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Contents

Federal Register

Vol. 73, No. 230

Friday, November 28, 2008

Agency for Toxic Substances and Disease Registry

NOTICES

Availability of an Update to the ATSDR Policy Guideline for Dioxins and Dioxin-Like Compounds in Residential Soil; Correction, 72484–72485

Agriculture Department

See Forest Service

See Rural Utilities Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals; Correction, 72442

Army Department

See Engineers Corps

NOTICES

Non-Exclusive, Exclusive License or Partially Exclusive Licensing; Availability:

Apparatus and Method to Test Abrasion Resistance of Material Using Airborne Particulate, 72454

Apparatus for Providing Velocity Differential Between Parachute and Payload to Reduce Shock Load, 72454–72455

Blind or Severely Disabled, Committee for Purchase From People Who Are

See Committee for Purchase From People Who Are Blind or Severely Disabled

Census Bureau

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72446–72447

Centers for Disease Control and Prevention

NOTICES

Meetings:

Advisory Board on Radiation and Worker Health, National Institute for Occupational Safety and Health, 72485

Centers for Medicare & Medicaid Services

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72486–72487

Medicare and Medicaid Programs:

Application by the Joint Commission for Continued Deeming Authority for Hospices, 72487–72489

Medicare Program:

Rechartering of the Advisory Panel on Ambulatory Payment Classification Groups, 72489–72490

Town Hall Meeting on the Fiscal Year 2010 Applications for New Medical Services and Technologies Add-on Payments, etc., 72490–72492

Meetings:

Advisory Panel on Medicare Education, (January 13, 2009), 72492–72493

Coast Guard

NOTICES

Random Drug Testing Rate for Covered Crewmembers, 72496

Commerce Department

See Census Bureau

See International Trade Administration

See National Institute of Standards and Technology

See Patent and Trademark Office

Committee for Purchase From People Who Are Blind or Severely Disabled

NOTICES

Procurement List; Additions and Deletions, 72445–72446

Consumer Product Safety Commission

RULES

Information Disclosure Under Section 6(b) of the Consumer Product Safety Act, 72334–72336

Defense Department

See Army Department

See Engineers Corps

See Navy Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72453–72454

Education Department

RULES

Title I - Improving the Academic Achievement of the Disadvantaged; Correction, 72352

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72460

Applications :

National Institute on Disability and Rehabilitation Research, etc.; New Awards for Fiscal Year (FY 2009), 72461–72468
Fiscal Year (FY 2009)

Energy Department

See Federal Energy Regulatory Commission

Engineers Corps

NOTICES

Environmental Impact Statements; Availability, etc.:

Pacific L.A. Marine Terminal LLC Crude Oil Terminal Project, Los Angeles County, CA, 72455

Environmental Impact Statements; Intent:

Los Angeles River Ecosystem Restoration Feasibility Study, Los Angeles County, CA, 72455–72458

Preserve at Sunridge, Rancho Cordova, Sacramento County, CA, 72458–72459

Environmental Protection Agency

RULES

Diflufenzuron; Pesticide Tolerances for Emergency Exemptions, 72352–72357

PROPOSED RULES

Effluent Limitations Guidelines and Standards for Construction and Development Point Source Category, 72562–72614

Protection of Stratospheric Ozone; the 2009 Critical Use Exemption from the Phaseout of Methyl Bromide, 72421–72440

NOTICES

Environmental Impacts Statements; Availability:

Weekly Receipts Filed 11/17/2008 Through 11/21/2008, 72477–72478

Environmental Impact Statements and Regulations;

Availability of EPA Comments, 72476–72477

Meetings:

National Advisory Council for Environmental Policy and Technology, 72478

Permits:

Offshore Seafood Processors in Alaska; Extension of Public Comment Period, 72478

Pesticide Experimental Use Permit; Receipt of Application; Comment Request, 72478–72480

Executive Office of the President

See Presidential Documents

Federal Aviation Administration**RULES**

Airworthiness Directives:

Airbus Model A330-200, A330-300, A340-300, A340-500, and A340-600 Series Airplanes, 72323–72326

Boeing Model 737-600, -700, -700C, -800 and -900 Series Airplanes, 72320–72323

Bombardier Model BD-700-1A10 and BD-700-1A11 Airplanes, 72316–72320

MD Helicopters, Inc. Model 500N and 600N Helicopters, 72326–72328

MD Helicopters, Inc. Model 600N Helicopters; Correction, 72316

Pratt & Whitney Canada Corp. JT15D 5; 5B; 5F; and 5R Turbofan Engines, 72328–72330

Rolls - Royce plc Models RB211 Trent 768-60, Trent 772-60, and Trent 772B-60 Turbofan Engines, 72310–72314

Vulcanair S.p.A. Model P68 Series Airplanes, 72314–72316

Special Conditions:

Embraer Model EMB-500 Series Airplane Special Conditions for Flight Performance, Flight Characteristics, and Operating Limitations, 72303–72310

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

Miscellaneous Amendments, 72330–72334

PROPOSED RULES

Airworthiness Directives:

Honeywell International Inc. ALF502L-2 and ALF502L-2C Turbofan Engines, 72370–72374

NOTICES

Meetings:

RTCA Program Management Committee, 72557–72558

Federal Communications Commission**NOTICES**

Debarments:

Schools and Libraries Universal Service Support Mechanism, 72480–72482

Federal Deposit Insurance Corporation**NOTICES**

Meetings; Sunshine Act, 72482

Federal Emergency Management Agency**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72496–72498

Disaster Declarations:

Kansas, 72498

Missouri, 72498–72499

Federal Energy Regulatory Commission**PROPOSED RULES**

Contract Reporting Requirements of Intrastate Natural Gas Companies, 72395–72398

NOTICES

Applications:

Atmos Pipeline and Storage, LLC, 72468–72469

Blanket Authorizations:

CenterPoint Energy Gas Transmission Co., 72469

Environmental Assessment; Availability:

Proposed Kentucky Energy Hub Project; Orbit Gas Storage, Inc., 72470

Environmental Assessment; Intent:

Sabine Pass LNG, L.P., 72471–72472

Filings:

Dynegy South Bay LLC, 72472

Kansas City Power & Light Co.; Aquila, Inc., 72472–72473

PSEG Energy Resources & Trade LLC, 72473

Public Service Commission of Maryland, 72473–72474

Sabine River Authority of Texas; Sabine River Authority, State of Louisiana, 72474–72475

Opportunity to File Reply Comments:

Sales of Electric Power to the Bonneville Power Administration; Revisions to the 2008 Average System Cost Methodology, 72475

Petition for Rate Approval:

J-W Pipeline Co., 72475–72476

Lee 8 Storage Partnership, 72476

Federal Highway Administration**NOTICES**

Final Federal Agency Actions on Proposed Highways in Texas, 72558–72559

Federal Railroad Administration**PROPOSED RULES**

Miscellaneous Amendments to the Federal Railroad Administration's Accident/Incident Reporting Requirements, 72440–72441

Federal Reserve System**NOTICES**

Federal Open Market Committee:

Domestic Policy Directive of the Conference Calls (Held on September 29, 2008, and October 7, 2008), and its Meeting (Held on October 28 and 29, 2008), 72482–72483

Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 72483

Federal Trade Commission**PROPOSED RULES**

Guides Concerning the Use of Endorsements and Testimonials in Advertising, 72374–72395

Fish and Wildlife Service**NOTICES**

Hanford Reach National Monument; Adams, Benton, Franklin and Grant Counties, WA, 72519

Food and Drug Administration**NOTICES**

Meetings:

Pediatric Ethics Subcommittee; Amendment, 72493–72494

Forest Service**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Grazing Permit Administration Forms, 72442–72443
Health Screening Questionnaire, 72443–72444

Health and Human Services Department

See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health

NOTICES

Meetings:

Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020, 72483–72484

Notice of Interest Rate on Overdue Debts, 72484

Petitions:

Designation of a Class of Employees for Standard Oil Development Co., Linden, NJ, 72484

Homeland Security Department

See Coast Guard
See Federal Emergency Management Agency
See Transportation Security Administration
See U.S. Customs and Border Protection

Housing and Urban Development Department**RULES**

HUD Programs:

Violence Against Women Act Conforming Amendments, 72336–72345

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Housing Finance Agency Risk-Sharing Program, 72502
Federal Property Suitable as Facilities to Assist the Homeless, 72502–72507

Funding Availability:

Rental Assistance for Non-Elderly Persons with Disabilities, etc., 72507–72513

Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans; Funding Availability, 72513–72518

Interior Department

See Fish and Wildlife Service
See Land Management Bureau
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Applicant Background Survey, 72518–72519

Internal Revenue Service**RULES**

Classification of Certain Foreign Entities, 72345–72346

PROPOSED RULES

Hearings:

Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions, 72398–72399

NOTICES

Publication of the Tier 2 Tax Rates, 72560

International Trade Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Internet Website Forms, 72447–72448

Antidumping:

Magnesium Metal from the People's Republic of China, 72448

Preserved Mushrooms from the People's Republic of China, 72448–72449

Countervailing Duties:

Dynamic Random Access Memory Semiconductors from the Republic of Korea, 72449–72450

International Trade Commission**NOTICES**

Investigations:

Sucralose, Sweeteners Containing Sucralose, and Related Intermediate Compounds, 72526–72527

Land Management Bureau**NOTICES**

Availability of Approved Resource Management Plan Amendments/Record of Decision (ROD):

Oil Shale and Tar Sands Resources to Address Land Use Allocations in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement, 72519–72520

Call for Nominations; North Slope Science Initiative, Science Technical Advisory Panel, Alaska, 72520–72521

Environmental Impact Statements; Availability, etc.:

Designation of Energy Corridors on Federal Land in the 11 Western States, etc., 72521–72525

Millennium Challenge Corporation**NOTICES**

Meetings; Sunshine Act, 72527

National Highway Traffic Safety Administration**RULES**

Tire Registration and Recordkeeping, 72358–72369
Tires; Correction, 72357–72358

National Institute of Standards and Technology**NOTICES**

Meetings:

Advisory Committee on Earthquake Hazards Reduction, 72450–72451

Malcolm Baldrige National Quality Award Board of Overseers, 72451

National Voluntary Laboratory Accreditation Program:

Laboratories Performing Interoperability, Performance, and Conformance Biometrics Testing, etc.; Establishment, 72451–72453

National Institutes of Health**NOTICES**

Decision to Evaluate a Petition to Designate a Class of Employees for the United Nuclear Corp., Hematite, Missouri, to be included in the Special Exposure C, 72494

Meetings:

Eunice Kennedy Shriver National Institute of Child Health and Human Development, 72494

Eunice Kennedy Shriver National Institute of Child Health and Human Development, 72494–72495

National Cancer Institute, 72495

National Heart, Lung, and Blood Institute Special
Emphasis Panel, etc., 72495–72496
National Institute of Dental and Craniofacial and
Craniofacial Research, 72496

National Science Foundation

NOTICES

Meetings; Sunshine Act, 72528

Navy Department

NOTICES

Environmental Impact Statements; Availability, etc.:
Laurelwood Housing Area Access, Naval Weapons
Station Earle, Colts Neck, NJ, 72459–72460

Nuclear Regulatory Commission

PROPOSED RULES

Consideration of Environmental Impacts of Temporary
Storage of Spent Fuel After Cessation of Reactor
Operation and Waste Confidence Decision Update:
Extension of Comment Period, 72370

NOTICES

Revision of the NRC Enforcement Policy, 72528–72529

Patent and Trademark Office

NOTICES

Meetings:

National Medal of Technology and Innovation
Nomination Evaluation Committee, 72453

Pension Benefit Guaranty Corporation

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Survey of Nonparticipating Single Premium Group
Annuity Rates, 72529–72530

Postal Service

RULES

Pricing and Mailing Standards Changes for Shipping
Services, 72616–72629

NOTICES

Change in Rates of General Applicability for Competitive
Products, 72630–72673
Meetings; Sunshine Act, 72530

Presidential Documents

PROCLAMATIONS

Trade:

Harmonized Tariff Schedule of the U.S.; modifications
(Proc. 8323), 72675–72683

ADMINISTRATIVE ORDERS

Marine War Risk Insurance Coverage; Provision
(Memorandum of November 25, 2008), 72685

Presidio Trust

NOTICES

Applications:

Wireless Telecommunications Facilities Site; The
Presidio of San Francisco, CA, 72530–72531

Reclamation Bureau

NOTICES

Central Valley Project Improvement Act, Water
Management Plans, 72525–72526

Rural Utilities Service

NOTICES

Meetings:

USDA Section 538 Guaranteed Rural Rental Housing
Program 2009 Industry Forums, 72444–72445

Securities and Exchange Commission

NOTICES

Applications:

Deregistration Under Section 8(f) of the Investment
Company Act (of 1940), 72531–72533

Self-Regulatory Organizations; Proposed Rule Changes:

BATS Exchange, Inc., 72533–72534

Boston Stock Exchange, Inc., 72534–72538

International Securities Exchange, LLC, 72538–72540

Municipal Securities Rulemaking Board, 72540–72546

NYSE Arca, Inc., 72546–72551

The NASDAQ Stock Market LLC, 72551–72554

State Department

NOTICES

Culturally Significant Objects Imported for Exhibition

Determinations:

'Carvers and Collectors, the Lasting Allure of Ancient
Gems', 72554

Declaration of Foreign Countries as Reciprocating Countries
for Enforcement of Family Support Obligations, 72555

Meetings:

Advisory Committee on Historical Diplomatic
Documentation, 72556

Advisory Committee on International Economic Policy,
72556

Industry Advisory Panel, 72556

Surface Mining Reclamation and Enforcement Office

RULES

Kansas Regulatory Program, 72346–72352

Surface Transportation Board

NOTICES

Progressive Rail Inc.-Intra-Corporate Family Transaction
Exemption-Airlake Terminal Railway Company, LLC,
72559–72560

Toxic Substances and Disease Registry Agency

See Agency for Toxic Substances and Disease Registry

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See Federal Railroad Administration

See National Highway Traffic Safety Administration

See Surface Transportation Board

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 72557

Transportation Security Administration

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Maryland-Three Airports: Enhanced Security Procedures
at Certain Airports in the Washington, DC, Area,
72499

Treasury Department

See Internal Revenue Service

See United States Mint

U.S. Customs and Border Protection

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72500–72501
Declaration of a Person Abroad Who Receives and is Returning Merchandise to the United States, 72501

United States Mint

NOTICES

Van Buren First Spouse Gold Coin Prices, 72560

Veterans Affairs Department

PROPOSED RULES

Per Diem for Nursing Home Care of Veterans in State Homes, 72399–72421

Separate Parts In This Issue

Part II

Environmental Protection Agency, 72562–72614

Part III

Postal Service, 72616–72673

Part IV

Executive Office of the President, Presidential Documents, 72675–72683, 72685

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR**Proclamations:**

8323.....72677

Administration Orders:**Memorandums:**

Memorandum of

November 25,

2008 72685

10 CFR**Proposed Rules:**

51 72370

14 CFR

23 72303

39 (8 documents) 72310,

72314, 72316, 72320, 72323,

72326, 72328

97 (2 documents) 72330,

72332

Proposed Rules:

39 72370

16 CFR

1101 72334

Proposed Rules:

255 72374

18 CFR**Proposed Rules:**

284 72395

24 CFR

5 72336

91 72336

880 72336

882 72336

883 72336

884 72336

886 72336

891 72336

903 72336

960 72336

982 72336

983 72336

26 CFR

301 72345

Proposed Rules:

1 72398

30 CFR

916 72346

34 CFR

200 72352

38 CFR**Proposed Rules:**

51 72399

58 72399

39 CFR

111 72616

40 CFR

180 72352

Proposed Rules:

82 72421

450 72562

49 CFR

571 72357

574 72358

Proposed Rules:

225 72440

Rules and Regulations

Federal Register

Vol. 73, No. 230

Friday, November 28, 2008

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE292; Special Conditions No. 23-232-SC]

Special Conditions: Embraer Model EMB-500 Series Airplane Special Conditions for Flight Performance, Flight Characteristics, and Operating Limitations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer Model EMB-500 series airplane. This airplane will have a novel or unusual design feature(s) associated with engine location, certain performance, flight characteristics and operating limitations necessary for this type of airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is November 18, 2008. We must receive your comments by December 29, 2008.

ADDRESSES: Mail two copies of your comments to: Federal Aviation

Administration, Regional Counsel, ACE-7, Attention: Rules Docket No. CE292, 901 Locust, Room 506, Kansas City, Missouri 64106. You may deliver two copies to the Regional Counsel at the above address.

Mark your comments: Docket No. CE292. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: J. Lowell Foster, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE-111, 901 Locust, Room 301, Kansas City, Missouri 816-329-4125, fax 816-329-4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective on issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this

preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On October 5, 2005, Embraer applied for a type certificate for their new Model, the EMB-500. The EMB-500 is an all-new, high-performance, low wing, twin turboprop powered airplane. Design features include turboprop engines, aft engine location, new avionics, and certain performance characteristics inherent in this type of airplane that were not envisioned by the existing regulations.

The EMB-500 will be a new airplane and will have the following significant features incorporated:

- Two Pratt & Whitney PW617F/1 turboprop engines rated at 1,600 pounds of thrust with a Full Authority Digital Engine Control (FADEC) system.
- Garmin will provide a new avionics/instrumentation system, the G1000. This system is a state-of-the-art glass cockpit utilizing redundant Active Matrix Liquid Crystal Displays, featuring three displays.
- The aircraft's general configuration will be similar to other normal category jet airplanes, including a T-tail, and a low wing with slight leading edge wing sweep.
- The cabin will have a maximum seating configuration for 8 passengers.
- The preliminary operational design criteria are:

Parameter	Symbol	EMB-500
Limit Speeds	V _{MO}	275 KCAS
	M _{MO}	0.70 Mach
Max Takeoff Weight		9965 lb
Max Landing Weight		9259 lb
Max Zero Fuel Weight		8510 lb
Flap Speeds	Flaps 1	200 KIAS
	Flaps 2	160 KIAS
	Flaps 3	145 KIAS

Parameter	Symbol	EMB-500
Landing Gear Speeds	Flaps Full	145 KIAS
	V _{LO} (Retracting)	180 KIAS
	V _{LO} (Extending)	250 KIAS
	V _{LE} (Extended)	275 KIAS
Maximum Altitude		41,000 ft

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Embraer must show that the EMB-500 meets the applicable provisions of part 23, as amended by Amendment 23-1 through 23-54 thereto. If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR, part 23) do not contain adequate or appropriate safety standards for the Embraer EMB-500 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the EMB-500 must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 23 noise certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92-574, the "Noise Control Act of 1972."

Novel or Unusual Design Features

The Embraer EMB-500 will incorporate the following novel or unusual design features: Aft-mounted engines, certain performance and flight characteristics, and operating limitations necessary for this type of airplane.

Applicability

As discussed above, these special conditions are applicable to the Embraer EMB-500 series. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Embraer EMB-500 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions on issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

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

The Special Conditions

Several 14 CFR part 23 paragraphs have been replaced by or supplemented with special conditions. These special conditions have been numbered to match the 14 CFR part 23 paragraphs they replace or supplement. Additionally, many of the other applicable part 23 paragraphs cross-reference paragraphs that are replaced by or supplemented with special conditions. It is implied that the special conditions associated with these paragraphs must be applied. This principal applies to all part 23 paragraphs that cross-reference paragraphs associated with special conditions.

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Embraer EMB-500 series airplanes.

§ 23.45 General.

Instead of compliance with § 23.45, the following apply:

(a) Unless otherwise prescribed, the performance requirements of this part must be met for—

(1) Still air and standard atmosphere; and

(2) Ambient atmospheric conditions.

(b) Performance data must be determined over not less than the following ranges of conditions—

(1) Airport altitudes from sea level to 10,000 feet; and

(2) Temperature from standard to 30 °C above standard, or the maximum ambient atmospheric temperature at which compliance with the cooling provisions of § 23.1041 to § 23.1047 is shown, if lower.

(c) Performance data must be determined with the cowl flaps or other means for controlling the engine cooling air supply in the position used in the cooling tests required by § 23.1041 to § 23.1047.

(d) The available propulsive thrust must correspond to engine power, not exceeding the approved power, less—

(1) Installation losses; and

(2) The power absorbed by the accessories and services appropriate to the particular ambient atmospheric conditions and the particular flight condition.

(e) The performance, as affected by engine power or thrust, must be based on a relative humidity:

(1) Of 80 percent at and below standard temperature; and

(2) From 80 percent, at the standard temperature, varying linearly down to 34 percent at the standard temperature plus 50 °F.

(f) Unless otherwise prescribed, in determining the takeoff and landing distances, changes in the airplane's configuration, speed, and power must be made in accordance with procedures established by the applicant for operation in service. These procedures must be able to be executed consistently by pilots of average skill in atmospheric

conditions reasonably expected to be encountered in service.

(g) The following, as applicable, must be determined on a smooth, dry, hard-surfaced runway—

- (1) Not applicable;
- (2) Accelerate-stop distance of § 23.55;
- (3) Takeoff distance and takeoff run of § 23.59; and
- (4) Landing distance of § 23.75.

Note: The effect on these distances of operation on other types of surfaces (for example, grass, gravel) when dry, may be determined or derived and these surfaces listed in the Airplane Flight Manual in accordance with § 23.1583(p).

(h) The following also apply:

(1) Unless otherwise prescribed, the applicant must select the takeoff, enroute, approach, and landing configurations for the airplane.

(2) The airplane configuration may vary with weight, altitude, and temperature, to the extent that they are compatible with the operating procedures required by paragraph (h)(3) of this section.

(3) Unless otherwise prescribed, in determining the critical-engine-inoperative takeoff performance, takeoff flight path, and accelerate-stop distance, changes in the airplane's configuration, speed, and power must be made in accordance with procedures established by the applicant for operation in service.

(4) Procedures for the execution of discontinued approaches and balked landings associated with the conditions prescribed in §§ 23.67(c)(4) and 23.77(c) must be established.

(5) The procedures established under paragraphs (h)(3) and (h)(4) of this section must—

(i) Be able to be consistently executed by a crew of average skill in atmospheric conditions reasonably expected to be encountered in service;

(ii) Use methods or devices that are safe and reliable; and

(iii) Include allowance for any reasonably expected time delays in the execution of the procedures.

§ 23.51 Takeoff speeds.

Instead of compliance with § 23.51, the following apply:

- (a) Not applicable.
- (b) Not applicable.
- (c) The following apply:
 - (i) V_1 must be established in relation to V_{EF} as follows:
 - (i) V_{EF} is the calibrated airspeed at which the critical engine is assumed to fail. V_{EF} must be selected by the applicant, but it must not be less than $1.05 V_{MC}$ determined under § 23.149(b) or, at the option of the applicant, not less than V_{MCG} determined under § 23.149(f).

(ii) The takeoff decision speed, V_1 , is the calibrated airspeed on the ground at which, as a result of engine failure or other reasons, the pilot is assumed to have made a decision to continue or discontinue the takeoff. The takeoff decision speed, V_1 , must be selected by the applicant but must not be less than V_{EF} plus the speed gained with the critical engine inoperative during the time interval between the instant at which the critical engine is failed and the instant at which the pilot recognizes and reacts to the engine failure, as indicated by the pilot's application of the first retarding means during the accelerate-stop determination of § 23.55.

(2) The rotation speed, V_R , in terms of calibrated airspeed, must be selected by the applicant and must not be less than the greatest of the following:

- (i) V_1 ;
- (ii) $1.05 V_{MC}$ determined under § 23.149(b);
- (iii) $1.10 V_{S1}$; or
- (iv) The speed that allows attaining the initial climb-out speed, V_2 , before reaching a height of 35 feet above the takeoff surface in accordance with § 23.57(c)(2).

(3) For any given set of conditions, such as weight, altitude, temperature, and configuration, a single value of V_R must be used to show compliance with both the one-engine-inoperative takeoff and all-engines-operating takeoff requirements.

(4) The takeoff safety speed, V_2 , in terms of calibrated airspeed, must be selected by the applicant so as to allow the gradient of climb required in § 23.67(c)(1) and (c)(2) but must not be less than $1.10 V_{MC}$ or less than $1.20 V_{S1}$.

(5) The one-engine-inoperative takeoff distance, using a normal rotation rate at a speed 5 knots less than V_R , established in accordance with paragraph (c)(2) of this section, must be shown not to exceed the corresponding one-engine-inoperative takeoff distance, determined in accordance with §§ 23.57 and 23.59(a)(1), using the established V_R . The takeoff, otherwise performed in accordance with § 23.57, must be continued safely from the point at which the airplane is 35 feet above the takeoff surface and at a speed not less than the established V_2 minus 5 knots.

(6) The applicant must show, with all engines operating, that marked increases in the scheduled takeoff distances, determined in accordance with § 23.59(a)(2), do not result from over-rotation of the airplane or out-of-trim conditions.

§ 23.53 Takeoff performance.

Instead of compliance with § 23.53, the following apply:

(a) Not applicable.

(b) Not applicable.

(c) Takeoff performance, as required by §§ 23.55 through 23.59, must be determined with the operating engine(s) within approved operating limitations.

§ 23.55 Accelerate-stop distance.

Instead of compliance with § 23.55, the following apply:

The accelerate-stop distance must be determined as follows:

(a) The accelerate-stop distance is the sum of the distances necessary to—

- (1) Accelerate the airplane from a standing start to V_{EF} with all engines operating;
 - (2) Accelerate the airplane from V_{EF} to V_1 , assuming the critical engine fails at V_{EF} ; and
 - (3) Come to a full stop from the point at which V_1 is reached.
- (b) Means other than wheel brakes may be used to determine the accelerate-stop distances if that means—
- (1) Is safe and reliable;
 - (2) Is used so that consistent results can be expected under normal operating conditions; and
 - (3) Is such that exceptional skill is not required to control the airplane.

§ 23.57 Takeoff path.

Instead of compliance with § 23.57, the following apply:

The takeoff path is as follows:

(a) The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1,500 feet above the takeoff surface at or below which height the transition from the takeoff to the enroute configuration must be completed; and

(1) The takeoff path must be based on the procedures prescribed in § 23.45;

(2) The airplane must be accelerated on the ground to V_{EF} at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(3) After reaching V_{EF} , the airplane must be accelerated to V_2 .

(b) During the acceleration to speed V_2 , the nose gear may be raised off the ground at a speed not less than V_R . However, landing gear retraction must not be initiated until the airplane is airborne.

(c) During the takeoff path determination, in accordance with paragraphs (a) and (b) of this section—

(1) The slope of the airborne part of the takeoff path must not be negative at any point;

(2) The airplane must reach V_2 before it is 35 feet above the takeoff surface, and must continue at a speed as close as practical to, but not less than V_2 , until it is 400 feet above the takeoff surface;

(3) At each point along the takeoff path, starting at the point at which the airplane reaches 400 feet above the takeoff surface, the available gradient of climb must not be less than 1.2 percent for two-engine airplanes; and

(4) Except for gear retraction and automatic propeller feathering, the airplane configuration must not be changed, and no change in power that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

(d) The takeoff path to 35 feet above the takeoff surface must be determined by a continuous demonstrated takeoff.

(e) The takeoff path to 35 feet above the takeoff surface must be determined by synthesis from segments; and

(1) The segments must be clearly defined and must be related to distinct changes in configuration, power, and speed;

(2) The weight of the airplane, the configuration, and the power must be assumed constant throughout each segment and must correspond to the most critical condition prevailing in the segment; and

(3) The takeoff flight path must be based on the airplane's performance without utilizing ground effect.

§ 23.59 Takeoff distance and takeoff run.

Instead of compliance with § 23.59, the following apply:

The takeoff distance and, at the option of the applicant, the takeoff run, must be determined.

(a) Takeoff distance is the greater of—

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface as determined under § 23.57; or

(2) With all engines operating, 115 percent of the horizontal distance from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with § 23.57.

(b) If the takeoff distance includes a clearway, the takeoff run is the greater of—

(1) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the liftoff point and the point at which the airplane is 35 feet above the takeoff surface as determined under § 23.57; or

(2) With all engines operating, 115 percent of the horizontal distance from the start of the takeoff to a point equidistant between the liftoff point and the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with § 23.57.

§ 23.61 Takeoff flight path.

Instead of compliance with § 23.61, the following apply:

The takeoff flight path must be determined as follows:

(a) The takeoff flight path begins 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with § 23.59.

(b) The net takeoff flight path data must be determined so that they represent the actual takeoff flight paths, as determined in accordance with § 23.57 and with paragraph (a) of this section, reduced at each point by a gradient of climb equal to 0.8 percent for two-engine airplanes.

(c) The prescribed reduction in climb gradient may be applied as an equivalent reduction in acceleration along that part of the takeoff flight path at which the airplane is accelerated in level flight.

§ 23.63 Climb: General.

Instead of compliance with § 23.63, the following apply:

(a) Compliance with the requirements of §§ 23.65, 23.66, 23.67, 23.69, and 23.77 must be shown—

(1) Out of ground effect; and

(2) At speeds that are not less than those at which compliance with the powerplant cooling requirements of §§ 23.1041 to 23.1047 has been demonstrated; and

(3) Unless otherwise specified, with one engine inoperative, at a bank angle not exceeding 5 degrees.

(b) Not applicable.

(c) Not applicable.

(d) Compliance must be shown at weights as a function of airport altitude and ambient temperature within the operational limits established for takeoff and landing, respectively, with—

(1) Sections 23.67(c)(1), 23.67(c)(2), and 23.67(c)(3) for takeoff; and

(2) Sections 23.67(c)(3), 23.67(c)(4), and 23.77(c) for landing.

§ 23.66 Takeoff climb: One-engine inoperative.

Instead of compliance with § 23.66, see § 23.67.

§ 23.67 Climb: One engine inoperative.

Instead of compliance with § 23.67, the following apply:

(a) Not applicable.

(b) Not applicable.

(c) The following apply:

(1) *Takeoff; landing gear extended.*

The steady gradient of climb at the altitude of the takeoff surface must be measurably positive for two-engine airplanes with—

(i) The critical engine inoperative and its propeller in the position it rapidly and automatically assumes;

(ii) The remaining engine(s) at takeoff power;

(iii) The landing gear extended, and all landing gear doors open;

(iv) The wing flaps in the takeoff position(s);

(v) The wings level; and

(vi) A climb speed equal to V_2 .

(2) *Takeoff; landing gear retracted.*

The steady gradient of climb at an altitude of 400 feet above the takeoff surface must be not less than 2.0 percent of two-engine airplanes with—

(i) The critical engine inoperative and its propeller in the position it rapidly and automatically assumes;

(ii) The remaining engine(s) at takeoff power;

(iii) The landing gear retracted;

(iv) The wing flaps in the takeoff position(s);

(v) A climb speed equal to V_2 .

(3) *En route.* The steady gradient of climb at an altitude of 1,500 feet above the takeoff or landing surface, as appropriate, must be not less than 1.2 percent for two-engine airplanes with—

(i) The critical engine inoperative and its propeller in the minimum drag position;

(ii) The remaining engine(s) at not more than maximum continuous power;

(iii) The landing gear retracted;

(iv) The wing flaps retracted; and

(v) A climb speed not less than 1.2 V_{S1} .

(4) *Discontinued approach.* The steady gradient of climb at an altitude of 400 feet above the landing surface must be not less than 2.1 percent for two-engine airplanes with—

(i) The critical engine inoperative and its propeller in the minimum drag position;

(ii) The remaining engine(s) at takeoff power;

(iii) Landing gear retracted;

(iv) Wing flaps in the approach position(s) in which V_{S1} for these position(s) does not exceed 110 percent of the V_{S1} for the related all-engines-operated landing position(s); and

(v) A climb speed established in connection with normal landing procedures but not exceeding 1.5 V_{S1} .

§ 23.73 Reference landing approach speed.

Instead of compliance with § 23.73, the following apply:

(a) Not applicable.

(b) Not applicable.

(c) The reference landing approach speed, V_{REF} , must not be less than the greater of 1.05 V_{MC} , determined in § 23.149(c), and 1.3 V_{SO} .

§ 23.75 Landing distance.

Instead of compliance with § 23.75, the following apply:

The horizontal distance necessary to land and come to a complete stop from a point 50 feet above the landing surface must be determined, for standard temperatures at each weight and altitude within the operational limits established for landing, as follows:

(a) A steady approach at not less than V_{REF} , determined in accordance with § 23.73(c) must be maintained down to the 50 foot height and—

(1) The steady approach must be at a gradient of descent not greater than 5.2 percent (3 degrees) down to the 50-foot height.

(2) In addition, an applicant may demonstrate by tests that a maximum steady approach gradient steeper than 5.2 percent, down to the 50-foot height, is safe. The gradient must be established as an operating limitation and the information necessary to display the gradient must be available to the pilot by an appropriate instrument.

(b) A constant configuration must be maintained throughout the maneuver.

(c) The landing must be made without excessive vertical acceleration or tendency to bounce, nose over, ground loop, porpoise, or water loop.

(d) It must be shown that a safe transition to the balked landing conditions of § 23.77 can be made from the conditions that exist at the 50 foot height, at maximum landing weight, or at the maximum landing weight for altitude and temperature of § 23.63(d)(2).

(e) The brakes must be used so as to not cause excessive wear of brakes or tires.

(f) Retardation means other than wheel brakes may be used if that means—

(1) Is safe and reliable; and

(2) Is used so that consistent results can be expected in service.

(g) If any device is used that depends on the operation of any engine, and the landing distance would be increased when a landing is made with that engine inoperative, the landing distance must be determined with that engine inoperative unless the use of other compensating means will result in a landing distance not more than that with each engine operating.

§ 23.77 Balked landing.

Instead of compliance with § 23.77, the following apply:

(a) Not applicable.

(b) Not applicable.

(c) Each airplane must be able to maintain a steady gradient of climb of at least 3.2 percent with—

(1) Not more than the power that is available on each engine eight seconds after initiation of movement of the

power controls from the minimum flight idle position;

(2) Landing gear extended;

(3) Wing flaps in the landing position; and

(4) A climb speed equal to V_{REF} , as defined in § 23.73(c).

§ 23.177 Static directional and lateral stability.

Instead of compliance with § 23.177, the following apply:

(a) The static directional stability, as shown by the tendency to recover from a wings level sideslip with the rudder free, must be positive for any landing gear and flap position appropriate to the takeoff, climb, cruise, approach, and landing configurations. This must be shown with symmetrical power up to maximum continuous power, and at speeds from $1.2 V_{S1}$ up to V_{FE} , V_{LE} , or V_{FC}/M_{FC} (as appropriate). The angle of sideslip for these tests must be appropriate to the type of airplane. At larger angles of sideslip, up to that at which full rudder is used or a control force limit in § 23.143 is reached, whichever occurs first, and at speeds from $1.2 V_{S1}$ to V_O , the rudder pedal force must not reverse.

(b) The static lateral stability, as shown by the tendency to raise the low wing in a sideslip, must be positive for all landing gear and flap positions. This must be shown with symmetrical power up to 75 percent of maximum continuous power at speeds above $1.2 V_{S1}$ in the takeoff configuration(s) and at speeds above $1.3 V_{S1}$ in other configurations, up to V_{FE} , V_{LE} , or V_{FC}/M_{FC} (as appropriate) for the configuration being investigated, in the takeoff, climb, cruise, and approach configurations. For the landing configuration, the power must be that necessary to maintain a 3 degree angle of descent in coordinated flight. The static lateral stability must not be negative at $1.2 V_{S1}$ in the takeoff configuration, or at $1.3 V_{S1}$ in other configurations. The angle of sideslip for these tests must be appropriate to the type of airplane, but in no case may the constant heading sideslip angle be less than that obtainable with a 10 degree bank, or if less, the maximum bank angle obtainable with full rudder deflection or 150 pound rudder force.

(c) Paragraph (b) of this section does not apply to acrobatic category airplanes certificated for inverted flight.

(d) In straight, steady slips at $1.2 V_{S1}$ for any landing gear and flap positions, and for any symmetrical power conditions up to 50 percent of maximum continuous power, the aileron and rudder control movements and forces must increase steadily, but

not necessarily in constant proportion, as the angle of sideslip is increased up to the maximum appropriate to the type of airplane. At larger slip angles, up to the angle at which the full rudder or aileron control is used or a control force limit contained in § 23.143 is reached, the aileron and rudder control movements and forces must not reverse as the angle of sideslip is increased. Rapid entry into, and recovery from, a maximum sideslip considered appropriate for the airplane must not result in uncontrollable flight characteristics.

§ 23.201(e) Wings level stall.

Instead of compliance with § 23.201(e), the following apply:

(e) Compliance with the requirements of this section must be shown under the following conditions:

(1) The flaps, landing gear, and speedbrakes in any likely combination of positions and altitudes appropriate for the various positions.

(2) Thrust—

(i) Idle; and

(ii) The thrust necessary to maintain level flight at $1.6 V_{S1}$ (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(3) Trim at $1.4 V_{S1}$ or the minimum trim speed, whichever is higher.

§ 23.203(c) Turning flight and accelerated turning stalls.

Instead of compliance with § 23.203(c), the following apply:

(c) Compliance with the requirements of this section must be shown under the following conditions:

(1) The flaps, landing gear, and speedbrakes in any likely combination of positions and altitudes appropriate for the various positions.

(2) Thrust—

(i) Idle; and

(ii) The thrust necessary to maintain level flight at $1.6 V_{S1}$ (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(3) Trim at $1.4 V_{S1}$ or the minimum trim speed, whichever is higher.

§ 23.251 Vibration and buffeting.

Instead of compliance with § 23.251, the following apply:

(a) The airplane must be demonstrated in flight to be free from any vibration and buffeting that would prevent continued safe flight in any likely operating condition.

(b) Each part of the airplane must be shown in flight to be free from excessive

vibration under any appropriate speed and thrust conditions up to V_{DF}/M_{DF} . The maximum speeds shown must be used in establishing the operating limitations of the airplane in accordance with special condition § 23.1505.

(c) Except as provided in paragraph (d) of this special condition, there may be no buffeting condition, in normal flight, including configuration changes during cruise, severe enough to interfere with the control of the airplane, to cause excessive fatigue to the crew, or to cause structural damage. Stall warning buffeting within these limits is allowable.

(d) There may be no perceptible buffeting condition in the cruise configuration in straight flight at any speed up to V_{MO}/M_{MO} , except that stall warning buffeting is allowable.

(e) With the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or Mach number, weight, and altitude for which the airplane is to be certified. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadvertent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

§ 23.253 High speed characteristics.

Instead of compliance with § 23.253, the following apply:

(a) *Speed increase and recovery characteristics.* The following speed increase and recovery characteristics must be met:

(1) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely cruise speed up to V_{MO}/M_{MO} . These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, passenger movement, leveling off from climb, and descent from Mach to airspeed limit altitudes.

(2) Allowing for pilot reaction time after effective inherent or artificial speed warning occurs, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to V_{MO}/M_{MO} , without:

- (i) Exceptional piloting strength or skill;
- (ii) Exceeding V_D/M_D , V_{DF}/M_{DF} , or the structural limitations; and
- (iii) Buffeting that would impair the pilot's ability to read the instruments or control the airplane for recovery.

(3) There may be no control reversal about any axis at any speed up to V_{DF}/M_{DF} . Any reversal of elevator control force or tendency of the airplane to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques.

(b) *Maximum speed for stability characteristics.* V_{FC}/M_{FC} . V_{FC}/M_{FC} is the maximum speed at which the requirements of § 23.175(b)(1), special condition §§ 23.177, and 23.181 must be met with flaps and landing gear retracted. It may not be less than a speed midway between V_{MO}/M_{MO} and V_{DF}/M_{DF} except that, for altitudes where Mach number is the limiting factor, M_{FC} need not exceed the Mach number at which effective speed warning occurs.

§ 23.703 Takeoff warning system.

Instead of compliance with § 23.703, the following apply:

Unless it can be shown that a lift or longitudinal trim device that affects the takeoff performance of the aircraft would not give an unsafe takeoff configuration when selection out of an approved takeoff position, a takeoff warning system must be installed and meet the following requirements:

(a) The system must provide to the pilots an aural warning that is automatically activated during the initial portion of the takeoff roll if the airplane is in a configuration that would not allow a safe takeoff. The warning must continue until—

(1) The configuration is changed to allow safe takeoff, or

(2) Action is taken by the pilot to abandon the takeoff roll.

(b) The means used to activate the system must function properly for all authorized takeoff power settings and procedures and throughout the ranges of takeoff weights, altitudes, and temperatures for which certification is requested.

§ 23.735 Brakes.

In addition to paragraphs (a), (b), (c), and (d), the following apply:

(e) The rejected takeoff brake kinetic energy capacity rating of each main wheel brake assembly must not be less than the kinetic energy absorption requirements determined under either of the following methods—

(1) The brake kinetic energy absorption requirements must be based on a conservative rational analysis of the sequence of events expected during a rejected takeoff at the design takeoff weight.

(2) Instead of a rational analysis, the kinetic energy absorption requirements for each main wheel brake assembly may be derived from the following formula—

$$KE = 0.0443 WV^2 / N$$

Where:

KE = Kinetic energy per wheel (ft.-lbs.);

W = Design takeoff weight (lbs.);

V = Ground speed, in knots, associated with the maximum value of V_1 selected in accordance with § 23.51(c)(1);

N = Number of main wheels with brakes.

§ 23.1323 Airspeed indicating system.

In addition to paragraphs (a), (b), (c), and (d), the following apply:

(e) In addition, the airspeed indicating system must be calibrated to determine the system error during the accelerate-takeoff ground run. The ground run calibration must be obtained between 0.8 of the minimum value of V_1 and the maximum value of V_2 , considering the approved ranges of altitude and weight. The ground run calibration must be determined assuming an engine failure at the minimum value of V_1 .

(f) Where duplicate airspeed indicators are required, their respective pitot tubes must be far enough apart to avoid damage to both tubes in a collision with a bird.

§ 23.1505 Airspeed limitations.

Instead of compliance with § 23.1505, the following apply:

(a) The maximum operating limit speed (V_{MO}/M_{MO} -airspeed or Mach number, whichever is critical at a particular altitude) is a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent), unless a higher speed is authorized for flight test or pilot training operations. V_{MO}/M_{MO} must be established so that it is not greater than the design cruising speed V_C/M_C and so that it is sufficiently below V_D/M_D or V_{DF}/M_{DF} , to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between V_{MO}/M_{MO} and V_D/M_D or V_{DF}/M_{DF} may not be less than that determined under § 23.335(b) or found necessary in the flight test conducted under special condition § 23.253.

§ 23.1583 Operating limitations.

Instead of compliance with § 23.1583, the following apply:

The Airplane Flight Manual must contain operating limitations determined under this part 23, including the following—

(a) *Airspeed limitations.* The following information must be furnished:

(1) Information necessary for the marking of the airspeed limits on the indicator as required in § 23.1545, and the significance of each of those limits and of the color-coding used on the indicator.

(2) The speeds V_{MC} , V_O , V_{LE} , and V_{LO} , if established, and their significance.

(3) In addition, for turbine powered airplanes—

(i) The maximum operating limit speed, V_{MO}/M_{MO} and a statement that this speed must not be deliberately exceeded in any regime of flight (climb, cruise or descent) unless a higher speed is authorized for flight test or pilot training;

(ii) If an airspeed limitation is based upon compressibility effects, a statement to this effect and information as to any symptoms, the probable behavior of the airplane, and the recommended recovery procedures; and

(iii) The airspeed limits must be shown in terms of V_{MO}/M_{MO} instead of V_{NO} and V_{NE} .

(b) *Powerplant limitations.* The following information must be furnished:

(1) Limitations required by § 23.1521.

(2) Explanation of the limitations, when appropriate.

(3) Information necessary for marking the instruments required by § 23.1549 through § 23.1553.

(c) *Weight.* The airplane flight manual must include—

(1) Not applicable;

(2) Not applicable;

(3) Not applicable;

(4) The maximum takeoff weight for each airport altitude and ambient temperature within the range selected by the applicant at which—

(i) The airplane complies with the climb requirements of § 23.63(d)(1); and

(ii) The accelerate-stop distance determined under § 23.55 is equal to the available runway length plus the length of any stopway, if utilized; and either:

(iii) The takeoff distance determined under § 23.59(a) is equal to the available runway length; or

(iv) At the option of the applicant, the takeoff distance determined under § 23.59(a) is equal to the available runway length plus the length of any clearway and the takeoff run determined under § 23.59(b) is equal to the available runway length.

(5) The maximum landing weight for each airport altitude within the range selected by the applicant at which—

(i) The airplane complies with the climb requirements of § 23.63(d)(2) for ambient temperatures within the range selected by the applicant; and

(ii) The landing distance determined under § 23.75 for standard temperatures is equal to the available runway length.

(6) The maximum zero wing fuel weight, where relevant, as established in accordance with § 23.343.

(d) *Center of gravity.* The established center of gravity limits.

(e) *Maneuvers.* The following authorized maneuvers, appropriate airspeed limitations, and unauthorized maneuvers, as prescribed in this section.

(1) Not applicable.

(2) Not applicable.

(3) Not applicable.

(4) Not applicable.

(5) Maneuvers are limited to any maneuver incident to normal flying, stalls (except whip stalls), and steep turns in which the angle of bank is not more than 60 degrees.

(f) *Maneuver load factor.* The positive limit load factors in g's, and, in addition, the negative limit load factor for acrobatic category airplanes.

(g) *Minimum flight crew.* The number and functions of the minimum flight crew determined under § 23.1523.

(h) *Kinds of operation.* A list of the kinds of operation to which the airplane is limited or from which it is prohibited under § 23.1525, and also a list of installed equipment that affects any operating limitation and identification as to the equipment's required operational status for the kinds of operation for which approval has been given.

(i) *Maximum operating altitude.* The maximum altitude established under § 23.1527.

(j) *Maximum passenger seating configuration.* The maximum passenger-seating configuration.

(k) *Allowable lateral fuel loading.* The maximum allowable lateral fuel loading differential, if less than the maximum possible.

(l) *Baggage and cargo loading.* The following information for each baggage and cargo compartment or zone—

(1) The maximum allowable load; and

(2) The maximum intensity of loading.

(m) *Systems.* Any limitations on the use of airplane systems and equipment.

(n) *Ambient temperatures.* Where appropriate, maximum and minimum ambient air temperatures for operation.

(o) *Smoking.* Any restrictions on smoking in the airplane.

(p) *Types of surface.* A statement of the types of surface on which operations may be conducted. (See §§ 23.45(g) and 23.1587(a)(4) and (d)(4)).

§ 23.1585 Operating procedures.

Instead of compliance with § 23.1585, the following apply:

(a) For all airplanes, information concerning normal, abnormal (if applicable), and emergency procedures and other pertinent information necessary for safe operation and the achievement of the scheduled performance must be furnished, including—

(1) An explanation of significant or unusual flight or ground handling characteristics;

(2) The maximum demonstrated values of crosswind for takeoff and landing, and procedures and information pertinent to operations in crosswinds;

(3) A recommended speed for flight in rough air. This speed must be chosen to protect against the occurrence, as a result of gusts, of structural damage to the airplane and loss of control (for example, stalling);

(4) Procedures for restarting any turbine engine in flight, including the effects of altitude; and

(5) Procedures, speeds, and configuration(s) for making a normal approach and landing, in accordance with § 23.73 and § 23.75, and a transition to the balked landing condition.

(6) For seaplanes and amphibians, water handling procedures and the demonstrated wave height.

(b) Not applicable.

(c) In addition to paragraph (a) of this section, for all multiengine airplanes, the following information must be furnished:

(1) Procedures, speeds, and configuration(s) for making an approach and landing with one engine inoperative;

(2) Procedures, speeds, and configuration(s) for making a balked landing with one engine inoperative and the conditions under which a balked landing can be performed safely, or a warning against attempting a balked landing;

(3) The V_{SSE} determined in § 23.149; and

(4) Procedures for restarting any engine in flight including the effects of altitude.

(d) Not applicable.

(e) Not applicable.

(f) In addition to paragraphs (a) and (c) of this section the information must include the following:

(1) Procedures, speeds, and configuration(s) for making a normal takeoff.

(2) Procedures and speeds for carrying out an accelerate-stop in accordance with § 23.55.

(3) Procedures and speeds for continuing a takeoff following engine failure in accordance with § 23.59(a)(1) and for following the flight path determined under § 23.57 and § 23.61(a).

(g) For multiengine airplanes, information identifying each operating condition in which the fuel system independence prescribed in § 23.953 is necessary for safety must be furnished,

together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(h) For each airplane showing compliance with § 23.1353(g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(i) Information on the total quantity of usable fuel for each fuel tank, and the effect on the usable fuel quantity, as a result of a failure of any pump, must be furnished.

(j) Procedures for the safe operation of the airplane's systems and equipment, both in normal use and in the event of malfunction, must be furnished.

§ 23.1587 Performance information.

Instead of compliance with § 23.1587, the following apply:

Unless otherwise prescribed, performance information must be provided over the altitude and temperature ranges required by § 23.45(b).

(a) For all airplanes, the following information must be furnished—

(1) The stalling speeds V_{SO} and V_{S1} with the landing gear and wing flaps retracted, determined at maximum weight under § 23.49, and the effect on these stalling speeds of angles of bank up to 60 degrees;

(2) The steady rate and gradient of climb with all engines operating, determined under § 23.69(a);

(3) The landing distance, determined under § 23.75 for each airport altitude and standard temperature, and the type of surface for which it is valid;

(4) The effect on landing distances of operation on other than smooth hard surfaces, when dry, determined under § 23.45(g); and

(5) The effect on landing distances of runway slope and 50 percent of the headwind component and 150 percent of the tailwind component.

(b) Not applicable.

(c) Not applicable.

(d) In addition to paragraph (a) of this section, the following information must be furnished—

(1) The accelerate-stop distance determined under § 23.55;

(2) The takeoff distance determined under § 23.59(a);

(3) At the option of the applicant, the takeoff run determined under § 23.59(b);

(4) The effect on accelerate-stop distance, takeoff distance and, if determined, takeoff run, of operation on other than smooth hard surfaces, when dry, determined under § 23.45(g);

(5) The effect on accelerate-stop distance, takeoff distance, and if determined, takeoff run, of runway slope and 50 percent of the headwind

component and 150 percent of the tailwind component;

(6) The net takeoff flight path determined under § 23.61(b);

(7) The enroute gradient of climb/descent with one engine inoperative, determined under § 23.69(b);

(8) The effect, on the net takeoff flight path and on the enroute gradient of climb/descent with one engine inoperative, of 50 percent of the headwind component and 150 percent of the tailwind component;

(9) Overweight landing performance information (determined by extrapolation and computed for the range of weights between the maximum landing and maximum takeoff weights) as follows—

(i) The maximum weight for each airport altitude and ambient temperature at which the airplane complies with the climb requirements of § 23.63(d)(2); and

(ii) The landing distance determined under § 23.75 for each airport altitude and standard temperature.

(10) The relationship between IAS and CAS determined in accordance with § 23.1323(b) and (c).

(11) The altimeter system calibration required by § 23.1325(e).

Issued in Kansas City, Missouri, on November 18, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-28025 Filed 11-26-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-23605; Directorate Identifier 2005-NE-48-AD; Amendment 39-15743; AD 2008-24-03]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce plc Models RB211 Trent 768-60, Trent 772-60, and Trent 772B-60 Turbofan Engines

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Rolls-Royce plc (RR) models RB211 Trent 768-60, Trent 772-60, and Trent 772B-60 turbofan engines that have not incorporated RR Service Bulletin (SB)

No. RB.211-72-E708, SB No. RB.211-72-F227, or SB No. RB.211-72-E965, at original issue or later revision. That AD currently requires initial and repetitive borescope inspections of the high-pressure/intermediate-pressure (HP/IP) turbine bearing internal oil vent tube, scavenge tube, and tube heat shields for wear and cracking, and removing tubes from service if found with any cracks beyond serviceable limits. That AD also currently requires installation of a new or modified HP/IP turbine bearings support as terminating action for the repetitive borescope inspections. This AD has the same requirements, and adds a repetitive inspection of the vent flow restrictor for blockage. This AD results from RR revising their alert service bulletin for inspection of the HP/IP turbine bearing internal oil vent tube, scavenge tube, and tube heat shields for damage, to include a repetitive inspection of the vent flow restrictor for blockage. We are issuing this AD to prevent oil ejecting from the HP/IP turbine bearings chamber and igniting. Burning oil can cause the intermediate-pressure (IP) shaft to fracture, the IP turbine to overspeed, and possible uncontained failure of the engine.

DATES: Effective December 15, 2008. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 15, 2008.

We must receive any comments on this AD by January 27, 2009.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493-2251.

Contact Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011-44-1332-242424; fax: 011-44-1332-245418, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT:

James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: james.lawrence@faa.gov; telephone (781) 238-7175; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: On February 24, 2006, the FAA issued AD 2006-05-03, Amendment 39-14500 (71 FR 11153, March 6, 2006). That AD requires initial and repetitive borescope inspections of the HP/IP turbine bearing internal oil vent tube, scavenge tube, and tube heat shields for wear and cracking, and removing tubes from service if found with any cracks beyond serviceable limits. That AD also requires installation of a new or modified HP/IP turbine bearings support as terminating action for the repetitive borescope inspections. That AD was the result of two reports of RR RB211 Trent 700 series engines found with the HP/IP internal oil vent tube and scavenge tube fretted by damaged heat shields on the tubes. That condition, if not corrected, could result in oil ejecting from the HP/IP turbine bearings chamber and igniting. Burning oil can cause the IP shaft to fracture, the IP turbine to overspeed, and possible uncontained failure of the engine.

Actions Since AD 2006-05-03 Was Issued

Since AD 2006-05-03 was issued, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, notified us that they issued EASA AD 2007-0255, dated September 14, 2007, to supersede EASA AD 2005-0024, dated October 14, 2005. EASA AD 2007-0255 carries forward the requirements from EASA AD 2005-0024. EASA AD 2007-0255 adds repetitive inspections of the vent flow restrictor for blockage, based on RR Issuing Alert Service Bulletin (ASB) No. RB.211-72-AE792, Revision 3. ASB Revision 3, and now Revision 4, add repetitive visual inspections of the vent flow restrictor for blockage. This AD requires the same actions as EASA AD 2007-0255.

Relevant Service Information

We have reviewed and approved the technical contents of RR ASB No. RB.211-72-AE792, Revision 4, dated August 2, 2007. That ASB describes procedures for initial and repetitive borescope inspections of the HP/IP turbine bearing internal oil vent tube, scavenge tube, and tube heat shields for wear and cracking, and removing tubes from service if found with any cracks beyond serviceable limits. That ASB also describes procedures for performing repetitive inspections of the vent flow restrictor for blockage. That ASB also references recently published RR SB No. RB.211-72-F227 and RR SB No. RB.211-72-E965 as terminating actions for the inspection requirements.

Bilateral Airworthiness Agreement

This engine model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the EASA has kept the FAA informed of the situation described above. We have examined the findings of the EASA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these RR RB211 Trent 768-60, Trent 772-60, and Trent 772B-60 turbofan engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other RR RB211 Trent 768-60, Trent 772-60, and Trent 772B-60 turbofan engines of the same type design. We are issuing this AD to prevent oil ejecting from the HP/IP turbine bearings chamber and igniting. Burning oil can cause the IP shaft to fracture, the IP turbine to overspeed, and possible uncontained failure of the engine. This AD requires:

- Initial and repetitive borescope inspections of the HP/IP turbine bearing internal oil vent tube, scavenge tube, and tube heat shields for wear and cracking; and
- Removing tubes from service if found with any cracks beyond serviceable limits; and
- Performing repetitive inspections of the vent flow restrictor for blockage; and
- As terminating action to the repetitive inspections required by the AD, at the next 05 module overhaul, but before May 31, 2010, removing the HP/IP bearings support and replacing with serviceable parts.

You must use the service information described previously to perform the inspections required by this AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. FAA-2006-23605; Directorate Identifier 2005-NE-48-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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

Examining the AD Docket

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14500 71 FR 11153, March 6, 2006, and by adding a new airworthiness directive, Amendment 39–15743, to read as follows:

2008–24–03 Rolls-Royce plc: Amendment 39–15743. Docket No. FAA–2006–23605; Directorate Identifier 2005–NE–48–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 15, 2008.

Affected ADs

(b) This AD supersedes AD 2006–05–03, Amendment 39–14500.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) models RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines that have not incorporated RR Service Bulletin (SB) No. RB.211–72–E708, SB No. RB.211–72–F227, or SB No. RB.211–72–E965, at original issue or later revision. These engines

are installed on, but not limited to, Airbus A330–243, A330–341, A330–342, and A330–343 airplanes.

Unsafe Condition

(d) This AD results from RR revising their alert service bulletin for inspection of the high-pressure/intermediate-pressure (HP/IP) turbine bearing internal oil vent tube, scavenge tube, and tube heat shields for damage, to include a repetitive inspection of the vent flow restrictor for blockage. We are issuing this AD to prevent oil ejecting from the HP/IP turbine bearings chamber and igniting. Burning oil can cause the intermediate-pressure (IP) shaft to fracture, the IP turbine to overspeed, and possible uncontained failure of the engine.

Compliance

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

On-Wing Initial Borescope Inspection

(f) Borescope inspect and assess the condition of the HP/IP turbine support assembly internal oil vent and scavenge tubes and heat shields, using Section 3. of the Accomplishment Instructions Part A, of RR Alert Service Bulletin (ASB) No. RB.211–72–AE792, Revision 4, dated August 2, 2007, and Table 1 of this AD.

(g) The threshold life of the 05 module for the initial borescope inspection is 10,000 operating hours since new or since overhaul, or 2,500 cycles since new or since overhaul, whichever occurs first.

TABLE 1—ON-WING BORESCOPE INSPECTION CRITERIA

For:	Action:
(1) 05 modules that exceed the threshold life on the effective date of this AD:	Inspect within 1 month after the effective date of this AD.
(2) 05 modules that are below the threshold life on the effective date of this AD:	Inspect by the threshold life or within 3 months from the effective date of this AD, whichever occurs later.

On-Wing Repetitive Borescope Inspections

(h) Determine the serviceability and establish the repetitive inspection intervals using Table 2 of this AD.

TABLE 2—DETERMINATION OF SERVICEABILITY AND REPETITIVE INSPECTION INTERVAL

For:	Action:
(1) Outer heat shields of the vent or scavenge tube with no visible damage:	Re-inspect within intervals of 10,000 operating hours or 2,500 cycles, whichever occurs first.
(2) Outer heat shields of the vent or scavenge tube with partial cracking up to 90 degrees around the circumference or 10 mm along the length of either outer heat shield:	Re-inspect within intervals of 6,400 operating hours or 1,600 cycles, whichever occurs first.
(3) Outer heat shields of the vent or scavenge tube with partial cracking in excess of item (2) above, but less than 360 degrees around the circumference of either outer heat shield:	Re-inspect within intervals of 1,600 operating hours or 400 cycles, whichever occurs first.
(4) Outer heat shields of the vent or scavenge tube with cracking around the complete circumference of either outer heat shield, or if there is any missing material from either outer heat shield:	Re-inspect or reject using Table 3 of this AD.

TABLE 3—INSPECTION AND REJECTION CRITERIA FOR HEAT SHIELDS MEETING CONDITIONS IN ITEM (4) OF TABLE 2 OF THIS AD

Condition:	Action:
(1) If the insulation blanket is in place inside the heat shield and preventing fretting between the heat shield and the tube.	Inspect within intervals of 1,600 operating hours or 400 cycles, whichever occurs first.
(2) If either vent or scavenge tube has fretting at the outer heat shield position where the maximum depth of fretting at any point around the full 360 degrees of each tube is less than 0.46 mm (0.018 inch).	Inspect within intervals of 400 operating hours or 100 cycles, whichever occurs first.
(3) If it is not possible to determine the maximum depth of fretting around the full 360 degrees of each tube and item (1) above is not applicable, then the HP/IP turbine support assembly must be rejected from service.	Reject from service within 50 cycles of the inspection being carried out.
(4) If either vent or scavenge tube has fretting at the outer heat shield position and the maximum depth of fretting is greater than 0.46 mm (0.018 inch) then the HP/IP turbine support assembly must be rejected from service.	Reject within 10 cycles of the inspection being carried out.

(i) For HP/IP turbine support assemblies which have been previously inspected using the superseded AD, or this AD:

(1) Re-inspect the internal oil vent and scavenge tubes and heat shields before exceeding the intervals established in Table 2 of this AD.

(2) Determine the serviceability and intervals to the next inspection using Table 2 of this AD.

Inspections of the Vent Flow Restrictor After On-Wing Borescope Inspection

(j) After a high-power ground run or not later than 25 cycles after heat shield inspection, inspect the vent flow restrictor,

using Section 3. of the Accomplishment Instructions of RR SB No. RB.211-72-AE792, Revision 4, dated August 2, 2007.

Repetitive Inspections of the Vent Flow Restrictor After On-Wing Borescope Inspection

(k) After each on-wing borescope inspection, specified in paragraphs (f) through (h) of this AD, repeat the inspection of the vent flow restrictor, as specified in paragraph (j) of this AD.

In-Shop Borescope Inspection

(l) For 05 modules in-shop which are not undergoing strip and overhaul:

(1) Borescope inspect and assess the condition of the HP/IP turbine support assembly internal oil vent and scavenge tubes and heat shields.

(2) Inspect the vent tubes and the vent flow restrictor for carbon, after performing a high-power ground run.

(3) Use Section 3. of the Accomplishment Instructions Part B, of RR ASB No. RB.211-72-AE792, Revision 4, dated August 2, 2007, and Table 4 of this AD to do the inspections.

(4) Determine the serviceability and establish the interval to next inspection of the HP/IP turbine support assembly internal oil vent and scavenge tubes and heat shields, using Table 4 of this AD:

TABLE 4—RE-INSPECTION CRITERIA

For:	Action:
(i) Outer heat shields of the vent and scavenge tubes with no visible damage:	Re-inspect at a threshold of 10,000 operating hours time-since-new or time-since-overhaul, or 2,500 cycles-since-new or cycles-since-overhaul, whichever occurs first.
(ii) Outer heat shields of the vent and scavenge tubes with cracking up to 90 degrees around the circumference or 10 mm along the length of either outer heat shield:	Re-inspect at a not to exceed interval of 6,400 operating hours or 1,600 cycles, whichever occurs first.
(iii) Outer heat shields of the vent and scavenge tubes with visible cracking greater than 90 degrees of the circumference or 10 mm along the length of either outer heat shield:	Reject the tube and perform the terminating action specified in paragraph (n) of this AD.

(m) For 05 modules in-shop which are undergoing strip and overhaul, carry out the terminating action specified in paragraph (n) of this AD.

Terminating Action

(n) As terminating action to the repetitive inspections required by this AD, at the next 05 module overhaul, but before May 31, 2010, remove the affected HP/IP bearings supports and replace with serviceable parts. Information on serviceable parts can be found in RR SB No. RB.211-72-E708, Revision 2, dated September 6, 2005, or in RR SB No. RB.211-72-F227, Revision 1, dated October 8, 2007, or in RR SB No. RB.211-72-E965, Revision 1, dated October 4, 2005. To obtain these SBs, see paragraph (r) of this AD for RR contact information.

Definition

(o) For the purposes of this AD, serviceable parts are new or reworked bearings supports which reduce the adverse effects of HP3 cooling air turbulence on the HP/IP turbine bearing internal oil vent and scavenge tubes and tube heat shields, as described in RR SB No. RB.211-72-E708, Revision 2, dated September 6, 2005, or in RR SB No. RB.211-72-F227, Revision 1, dated October 8, 2007, or in RR SB No. RB.211-72-E965, Revision 1, dated October 4, 2005.

Alternative Methods of Compliance

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

Related Information

(q) European Aviation Safety Agency AD 2007-0255, dated September 14, 2007, also addresses the subject of this AD.

Material Incorporated by Reference

(r) You must use the service information specified in Table 5 of this AD to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 5 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011-44-1332-242424; fax: 011-44-1332-245418, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call

202-741-6030, or go to: <http://>www.archives.gov/federal-register/cfr/ibr-locations.html.

TABLE 5—INCORPORATION BY REFERENCE

Rolls-Royce Alert Service Bulletin No.	Page	Revision	Date
RB.211-72-AE792, including Appendix A Total Pages: 31	All	4	August 2, 2007.

Issued in Burlington, Massachusetts, on November 12, 2008.

Peter A. White,

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

[FR Doc. E8-27298 Filed 11-26-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-1020 Directorate Identifier 2008-CE-053-AD; Amendment 39-15751; AD 2008-24-11]

RIN 2120-AA64

Airworthiness Directives; Vulcanair S.p.A. Model P68 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The Safe Fatigue Limits (SFL) of the Wing Structure in the P68 Series aircraft have been redefined from the current 8,500 Flight Hours to a new value to be calculated up to a maximum of 17,500 Flight Hours. This has been developed by Vulcanair under Change No. MOD.P68/79 Rev. 1 and approved by EASA with No. EASA.A.C.02482 on 07 June 2006.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective January 2, 2009.

On January 2, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at

Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 26, 2008 (73 FR 55786). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The Safe Fatigue Limits (SFL) of the Wing Structure in the P68 Series aircraft have been redefined from the current 8,500 Flight Hours to a new value to be calculated up to a maximum of 17,500 Flight Hours. This has been developed by Vulcanair under Change No. MOD.P68/79 Rev. 1 and approved by EASA with No. EASA.A.C.02482 on 07 June 2006.

The new Safe Fatigue Limits depend on:

- (a) Status of the modification (reinforcement) of the wing structure itself (Partenavia Service Bulletin No. 65 refers); and
- (b) Aircraft Flight Hours accumulated before the modification (reinforcement) was implemented.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But

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

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

Costs of Compliance

Based on the service information, we estimate that this AD will affect 72 products of U.S. registry. We also estimate that it will take about 80 work-hours per product to comply with basic requirements of this AD. The average labor rate is \$80 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$460,800, or \$6,400 per product.

We have no way of determining the number of products that may need any necessary follow-on actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on

the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008-24-11 Vulcanair S.p.A.: Amendment 39-15751; Docket No. FAA-2008-1020; Directorate Identifier 2008-CE-053-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 2, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models P 68, P 68B, P 68C, P 68C-TC, P 68 "OBSERVER," AP68TP300 "SPARTACUS," P68TC "OBSERVER," AP68TP 600 "VIATOR," and P68 "OBSERVER 2" airplanes; all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 51: Standard Practices/Structures.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states: The Safe Fatigue Limits (SFL) of the Wing Structure in the P68 Series aircraft have been redefined from the current 8,500 Flight Hours to a new value to be calculated up to a maximum of 17,500 Flight Hours. This has been developed by Vulcanair under Change No. MOD.P68/79 Rev. 1 and approved by EASA with No. EASA.A.C.02482 on 07 June 2006.

The new Safe Fatigue Limits depend on:

- (a) Status of the modification (reinforcement) of the wing structure itself (Partenavia Service Bulletin No. 65 refers); and
- (b) Aircraft Flight Hours accumulated before the modification (reinforcement) was implemented.

Actions and Compliance

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

- (1) For serial numbers 01 through 356, determine the safe fatigue limit of the wing structure following Vulcanair S.p.A. Service Bulletin No. 120 Rev. 1, dated June 7, 2006, within 8,500 hours time-in-service (TIS) since new or within 500 hours TIS after January 2, 2009 (the effective date of this AD), whichever occurs later.
- (2) For serial numbers 01 through 356, inspect the wing structure and the wing to fuselage attachments following Vulcanair S.p.A. Service Bulletin No. 120 Rev. 1, dated June 7, 2006, within the safe fatigue limit determined in paragraph (f)(1) of this AD or within 500 hours TIS after January 2, 2009 (the effective date of this AD), whichever occurs later. Repetitively thereafter inspect at intervals not to exceed every 500 hours TIS.
- (3) For serial numbers 357 and above, inspect the wing structure and the wing to fuselage attachments following Vulcanair S.p.A. Service Bulletin No. 120 Rev. 1, dated June 7, 2006, within 17,500 hours TIS since new or within 500 hours TIS after January 2, 2009 (the effective date of this AD), whichever occurs later. Repetitively thereafter inspect at intervals not to exceed every 500 hours TIS.
- (4) For all serial numbers, inspect the stabilator following Vulcanair S.p.A. Service Bulletin No. 120 Rev. 1, dated June 7, 2006, within 8,500 hours TIS since new or within 500 hours TIS after January 2, 2009 (the effective date of this AD), whichever occurs later. Repetitively thereafter inspect at intervals not to exceed every 500 hours TIS.
- (5) If as a result of any inspection required by paragraphs (f)(2), (f)(3), or (f)(4) of this AD you find any discrepancies (for example,

cracked or broken parts), do one of the following actions before further flight:

- (i) Repair the airplane following FAA-approved repair instructions obtained from Vulcanair S.p.A.; or
- (ii) Repair the airplane following a repair method approved by the FAA for this AD. Contact the FAA at the address in paragraph (g)(1) of this AD for an FAA-approved method.

Note 1: For certain Model P 68 airplanes, AD 85-08-04 requires repetitive inspections of the front and rear wing spars for cracks with modification if cracks are found. The modification terminates the repetitive inspections required in AD 85-08-04 and may be done regardless if cracks are found. The actions of AD 85-08-08 are independent of this AD action and remain in effect.

FAA AD Differences

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

(1) The MCAI is extending the safe fatigue limits of the wing structure and the wing to fuselage attachments of certain airplanes. Airplanes registered in the United States did not have safe fatigue limits established for the wing structure and the wing to fuselage attachments. This AD is establishing safe fatigue limits for the wing structure and the wing to fuselage attachments. This AD is also establishing safe fatigue limits for the stabilator.

(2) The MCAI requires implementation of safe fatigue limits into the airplane maintenance program (maintenance program). An airplane registered in the United States and operated under 14 CFR part 91 is required to have a maintenance program, but not necessarily following the airplane maintenance manual. This AD requires you to do specific actions of Vulcanair S.p.A. Service Bulletin No. 120 Rev. 1, dated June 7, 2006, rather than incorporating those actions into the maintenance program.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency AD No.: 2007-0027, dated February 5, 2007, for related information.

Material Incorporated by Reference

(i) You must use Vulcanair S.p.A. Service Bulletin No. 120 Rev. 1, dated June 7, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Vulcanair S.p.A., Via G. Pascoli, 7, Casoria (Naples), 80026 Italy; telephone: +39 081 5918111; fax: +39 081 5918172; e-mail: info@vulcanair.com; Internet: <http://www.vulcanair.com>.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Kansas City, Missouri, on November 19, 2008.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-27916 Filed 11-26-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0835; Directorate Identifier 2008-SW-34-AD; Amendment 39-15684; AD 2008-20-05]

RIN 2120-AA64

Airworthiness Directives; MD Helicopters, Inc. Model 600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects airworthiness directive (AD) 2008-20-05 which was published on October 10, 2008 (73 FR 60102) and applies to MD Helicopters, Inc. (MDHI) Model 600N helicopters. AD 2008-20-05 requires modifying the fuselage aft section,

repetitively inspecting the tailboom attachment fittings, installing inspection holes and attachment bolt washers, modifying both access covers, and replacing broken attachment bolts. This document corrects the AD number that is incorrectly listed as 2008-20-08 on page 60104 of the AD.

DATES: The effective date of AD 2008-20-05 remains October 27, 2008.

FOR FURTHER INFORMATION CONTACT: Eric Schrieber, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627-5348, fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Discussion: On September 25, 2008, we issued AD 2008-20-05 to amend 14 CFR part 39 to include an AD that applies to MDHI Model 600N helicopters. That AD requires modifying the fuselage aft section, repetitively inspecting the tailboom attachment fittings, installing inspection holes and attachment bolt washers, modifying both access covers, and replacing broken attachment bolts.

As published, AD 2008-20-05 contains an incorrect AD number (2008-20-08) in the regulatory text on page 60104 of the AD. The correct AD number is 2008-20-05.

No other part of the regulatory information has been changed; therefore, the AD is not republished in the **Federal Register**.

Correction of Publication

Accordingly, the publication on October 10, 2008 of Amendment 39-15684, AD 2008-20-05, Docket No. FAA-2008-0835, Directorate Identifier 2008-SW-34-AD (73 FR 60102), which is the subject of FR Doc. E8-23540, is corrected as follows:

§ 39.13 [Corrected]

On page 60104, in the second column, in the paragraph under § 39.13 [Amended], change “2008-20-08” to read “2008-20-05”.

Issued in Fort Worth, Texas, on November 14, 2008.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8-28108 Filed 11-26-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-1238; Directorate Identifier 2008-NM-181-AD; Amendment 39-15753; AD 2008-24-12]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model BD-700-1A10 and BD-700-1A11 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During scheduled maintenance inspection, a bolt which connects the PCU (power control unit) to the elevator surface was found fractured in the assembly. Further inspection of the assembly revealed that the bearing on the PCU rod end had seized, which resulted in damage to the attachment fitting bushing and fracture of the bolt. Inspection of other in-service airplanes revealed two more seized PCU attachment joints. However, except seizure, no fractured bolt was found on these airplanes. Failure of the bolts in both PCUs on one side could result in disconnection of the elevator control surface which would lead to flutter and loss of the aircraft.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective December 15, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 15, 2008.

We must receive comments on this AD by December 29, 2008.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT:

Pong K. Lee, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart

Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7324; fax (516) 794-5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has issued Canadian Emergency Airworthiness Directive CF-2008-31, dated October 9, 2008 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

During scheduled maintenance inspection, a bolt which connects the PCU (power control unit) to the elevator surface was found fractured in the assembly. Further inspection of the assembly revealed that the bearing on the PCU rod end had seized, which resulted in damage to the attachment fitting bushing and fracture of the bolt. Inspection of other in-service airplanes revealed two more seized PCU attachment joints. However, except seizure, no fractured bolt was found on these airplanes. Failure of the bolts in both PCUs on one side could result in disconnection of the elevator control

surface which would lead to flutter and loss of the aircraft.

This Airworthiness Directive (AD) is issued to mandate the inspection and lubrication of all part number (P/N) GT411-3800-5 and GT411-3800-7 PCU attachment joints.

The required actions include inspections for damage and seizure (including signs of seizure) of the PCU attachment joints, an inspection for damage (including wear damage, fretting, corrosion, galling, scoring, fretting wear, and parts that do not meet inspection requirements) of the PCU attachment joint components, and applicable corrective actions. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued the service information in the following table. The actions described in the service information are intended to correct the unsafe condition identified in the MCAI.

SERVICE BULLETINS

Service Bulletin	Revision level	Date
Bombardier Alert Service Bulletin A700-1A11-27-024	01	October 3, 2008.
Bombardier Alert Service Bulletin A700-27-066	01	October 3, 2008.
Bombardier Service Bulletin 700-1A11-27-025	Original	October 9, 2008.
Bombardier Service Bulletin 700-27-067	Original	October 9, 2008.

FAA's Determination and Requirements of This AD

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

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because failure of the bolts in both PCUs on one side of the airplane could cause disconnection of the elevator control surface which could result in flutter and consequent loss of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We

invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2008-1238; Directorate Identifier 2008-NM-181-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008-24-12 Bombardier: Amendment 39-15753. Docket No. FAA-2008-1238; Directorate Identifier 2008-NM-181-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 15, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model BD-700-1A10 and BD-700-1A11 airplanes, certificated in any category, serial numbers (S/Ns) 9002 through 9222 inclusive; equipped with elevator power control units (PCUs) having part number (P/N) GT411-3800-5 or GT411-3800-7.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

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

During scheduled maintenance inspection, a bolt which connects the PCU (power control unit) to the elevator surface was found fractured in the assembly. Further inspection of the assembly revealed that the bearing on the PCU rod end had seized, which resulted in damage to the attachment fitting bushing and fracture of the bolt. Inspection of other in-service airplanes revealed two more seized PCU attachment joints. However, except seizure, no fractured bolt was found on these airplanes. Failure of the bolts in both PCUs on one side could result in disconnection of the elevator control surface which would lead to flutter and loss of the aircraft.

This Airworthiness Directive (AD) is issued to mandate the inspection and lubrication of all part number (P/N) GT411-3800-5 and GT411-3800-7 PCU attachment joints.

The required actions include inspections for damage and seizure (including signs of seizure) of the PCU attachment joints, an inspection for damage (including wear damage, fretting, corrosion, galling, scoring, fretting wear, and parts that do not meet inspection requirements) of the PCU attachment joint components, and applicable corrective actions.

Actions and Compliance

(f) Unless already done: For airplanes on which elevator PCUs with P/N GT411-3800-5 or P/N GT411-3800-7, S/N 0615 and lower, are installed, excluding P/N GT411-3800-7 PCUs having a serial number listed in Table 1 of this AD, and excluding P/N GT411-3800-7 PCUs on which less than 1,000 flight hours have accumulated on the PCUs as of the effective date of this AD, do the actions specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD.

Note 1: Units listed in Table 1 of this AD have been lubricated by the vendor and the inspections required by paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) of this AD are not required for those units.

TABLE 1—SERIAL NUMBERS

0030	0097	0156	0188	0218	0369	0438
0031	0101	0161	0190	0222	0406	0453
0033	0105	0163	0191	0223	0407	0491
0041	0108	0164	0197	0240	0408	0495
0046	0109	0165	0198	0262	0413	0504
0060	0110	0171	0199	0265	0420	0506
0062	0111	0173	0202	0281	0427	0513
0066	0119	0174	0205	0296	0429	0533
0081	0130	0178	0206	0301	0430	0536
0083	0138	0179	0208	0310	0431	0586
0087	0141	0181	0210	0323	0433	
0092	0145	0183	0214	0365	0435	

(1) Within 10 flight cycles or 50 flight hours after the effective date of this AD, whichever occurs first: Inspect for damage and wear and lubricate the PCU attachment joints in accordance with Bombardier Alert Service Bulletin A700-1A11-27-024, Revision 01, dated October 3, 2008; or Bombardier Alert Service Bulletin A700-27-

066, Revision 01, dated October 3, 2008; as applicable.

(2) Within 90 days or 200 flight hours after performing the actions required by paragraph (f)(1) of this AD, whichever occurs first: Repeat the inspection and lubrication of the PCU attachment joints in accordance with Bombardier Alert Service Bulletin A700-

1A11-27-024, Revision 01, dated October 3, 2008; or Bombardier Alert Service Bulletin A700-27-066, Revision 01, dated October 3, 2008; as applicable.

(3) Within 45 days or 100 flight hours after performing the actions required by paragraph (f)(2) of this AD, whichever occurs first: Repeat the inspection and lubrication of the

PCU attachment joints in accordance with Bombardier Alert Service Bulletin A700–1A11–27–024, Revision 01, dated October 3, 2008; or Bombardier Alert Service Bulletin A700–27–066, Revision 01, dated October 3, 2008; as applicable. Repeat the inspection thereafter at intervals not to exceed 45 days or 100 flight hours, whichever occurs first, until paragraph (f)(4) of this AD is accomplished.

(4) Completion of a disassembly with an inspection for damage, applicable corrective actions, and lubrication of the PCU attachment joint components in accordance with Bombardier Service Bulletin 700–1A11–27–025, dated October 9, 2008; or Bombardier Service Bulletin 700–27–067,

dated October 9, 2008; as applicable; constitutes terminating action for the inspections required by paragraphs (f)(1), (f)(2), and (f)(3) of this AD.

(5) Unless already done, if any damage or seizure is found during any inspection required by paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) of this AD, before further flight, replace the affected part in accordance with Bombardier Service Bulletin 700–1A11–27–025, dated October 9, 2008, or Bombardier Service Bulletin 700–27–067, dated October 9, 2008, as applicable.

(6) Actions done before the effective date of this AD in accordance with the Bombardier Alert Service Bulletins A700–1A11–27–024 and A700–27–066, both dated

October 2, 2008, are acceptable for compliance with the corresponding requirements of this AD.

(7) Unless already done, submit a report to Bombardier of all findings found during any inspection required by this AD, in accordance with the applicable service bulletin listed in Table 2 of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 14 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 14 days after the effective date of this AD.

TABLE 2—SERVICE BULLETINS FOR REPORTS

Service Bulletin	Revision level	Date
Bombardier Alert Service Bulletin; A700–1A11–27–024	01	October 3, 2008.
Bombardier Alert Service Bulletin; A700–27–066	01	October 3, 2008.
Bombardier Service Bulletin; 700–1A11–27–025	Original	October 9, 2008.
Bombardier Service Bulletin; 700–27–067	Original	October 9, 2008.

FAA AD Differences

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

(1) This AD does not mandate the terminating action specified in paragraph A.4. of the MCAI; it is included as an optional terminating action in paragraph (f)(4) of this AD. The planned compliance times for that action would allow enough time to provide notice and opportunity for prior public comment on the merits of those actions. Therefore, we are considering further rulemaking to require the terminating action on all affected airplanes.

(2) Paragraph A.3. of the MCAI requires a one-time inspection; however, since we have changed the terminating action in paragraph A.4. of the MCAI to an optional action, paragraph (f)(3) of this AD requires repeating the inspections until the terminating action is performed.

(3) This AD does not require the inspection and lubrication of PCUs specified in Paragraph B. of the MCAI. The planned compliance times for those actions would allow enough time to provide notice and opportunity for prior public comment on the merits of those actions. Therefore, we are considering further rulemaking to address this issue.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft

Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Pong K. Lee, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7324; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 1120–0056.

(4) *Special Flight Permits:* As described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), special flight permits are not allowed.

Related Information

(h) Refer to Mandatory Continuing Airworthiness Information (MCAI) Transport Canada Civil Aviation Emergency Airworthiness Directive CF–2008–31, dated October 9, 2008, and the service information specified in Table 2 of this AD, for related information.

Material Incorporated by Reference

(i) You must use the service information specified in Table 3 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail thd.crj@aero.bombardier.com; Internet <http://www.bombardier.com>.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
Bombardier Alert Service Bulletin A700–1A11–27–024	01	October 3, 2008.
Bombardier Alert Service Bulletin A700–27–066	01	October 3, 2008.
Bombardier Service Bulletin 700–1A11–27–025	Original	October 9, 2008.
Bombardier Service Bulletin 700–27–067	Original	October 9, 2008.

Issued in Renton, Washington, on November 16, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-28103 Filed 11-26-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0176; Directorate Identifier 2007-NM-228-AD; Amendment 39-15748; AD 2008-24-08]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-600, -700, -700C, -800 and -900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737-600, -700, -700C, -800 and -900 series airplanes. This AD requires an inspection of the escape slides for the forward and aft entry and service doors to determine the part number and service bulletin number stenciled on the escape slide girt, and modification of the escape slide assemblies. This AD also requires concurrent modification of the escape slide latch assemblies; concurrent inspection of the escape slides to determine the part number and service bulletin number stenciled on the escape slide girts, and replacement of the trigger housing on the regulator valve with an improved trigger housing if necessary; and concurrent replacement of the rod in the pilot valve regulator with a new, improved rod; as applicable. This AD results from reports that certain escape slides did not automatically inflate when deployed or after the manual inflation cable was pulled. We are issuing this AD to prevent failure of an escape slide to inflate when deployed, which could result in the slide being unusable during an emergency evacuation and consequent injury to passengers or crewmembers.

DATES: This AD is effective January 2, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 2, 2009.

The Director of the Federal Register previously approved the incorporation

by reference of Boeing Service Bulletin 737-25-1404, dated May 25, 2000 on August 28, 2001 (66 FR 38361, July 24, 2001).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207; telephone (206) 544-9990; fax (206) 766-5682; e-mail DDCS@boeing.com; Internet <https://www.myboeingfleet.com>.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Robert K. Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6457, fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737-600, -700, -700C, -800 and -900 series airplanes. That NPRM was published in the **Federal Register** on February 15, 2008 (73 FR 8833). That NPRM proposed to require an inspection of the escape slides for the forward and aft entry and service doors to determine the part number and service bulletin number stenciled on the escape slide girt, and modification of the escape slide assemblies. That NPRM also proposed to require concurrent modification of the escape slide latch assemblies; concurrent inspection of the escape slides to determine the part number and service bulletin number stenciled on the escape slide girts, and replacement of the trigger housing on the regulator valve with an improved trigger housing if necessary; and concurrent replacement of the rod in the pilot valve

regulator with a new, improved rod; as applicable.

Comments

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

Support for the NPRM

Boeing concurs with the contents of the proposed rule.

Requests To Refer to Additional Goodrich Service Bulletin

Goodrich, and Air Transport Association (ATA) on behalf of one of its members, American Airlines (AA), request that Boeing revise Boeing Service Bulletin 737-25-1491, dated April 23, 2007 (cited in the NPRM as the appropriate source of service information for accomplishing certain actions specified in the NPRM), to include a reference to Goodrich Service Bulletin 5A3307-25-339, Revision 2, dated March 31, 2004, as an alternative method of compliance (AMOC) to BFGoodrich Service Bulletin 25-308, dated January 21, 2000 (cited in the NPRM as a source of service information for accomplishing certain other actions specified in the NPRM). ATA and AA note that this service bulletin modifies the applicable slide to the latest standard offered by Goodrich. AA and Goodrich suggest that if Boeing Service Bulletin 737-25-1491, dated April 23, 2007, is not revised, the AD should state that it does not apply to Goodrich part number (P/N) 5A3307-5 slides and that Goodrich Service Bulletin 5A3307-25-339, Revision 2, dated March 31, 2004, be identified as an AMOC for the slide portion of the AD.

We disagree with the request to revise the AD to refer to Goodrich Service Bulletin 5A3307-25-339, Revision 2, dated March 31, 2004. There are significant differences in the actions between BFGoodrich Service Bulletin 25-308, dated January 21, 2000 and Goodrich Service Bulletin 5A3307-25-339, Revision 2, dated March 31, 2004. Therefore, any request to use the procedures in Goodrich Service Bulletin 5A3307-25-339 is best handled through the AMOC process. Under the provisions of paragraph (k) of the AD, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. We have not changed the AD in this regard.

Request To Revise Unsafe Condition

Goodrich notes that paragraph (g)(1) of the NPRM addresses an unsafe

condition (escape slide latch assembly) that is not mentioned in paragraph (d), “Unsafe Condition,” of the NPRM. Goodrich requests that we revise paragraph (d) to include a reference to the escape slide latch assembly.

We disagree with the request to revise the unsafe condition to refer to the escape slide latch assembly. The unsafe condition addressed by this AD (failure of an escape slide to inflate when deployed) is addressed by the inspection and modification required by paragraph (f) of this AD. However, the inspection and modification cannot be done unless the applicable concurrent requirements addressed by both paragraphs (g)(1) and (g)(2) of the AD are done before or concurrently with the actions required by paragraph (f) of this AD. Those concurrent requirements, in paragraph (g)(1) of this AD, are part of addressing the unsafe condition only in that they enable accomplishment of paragraph (f) of this AD. We have not changed the AD in this regard.

Request To Include Alternative Rod Replacement

Goodrich notes that paragraph (g)(3) of the NPRM specifies rod replacement in the regulator valve in accordance with BFGoodrich Service Bulletin 25–308, dated January 21, 2000, for slides with P/Ns 5A3307–1 and –3. Goodrich states that the combination rod/bushing/trigger housing replacement in Goodrich Service Bulletin 5A3307–25–339, Revision 2, dated March 31, 2004,

provides an acceptable alternative rod replacement. Goodrich recommends that we include this alternative in the AD.

We disagree with the request to revise the AD to refer to Goodrich Service Bulletin 5A3307–25–339, Revision 2, dated March 31, 2004. As stated previously, there are significant differences in the actions between BF Goodrich Service Bulletin 25–308, dated January 21, 2000 and Goodrich Service Bulletin 5A3307–25–339, Revision 2, dated March 31, 2004. Therefore, any request to use the procedures in Goodrich Service Bulletin 5A3307–25–339 is best handled through the AMOC process. Under the provisions of paragraph (k) of the AD, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. We have not changed the AD in this regard.

Request To Revise Costs of Compliance

ATA on behalf of AA states that the Costs of Compliance provided by the NPRM do not accurately reflect the true costs associated with the proposed modification. The commenters state that accomplishment of the minimum required service bulletins would accrue approximately \$800 per airplane in material for modification of the slide in accordance with BFGoodrich Service Bulletin 25–308, dated January 21, 2000, and \$200 in labor for verification of

incorporation of the new latch assembly.

We infer that the commenters would like us to revise the Costs of Compliance section of the NPRM. We disagree. We based our cost estimate of \$516 per airplane for parts for the modification of the slide in accordance with BFGoodrich Service Bulletin 25–308, dated January 21, 2000, on information from the manufacturer. The commenters did not supply additional information to use as a basis for changing the Costs of Compliance section. Therefore, we do not find it necessary to change the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 480 airplanes of U.S. registry. We also estimate that it takes about 1 work-hour per product to comply with the inspection. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of this AD to U.S. operators to be \$38,400 or \$80 per product.

The following table provides the estimated costs, at an average labor rate of \$80 per work-hour, for U.S. operators to comply with the concurrent actions, if applicable.

ESTIMATED CONCURRENT COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Concurrent actions specified in Boeing Service Bulletin 737–25–1404	2	\$1,424	\$1,584	Up to \$760,320.
Concurrent actions specified in Boeing Special Attention Service Bulletin 737–25–1475.	3	1,740	1,980	Up to \$950,400.
Concurrent actions specified in BFGoodrich Service Bulletin 25–308	3	516	756	Up to \$362,880.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

(1) Is not a “significant regulatory action” under Executive Order 12866,

(2) Is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008-24-08 Boeing: Amendment 39-15748. Docket No. FAA-2008-0176; Directorate Identifier 2007-NM-228-AD.

Effective Date

(a) This airworthiness directive (AD) is effective January 2, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737-600, -700, -700C, -800 and -900 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 737-25-1491, dated April 23, 2007.

Unsafe Condition

(d) This AD results from reports that certain escape slides did not inflate when deployed or after the manual inflation cable was pulled. We are issuing this AD to prevent failure of an escape slide to inflate when deployed, which could result in the slide being unusable during an emergency evacuation and consequent injury to passengers or crewmembers.

Compliance

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

Inspection and Modification

(f) Within 36 months after the effective date of this AD, inspect the escape slides for the forward and aft entry and service doors to determine the Goodrich part number (P/N) and service bulletin number stenciled on the escape slide girts, and modify the escape slide assemblies, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737-25-1491, dated April 23, 2007.

Note 1: Boeing Service Bulletin 737-25-1491, dated April 23, 2007, refers to Goodrich Service Bulletin 25-338, Revision 1, dated March 31, 2004, as an additional source of service information for modifying the escape slide assemblies.

Concurrent Requirements

(g) Prior to or concurrently with accomplishing the actions required by paragraph (f) of this AD, do the applicable actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(1) For Model 737-600, -700, and -800 series airplanes identified in Boeing Service Bulletin 737-25-1404, dated May 25, 2000, equipped with any escape slide having P/N 5A3307-1, P/N 5A3307-3, P/N 5A3086-3, or P/N 5A3088-3: Modify the escape slide latch assembly in accordance with Boeing Service Bulletin 737-25-1404, dated May 25, 2000, as required by paragraph (a) of AD 2001-15-01; or Boeing Service Bulletin 737-25-1404, Revision 1, dated April 18, 2002.

(2) For Model 737-600, -700, -700C, -800 and -900 series airplanes equipped with any escape slide having P/N 5A3086-3 or P/N 5A3088-3: Inspect the four escape slides to determine the part number and service bulletin number stenciled on the escape slide girts, and replace the trigger housing on the regulator valve with an improved trigger housing if BFGoodrich Service Bulletin 5A3086/5A3088-25-302 is not stenciled on the girt, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-25-1475, dated November 26, 2002. For airplanes identified as Group 2 in Boeing Special Attention Service Bulletin 737-25-1475, dated November 26, 2002, a records review may be done in lieu of the inspection to determine the part number.

Note 2: Boeing Special Attention Service Bulletin 737-25-1475, dated November 26, 2002, refers to Goodrich Service Bulletin 5A3086/5A3088-25-336, dated June 17, 2002, as an additional source of service information for replacing the trigger housing on the regulator valve with a new, improved trigger housing.

(3) For Model 737-600, -700, -700C, -800 and -900 series airplanes equipped with any escape slide having P/N 5A3307-1, P/N 5A3086-3, or P/N 5A3088-3; or P/N 5A3307-3 and BFGoodrich Service Bulletin 5A3307-25-309 stenciled on the girt: Replace the rod in the pilot valve regulator with a new, improved rod in accordance with BFGoodrich Service Bulletin 25-308, dated January 21, 2000.

Terminating Action for AD 2001-15-01

(h) For Model 737-600, -700, and -800 series airplanes identified in Boeing Special Attention Service Bulletin 737-25-1403, dated May 4, 2000: Accomplishing the

replacement of the regulator piston plug in the vespel piston with a new piston plug, installation of a new insolate pad on the valise, and removal of the trigger housing cover, in accordance with Goodrich Service Bulletin 25-338, Revision 1, dated March 31, 2004, terminates the modification specified in Boeing Special Attention Service Bulletin 737-25-1403, dated May 4, 2000, as required by paragraph (a) of AD 2001-15-01. All other applicable actions required by paragraph (a) of AD 2001-15-01 must be fully complied with.

(i) For Model 737-600, -700, and -800 series airplanes: Installation of a cover assembly on the trigger housing of the inflation cylinder on the escape slides in accordance with Boeing Special Attention Service Bulletin 737-25-1403, Revision 1, dated November 29, 2001, terminates the corresponding action required by paragraph (a) of AD 2001-15-01. All other applicable actions required by paragraph (a) of AD 2001-15-01 must be fully complied with.

(j) For Model 737-600, -700, and -800 series airplanes: Modification of the escape slide latch assembly in accordance with Boeing Service Bulletin 737-25-1404, Revision 1, dated April 18, 2002, terminates the corresponding action required by paragraph (a) of AD 2001-15-01. All other applicable actions required by paragraph (a) of AD 2001-15-01 must be fully complied with.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office, FAA, ATTN: Robert K. Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6457, fax (425) 917-6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

Material Incorporated by Reference

(l) You must use the applicable service information contained in Table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the terminating actions for AD 2001-15-01 specified in this AD, you must use the applicable service information contained in Table 2 of this AD, unless the AD specifies otherwise.

TABLE 1—MATERIAL INCORPORATED BY REFERENCE FOR ACTIONS REQUIRED IN THIS AD

Service Bulletin	Revision	Date
Boeing Service Bulletin 737-25-1404	Original	May 25, 2000.
Boeing Service Bulletin 737-25-1404	1	April 18, 2002.
Boeing Service Bulletin 737-25-1491	Original	April 23, 2007.

TABLE 1—MATERIAL INCORPORATED BY REFERENCE FOR ACTIONS REQUIRED IN THIS AD—Continued

Service Bulletin	Revision	Date
Boeing Special Attention Service Bulletin 737–25–1475	Original	November 26, 2002.
BFGoodrich Service Bulletin 25–308	Original	January 21, 2000.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE FOR THE OPTIONAL TERMINATING ACTION IN THIS AD

Service Bulletin	Revision	Date
Boeing Service Bulletin 737–25–1404	1	April 18, 2002.
Boeing Special Attention Service Bulletin 737–25–1403	1	November 29, 2001.
Goodrich Service Bulletin 25–338	1	March 31, 2004.

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in Table 3 of

this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 3—NEW MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision	Date
Boeing Service Bulletin 737–25–1404	1	April 18, 2002.
Boeing Service Bulletin 737–25–1491	Original	April 23, 2007.
Boeing Special Attention Service Bulletin 737–25–1475	Original	November 26, 2002.
Goodrich Service Bulletin 25–308	Original	January 21, 2000.

(2) The Director of the Federal Register previously approved the incorporation by reference of Boeing Service Bulletin 737–25–1404, dated May 25, 2000, on August 28, 2001 (66 FR 38361, July 24, 2001).

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; telephone (206) 544–9990; fax (206) 766–5682; e-mail DDCS@boeing.com; Internet <https://www.myboeingfleet.com>.

(4) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on November 16, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–27926 Filed 11–26–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0910; Directorate Identifier 2008–NM–033–AD; Amendment 39–15749; AD 2008–24–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200, A330–300, A340–300, A340–500, and A340–600 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

An A330 operator reported a shroud box bottom panel missing during a routine inspection. The same panel detached from an A330 aircraft during take-off, causing damage to the surrounding structure and to the Trimmable Horizontal Stabilizer (THS) tip fairing.

The inspection indicated the blind rivets used to attach the panel worked loose causing fatigue damage with crack

propagation through the fastener line resulting in panel detachment * * *.

* * * Three additional events of panel loss have been experienced on in service aircraft already inspected in accordance with the AD requirements * * *.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective January 2, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 2, 2009.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 26, 2008 (73 FR

50256) and proposed to supersede AD 2007–08–05, Amendment 39–15022 (72 FR 18563, April 13, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

An A330 operator reported a shroud box bottom panel missing during a routine inspection. The same panel detached from an A330 aircraft during take-off, causing damage to the surrounding structure and to the Trimmable Horizontal Stabilizer (THS) tip fairing.

The inspection indicated the blind rivets used to attach the panel worked loose causing fatigue damage with crack propagation through the fastener line resulting in panel detachment.

To avoid potential injuries to persons on ground, Airworthiness Directive (AD) 2006–0107 [which corresponds with FAA AD 2007–08–05] mandated a one time detailed visual inspection of the shroud box bottom panel.

Further to issuance of AD 2006–0107, three additional events of panel loss have been experienced on in service aircraft already inspected in accordance with the AD requirements and no findings. Thus, it has been decided to delete this one time detailed visual inspection and to mandate a modification which prevents such unsafe condition. Therefore, the present AD supersedes EASA AD 2006–0107 and mandates the installation of a bolted shroud box bottom panel instead of blind riveted metallic design.

The modification includes doing all applicable related investigative and corrective actions. The related investigative action is an inspection to detect cracks of the shroud box hole. The corrective action is repairing any cracked shroud box hole. The applicability of the MCAI has been revised; certain airplanes have been removed and others added. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S.

operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

We estimate that this AD will affect about 34 products of U.S. registry. We also estimate that it will take about 20 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$990 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$88,060, or \$2,590 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15022 (72 FR 18563, April 13, 2007) and adding the following new AD:

2008–24–09 Airbus: Amendment 39–15749. Docket No. FAA–2008–0910; Directorate Identifier 2008–NM–033–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 2, 2009.

Affected ADs

(b) This AD supersedes AD 2007–08–05, Amendment 39–15022.

Applicability

(c) This AD applies to Airbus airplanes identified in Table 1 of this AD; certificated in any category.

TABLE 1—APPLICABILITY

For model—	On which—	Except for those airplanes on which—
(1) A330–200, A330–300, and A340–300 series, all certified models, all serial numbers.	Airbus modification 46077 has been embodied in production.	Airbus Modification 55568 has been done in production, or Airbus Mandatory Service Bulletin A330–57–3100 or Airbus Mandatory Service Bulletin A340–57–4109 has been embodied in service.
(2) Airbus A340–500 and A340–600 series, all certified models, all serial numbers.	None	Airbus Modification 55568 has been embodied in production, or Airbus Mandatory Service Bulletin A340–57–5018 has been embodied in service.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

An A330 operator reported a shroud box bottom panel missing during a routine inspection. The same panel detached from an A330 aircraft during take-off, causing damage to the surrounding structure and to the Trimmable Horizontal Stabilizer (THS) tip fairing.

The inspection indicated the blind rivets used to attach the panel worked loose causing fatigue damage with crack propagation through the fastener line resulting in panel detachment.

To avoid potential injuries to persons on ground, Airworthiness Directive (AD) 2006–0107 [which corresponds with FAA AD 2007–08–05] mandated a one time detailed visual inspection of the shroud box bottom panel.

Further to issuance of AD 2006–0107, three additional events of panel loss have been experienced on in service aircraft already inspected in accordance with the AD requirements and no findings. Thus, it has been decided to delete this one time detailed visual inspection and to mandate a modification which prevents such unsafe condition. Therefore, the present AD supersedes EASA AD 2006–0107 and mandates the installation of a bolted shroud box bottom panel instead of blind riveted metallic design.

The modification includes doing all applicable related investigative and corrective actions. The related investigative action is an inspection to detect cracks of the shroud box hole. The corrective action is repairing any cracked shroud box hole.

New Requirements of This AD: Actions and Compliance

(f) Unless already done: Within 69 months after the effective date of this AD, modify the shroud box bottom skin panel on both wings, and do all applicable related investigative and corrective actions, by accomplishing all the actions in the applicable service bulletins identified in Table 2 of this AD. Do all applicable related investigative and corrective actions before further flight.

TABLE 2—SERVICE BULLETINS

Service Bulletin—	Date—
Airbus Mandatory Service Bulletin A330–57–3100	October 1, 2007.
Airbus Mandatory Service Bulletin A340–57–4109	October 1, 2007.
Airbus Mandatory Service Bulletin A340–57–5018	October 1, 2007.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0002, dated January 7, 2008, and the service bulletins identified in Table 2 of this AD for related information.

Material Incorporated by Reference

(i) You must use the service information specified in Table 3 of this AD to do the

actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 45 80, e-mail airworthiness.A330-A340@airbus.com; Internet <http://www.airbus.com>.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin—	Date—
Airbus Mandatory Service Bulletin A330–57–3100	October 1, 2007.
Airbus Mandatory Service Bulletin A340–57–4109	October 1, 2007.

TABLE 3—MATERIAL INCORPORATED BY REFERENCE—Continued

Service Bulletin—	Date—
Airbus Mandatory Service Bulletin A340–57–5018	October 1, 2007.

Issued in Renton, Washington, on November 16, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–27940 Filed 11–26–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1244; Directorate Identifier 2008–SW–59–AD; Amendment 39–15752; AD 2008–22–52]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model 500N and 600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document supersedes AD 2008–18–52 and publishes in the **Federal Register** an amendment adopting Emergency Airworthiness Directive (AD) 2008–22–52 which was sent previously to all known U.S. owners and operators of MD Helicopters, Inc. (MDHI) Model 500N and 600N helicopters by individual letters. This AD requires turning OFF the Yaw Stability Augmentation System (YSAS); installing a placard that limits airspeed to 100 KTS or V_{NE} , whichever is less; and revising the limitations section of the Rotorcraft Flight Manual (RFM) to reflect that limitation. Finally, replacing the adapter tubes with airworthy adapter tubes that have a production date code stamp is required. This AD is prompted by several occurrences of failed adapter tubes on the Model MD900 helicopter which uses the same adapter tubes. The actions specified by this AD are intended to prevent loss of yaw control and subsequent loss of control of the helicopter.

DATES: Effective December 15, 2008, to all persons except those persons to whom it was made immediately effective by Emergency AD 2008–22–52, issued on October 23, 2008, which

contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before January 27, 2009.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or on the Web at <http://www.mdhelicopters.com>.

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information on the Internet at <http://www.regulations.gov>, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Eric D. Schrieber, FAA, Los Angeles Aircraft Certification Office, Aviation Safety Engineer, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone 562–627–5348, fax 562–627–5210.

SUPPLEMENTARY INFORMATION: On August 20, 2008, we issued Emergency AD 2008–18–51 for 500N, 600N, and MD900 helicopters. Emergency AD 2008–18–51 was prompted by reports that 2 MD900 helicopters experienced failed vertical stabilizer control system

(VSCS) adapter tubes. In one case, the helicopter experienced an uncommanded yaw, resulting in loss of a window and a door. The Emergency AD required several actions related to the YSAS for the Model 500N and 600N helicopters and to the vertical stabilizer control system (VSCS) for the Model MD900 helicopters.

After we issued Emergency AD 2008–18–51, we discovered that pulling the circuit breaker per the Emergency AD caused impaired directional control, which could result in loss of control of the helicopter. Therefore, on August 27, 2008, we issued superseding Emergency AD 2008–18–52, which requires, for Model 500N, 600N and MD900 helicopters, turning OFF the VSCS or YSAS switches instead of pulling the circuit breakers and installing placards that limit airspeed to 100 KIAS or V_{NE} , whichever is less. For the Model MD900 helicopters, limiting flight to VFR, prohibiting use of the autopilot, and making changes to the Emergency Procedures and Airworthiness (sic) Limitations sections of the RFM are also required. For all of the helicopter models, Emergency AD 2008–18–52 requires, within 45 days, terminating action by replacing the adapter tube with an airworthy adapter tube that has a date stamp of August 15, 2008 or later, and then removing the placards, removing the AD limitation changes from the RFM, and returning all switches and circuit breakers to their normal positions.

Since the issuance of Emergency AD 2008–18–52, we have had additional occurrences of failed adapter tubes on the MD900 helicopters. The replacement adapter tube that was terminating action for the requirements of Emergency AD 2008–18–52 failed on 2 of the MD900 helicopters. Furthermore, adapter tubes without a production date code stamp remain a safety concern on the 500N and 600N helicopters because they may not conform to the FAA-approved design. Therefore, we separated the AD actions and issued 2 superseding Emergency ADs; 2008–22–52 for the 500N and 600N helicopters, and 2008–22–53 for the MD900 helicopters.

Emergency AD 2008–22–52 applies to the 500N and 600N helicopters and continues to require the same actions as Emergency AD 2008–18–52; however,

we made minor editorial changes as well as the following changes:

- We do not include any serial numbers in the applicability because this unsafe condition can occur on any helicopter with the affected adapter tube installed.
- We require that the limitations section of the RFM be revised to reflect the airspeed limitation required by the placard.
- We require that replacement adapter tubes have a production date code stamped on them to determine that the parts are airworthy (e.g., 08-08 indicates a production date of August 2008).

We have reviewed MDHI Service Bulletin (SB) SB500N-040R1/SB600N-047R1 dated August 27, 2008. The SB specifies de-energizing the YSAS, installing a placard that limits the airspeed, and replacing the YSAS adapter.

Since the unsafe condition described is likely to exist or develop on other MDHI Model 500N and 600N helicopters of the same type designs, we issued superseding Emergency AD 2008-22-52 to prevent loss of yaw control and subsequent loss of control of the helicopter. The Emergency AD requires the following before further flight:

- Turning OFF the YSAS switch.
- Installing a placard on the instrument panel as close as practicable to the airspeed indicator that states:

“YSAS SYSTEM IS OFF. AIRSPEED LIMIT 100 KIAS or V_{NE} , WHICHEVER IS LESS.”

- Revising the limitations section of the RFM to limit the airspeed to 100 KIAS or V_{NE} , whichever is less.

The Emergency AD also requires replacing adapter tubes without a production date code stamp with adapter tubes that have a production date code stamp within 45 days and is terminating action for the requirements of the Emergency AD. After replacing the affected adapter tubes, the Emergency AD requires removing the placards, removing the revisions that were made to the RFM because of the Emergency AD, and returning the YSAS system to its normal position. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the actions described previously are required before further flight and within 45 days, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable

and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 23, 2008 to all known U.S. owners and operators of MDHI Model 500N and 600N helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

We estimate that this AD will affect 65 helicopters of U.S. registry. The required actions will take about 6 work hours per helicopter, at an average labor rate of \$80 per work hour. Required parts will cost about \$920 per helicopter. Based on these figures we estimate the total cost impact of the AD on U.S. operators to be \$91,000 (\$1,400 per helicopter). However, MDHI states in their service information that required YSAS adapters will be supplied at no cost and labor costs of 5.7 hours will be covered under labor warranty. Assuming operators take advantage of these credits, we estimate that this AD will have a negligible cost impact on U.S. operators.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2008-1244; Directorate Identifier 2008-SW-59-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will

not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2008-22-52 MD Helicopters, Inc.:

Amendment 39-15752. Docket No. FAA-2008-1244; Directorate Identifier 2008-SW-59-AD. Supersedes Emergency AD 2008-18-52, Directorate Identifier 2008-SW-52-AD.

Applicability: Model 500N and 600N helicopters, with a Yaw Stability Augmentation System (YSAS) adapter tube, part number 500N7218-1, installed, certificated in any category. Adapter tubes that have a production date code stamp are not included in the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of yaw control and subsequent loss of control of the helicopter, do the following:

(a) Before further flight:

(1) Turn OFF the YSAS switch.

(2) Install a placard on the instrument panel as close as practicable to the airspeed indicator that states:

“YSAS SYSTEM IS OFF. AIRSPEED LIMIT 100 KIAS or V_{NE} , WHICHEVER IS LESS.”

Note: MDHI Service Bulletin SB500N-040R1/SB600N-047R1, dated August 27, 2008, and maintenance manual CSP-HMI-3, Section 96-00-00, pertain to the subject of this AD.

(3) Make pen and ink changes or place a copy of this AD in the limitations section of the rotorcraft flight manual (RFM) to revise the limitations as follows: “ V_{NE} is limited to 100 KIAS or less as determined by referring to the airspeed V_{NE} placard already installed on the helicopter.”

(b) Within 45 days, replace each affected adapter tube with an airworthy adapter tube that has a production date code stamp. This replacement is terminating action for the requirements of this AD. Once this replacement has been done, remove the placards, remove the airspeed restriction revisions that were made to the RFM, and return the YSAS system to its normal position.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Los Angeles Aircraft Certification Office, FAA, ATTN: Eric D. Schrieber, Aviation Safety Engineer, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone 562-627-5348, fax 562-627-5210, for information about previously approved alternative methods of compliance.

(d) Copies of the applicable service information may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215-9734, telephone 1-800-388-3378, fax 480-346-6813, or on the Web at <http://www.mdhelicopters.com>.

(e) This amendment becomes effective on December 15, 2008, to all persons except those persons to whom it was made immediately effective by Emergency AD 2008-22-52, issued October 23, 2008, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on November 14, 2008.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8-28110 Filed 11-26-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0752; Directorate Identifier 2008-NE-22-AD; Amendment 39-15750; AD 2008-24-10]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. JT15D-5; -5B; -5F; and -5R Turbofan Engines

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as follows:

There have been several reported incidents of high altitude, dual engine flameout on JT15D-5 engine powered aircraft operating in certain meteorological conditions. Subsequent to the investigation of incidents, review of the engine design has revealed that the Fuel Control Hydro Mechanical Unit (HMU) P3 servo can be exposed to excessive moisture and freezing.

We are issuing this AD to prevent engine flameouts of one or both engines, caused by excessive moisture and freezing in the P3 servo during certain flight conditions.

DATES: This AD becomes effective January 2, 2009. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 2, 2009.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and

Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: ian.dargin@faa.gov; telephone (781) 238-7178; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 22, 2008 (73 FR 49619). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states the following:

There have been several reported incidents of high altitude, dual engine flameout on JT15D-5 engine powered aircraft operating in certain meteorological conditions. Subsequent to the investigation of incidents, review of the engine design has revealed that the Fuel Control Hydro Mechanical Unit (HMU) P3 servo can be exposed to excessive moisture and freezing.

Comments

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

Request To Reference Hawker Beechcraft Service Bulletin for Wire Harness

One commenter, Flight Options, requests that we reference Hawker Beechcraft Service Bulletin (SB) No. SB 73-3888, Revision 1, dated July, 2008, in the AD. That SB instructs to re-route and secure the throttle solenoid wire harness, and instructs to install a serviceable compressor air to HMU delivery tube, using Pratt & Whitney Canada Corp. (P&WC) Alert SB No. JT15D-72-A7611, Revision 1, dated June 16, 2008. The commenter states that without the proposed AD referring to the Hawker Beechcraft SB, operators could leave wire harnesses unsecured, potentially leading to other system failures.

We partially agree. We recognize that instructions to re-route and secure the throttle solenoid wire harness are contained in the Hawker Beechcraft SB, and operators should refer to these requirements during the modification. We do not agree that securing the throttle solenoid wire harness needs to be mandated by this AD. However, we have added the Hawker Beechcraft SB reference to the Related Information paragraph in the AD.

Suggestion To Use Hawker Beechcraft SB for AD Compliance

Flight Options suggests that the Hawker Beechcraft SB No. SB 73-3888,

Revision 1, or later Revision, is a satisfactory method of compliance with the proposed AD.

We agree that the SB contains a satisfactory method of compliance, but it also imposes additional requirements which are unnecessary. Accordingly, we do not agree that compliance to the Hawker Beechcraft SB needs to be mandated to prevent flameouts of one or both engines. We did not change the AD.

Request To Change Compliance Period

Flight Options requests that we change the proposed compliance period of "200 hours after the effective date of this AD or by December 31, 2008" to "400 hours after the effective date of this AD or by March 31, 2009". The commenter did not provide any data to substantiate their request.

We do not agree. A short compliance period is necessary, in the interest of safety. However, we changed the compliance to "within 200 flight hours after the effective date of this AD or within 30 days after the effective date of this AD, whichever occurs first".

Suggestion To Add P&WC Alert SB No. JT15D-72-A7611, Revision 1, to Previous Credit Paragraph

Flight Options suggests that we add P&WC Alert SB No. JT15D-72-A7611, Revision 1, dated June 16, 2008 to the Previous Credit paragraph (h). The commenter notes that P&WC added two engine models to that SB revision.

We do not agree. Engines that have been made compliant per that SB before the effective date of the AD are covered by compliance paragraph (e) which states "Unless already done, do the following actions." We did not change the AD.

Request To Remove Cessna Airplanes From Applicability

One commenter, Cessna Aircraft Company, requests that we remove the references to Cessna airplanes from the applicability, as the affected engines are not installed on Cessna airplanes.

We agree. We removed the Cessna references from the AD.

Request To Remove Mitsubishi Airplanes From Applicability

Hawker Beechcraft requests that we remove the references to Mitsubishi MU-300 and MU-300-10 airplanes from the applicability, as the affected engines are not installed on Mitsubishi airplanes.

We agree. We removed the Mitsubishi references from the AD.

Claim That AD Is Not Needed

One commenter, Hawker Beechcraft, claims that the AD is not needed. The commenter states that the earlier FAA AD 2006-21-02 addresses the problem, which at the time of AD issuance, was believed to be the result of ice buildup in the engine core.

We do not agree. While icing of the engine core stators remains the most obvious contributor to the engine flameout issue, more recent tests by P&WC have shown that freezing of the compressor air to HMU delivery tube at altitudes of 37,000 feet and higher, is also a contributing element. This AD is necessary to address required engine installation changes.

Request To Revise AD 2006-21-02

Hawker Beechcraft requests that we revise FAA AD 2006-21-02 to incorporate the replacement of the compressor air to HMU delivery tube, which is the subject of the proposed AD. The commenter states that having two ADs addressing dual-engine flameouts will be confusing to operators.

We do not agree. While the first AD addresses operational issues at the airplane level, a separate AD is required to mandate an engine configuration change to incorporate improvements to the compressor air to HMU delivery tube. This will eliminate a second contributor to the in-flight engine shutdowns seen in service.

Request To Add the JT15D-5F Engine Model to the Costs of Compliance

Hawker Beechcraft requests that we add the JT15D-5F engine model to the costs of compliance, as this model is also affected by P&WC ASB No. JT15D-72-A7611, Revision 1, dated June 16, 2008.

We agree. We inadvertently listed the JT15D-5R engine model twice; the second listing should have been -5F. We changed the costs of compliance to read "* * * and \$3,169 per product for JT15D-5B and -5F engines".

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 1,500 products of U.S. registry. We also estimate that it will take about 3 work-

hours per product to comply with this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$1,981 per product for JT15D-5 and -5R engines, and \$3,169 per product for JT15D-5B and -5F engines. Based on these figures, we estimate the cost of the AD on U.S. operators to be \$4,222,500. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

Examining the AD Docket

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

contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008-24-10 Pratt & Whitney Canada Corp.: Amendment 39-15750. Docket No. FAA-2008-0752; Directorate Identifier 2008-NE-22-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 2, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following Pratt & Whitney Canada Corp. (P&WC) turbofan engines with compressor air to HMU delivery tube, part number (P/N) 3119150-01 installed:

- (1) JT15D-5 turbofan engines, serial numbers (SNs) below and including SN PCE-100411.
- (2) JT15D-5 turbofan engines, SNs below and including SN PCE-JA0818.
- (3) All JT15D-5B turbofan engines.
- (4) All JT15D-5F turbofan engines.
- (5) JT15D-5R turbofan engines SNs below and including SN PCE-JG0104.
- (6) All JT15D-5 turbofan engines converted to model JT15D-5R by incorporation of P&WC Service Bulletin No. 7605.

These engines are installed on, but not limited to, Hawker Beechcraft models 400, 400A, and 400T airplanes.

Reason

(d) Transport Canada AD CF-2008-23, dated June 27, 2008, states:

There have been several reported incidents of high altitude, dual engine flameout on JT15D-5 engine powered aircraft operating in certain meteorological conditions. Subsequent to the investigation of incidents, review of the engine design has revealed that

the Fuel Control Hydro Mechanical Unit (HMU) P3 servo can be exposed to excessive moisture and freezing. To preclude P3 servo freezing, P&WC has issued JT15D Alert Service Bulletin (ASB) JT15D-72-A7611 to re-route compressor delivery air to the HMU and improve moisture separation. Considering the potentially hazardous consequence of possible in-flight dual engine flameout, this airworthiness directive is issued to mandate the incorporation of P&WC ASB JT15D-72-A7611 to the affected JT15D-5 engines, in order to minimize the possibility of this hazard.

We are issuing this AD to prevent engine flameouts of one or both engines caused by excessive moisture and freezing in the P3 servo during certain flight conditions.

Actions and Compliance

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

(1) Within 200 flight hours after the effective date of this AD or within 30 days after the effective date of this AD, whichever occurs first, remove from service compressor air to HMU delivery tube, P/N 3119150-01.

(2) Install a serviceable compressor air to HMU delivery tube in accordance with P&WC Alert Service Bulletin (ASB) No. JT15D-72-A7611, Revision 1, dated June 16, 2008.

Prohibition of Compressor Air to HMU Delivery Tube, P/N 3119150-01

(3) After the effective date of this AD, do not install any compressor air to HMU delivery tube, P/N 3119150-01, onto any engine.

Definition

(f) For the purpose of this AD, a serviceable compressor air to HMU delivery tube is a compressor air to HMU delivery tube that is other than the tube part number listed in this AD.

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

Previous Credit

(h) Replacement of the compressor air to HMU delivery tube using P&WC ASB No. JT15D-72-A7611, dated March 26, 2008, before the effective date of this AD, meets the requirements of this AD.

Related Information

(i) Refer to Transport Canada AD CF-2008-23, dated June 27, 2008, for related information.

(j) Hawker Beechcraft Service Bulletin No. SB 73-3888, Revision 1, dated July 2008, also pertains to the subject of this AD.

(k) Contact Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: ian.dargin@faa.gov; telephone (781) 238-7178; fax (781) 238-7199, for more information about this AD.

Material Incorporated by Reference

(l) You must use Pratt & Whitney Canada Corp. Alert Service Bulletin No. JT15D-72-

A7611, Revision 1, dated June 16, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1, telephone: (800) 268-8000.

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

Issued in Burlington, Massachusetts, on November 19, 2008.

Peter A. White,

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

[FR Doc. E8-28062 Filed 11-26-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30638; Amdt. No 3296]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective November 28, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 2008.

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

For Examination—

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

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT:

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

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

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

The Rule

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

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on November 14, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 18 DEC 2008

Hopkinsville, KY, Hopkinsville-Christian County, Takeoff Minimums and Obstacle DP, Amdt 1

Hamilton, NY, Hamilton Muni, Takeoff Minimums and Obstacle DP, Amdt 2

Effective 15 JAN 2009

Fresno, CA, Fresno-Chandler Executive, Takeoff Minimums and Obstacle DP, Amdt 2

Ocala, FL, Ocala Intl-Jim Taylor Fld, ILS OR LOC/DME RWY 36, Amdt 1

Ocala, FL, Ocala Intl-Jim Taylor Fld, NDB RWY 36, Amdt 5, CANCELLED

Ocala, FL, Ocala Intl-Jim Taylor Fld, RNAV (GPS) RWY 18, Amdt 1

Ocala, FL, Ocala Intl-Jim Taylor Fld, RNAV (GPS) RWY 36, Amdt 1

Ocala, FL, Ocala Intl-Jim Taylor Fld, Takeoff Minimums and Obstacle DP, Orig

Ocala, FL, Ocala Intl-Jim Taylor Fld, VOR RWY 36, Amdt 18
 Kahului, HI, Kahului, RNAV (GPS) RWY 23, Amdt 1
 Kahului, HI, Kahului, Takeoff Minimums and Obstacle DP, Amdt 6
 Clinton, IA, Clinton Muni, GPS RWY 21, Amdt 1A, CANCELLED
 Clinton, IA, Clinton Muni, RNAV (GPS) RWY 3, Orig
 Clinton, IA, Clinton Muni, RNAV (GPS) RWY 21, Orig
 Clinton, IA, Clinton Muni, Takeoff Minimums and Obstacle DP, Orig
 Clinton, IA, Clinton Muni, VOR RWY 3, Amdt 15
 Quincy, IL, Quincy Rgnl-Baldwin Field, RNAV (GPS) RWY 4, Orig
 Quincy, IL, Quincy Rgnl-Baldwin Field, RNAV (GPS) RWY 13, Orig
 Quincy, IL, Quincy Rgnl-Baldwin Field, RNAV (GPS) RWY 31, Orig
 Quincy, IL, Quincy Rgnl-Baldwin Field, RNAV (GPS) RWY 36, Orig
 Quincy, IL, Quincy Rgnl-Baldwin Field, VOR RWY 4, Amdt 12
 Quincy, IL, Quincy Rgnl-Baldwin Field, VOR/DME RNAV OR GPS RWY 13, Amdt 4, CANCELLED
 Alpena, MI, Alpena County Rgnl, NDB RWY 1, Amdt 7
 Alpena, MI, Alpena County Rgnl, Takeoff Minimums and Obstacle DP, Orig
 Minneapolis, MN, Crystal, GPS RWY 14L, Orig-C, CANCELLED
 Minneapolis, MN, Crystal, RNAV (GPS) RWY 14L, Orig
 Rushford, MN, Rushford Muni, GPS RWY 34, Orig, CANCELLED
 Rushford, MN, Rushford Muni, RNAV (GPS) RWY 34, Orig
 Rushford, MN, Rushford Muni, VOR/DME-A, Amdt 2
 Hammonton, NJ, Hammonton Muni, Takeoff Minimums and Obstacle DP, Orig
 Brockport, NY, Ledge Dale Airpark, GPS RWY 28, Orig, CANCELLED
 Brockport, NY, Ledge Dale Airpark, RNAV (GPS) RWY 28, Orig
 Brockport, NY, Ledge Dale Airpark, Takeoff Minimums and Obstacle DP, Orig
 Columbus, OH, Bolton Field, ILS OR LOC RWY 4, Amdt 5
 Columbus, OH, Bolton Field, NDB RWY 4, Amdt 7
 Columbus, OH, Bolton Field, RNAV (GPS) RWY 4, Orig
 Columbus, OH, Bolton Field, Takeoff Minimums and Obstacle DP, Orig
 Mount Vernon, OH, Knox County, RNAV (GPS) RWY 10, Orig
 Mount Vernon, OH, Knox County, RNAV (GPS) RWY 28, Orig
 Mount Vernon, OH, Knox County, Takeoff Minimums and Obstacle DP, Orig
 Mount Vernon, OH, Knox County, VOR/DME RNAV OR GPS RWY 10, Amdt 2A, CANCELLED
 Mount Vernon, OH, Knox County, VOR/DME RNAV OR GPS RWY 28, Amdt 2B, CANCELLED
 Van Wert, OH, Van Wert County, GPS RWY 9, Orig, CANCELLED
 Van Wert, OH, Van Wert County, GPS RWY 27, Orig, CANCELLED
 Van Wert, OH, Van Wert County, NDB RWY 9, Amdt 3

Van Wert, OH, Van Wert County, RNAV (GPS) RWY 9, Orig
 Van Wert, OH, Van Wert County, RNAV (GPS) RWY 27, Orig
 Van Wert, OH, Van Wert County, Takeoff Minimums and Obstacle DP, Amdt 3
 Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 17R, Amdt 2A
 Watonga, OK, Watonga Rgnl, NDB RWY 17, Orig, CANCELLED
 Pittsburgh, PA, Pittsburgh Intl, RNAV (GPS) Y RWY 28L, Amdt 4A
 Sterling, PA, Spring Hill, Takeoff Minimums and Obstacle DP, Orig
 Beaumont, TX, Beaumont Muni, Takeoff Minimums and Obstacle DP, Orig
 Big Spring, TX, Big Spring Mc Mahon-Wrinkle, RNAV (GPS) RWY 17, Orig
 Big Spring, TX, Big Spring Mc Mahon-Wrinkle, RNAV (GPS) RWY 35, Orig
 Big Spring, TX, Big Spring Mc Mahon-Wrinkle, VOR/DME RWY 17, Amdt 8
 Big Spring, TX, Big Spring Mc Mahon-Wrinkle, VOR/DME RWY 35, Amdt 8
 Fort Hood, TX, Hood AAF, Takeoff Minimums and Obstacle DP, Amdt 1
 Killeen, TX, Skylark Field, Takeoff Minimums and Obstacle DP, Amdt 2
 Eau Claire, WI, Chippewa Valley Rgnl, ILS OR LOC RWY 22, Amdt 8
 Eau Claire, WI, Chippewa Valley Rgnl, LOC/DME BC RWY 4, Amdt 9
 Stevens Point, WI, Stevens Point Muni, ILS OR LOC RWY 21, Orig
 Stevens Point, WI, Stevens Point Muni, Takeoff Minimums and Obstacle DP, Orig
 Bluefield, WV, Mercer County, Takeoff Minimums and Obstacle DP, Amdt 4
 [FR Doc. E8-28035 Filed 11-26-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30639; Amdt. No. 3297]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 28, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 2008.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Availability—All SIAPs are available online free of charge. Visit <http://nfdc.faa.gov> to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P-NOTAM), and is

incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at

the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on November 14, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * Effective Upon Publication

FDC date	State	City	Airport	FDC No.	Subject
11/11/08	IA	PERRY	PERRY MUNI	8/6135	NDB RWY 14, AMDT 2A.
11/11/08	IA	PERRY	PERRY MUNI	8/6136	GPS RWY 14, ORIG–A.
11/11/08	IA	PERRY	PERRY MUNI	8/6137	NDB RWY 32, AMDT 5A.
11/11/08	OR	AURORA	AURORA STATE	8/7664	RNAV (GPS) RWY 35, ORIG.
11/11/08	WI	MOSINEE	CENTRAL WISCONSIN	8/7680	VOR OR GPS A, AMDT 8.
11/11/08	WI	WAUSAU	WAUSAU DOWNTOWN	8/7681	VOR OR GPS A, AMDT 18.
11/3/08	AK	DEADHORSE	DEADHORSE	8/7694	ILS OR LOC/DME RWY 5, 2B.
11/11/08	CA	SAN DIEGO	SAN DIEGO INTL	8/8050	ILS OR LOC RWY 9, AMDT 1A.
11/11/08	CA	TORRANCE	ZAMPERINI FIELD	8/8053	ILS OR LOC RWY 29R, AMDT 2A.
11/11/08	IL	BELLEVILLE	SCOTT AFB/MIDAMERICA	8/8129	GPS RWY 14L, ORIG–A.
11/11/08	IL	BELLEVILLE	SCOTT AFB/MIDAMERICA	8/8130	GPS RWY 32R, ORIG–A.
11/11/08	IL	BELLEVILLE	SCOTT AFB/MIDAMERICA	8/8131	RNAV (GPS) RWY 32L, ORIG–A.
11/11/08	IL	BELLEVILLE	SCOTT AFB/MIDAMERICA	8/8134	ILS OR LOC RWY 32R, ORIG–B.
11/11/08	IL	BELLEVILLE	SCOTT AFB/MIDAMERICA	8/8135	ILS OR LOC RWY 14R, ORIG–B.
11/11/08	IL	BELLEVILLE	SCOTT AFB/MIDAMERICA	8/8136	ILS/DME RWY 14L, ORIG–A.
11/11/08	IL	BELLEVILLE	SCOTT AFB/MIDAMERICA	8/8137	RNAV (GPS) RWY 14R, ORIG–A.
11/11/08	FL	ST AUGUSTINE	ST AUGUSTINE	8/8408	VOR RWY 13, ORIG.
11/7/08	NY	ROME	GRIFFISS AIRFIELD	8/8485	VOR/DME RWY 33, ORIG.
11/11/08	GA	PERRY	PERRY-HOUSTON COUNTY	8/8543	RNAV (GPS) RWY 18, ORIG.
11/7/08	NY	NEW YORK	LA GUARDIA	8/8554	LDA–A, AMDT 2A.

[FR Doc. E8-28041 Filed 11-26-08; 8:45 am]

BILLING CODE 4910-13-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1101

Information Disclosure Under Section 6(b) of the Consumer Product Safety Act

AGENCY: Consumer Product Safety Commission.

ACTION: Final Rule.

SUMMARY: The Consumer Product Safety Improvement Act of 2008, Public Law 110-314, 122 Stat. 3016, enacted August 14, 2008, amends section 6 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.* Specifically, the amendments shorten the time periods for notice and opportunity to comment on public disclosure of product-specific information, broaden the statutory exceptions to section 6(b), and eliminate the **Federal Register** publication requirement the Commission previously had to follow when it made a finding that the public health and safety required public disclosure within a lesser period of notice than that is required by section 6(b)(1). The Commission is issuing this rule to reflect the newly-enacted statutory amendments on public disclosure of product-specific information.

DATES: These amendments are effective November 28, 2008.

FOR FURTHER INFORMATION CONTACT: Patricia Kennedy Vieira, Attorney, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504-7623, pvieira@cpsc.gov.

SUPPLEMENTARY INFORMATION: On August 14, 2008 the Consumer Product Safety Improvement Act (CPSIA) became law. The CPSIA amends section 6 of the Consumer Product Safety Act by shortening the time from 30 to 15 days in Section 6(b) of the CPSA for notice and opportunity to comment on information prior to the Commission's disclosure to the public of certain product-specific information. The statutory amendments also shorten the time from 10 to five days in which the Commission must notify a company of its intention to disclose information over its objection. The amendments shorten the time for notice and opportunity to comment under section 6(b) where the Commission publishes a finding that the public health and safety

requires public disclosure in less than 15 days. The amendments eliminate the requirement to publish such finding in the **Federal Register**.

The amendments also broaden the scope of the exceptions in section 6(b). First, the amendments provide an additional exception to the definition of the term "public" to exclude any federal, state, local, or foreign government agency pursuant to section 29(f) of the CPSIA. The regulatory definition of "public" has been changed to reflect the additional exclusion. The amendments broaden the exception under 6(b)(4) for information not covered by section 6(b) of the CPSA where the Commission has reasonable cause to believe the product is in violation of any consumer product safety rule or provision under the CPSA or similar rule or provision of any other act enforced by the Commission. Finally, the amendments also broaden the exception under section 6(b)(5) for information provided under Section 15(b) of the CPSA where the Commission publishes a finding that the public health and safety requires public disclosure within a lesser period of notice than is required by section 6(b)(1). The amendments eliminate the requirement that the Commission publish such health and safety finding in the **Federal Register**. Existing regulatory provisions are inconsistent with the statutory amendments to section 6(b) under the CPSIA and, therefore, the Commission is amending the regulatory provisions of section 6 to reflect these statutory changes.

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) authorizes an agency to dispense with certain notice procedures for a rule when it finds "good cause" to do so. 5 U.S.C. 553(b)(3)(B). Specifically, under 5 U.S.C. 553(b)(3)(B), the requirement for notice and an opportunity to comment does not apply when the agency, for good cause, finds that those procedures are "impractical, unnecessary, or contrary to the public interest." The statutory changes reflected in these amendments are imposed by the CPSIA and are not discretionary with the Commission. The Commission has no authority to make changes to the CPSIA provisions, and therefore could not make any changes in response to public comments. Accordingly, the Commission hereby finds that notice and an opportunity to comment on these amendments are unnecessary.

The amendments became effective by statutory enactment (August 14, 2008). Accordingly, the Commission is publishing these amendments to its

regulations to make them consistent with the statutory provisions.

Effective Date

The amendments are effective immediately upon their publication in final form in the **Federal Register**, and cover all requests for information received by the Commission since August 14, 2008.

Impact on Small Business

Because these clauses are mandated by statute and not discretionary with the Commission, these amendments are not subject to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Environmental Considerations

The amendments are not subject to the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, because they incorporate a statutory requirement not subject to agency discretion.

List of Subjects in 16 CFR Part 1101

Administrative practice and procedure, Business and Industry, Consumer protection, Reporting and recordkeeping requirements.

■ Accordingly, 16 CFR part 1101 is amended as follows:

PART 1101—INFORMATION DISCLOSURE UNDER SECTION 6(b) OF THE CONSUMER PRODUCT SAFETY ACT

■ 1. The authority citation for part 1101 is revised to read as follows:

Authority: Section 6(b) of Public Law 92-573, as amended by Section 211 of Public Law 110-314, 122 Stat. 3016, 15 U.S.C. 2055(b), 5 U.S.C. 553(b).

§ 1101.1 [Amended]

■ 2. Section 1101.1(b)(1) is amended as follows:

■ a. Remove the number "30" and add, in its place "15."

■ b. Remove the word "finds" and add, in its place "publishes a finding that."

■ 3. Section 1101.2 is revised to read as follows:

§ 1101.2. Scope.

Section 6(b) and these rules apply to information concerning products subject to the CPSA (15 U.S.C. 2051-2085), and to the four other acts the Commission administers (transferred acts). These transferred acts are the Flammable Fabrics Act, 15 U.S.C. 1191-1204 (FFA); the Poison Prevention Packaging Act of 1970, 15 U.S.C. 1471-1476 (PPPA); the Federal Hazardous Substances Act, 15 U.S.C. 1261-1276 (FHSA); and the Refrigerator Safety Act, 15 U.S.C. 1211-1214 (RSA). These provisions are now

applicable to the Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. 8003(a); and the Children's Gasoline Burn Prevention Act § 2(a), Public Law 110-278, 122 Stat. 2602 (July 17, 2008).

■ 4. Section 1101.12 is amended by adding new paragraph (h) to read as follows:

§ 1101.12. Commission must disclose information to the public.

* * * * *

(h) Any federal, state, local, or foreign government agency pursuant to, and in accordance with, section 29(f) of the Consumer Product Safety Improvement Act of 2008 (Pub. L. 110-314, 122 Stat. 3016 (August 14, 2008)).

§ 1101.21 [Amended]

■ 5. In the third sentence of § 1101.21(a), remove the words "makes a public health and safety finding" and add, in its place "publishes a finding that the public health and safety requires a lesser period of notice."

§ 1101.22 [Amended]

■ 6. Section 1101.22 is amended as follows:

■ a. In paragraph (a)(1) remove the words "a minimum of twenty (20)" and add, in its place "ten (10)."

■ b. In the second sentence of paragraph (a)(2) remove the word "find" and add, in its place "publish a finding."

■ c. In paragraph (b)(2) remove the word "finds" and add, in its place "publishes a finding."

■ d. In paragraph (b)(2) remove the number "30" and add, in its place "15."

■ 7. Section 1101.23 is amended as follows:

■ a. Revise the heading to read follows:

■ b. In the introductory paragraph remove the number "30" and add, in its place "15."

■ c. In paragraph (a) remove the number "30" and add, in its place "15."

■ d. In paragraph (b) remove the number "30" and add, in its place "15" wherever it appears.

■ e. In the first sentence of paragraph (b) remove the word "find" and add, in its place "publish a finding."

■ f. In the second sentence of paragraph (b) remove the word "determine" and add, in its place "find."

■ g. Revise paragraph (c) to read as follows:

§ 1101.23 Providing less than 15 days notice before disclosing information.

* * * * *

(c) *Notice of finding.* The Commission will inform a manufacturer or private labeler of a product which is the subject of a public health and safety finding that the public health and safety requires

less than 15 days advance notice either orally or in writing, depending on the immediacy of the need for quick action. Where applicable, before releasing information, the Commission will comply with the requirements of section 6(b)(1) and (2) by giving the firm the opportunity to comment on the information, either orally or in writing depending on the immediacy of the need for quick action, and by giving the firm advance notice before disclosing information claimed by a manufacturer or private labeler to be inaccurate (see § 1101.25).

■ 8. Section 1101.25 is amended as follows:

■ a. In paragraph (a) remove the words "10 working" and add, in its place "5."

■ b. In paragraph (b) remove the words "10 working" and add, in its place "5."

■ c. Revise paragraph (c) to read as follows:

§ 1101.25 Notice of intent to disclose.

* * * * *

(c) *Notice of findings.* The Commission will inform a manufacturer or private labeler of a product which is the subject of a public health and safety finding that the public health and safety requires less than 5 days advance notice either orally or in writing, depending on the immediacy of the need for quick action.

§ 1101.31 [Amended]

■ 9. In § 1101.31(a) remove the word "thirty" and add, in its place "fifteen."

■ 10. Section 1101.41(a) is revised to read as follows:

§ 1101.41 Generally.

(a) *Scope.* This subpart describes and interprets the exceptions to the requirements of section 6(b)(1)–(b)(3) that are set forth in section 6(b)(4). These exceptions apply to:

(1) Information about a product reasonably related to the subject matter of an imminent hazard action in federal court;

(2) Information about a product which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision under the Consumer Product Safety Act (15 U.S.C. 2051, *et seq.*) or similar rule or provision of any other act enforced by the Commission;

(3) Information in the course of or concerning a rulemaking proceeding; or

(4) information in the course of or concerning an adjudicatory, administrative or judicial proceeding.

* * * * *

■ 11. Section 1101.43 is revised to read as follows:

§ 1101.43 Section 6(b)(4)(A) exception.

(a) *Statutory provision.* Section 6(b)(4)(A) provides that the requirements of section 6(b)(1) do not apply to public disclosure of information about any consumer product which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision under the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*) or similar rule or provision of any other act enforced by the Commission.

(b) *Scope of exception.* This exception applies once the Commission has "reasonable cause to believe" there has occurred a violation of any consumer product safety rule or provision under the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*) or similar rule or provision of any other act enforced by the Commission. Once the exception applies, the Commission may disclose information to the public without following the requirements of section 6(b)(1) if the information concerning the product is reasonably related to the violation.

■ 12. Section 1101.61 is amended by adding a new paragraph (b)(4) to read as follows:

§ 1101.61 Generally.

* * * * *

(b) * * *

(4) The Commission publishes a finding that the public health and safety requires public disclosure with a lesser period of notice than is required by section 6(b)(1).

* * * * *

■ 13. Section 1101.62(a)(2) is revised to read as follows:

§ 1101.62 Statutory exceptions to section 6(b)(5) requirements.

(a) * * *

(2) Information with respect to a consumer product which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision under the Consumer Product Safety Act (Pub. L. 92-573, 86 Stat. 1207, as amended (15 U.S.C. 2051, *et seq.*)) or similar rule or provision of any other act enforced by the Commission; or

* * * * *

§ 1101.71 [Amended]

■ 14. Section 1101.71(b) is amended as follows:

■ a. In paragraph (b)(1) remove the number "30" and add, in its place "15."

■ b. In paragraph (b)(2) remove the words "ten (10)" and add, in its place "five (5)."

Dated: November 20, 2008.

Todd A. Stevenson,

Secretary, Consumer Product Safety
Commission.

[FR Doc. E8-28200 Filed 11-26-08; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**24 CFR Parts 5, 91, 880, 882, 883, 884,
886, 891, 903, 960, 982, and 983**

[Docket No. FR-5056-I-01]

RIN 2577-AC65

HUD Programs: Violence Against Women Act Conforming Amendments

AGENCY: Office of the Secretary.

ACTION: Interim rule.

SUMMARY: This interim rule conforms HUD's regulations to the self-implementing provisions of the statutory protections for victims of domestic violence, dating violence, sexual assault, and stalking provided by the Violence Against Women Act (VAWA), as recently amended. These new protections apply to families applying for or receiving rental assistance under HUD's public housing and tenant-based and project-based Section 8 programs. The primary objectives of VAWA are to reduce violence against women and to protect the safety and confidentiality of victims of domestic violence and abuse.

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

Comments Due Date: January 27, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule. There are two methods for comments to be submitted as public comments and to be included in the public comment docket for this rule. Additionally, all submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare

and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on the site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For information about HUD's Public Housing program, please contact Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Room 4226, telephone number 202-708-0744. For information about the Office of Public and Indian Housing's Section 8 Tenant-Based program, please contact Danielle Bastarache, Director, Housing Voucher Management and Operations, Office of Public and Indian Housing, Room 4210, telephone number 202-402-5264. For information about the Office of Housing's Section 8 Project-Based program, please contact Gail Williamson, Director, Housing Assistance Policy Division, Office of Housing, Room 6138, telephone number 202-402-2473. The address for all of the above offices is the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. The above-listed telephone numbers are not toll-free numbers. Persons with hearing or speech impairments may access the numbers through TTY by calling the toll-free

Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Violence Against Women Act of 1994 (VAWA 1994) was enacted as Title IV of the Violent Crime Control and Enforcement Act of 1994 (Pub. L. 103-322, approved September 13, 1994), codified at 42 U.S.C. 13931 *et seq.* VAWA 1994 was not applicable to HUD programs. VAWA 1994 was applicable to other federal agencies and authorized grants to prevent crime in public transportation and assist victims of sexual assault, and included provisions to maintain the confidentiality of domestic violence shelters and addresses of abused persons.

On January 5, 2006, President Bush signed into law the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162), and, on August 28, 2006, the President signed into law technical corrections to the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-271) (collectively, "VAWA 2005"). Except as provided in Section 4 of the technical corrections law, VAWA 2005 became effective upon enactment of the law on January 5, 2006. Section 4 of the technical corrections law delayed the effectiveness of certain provisions to the commencement of Fiscal Year (FY) 2007, none of which are directly applicable to this rule.

VAWA 2005 reauthorizes and substantially amends VAWA 1994 for FYs 2007 through 2011, and, among other things, consolidates major law enforcement grant programs, makes amendments to criminal and immigration laws, and makes amendments to other statutes, including certain HUD statutes, to support and strengthen efforts to combat domestic violence and other forms of violence against women. The provisions of VAWA 2005, as amended in 2006, that are applicable to HUD programs are found in Title VI entitled "Housing Opportunities and Safety for Battered Women and Children." Section 601 of VAWA 2005 amends VAWA 1994 to add a new Subtitle N to VAWA 1994 entitled "Addressing the Housing Needs of Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking."

The VAWA 2005 amendments that are applicable to HUD public housing and tenant-based and project-based Section 8 programs are self-implementing. Accordingly, this rule makes conforming amendments to those programs to keep HUD's regulations

current, create consistency, and avoid confusion.

Following enactment of the new law, HUD's Office of Public and Indian Housing (PIH) issued, on June 23, 2006, a direct notice on VAWA 2005, PIH 2006-23. In that notice, PIH advised public housing agencies (PHAs) that the statutory provisions of VAWA 2005 were effective the date the law was enacted (January 5, 2006). This notice can be found at <http://www.hud.gov/offices/pih/publications/notices/06/pih2006-23.pdf>. In addition, PIH Notice 2007-5 explains the VAWA provisions that are incorporated into the Housing Choice Voucher Housing Assistance Payments contract and tenancy addendum. This notice can be found at <http://www.hud.gov/offices/adm/hudclips/notices/pih/07pihnotices.cfm>. PIH Notice 2006-42 transmits the certification form for use by tenants claiming protection under VAWA and can be found at <http://www.hud.gov/offices/adm/hudclips/notices/pih/06pihnotices.cfm>.

The Department followed the PIH direct notice with a **Federal Register** notice that addressed the applicability of VAWA 2005 to all HUD programs. This notice, published on March 16, 2007 (72 FR 12696), provided an overview of the key VAWA provisions that affect HUD programs, and advised program participants concerning compliance with VAWA. The notice described those provisions of VAWA that are self-implementing and their effect on HUD programs. This notice also advised that HUD would be amending its regulations to conform existing regulations to the VAWA requirements. This interim rule presents those conforming amendments.

II. This Interim Rule

For the convenience of the reader and for better understanding of conforming changes to HUD's regulations, this preamble provides an overview of VAWA provisions applicable to HUD and identifies where this interim rule makes conforming amendments to HUD's codified regulations.

Consolidated Plan Amendments

Section 604 of VAWA 2005 amends section 105(b)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705(b)(1)) by including "victims of domestic violence, dating violence, sexual assault, and stalking" among the jurisdiction's estimated housing needs. Accordingly, this interim rule amends 24 CFR 91.205(b) and 91.305(b) to conform the regulations to this statutory amendment.

Public Housing Agency Plan Amendments

Section 603 of VAWA 2005 amends section 5A of the U.S. Housing Act of 1937, which requires the submission of annual and 5-year plans by PHAs. This amendment requires PHAs to begin including in their 5-year plans a statement about goals, activities, objectives, policies, or programs that will enable a PHA to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.

The statutory amendment requires the annual plan to include a description of any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking; and any activities, services, or programs provided or offered that help child and adult victims of domestic violence, dating violence, sexual assault, or stalking to obtain or maintain housing; and any activities, services, or programs provided or offered to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families.

This interim rule includes a conforming amendment to HUD's PHA plan regulations at 24 CFR 903.6 and 903.7 to include the additional information required by VAWA 2005 in the annual and 5-year PHA plans.

Section 8 and Public Housing Program Amendments

Sections 606 and 607 of VAWA 2005, respectively, amend HUD's Section 8 program (codified at section 8 of the 1937 Act, 42 U.S.C. 1437f) (Section 8) and section 6 of the U.S. Housing Act of 1937 (codified at section 6 of the 1937 Act, 42 U.S.C. 1437d), governing HUD's public housing program requirements.

Admission, Occupancy, and Termination of Assistance Policies. With respect to admission, occupancy, and termination of assistance policies, sections 606 and 607 of VAWA 2005 provide that being a victim of domestic violence, dating violence, or stalking, as these terms are defined in the law, is not a basis for denial of assistance or admission to public or Section 8 assisted housing, if the applicant otherwise qualifies for assistance or admission.

These provisions also provide that incidents or threats of abuse will not be construed as serious or repeated violations of the lease or as other "good cause" for termination of the assistance, tenancy, or occupancy rights of a victim of abuse.

Additionally, the provisions state that criminal activity directly relating to abuse, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that abuse.

Rights and Responsibilities of PHAs, Owners, and Management Agents. With respect to the rights and responsibilities of PHAs, owners, and management agents, VAWA 2005 provides that these protective policies are not to interfere with certain rights and responsibilities of PHAs, owners, and management agents regarding criminal activity or acts of violence against family members or others. Specifically, VAWA 2005 provides that:

(1) The provision protecting victims of domestic violence, dating violence, or stalking engaged in by a member of the household, may not be construed to limit a PHA, owner, or management agent, when notified, from honoring various court orders issued to either protect the victim or address the distribution of property in case a family breaks up;

(2) The provision in VAWA 2005 protecting victims of domestic violence, dating violence, or stalking engaged in by a member of the household, may not be construed to limit the authority of a PHA, owner, or management agent to terminate assistance to individuals who engage in criminal acts of physical violence against family members or others, or if the PHA, owner, or management agent so chooses, to bifurcate a lease (that is, divide into separate leases by operation of law) in order to: Evict, remove, or terminate a household member from the lease, without regard to whether a household member is a signatory to the lease; evict, remove, terminate occupancy rights; or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without penalizing the victim of such violence who is also a tenant or lawful occupant;

(3) The provision in VAWA 2005 protecting victims of domestic violence, dating violence, or stalking engaged in by a member of the household does not limit any otherwise available authority of an owner or management agent to evict or of the PHA to terminate the assistance to a tenant for any lease violation not premised on the act of violence in question against the tenant or member of the tenant's household, provided that the PHA, owner, or

management agent does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants, in determining whether to evict or terminate assistance;

(4) The provision in VAWA 2005 protecting victims of domestic violence, dating violence, or stalking engaged in by a member of the household, may not be construed to limit the authority of a PHA, owner, or management agent to terminate the assistance of, or evict, any occupant who can be demonstrated to pose an actual or imminent threat to other tenants or the property's employees; and

(5) The statute shall not be construed to supersede any provisions of federal, state, or local laws that provide greater protection for victims of abuse.

With respect to these rights and responsibilities, under the housing choice voucher program, PHAs may be able to use their existing authority under § 982.552(c)(2)(ii) to terminate voucher assistance for certain family members for criminal activity while permitting other members of a participant family to continue receiving assistance (provided that the culpable family member will no longer reside in the unit). A PHA's right to exercise this administrative discretion under § 982.552(c)(2)(ii) is not dependent on a bifurcated lease or other eviction action by the owner against an individual family member.

VAWA 2005 also provides that such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by federal, state, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing.

This interim rule conforms HUD's existing regulations to these effective legal requirements. Since these are cross-cutting requirements affecting HUD's tenant-based and project-based Section 8 and public housing programs, this rule organizes these items in a new subpart L of 24 CFR part 5. Also, because section 604 of VAWA applies to Consolidated Plan requirements, conforming amendments are made to 24 CFR part 91. For clarification purposes only, cross-references are included at 24 CFR parts 880, 882, 883, 884, 886, 891, 960, 982, and 983. However, as provided in the March 16, 2007, **Federal Register** notice, VAWA 2005 is effective and applicable to HUD's Public Housing and tenant-based and project-based Section 8 programs, regardless of whether a specific reference is included. It should be noted that with respect to

part 891, VAWA applies to projects for the elderly or handicapped with Section 8 assistance under §§ 891.520 through 891.650.

Certification of Abuse. Sections 606 and 607 of VAWA 2005 add certification and confidentiality provisions. Under these provisions, owners, management agents, and PHAs may request an individual claiming VAWA protection to certify, by means of a HUD-approved certification form, that the individual is a victim of abuse and that the incidences of abuse are bona fide. The certification must include the name of the perpetrator. The victim has 14 business days after the request to provide the certification. (See 42 U.S.C. 1437f(ee)(1)(A); 42 U.S.C. 1437d(u)(1)(A).) The owner, management agent, or PHA may extend this time period at its discretion. (See 42 U.S.C. 1437f(ee)(1)(B); 42 U.S.C. 1437d(u)(1)(B).)

The statute allows, but does not require, the victim to self-certify, in order to be afforded protection under VAWA 2005. Forms HUD-50066, for use by PHAs, and HUD-90066, for use by owners and management agents, have been developed for the purpose of the optional certification. They are standard forms and collect limited, relevant information from the victim. It is not mandatory that the victim provide the HUD form, and the PHA, owner, or management agent may not require the victim to provide the form. A victim may also provide documentation from a third-party source. PHAs, owners, and management agents may, at their discretion, provide benefits under VAWA 2005 based solely on the statement of the individual.

Form HUD-50066 is currently available on HUD's Web site at <http://www.hud.gov/offices/adm/hudclips/forms/files/50066.doc>. Form HUD-90066 is available on HUD's HUDCLIPS Web site upon receipt of OMB approval. These forms are designed as uniform tenant declaration forms to be completed by the victim or by a family member on behalf of the victim. The forms are not intended as third-party verification forms.

The certification provision may be satisfied with third-party documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking or the effects of the abuse in which the professional attests, under penalty of perjury (28 U.S.C. 1746), to the professional's belief that the incident or incidents in question are

bona fide incidents of abuse, and that the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation. (See 42 U.S.C. 1437f(ee)(1)(C)(i); 42 U.S.C. 1437d(u)(1)(C)(i).) The statute also allows for the certification requirement to be satisfied by producing a federal, state, tribal, territorial, or local police or court record. (See 42 U.S.C. 1437f(ee)(1)(C)(ii); 42 U.S.C. 1437d(u)(1)(C)(ii).) If the individual does not provide the certification within 14 days as required, the PHA, owner, or management agent has the authority to evict the individual if the individual has committed violations of the lease. The PHA, owner, or management agent may extend the 14-day deadline at their discretion. (See 42 U.S.C. 1437f(ee)(1)(B); 42 U.S.C. 1437d(u)(1)(B).)

All information provided in the certification of abuse is confidential, by statute (42 U.S.C. 1437f(ee)(2)(A); 42 U.S.C. 1437d(u)(2)(A)). The statute makes three exceptions: (1) Disclosure is consented to or requested by the individual in writing; (2) disclosure is required for an eviction proceeding; or (3) disclosure is otherwise required by applicable law. The interim rule codifies the certification and confidentiality requirements at 24 CFR 5.2007. PHAs must provide notice of VAWA rights, including the right to confidentiality, to tenants. (See 42 U.S.C. 1437f(ee)(2)(B); 42 U.S.C. 1437d(u)(2)(B).)

Portability in the Housing Choice Voucher Program. VAWA 2005 amended section 8(r) of the U.S. Housing Act (42 U.S.C. 1437f(r)), by providing an exception to the prohibition against a family moving under the portability provisions in violation of the lease. VAWA 2005 provides that the family may receive a voucher and move in violation of the lease under the portability procedures, if the family has complied with all other obligations of the voucher program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.

This special portability provision for victims of domestic violence, dating violence, and stalking is found at 24 CFR 982.353(b) of this interim rule.

PHA Notification to Section 8 Program Participants and Public Housing Residents. VAWA 2005 further requires that PHAs must provide notice

to tenants assisted under Section 8 of the U.S. Housing Act of 1937 of their rights, and notice to owners and management agents of their rights and obligations, under section 8 as amended by VAWA 2005. Specifically, the notice must cover rights and obligations under sections 42 U.S.C. 1437f(c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), (o)(20), (r)(5), and (ee) (these sections reference the basic VAWA protections for Section 8 program applicants and participants, the special portability provision, and the certification provision). VAWA 2005 also requires that a PHA must provide notice to public housing residents of their rights under section 6 of the U.S. Housing Act of 1937, as amended by VAWA 2005. Specifically, the notice must cover rights under sections 42 U.S.C. 1437d(l)(5), (6)(l)(6), and (6)(u) (the VAWA protections and certification provision for the public housing program), including their rights to confidentiality and the limits thereof. This interim rule provides for PHA notification to public housing tenants, Section 8 tenants, owners, and management agents of these rights and obligations at 24 CFR 5.2007(a)(3).

While the statute at 42 U.S.C. 1437f(ee)(2)(B) only requires PHAs to provide notification to tenants of their rights and protections under VAWA, those owners and management agents administering an Office of Housing project-based Section 8 program will also be required to provide tenant notification. The Office of Housing will be issuing a notice that provides administrative guidance for implementation of the notification requirements.

Definitions. VAWA 2005 adds a number of new definitions to the U.S. Housing Act of 1937. Sections 606 and 607 of VAWA 2005 add 42 U.S.C. 1437d(u)(3) and 1437f(f)(8), (9), (10), and (11), respectively, to add definitions of “domestic violence,” “dating violence,” “stalking,” and “immediate family member.” Specifically, VAWA 2005 inserted definitions of the terms “stalking” and “immediate family member” into Section 8(f) of the U.S. Housing Act of 1937, along with references to the definitions of “domestic violence” and “dating violence,” as stated in the new section 40002 of VAWA, which was added to VAWA 1994.

Conforming definitions are added to 24 CFR 5.2003 where HUD believes they will be useful to the public in understanding new VAWA-related material added to those parts. In addition, the interim rule at 24 CFR part 5 defines additional terms that are used

in the rule and for which HUD believes clarification is helpful. The term “bifurcate,” which is used in the rule in the context of leases, is defined.

III. Findings and Certifications

Justification for Interim Rulemaking

As required by its regulations on rulemaking at 24 CFR part 10, HUD ordinarily publishes its rules for advance public comment. Notice and public procedure are omitted, however, if HUD determines that, in a particular case or class of cases, notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.” (See 24 CFR 10.1.) In this case, HUD is simply conforming its existing regulations to statutory provisions that are legally effective. In doing so, HUD is not exercising agency discretion, but rather merely following the statutory mandate. Because this is a conforming regulation, advance public notice and comment is unnecessary. However, while HUD found the statutory language to be clear as to meaning and intent and has incorporated the language without change, PHAs, owners, management agents, tenants, or interested members of the public may not find the language as helpful as is, and may need further clarification. HUD specifically welcomes comments on the clarity of the conforming amendments, as well as on any other aspect of the rule. HUD will consider all comments submitted by the public in the final rule that follows this interim rule.

Paperwork Reduction Act

The information collection requirements contained in 24 CFR part 5, subpart L that are applicable to PHAs have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0249. The information collection requirements contained in 24 CFR part 5, subpart L, that are applicable to owners and management agents have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0204. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid control number.

Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) 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.

This rule applies primarily to PHAs, owners, and management agents and is limited to amending HUD’s regulations to incorporate statutory requirements that are already applicable to PHAs, owners, and management agents, because they are self-implementing statutory provisions.

Notwithstanding HUD’s determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD’s objectives, as described in this preamble.

Environmental Impact

This interim rule involves a policy document that, with the exception of the amendments to 24 CFR part 903, sets out nondiscrimination standards. The amendments to 24 CFR part 903 do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(3) and (1), respectively, this interim rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Section 6(c) of Executive Order 13132 (entitled “Federalism”) requires an agency that is publishing a regulation that has federalism implications and that preempts state law to follow certain procedures. Regulations that have federalism implications, according to section 1(a) of the Order, are those 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 interim rule incorporates the statutory language that provides for bifurcation of leases to protect victims of domestic violence, notwithstanding state law. In addition, the rule, consistent with statute, provides that incidents of, or criminal acts connected

to domestic violence cannot be the basis for termination of assistance or tenancy.

HUD finds that this statutory provision has only minor effects on the states and therefore, this rule, by incorporating this provision in HUD's regulation, does not meet the definition of rules with "federalism implications." First, any preemptive effect of this provision is limited to Section 8 and public housing, which together are only a small portion of the total housing market. Second, the possible effect appears limited to only those eviction actions where the tenant to be evicted has a valid claim of protection as a victim of domestic violence, or where lease bifurcation is sought because of domestic violence. The rule does not, for example, involve the preemption of a whole field of state law as is the case in other situations in which preemption occurs, but rather merely requires a small adjustment to any existing laws that do not already offer greater protection to victims of domestic violence. Therefore, HUD has determined that this rule, by directly incorporating the statutory provision on bifurcation of lease, will not have substantial direct effects on states or their political subdivisions, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government, and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This interim rule does not impose any federal mandates on any state, local, or tribal government, or the private sector within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.195, 14.850, 14.856, and 14.871.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development,

Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 91

Grant programs—housing and community development, Low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Loan programs—housing and community development, Low- and moderate-income housing, Rent subsidies.

24 CFR Part 882

Grant programs—housing and community development, Housing, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 903

Grant programs, Civil rights, Public housing agency plans, Public housing.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing.

24 CFR Part 982

Grant programs—housing and community development, Housing,

Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 5, 91, 880, 882, 883, 884, 886, 891, 903, 960, 982, and 983, as follows.

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

■ 2. Add subpart L to read as follows:

Subpart L—Protection for Victims of Domestic Violence in Public and Section 8 Housing

Sec.

5.2001 Applicability.

5.2003 Definitions.

5.2005 Protection of victims of domestic violence, dating violence, and stalking in public and Section 8 housing.

5.2007 Certification of status and confidentiality.

5.2009 Effect on other laws.

Subpart L—Protection for Victims of Domestic Violence in Public and Section 8 Housing

§ 5.2001 Applicability.

This subpart addresses the protections for victims of domestic violence residing in public and Section 8 housing, as provided in the 1937 Act, as amended by the Violence Against Women Act (VAWA) (42 U.S.C. 1437f and 42 U.S.C. 1437d). This subpart applies to the Housing Choice Voucher program under 24 CFR part 982; the project-based voucher and certificate programs under 24 CFR part 983, the public housing admission and occupancy requirements under 24 CFR part 960, and renewed funding or leases under 24 CFR parts 880, 882, 883, 884, 886, and 891.

§ 5.2003 Definitions.

The definitions of *1937 Act*, *PHA*, *HUD*, *household*, *responsible entity*, and *other person under the tenant's control* are defined in subpart A of this part. As used in this subpart L:

Bifurcate means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such

that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

Dating violence means violence committed by a person: Who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Immediate family member means, with respect to a person: A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or any other person living in the household of that person and related to that person by blood or marriage.

Stalking means: To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to that person, a member of the immediate family of that person, or the spouse or intimate partner of that person.

§ 5.2005 Protection of victims of domestic violence, dating violence, and stalking in public and Section 8 housing.

(a) *Domestic violence, dating violence, or stalking.* An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated lease violation by the victim or threatened victim of the domestic violence, dating violence, or stalking, or as good cause to terminate the tenancy, occupancy rights, or assistance of the victim. Admission to

the program shall not be denied on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking, if the applicant otherwise qualifies for assistance or admission;

(b) *Criminal activity related to domestic violence, dating violence, or stalking.* Criminal activity directly related to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of tenancy, occupancy rights of, or assistance to the victim, if the tenant or immediate family member of the tenant is the victim. Nothing in this paragraph limits the authority of the PHA, owner, or management agent to evict a tenant for a lease violation unrelated to domestic violence, provided that the PHA, owner, or management agent does not subject such a tenant to a more demanding standard than other tenants, in making the determination whether to evict or terminate tenancy or occupancy rights;

(c) *Lease bifurcation.* Notwithstanding paragraph (a) of this section or any federal, state, or local law to the contrary, a PHA, owner, or management agent may bifurcate a lease, or remove a household member from a lease without regard to whether the household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by federal, state, or local law for termination of assistance or leases under the relevant public or Section 8 housing assistance program;

(d) *Court orders.* Nothing in paragraph (a) of this section may be construed to limit the authority of a PHA, owner, or management agent, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and to address the distribution of property among household members in a case where a family breaks up;

(e) *Threat to others.* Nothing in paragraph (a) of this section may be construed to limit the authority of a PHA, owner, or management agent to evict or terminate assistance to any

tenant or lawful occupant if the PHA, owner, or management agent can demonstrate an actual or imminent threat to other tenants or those employed at or providing service to the public housing or Section 8 assisted property if that tenant or lawful occupant is not terminated from assistance. In this context, words, gestures, actions, or other indicators will be considered an "imminent threat" if a reasonable person, considering all of the relevant circumstances, would have a well-grounded fear of death or bodily harm as a result.

§ 5.2007 Certification of status and confidentiality.

(a)(1) A PHA, owner, or management agent presented with a claim for continued tenancy based on status as a victim of domestic violence or criminal activity related to domestic violence may request that the tenant making the claim certify in a form approved by HUD that the tenant is a victim of domestic violence, dating violence, or stalking, within 14 business days after the date that the tenant receives the request or such longer time as the PHA, owner, or management agent may at its discretion allow. The certification:

(i) May be based solely on the personal signed attestation of the victim under penalties for perjury, as provided in section 1746 of title 28, Judiciary and Judicial Procedure, of the United States Code (28 U.S.C. 1746); or

(ii) May be based on or supported by a federal, state, tribal, territorial, or local police or court record; or

(iii) May be based on or supported by documentation signed by an employee, agent, volunteer of a victim service provider, an attorney, or medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or in addressing the effects of abuse, in which the professional attests under penalty of perjury under 28 U.S.C. 1746 to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; and

(iv) Shall include the name of the perpetrator or alleged perpetrator, if known.

(v) Shall be kept confidential by the PHA, owner, or management agent. The PHA, owner, or management agent shall not enter the information contained in the certification into any shared database or provide it to any other

entity, except to the extent that disclosure is:

(A) Requested or consented to by the tenant making the certification, in writing;

(B) Required for use in an eviction proceeding, or

(C) Otherwise required by applicable law.

(2) If the tenant does not provide the certification under paragraph (a)(1) of this section within 14 business days from the date of receipt of the PHA, owner, or management agent's request, or such longer time as the PHA, owner, or management agent at their discretion may allow, the PHA, owner, or management agent may evict the tenant or a family member that commits lease violations that otherwise would constitute good cause to evict;

(3) PHAs must provide notice:

(i) To public housing and Section 8 tenants of their rights under VAWA and this regulation, including the right to confidentiality and the exceptions; and

(ii) To owners and management agents of assisted housing, of their rights and obligations under VAWA and this regulation.

(b) A PHA's, owner's, or management agent's compliance with this section, whether based solely on the tenant's statement or on other corroborating evidence, shall not alone be sufficient to constitute evidence of an unreasonable act or omission by a PHA, PHA employee, owner, or employee or agent of the owner.

§ 5.2009 Effect on other laws.

Nothing in this subpart shall be construed to supersede any provision of any federal, state, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 3. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

■ 3A. Amend § 91.205 to revise the first sentence of paragraph (b)(1) to read as follows:

§ 91.205 Housing and homeless needs assessment.

* * * * *

(b) * * *

(1) The plan shall estimate the number and type of families in need of housing assistance for extremely low-

income, low-income, moderate-income, and middle-income families, for renters and owners, for elderly persons, for single persons, for large families, for public housing residents, for families on the public housing and section 8 tenant-based waiting list, for persons with HIV/AIDS and their families, for victims of domestic violence, dating violence, sexual assault, and stalking, and for persons with disabilities. * * *

* * * * *

■ 4. Amend § 91.305 to revise the first sentence of paragraph (b)(1) to read as follows:

§ 91.305 Housing and homeless needs assessment.

* * * * *

(b) * * *

(1) The plan shall estimate the number and type of families in need of housing assistance for extremely low-income, low-income, moderate-income, and middle-income families, for renters and owners, for elderly persons, for single persons, for large families, for persons with HIV/AIDS and their families, for victims of domestic violence, dating violence, sexual assault, and stalking, and for persons with disabilities. * * *

* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENT PROGRAM FOR NEW CONSTRUCTION

■ 5. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

■ 6. Amend § 880.504 to add paragraph (f) to read as follows:

§ 880.504 Leasing to eligible families.

* * * * *

(f) Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

■ 7. Amend § 880.607 to add paragraph (c)(5) to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(c) * * *

(5) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence,

dating violence, or stalking is involved or claimed to be involved.

* * * * *

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

■ 8. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535d.

■ 9. Revise § 882.407 to read as follows:

§ 882.407 Other federal requirements.

The moderate rehabilitation program is subject to applicable federal requirements in 24 CFR 5.105 and to the requirements for protection for victims of domestic violence, dating violence, and stalking in 24 CFR part 5, subpart L.

■ 10. Amend § 882.511 to add paragraph (g) to read as follows:

§ 882.511 Lease and termination of tenancy.

* * * * *

(g) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, or stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

■ 11. Amend § 882.514 to revise the second sentence of paragraph (c) to read as follows:

§ 882.514 Family participation.

* * * * *

(c) *Owner selection of families.* * * * Since the Owner is responsible for tenant selection, the Owner may refuse any family, provided that the Owner does not unlawfully discriminate, except that the fact that an applicant is or has been a victim of dating violence, domestic violence, or stalking is not an appropriate basis for denial of program assistance or admission if the applicant otherwise qualifies for assistance or admission. * * *

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS—STATE HOUSING AGENCIES

■ 12. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

■ 13. Revise § 883.605 to read as follows:

§ 883.605 Leasing to eligible families.

The provisions of 24 CFR 880.504, including subpart L of 24 CFR part 5 pertaining to the selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking apply, subject to the requirements of § 883.105.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING

- 14. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

- 15. Amend § 884.216 to add paragraph (c) to read as follows:

§ 884.216 Termination of tenancy.

* * * * *

(c) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

- 16. Amend § 884.223 to add paragraph (f) to read as follows:

§ 884.223 Leasing to eligible families.

* * * * *

(f) Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

- 17. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

- 18. Revise § 886.128 to read as follows:

§ 886.128 Termination of tenancy.

Part 247 of this title (24 CFR part 247) applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR parts 247 and 5 shall apply. For cases where domestic

violence, dating violence, stalking, or criminal activity directly relating to domestic violence, dating violence, or stalking is involved or claimed to be involved, the provisions of 24 CFR part 5, subpart L, apply. The provisions of 24 CFR part 5, subpart E, of this title concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance also shall apply.

- 19. Revise § 886.132 to read as follows:

§ 886.132 Tenant selection.

Subpart F of 24 CFR part 5 governs selection of tenants and occupancy requirements applicable under this subpart A of part 886. Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

- 20. Revise § 886.328 to read as follows:

§ 886.328 Termination of tenancy.

Part 247 of this title (24 CFR part 247) applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR part 247 and 24 CFR part 5 shall apply. For cases where domestic violence, dating violence, stalking, or criminal activity directly relating to domestic violence, dating violence, or stalking is involved or claimed to be involved, the provisions of 24 CFR part 5, subpart L, apply. The provisions of 24 CFR part 5, subpart E, concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance, also shall apply.

- 21. Amend § 886.329 to add paragraph (f) to read as follows:

§ 886.329 Leasing to eligible families.

* * * * *

(f) Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

- 22. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

- 23. Amend § 891.575 to add paragraph (f) to read as follows:

§ 891.575 Leasing to eligible families.

* * * * *

(f) Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

- 24. Revise § 891.610(c) to read as follows:

§ 891.610 Selection and admission of tenants.

* * * * *

(c) *Determination of eligibility and selection of tenants.* The Borrower is responsible for determining whether applicants are eligible for admission and for selection of families. To be eligible for admission, an applicant must be an elderly or handicapped family as defined in § 891.505; meet any project occupancy requirements approved by HUD; meet the disclosure and verification requirement for Social Security Numbers and sign and submit consent forms for obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B; and, if applying for an assisted unit, be eligible for admission under subpart F of 24 CFR part 5 governing selection of tenants and occupancy requirements. For cases where domestic violence, dating violence, stalking, or criminal activity directly relating to domestic violence, dating violence, or stalking is involved or claimed to be involved, the provisions of 24 CFR part 5, subpart L, apply.

* * * * *

- 25. Amend § 891.630 to add a new paragraph (c) to read as follows:

§ 891.630 Denial of admission, termination of tenancy, and modification of lease.

* * * * *

(c) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

PART 903—PUBLIC HOUSING AGENCY PLANS

■ 26. The authority citation for part 903 continues to read as follows:

Authority: 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

■ 27. Amend § 903.6 to add paragraph (a)(3) to read as follows:

§ 903.6 What information must a PHA provide in the 5-Year Plan?

(a) * * *

(3) A statement about goals, activities, objectives, policies, or programs that will enable a PHA to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.

* * * * *

■ 28. Amend § 903.7 to add a new paragraph (m)(5) to read as follows:

§ 903.7 What information must a PHA provide in an annual plan?

* * * * *

(m) * * *

(5) A statement of any domestic violence, dating violence, sexual assault, and stalking prevention programs:

(i) A description of any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking;

(ii) Any activities, services, or programs provided or offered that help child and adult victims of domestic violence, dating violence, sexual assault, or stalking to obtain or maintain housing; and

(iii) Any activities, services, or programs provided or offered to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families.

* * * * *

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

■ 29. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

■ 30. Amend § 960.103 to revise the section heading and add paragraph (d) to read as follows:

§ 960.103 Equal opportunity requirements and protection for victims of domestic violence.

* * * * *

(d) *Protection for victims of domestic violence, dating violence, and stalking.* The PHA must apply 24 CFR part 5, subpart L in all applicable cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, and stalking.

■ 31. Amend § 960.200 to add paragraph (b)(8) to read as follows:

§ 960.200 Purpose.

* * * * *

(b) * * *

(8) Protection for victims of domestic violence, dating violence, and stalking, 24 CFR part 5, subpart L.

■ 32. Amend § 960.203 to add paragraph (c)(4) to read as follows:

§ 960.203 Standards for PHA tenant selection criteria.

* * * * *

(c) * * *

(4) PHA tenant selection criteria are subject to 24 CFR part 5, subpart L, protections for victims of domestic violence, dating violence, and stalking.

* * * * *

PART 982—SECTION 8 TENANT- BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 33. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535d.

■ 34. Amend § 982.53 to revise the section heading and add paragraph (e) to read as follows:

§ 982.53 Equal opportunity requirements and protection for victims of domestic violence.

* * * * *

(e) *Protection for victims of domestic violence, dating violence, and stalking.* The PHA must apply 24 CFR part 5, subpart L, in all applicable cases where there is involved incidents of, or criminal activity related to, domestic violence, dating violence, and stalking.

■ 35. Amend § 982.201 to revise paragraph (a), to read as follows:

§ 982.201 Eligibility and targeting.

(a) When applicant is eligible: General. The PHA may admit only eligible families to the program. To be eligible, an applicant must be a “family;” must be income-eligible in accordance with paragraph (b) of this section and 24 CFR part 5, subpart F; and must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with 24 CFR part 5, subpart E. If the applicant is a victim of domestic violence, dating

violence, or stalking, 24 CFR part 5, subpart L, applies.

* * * * *

■ 36. Revise § 982.202(d) to read as follows:

§ 982.202 How applicants are selected: General requirements.

* * * * *

(d) *Admission policy.* The PHA must admit applicants for participation in accordance with HUD regulations and other requirements, including but not limited to 24 CFR part 5, subpart L, protection for victims of domestic violence, dating violence, and stalking, and with PHA policies stated in the PHA administrative plan and the PHA plan. The PHA admission policy must state the system of admission preferences that the PHA uses to select applicants from the waiting list, including any residency preference or other local preference.

* * * * *

■ 37. Amend § 982.307 to add paragraph (b)(4) to read as follows:

§ 982.307 Tenant screening.

* * * * *

(b) * * *

(4) In cases involving a victim of domestic violence, dating violence, and stalking, 24 CFR part 5, subpart L, applies.

■ 38. Revise § 982.310(h)(4) to read as follows:

§ 982.310 Owner termination of tenancy.

* * * * *

(h) * * *

(4) *Nondiscrimination limitation and protection for victims of domestic violence.* The owner's termination of tenancy actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105, and with the provisions for protection of victims of domestic violence, dating violence, and stalking in 24 CFR part 5, subpart L.

■ 39. Revise the last sentence of § 982.353(b) to read as follows:

§ 982.353 Where family can lease a unit with tenant-based assistance.

* * * * *

(b) * * * The initial PHA must not provide such portable assistance for a participant if the family has moved out of the assisted unit in violation of the lease, except that if the family moves out in violation of the lease in order to protect the health or safety of a person who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by

harm from further violence if he or she remained in the dwelling unit, and has otherwise complied with all other obligations under the Section 8 program, the family may receive a voucher from the PHA and move to another jurisdiction under the housing choice voucher program.

* * * * *

- 40. Amend § 982.452(b)(1) to add a second sentence to read as follows:

§ 982.452 Owner responsibilities.

* * * * *

(1) * * * The fact that an applicant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of tenancy if the applicant otherwise qualifies for tenancy.

* * * * *

- 41. Revise §§ 982.551(e) and 982.551(l) to read as follows:

§ 982.551 Obligations of participant.

* * * * *

(e) *Violation of lease.* The family may not commit any serious or repeated violation of the lease. Under 24 CFR 5.2005(a), an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated lease violation by the victim or threatened victim of the domestic violence, dating violence, or stalking, or as good cause to terminate the tenancy, occupancy rights, or assistance of the victim.

* * * * *

(l) *Crime by household members.* The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises (see § 982.553). Under 24 CFR 5.2005(b), criminal activity directly related to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of tenancy, occupancy rights, or assistance of the victim, if the tenant or immediate family member of the tenant is the victim.

* * * * *

- 42. Revise § 982.552(c)(2)(v) to read as follows:

§ 982.552 PHA denial or termination of assistance for the family.

* * * * *

- (c) * * *
(2) * * *

(v) *Nondiscrimination limitation and protection for victims of domestic*

violence. The PHA's admission and termination actions must be consistent with fair housing and equal opportunity provisions of § 5.105 of this title, and with the requirements of 24 CFR part 5, subpart L, protection for victims of domestic violence, dating violence, and stalking.

* * * * *

- 43. Amend § 982.553 to add a new paragraph (e), to read as follows:

§ 982.553 Denial of admission and termination of assistance for criminals and alcohol abusers.

* * * * *

(e) In cases of criminal activity related to domestic violence, dating violence, or stalking, the victim protections of 24 CFR part 5, subpart L, apply.

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

- 44. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

- 44A. Amend § 983.4 to add a new proviso in alphabetical order as follows:

§ 983.4 Cross-reference to other federal requirements.

* * * * *

Protection for victims of domestic violence, dating violence, and stalking. See 24 CFR part 5, subpart L.

* * * * *

- 45. Amend § 983.251 to add paragraph (a)(3) to read as follows:

§ 983.251 How participants are selected.

(a) * * *

(3) The protections for victims of domestic violence, dating violence, and stalking in 25 CFR part 5, subpart L, apply to admission to the project-based program.

* * * * *

- 46. Amend § 983.255 to add paragraph (d) to read as follows:

§ 983.255 Tenant screening.

* * * * *

(d) The protections for victims of domestic violence, dating violence, and stalking in 25 CFR part 5, subpart L, apply to tenant screening.

- 47. Amend § 983.257 to add a new sentence at the end of paragraph (a) to read as follows:

§ 983.257 Owner termination of tenancy and eviction.

(a) * * * 24 CFR part 5, subpart L, on protection for victims of domestic violence, dating violence, and stalking applies to this part.

* * * * *

Dated: October 30, 2008.

Roy A. Bernardi,
Deputy Secretary.

[FR Doc. E8–28235 Filed 11–26–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9433]

RIN 1545–BH23

Classification of Certain Foreign Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to certain business entities included on the list of foreign business entities that are always classified as corporations for Federal tax purposes. The regulations are needed to make the Federal tax classification of the Bulgarian public limited liability company (aktsionerno druzhestvo) consistent with the Federal tax classification of public limited liability companies organized in other countries of the European Economic Area. The regulations will affect persons owning an interest in a Bulgarian aktsionerno druzhestvo on or after January 1, 2007.

DATES: *Effective Date:* These regulations are effective on November 28, 2008.

Applicability Date: For the dates of applicability of these regulations, see § 301.7701–2(e)(7).

FOR FURTHER INFORMATION CONTACT: S. James Hawes, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 21, 2008, the IRS and Treasury Department published in the **Federal Register** temporary regulations (TD 9388, 2008–17 IRB 832, 73 FR 15064) and a notice of proposed rulemaking (REG–143468–07, 2008–17 IRB 848, 73 FR 15107) under section 7701 of the Internal Revenue Code (Code). The regulations added the Bulgarian aktsionerno druzhestvo to the list of entities in § 301.7701–2(b)(8) (the per se corporation list). For further background, see TD 9388 and Notice 2007–10 (2007–4 IRB 354).

On October 8, 2001, the Council of the European Union adopted Council Regulation 2157/2001 (2001 Official

Journal of the European Communities, L 294/1) (the EU Regulation) permitting the organization of a new public limited liability company, the Societas Europaea (SE). The EU Regulation entered into force on October 8, 2004. The general rules for the formation and operation of an SE provided by the EU Regulation are supplemented by the laws of the member country in which the SE has its registered office. On December 16, 2005, the IRS and Treasury Department published final regulations in the **Federal Register** (TD 9235) adding the SE to the per se corporation list. The preamble to TD 9388 stated incorrectly that the aktsionerno druzhestvo is Bulgaria's SE. In fact, the aktsionerno druzhestvo is a public limited liability company organized in Bulgaria. The IRS and Treasury Department continue to study issues related to the residence of an SE for application of relevant Federal income tax provisions, such as the same-country exception under section 954(c)(3) of the Code. Comments are requested.

Explanation of Provisions

No written comments were received from the public or the Small Business Administration on the temporary or proposed regulations. No public hearing was requested or held. Accordingly, these regulations finalize the proposed regulations without modification and remove the text of the temporary regulations from the Code of Federal Regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply either. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is S. James Hawes of the Office of Associate Chief Counsel (International); however, other personnel from the IRS and the Treasury

Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 2.** Section 301.7701-2 is amended by:

■ 1. Adding an entry in alphabetical order to paragraph (b)(8)(i).

■ 2. Removing paragraph (b)(8)(vi).

■ 3. Revising paragraph (e)(7).

The revisions and addition read as follows:

§ 301.7701-2 Business entities; definitions.

* * * * *

(b) * * *

(8) * * *

(i) * * *

Bulgaria, Aktsionerno Druzhestvo.

* * * * *

(e) * * *

(7) The reference to the Bulgarian entity in paragraph (b)(8)(i) of this section applies to such entities formed on or after January 1, 2007, and to any such entity formed before such date from the date that, in the aggregate, a 50 percent or more interest in such entity is owned by any person or persons who were not owners of the entity as of January 1, 2007. For purposes of the preceding sentence, the term *interest* means—

(i) In the case of a partnership, a capital or profits interest; and

(ii) In the case of a corporation, an equity interest measured by vote or value.

§ 301.7701-2T [Removed]

■ **Par. 3.** Section 301.7701-2T is removed.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: October 31, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8-28211 Filed 11-26-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[SATS No. KS-024-FOR; Docket No. OSM-2008-0001]

Kansas Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving amendments to the Kansas regulatory program (Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kansas proposed revisions to its 2006 Revegetation Success Guidelines, Normal Husbandry Practices, and State Regulations. Kansas intends to revise its program to improve operational efficiency.

DATES: *Effective Date:* November 28, 2008.

FOR FURTHER INFORMATION CONTACT:

Alfred L. Clayborne, Director, Tulsa Field Office, Telephone: (918) 581-6430, E-mail: acclayborne@osmre.gov.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Kansas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kansas program on January 21, 1981. You can find background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5892). You can also find later actions concerning the

Kansas program and program amendments at 30 CFR 916.10, 916.12, 916.15, and 916.16.

II. Submission of the Amendment

Kansas, by letter dated November 19, 2007 (Administrative Record Nos. 626 and 627), sent amendments to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kansas submitted these amendments at its own initiative.

We announced receipt of Kansas' amendments in the January 23, 2008, **Federal Register** (73 FR 3894). We opened the public comment period and the public was provided an opportunity to submit comments or request a public hearing on the adequacy of Kansas' proposed amendments. No one requested a public hearing. The public comment period ended February 22, 2008.

On February 7, 2008, we notified Kansas by telephone (Administrative Record No. KS-626.08), of inconsistent and incorrect citations to specific regulations referenced within Kansas' 2006 Revegetation Success Guidelines and Normal Husbandry Practices. On February 7, 2008, Kansas submitted its newly promulgated regulations (Administrative Record No. 626.06), to correct those inconsistencies; however, the submitted regulations were not yet approved by us as part of the Kansas Program. On May 12, 2008, we reopened the public comment period to provide the public an opportunity to consider the adequacy of Kansas' revised regulations and to reconsider the original amendment in light of these revised regulations (73 FR 22888). Under the provisions of 30 CFR 732.17(h), we requested comments on whether the amendments satisfied the program approval criteria of 30 CFR 732.15. No one requested a public hearing. The public comment period ended May 28, 2008.

III. OSM's Findings

The following are our findings concerning the submitted amendments under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendments as described below.

A. 2006 Revegetation Success Guidelines: Guidance Document

Kansas has adopted by reference significant parts of OSM's 2001 regulations, including 30 CFR parts 816, 817, and 823. Specifically, the 2001 Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that each regulatory authority select revegetation success standards and statistically valid techniques for

measuring revegetation success and include them in its approved regulatory program.

OSM's approval of revegetation success guidelines has been eliminated at 30 CFR parts 816 and 817 (71 FR 51684). However, Kansas' approved program still requires our approval of its revegetation success standards. Therefore, Kansas has submitted its Revegetation Success Guidelines to us for approval in accordance with the State's approved regulatory program.

Definitions

Kansas proposed to add the following definitions: Fish and wildlife habitat, forestry, industrial/commercial, pastureland, recreation, and residential. In addition, Kansas proposed to revise existing definitions: historically used for cropland, permanent, and previously mined.

The Federal regulations contain all of the above definitions proposed by Kansas. We are approving Kansas' proposed definitions because they are substantively the same as the Federal definitions at 30 CFR 701.5.

Table 1. Revegetation Requirement for Pastureland and Grazingland Bond Release

Kansas, at Table 1, proposed to decrease the ground cover success standard for Phase II and Phase III bond release from 100 percent to 90 percent.

We find that the revision meets the requirements of the Federal regulations at 30 CFR 816.116(a)(1) and 817.117(a)(1) stating that standards for success shall be selected by the regulatory authority. Therefore, we approve this revision.

Section I. Ground Cover Success Standard

Kansas proposed to change information and consolidate substantive provisions of its approved ground cover success standards for all land uses. Subsection A provides the success standard for ground cover on prime farmland cropland. Subsection B discusses the success standard for ground cover on cropland. Subsection C provides the success standard for ground cover on pastureland and grazingland. Subsection D contains the success standard for ground cover on pastureland and grazingland—no topsoil. Subsections E and F contain the success standards for ground cover for fish and wildlife habitat, recreation, shelter belts, and forest products land uses with or without topsoil, respectively. Subsection G contains specific success standards for ground

cover on industrial, commercial, or residential sites with or without topsoil.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority, described in writing, and made available to the public. The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover. Ground cover will be considered equal to the approved success standard when it is not less than 90 percent of the success standard. The sampling techniques for measuring success must use a 90 percent statistical confidence interval (*i.e.*, one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b), and 817.116(b) contain the minimum success standards for ground cover for each land use; however, the Federal regulations do not contain a specific ground cover success standard for prime farmland or cropland. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) contain the minimum period of extended responsibility for successful revegetation. We conducted a technical review of Section I and found that Kansas' guidelines for ground cover success standards are no less effective than the requirements of the Federal regulations. Therefore, we approve these revisions.

Section II. Ground Cover Sampling

Kansas proposed to make editorial and format changes to its approved ground cover success standards for all land uses in Section II. Subsection A. contains specific information regarding premine ground cover sampling criteria and techniques. Subsection B provides information on postmine ground cover sampling criteria and techniques. Kansas did not propose any substantive changes, therefore, we approve these revisions.

Section III. Production Success Standards-Forage

Kansas revised and reformatting substantive provisions of this section regarding production success standards for forage. Subsection A discusses forage productivity standard databases. It requires the use of the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) crop yield databases for establishing forage production success standards. These databases list crop yields by

county and soil mapping units and can be found in the NRCS Soil Data Mart located at <http://soildata.mart.nrcs.usda.gov/>. Section A also contains the productivity standards for prime farmland cropland forage crops, cropland forage crops, pastureland, and grazingland. For prime farmland, the permittee must meet 100 percent of the forage productivity standard. For cropland, 90 percent of the forage productivity standard must be met. For pastureland and grazingland, the applicant must demonstrate successful revegetation establishment in accordance with K.A.R. 47-8-9(a)(13) for Phase II and Phase III revegetation bond release.

Subsection B explains the method of calculation for converting the Animal Unit Month (A.U.M.) values listed in the NRCS *Nonirrigated Yield by Map Unit* database to pounds per acre of dry forage per growing season. Kansas reevaluated the A.U.M. value used in its previous guidance document for forage production. A conversion factor of 760 pounds of dry forage per A.U.M. is used.

Subsection C describes methods for data collection to assess forage productivity. The permittee may collect this data through a sampling program or through whole field harvest.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority, described in writing, and made available to the public. The Federal regulations at 30 CFR 816.116(a)(2), 817.116(a)(2), and 823.15 require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of production. Productivity for prime farmland soils must equal or exceed the average yield of the reference crop established for the same period for the same or similar non-mined soils. Productivity for cropland, pastureland, and grazingland must, at a minimum, meet 90 percent of the success standard with a 90 percent statistical confidence interval (*i.e.*, one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b) and 817.116(b) contain the minimum success standards for cropland, pastureland, and grazingland in which productivity must be equal to that of a reference area or such other success standards approved by the regulatory authority. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) and 823.15(b) contain the minimum period of extended responsibility for successful revegetation. We conducted a technical

review of Section III and found that Kansas' guidelines for forage production are no less effective than the requirements of the Federal regulations. Therefore, we are approving them.

Section IV. Production Success Standards-Row Crops

Kansas revised and consolidated substantive provisions of its approved row crop production success standards for prime farmland and cropland. These success standards are based on the NRCS crop yield databases. Kansas will now rely upon the "Electronic Field Office Technical Guides (eFOTG)" found at <http://soildata.mart.nrcs.usda.gov/>. Where a yield number has not been established for a particular crop in a particular soil mapping unit, the operator in conjunction with the Kansas Surface Mining Section (SMS), may establish a yield target based on the previously published county soil surveys and the NRCS database in Technical Guide Notice KS-145. The operator will also be required to submit a printout of the yield data generated for the permit, including the date the information was accessed, as part of the approved permit application package. Subsection A of this section discusses the acceptable row crops for determining revegetation productivity. Subsection B describes the acceptable method for calculating the row crop production success standard. Subsection C describes row crop sampling criteria. Subsection D describes the methods of data collection that permittees may choose to assess row crop productivity. Sections E and F describe productivity sampling criteria for prime farmland row crops and cropland row crops, respectively. Finally, Subsection G describes row crop sampling techniques for test plots and whole field sampling for grain sorghum (milo), wheat, soybeans, and corn.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority, described in writing, and made available to the public. The Federal regulations at 30 CFR 816.116(a)(2), 817.116(a)(2), and 823.15 require that standards for success must include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of production. Productivity for prime farmland soils must equal or exceed the average yield of the reference crop established for the same period for the same or similar non-mined soils. Productivity for

cropland must, at a minimum, meet 90 percent of the success standard with a 90 percent statistical confidence interval (*i.e.*, one-sided test with a 0.10 alpha error). The Federal regulations at 30 CFR 816.116(b)(2) and 817.116(b)(2) and 823.15(b)(2) contain the minimum success standards for cropland in which productivity must be equal to that of a reference area or such other success standards approved by the regulatory authority. The Federal regulations at 30 CFR 816.116(c) and 817.116(c) and 823.15(b) contain the minimum period of extended responsibility for successful revegetation.

The Federal regulations at 30 CFR 823.15(b)(2) allow soil productivity to be measured on a representative sample area or on all of the mined and reclaimed prime farmland. Kansas now allows productivity to be measured on a representative area or by whole field harvest. The Federal regulations at 30 CFR 823.15(b)(7)(ii) require that reference crop yields for a given crop season be determined using the average county yields recognized by the U.S. Department of Agriculture which have been adjusted by the U.S. Soil Conservation Service (now the NRCS) for local yield variation within the county. Kansas now refers directly to NRCS' on-line crop yield database to determine the yield target for a given permit. We conducted a technical review of the changes to Section IV and found that Kansas' guidelines for row crop production are no less effective than the requirements of the Federal regulations. Therefore, we are approving them.

Appendices

Kansas' revised revegetation guidance document contains seven appendices that support the provisions in Sections I through IV.

Appendix A, Plant Species List

Kansas revised its previously approved list of plant species. Appendix A lists the plant species that are unacceptable for all land uses except for selected species at areas acceptable for fish and wildlife habitat land use. It lists the acceptable tree species for fish and wildlife habitat, recreation areas, forest products, and shelter belt land uses. It also lists the acceptable shrub and vine species for fish and wildlife habitat, recreation areas, and shelter belt land uses. In addition, it lists the acceptable legume species based on land use for revegetation productivity and ground cover. Finally, it lists the acceptable grass species based on land use for revegetation productivity and ground cover.

The Federal regulations at 30 CFR 816.116(a), 817.116(a), and 823.15 contain the requirements for revegetation success standards. Kansas, by providing to the public a list of selected acceptable and unacceptable plant species and providing opportunity for public comment, has met Federal regulatory requirements. We are approving the revisions to Appendix A, Appendix C, Production Data

Kansas, at Appendix C, has adopted by reference the NRCS production data found in the NRCS Soil Data Mart located at <http://soildatamart.nrcs.usda.gov/>.

The Federal regulations at 30 CFR 816.116(a)(2), 817.116(a)(2), and 823.15 contain the requirements for revegetation success standards. Because Kansas revisions meet these requirements and based on our technical review and a concurrence letter from the NRCS, we are approving the revisions to Appendix C.

Appendix B, Animal Unit Month- Methods of Production Success Standard Calculations; Appendix D, Planting Reports; Appendix E, Reference Area Criteria; Appendix F, Representative Sample Field Area Definition and Test Plot Criteria; and Appendix G, Measuring Grain Moisture

Kansas either proposed no revisions or nonsubstantive revisions to the previously approved information contained in Appendices B, D, E, F, and G. We find that the information in these appendices continues to meet the requirements of 30 CFR 816.116(a)(1), 817.116(a)(1) and 823.15.

B. Normal Husbandry Practices for Surface-Mined Lands in Kansas

Kansas proposed to revise its existing husbandry practice regarding rills and gullies, and to add new husbandry practices for surface mined lands in Kansas. Kansas changed its husbandry practice guidelines for the repair of rills and gullies by updating the name of the United States Department of Agriculture's Soil Conservation Service to its current name of the NRCS, and to add further clarification to these guidelines.

Kansas added new husbandry practices for liming, fertilization, mulching, seeding or stocking (stems) following the reclamation of any temporary roads, temporary sediment or hydraulic control structures, or areas where the vegetation was disturbed by vehicular traffic not under the control of the permittee.

Kansas added another approved husbandry practice stating that reliming

and/or refertilization of revegetated areas, reseeding cropland in annual crops; or renovating pastureland or cropland areas in perennial cover by overseeding with legumes after a Phase II bond release shall be considered normal husbandry practices and shall not restart the liability period if the amount and frequency of these practices do not exceed normal husbandry practices used on unmined land within the region.

Kansas added another approved husbandry practice on postmining land uses of fish and wildlife habitat, recreation, and forestry, that allows disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions. Replanting of more than 20% of the trees/shrubs needed to meet the established technical success will restart the 5 year liability time clock. Trees and shrubs counted in determining the success of stocking shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80% of the trees and shrubs used to determine such success shall have been in place for a minimum of three years.

In addition, Kansas added a list of approved husbandry practices from selected Kansas State University (KSU), NRCS, and Kansas Forestry publications. Kansas, in determining what is an approved selective husbandry practice, used SMS professional judgments, the incorporation of guidelines provided by approved source documents, and information provided by KSU and NRCS.

Kansas stated that the use of its selective husbandry practices will not result in an extension to the period of responsibility for revegetation success and bond liability and that the probability of permanent revegetation failure will not be increased if the approved practices are discontinued after expiration of the liability period. Practices not approved and which will result in an extension of the liability period include any seeding, fertilization, or irrigation performed at levels which exceed those normally applied in maintaining comparable unmined land in the surrounding area.

The Federal regulation at 30 CFR 816.116(c)(4), and 817.117(c)(4) provide that the regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from OSM in accordance with 30 CFR 732.17 that the practices are normal husbandry practices, without extending the period

of responsibility for revegetation success and bond liability. This Federal regulation also requires that normal husbandry practices must be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, and that if such practices can be expected to continue as part of the postmining land use, or if they are discontinued after the liability period expires, the probability of permanent revegetation success will not be reduced. We are approving Kansas' normal husbandry practices because they are no less effective than the Federal regulation.

C. Kansas Regulations

Kansas proposed to revise the following previously approved regulations.

1. K.A.R. 47-4-14a, Public Hearing

a. Kansas made changes at K.A.R. 47-4-14a(c)(2) Document filing. Kansas deleted the language, "administrative appeals section of the Kansas department of health and environment, suite 400D, 109 SW 9th, Topeka, Kansas 66612-1215," and replaced it with the language, "office of administrative hearings, a division of the Kansas department of administration," indicating where all documents are to be filed regarding an administrative hearing. All other provisions of KAR 47-4-14a(c) were previously approved by OSM.

Based on our review of Kansas' public hearing and administrative appeals rules, we find that they are no less effective than the Federal regulations. Therefore, we are approving this section.

b. Kansas made changes at K.A.R. 47-4-14a(d)(2)(A) Presiding officer. Kansas proposed to delete, "the secretary or one or more other persons designated by the secretary," and add, "administrative hearing officer from the office of administrative hearings." Kansas proposed to delete paragraph (d)(2)(F) that allows for hearing officers from another state agency to conduct proceedings under these regulations.

The Federal regulation at 30 CFR 775.11(b) pertaining to administrative hearings under State programs does not contain a provision regarding presiding officers for administrative hearings. We find that the changes by Kansas are not inconsistent with the Federal regulations; therefore, we are approving them.

c. Kansas proposed to delete paragraph (d)(3)(A) that states, "a presiding officer shall be assigned by the department for the prehearing conference, exercising the same

discretion as is provided by subsection (d)(2) concerning the selection of a presiding officer for a hearing.”

The Federal regulations at 30 CFR 773.6(c) and 775.11(b) pertaining to informal conferences and administrative hearings, respectively, do not contain a provision regarding assigning presiding officers for prehearing conferences with the same discretionary powers as a presiding officer for a hearing. The Federal regulation at 30 CFR 775.11(b) does state that no person who presided at an informal conference under 30 CFR 773.6(c) shall either preside at the hearing or participate in the decision following the hearing or administrative appeal. We find that the changes by Kansas are not inconsistent with the Federal regulations; therefore, we are approving them.

2. K.A.R. 47–5–5a, Civil Penalties

a. Kansas made revisions at K.A.R. 47–5–5a(a)(4), Determination of amount of penalty, where it proposed to replace the table in 30 CFR 845.14, adopted by reference, with a new penalty table. The minimum proposed penalty is \$20 and increases to a maximum proposed penalty of \$5,000.

At K.A.R. 47–5–5a(a)(5), Assessment of separate violations for each day, Kansas adopted by reference 30 CFR 845.15, except that it decreased the minimum assessed civil penalty. The current Federal regulations specify a minimum penalty of \$1,025 for each day a violation continues. Kansas has reduced this to \$750 per day.

Section 518(i) of SMCRA requires that the civil penalty provisions of each State program contain penalties which are “no less stringent than” those set forth in SMCRA. Our regulations at 30 CFR 840.13(a) specify that each State program shall contain penalties which are no less stringent than those set forth in section 518 of the Act and shall be consistent with 30 CFR part 845. However, in a 1980 decision on OSM’s regulations governing civil monetary penalties (CMPs), the U.S. District Court for the District of Columbia held that because Section 518 of SMCRA fails to enumerate a point system for assessing civil penalties, the imposition of this requirement upon the States is inconsistent with SMCRA. In response to the Secretary of the Interior’s request for clarification, the Court further stated that it could not uphold requiring the States to impose penalties as stringent as those appearing in 30 CFR 845.15. Instead, section 518(i) of the Act requires only the incorporation of penalties and procedures explained in section 518. The system proposed by the State must incorporate the four criteria

of section 518(a) of SMCRA: (1) History of previous violations, (2) seriousness of the violation, (3) negligence of the permittee, and (4) good faith of the permittee in attempting to achieve compliance. As a result of the litigation, 30 CFR 840.13(a) was suspended in part on August 4, 1980 (45 FR 51548) by suspending the requirement that penalties shall be consistent with 30 CFR part 845. Consequently, we cannot require that the CMP provisions contained in a State’s regulatory program mirror the penalty provisions of our regulations at 30 CFR 845.14 and 845.15.

We are approving Kansas’ revisions at K.A.R. 47–5–5a because they include the four criteria used in assessing penalties as identified in section 518(a) of SMCRA, consistent with the 1980 U.S. District Court decision.

Furthermore, Kansas’ penalties are no less stringent than those set forth in section 518 of the Act.

b. At K.A.R. 47–5–5a(a)(13), Payment of penalty, Kansas adopted by reference 30 CFR 846.18 except that, for subsection (d), Kansas incorporated substantially identical language into its regulations. Kansas also incorporated into subsection (d) the language for 30 CFR 870.15(e) through (g) relating to payment of overdue fees. We approve these revisions because they are no less effective than the Federal regulations.

3. Federal Regulations That Kansas Adopted by Reference

Kansas regulations	Federal counterpart regulations
K.A.R. 47–5–5a(a)(9), Request for hearing.	30 CFR 845.19
K.A.R. 47–5–5a(a)(11), Amount of individual civil penalty.	30 CFR 846.14
K.A.R. 47–5–5a(a)(12), Procedure for assessment of individual civil penalty.	30 CFR 846.17

We are approving Kansas’ adoptions by reference of the above regulations because they are substantially the same as the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

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

Federal Agency Comments

On December 3, 2007, and February 21, 2008, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments from various agencies with an actual or potential

interest in Kansas’ revised 2006 Revegetation Success Guidelines and Normal Husbandry Practices, and its regulations (Administrative Record Nos. 626.06 and 626.12).

We received comments from three agencies, the U.S. Fish and Wildlife Service, the Kansas Ecological Services Field Office, and the Kansas State Historical Society. All three agencies indicated that they had no objections to Kansas’ proposed regulatory program changes.

Environmental Protection Agency (EPA) Concurrence and Comments

We are required to get a written concurrence from the Environmental Protection Agency (EPA) under 30 CFR 732.17(h)(11)(ii), for those provisions of Kansas’ program amendments that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). On December 3, 2007, and February 21, 2008, we requested comments on the proposed amendments from the EPA (Administrative Record Nos. KS–626.02 and 626.12). The EPA did not respond to our requests.

V. OSM’s Decision

Based on the above findings, we are approving Kansas’ revisions to its 2006 Revegetation Success Guidelines and Normal Husbandry Practices submitted on November 19, 2007, and its regulations sent to us on February 7, 2008.

To implement this decision, we are amending the Federal regulations at 30 CFR part 916 which codify decisions concerning the Kansas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State’s program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact

that the Kansas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Kansas program has no effect on Federally recognized Indian tribes.

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

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 16, 2008.

Ervin J. Barchenger,

Regional Director, Mid-Continent Region.

■ For the reasons set out in the preamble, 30 CFR part 916 is amended as set forth below:

PART 916—KANSAS

■ 1. The authority citation for part 916 continues to read as follows:

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

■ 2. Section 916.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

§ 916.15 Approval of Kansas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
November 19, 2007.	November 28, 2008.	Revegetation Success Guidelines; Normal Husbandry Practices; Kansas Regulations: K.A.R. 47-4-14a(c)(2), (d)(2)(A), (d)(3)(A); K.A.R. 47-5-5a(a)(4), (a)(5), (a)(9), and (a)(11) through (a)(13).

[FR Doc. E8-28337 Filed 11-26-08; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810-AB01

[Docket ID ED-2008-OESE-0003]

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final rule; correction.

SUMMARY: The Department of Education is correcting a final regulation that was published in the **Federal Register** on October 29, 2008 (73 FR 64436). The final regulations clarified and strengthened the Title I regulations in the areas of assessment, accountability, public school choice, and supplemental educational services.

DATES: Effective November 28, 2008.

FOR FURTHER INFORMATION CONTACT: Zollie Stevenson, Jr., Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W230, Washington, DC 20202-6132. Telephone: (202) 260-1824.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or computer diskette) on request to the contact person listed under this section.

SUPPLEMENTARY INFORMATION: In FR Doc. E8-25270 appearing on page 64436 in the **Federal Register** on October 29, 2008, the following corrections are made:

§ 200.7 [Corrected]

1. On page 64508, in the first column, in § 200.7, in amendment 3, instruction D is removed.

§ 200.19 [Corrected]

2. On page 64508, in the second column, in § 200.19, in amendment 5, instruction B is corrected to read: “Removing paragraph (d) and redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively.”.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>

Dated: November 24, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8-28266 Filed 11-26-08; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2008-0714; FRL-8388-9]

Diffubenzuron; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of diflubenzuron and its metabolites p-chlorophenylurea and p-chloroaniline in or on alfalfa, forage and alfalfa, hay. This action is in response to EPA's granting of an emergency exemption under section 18 of the

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on alfalfa and mixed grass/alfalfa fields. This regulation establishes a maximum permissible level for residues of diflubenzuron and its metabolites p-chlorophenylurea and p-chloroaniline, in these food commodities. The time-limited tolerances expire and are revoked on December 31, 2011.

DATES: This regulation is effective November 28, 2008. Objections and requests for hearings must be received on or before January 27, 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-2008-0714. 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., 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: Libby Pemberton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9364; e-mail address: pemberton.libby@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 e-CFR site at <http://www.gpoaccess.gov/ecfr>.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (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-2008-0714 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 27, 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-2008-0714, 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

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of FFDCA, 21 U.S.C. 346a(e) and 346a(l)(6), is establishing time-limited tolerances for combined residues of the insecticide diflubenzuron and its metabolites p-chlorophenylurea and p-chloroaniline, in or on alfalfa, forage and alfalfa, hay at 6 parts per million (ppm). These time-limited tolerances expire and are revoked on December 31, 2011. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the CFR.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related time-limited tolerances to set binding precedents for the application of section 408 of FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an

exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish 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(b)(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 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 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. . . .”

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that “emergency conditions exist which require such exemption.” EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Diflubenzuron on Alfalfa and FFDCA Tolerances

The United States Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS) requested the use of diflubenzuron to control Mormon crickets and grasshoppers on alfalfa grown for hay to protect pollinators of Spalding’s catchfly, a threatened plant species endemic to the proposed treatment area in Montana. The alfalfa fields are interspersed within the rangeland spray blocks. EPA evaluated this request and found that USDA/APHIS had identified an emergency situation. Thus, EPA concurred on the request.

In a separate action, the Oregon Department of Agricultural (ODA) declared a crisis emergency exemption for use of diflubenzuron to control the same pests on alfalfa grown for hay, and mixed grass/alfalfa hay on June 30, 2008.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by combined residues of diflubenzuron in or on alfalfa, forage and alfalfa, hay. In doing so, EPA considered the safety

standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. EPA has previously evaluated the use of diflufenazuron on alfalfa and established time-limited tolerances initially for a similar use in **Federal Register**: September 20, 2002 (67 FR 59177), OPP-2002-0253; FRL-7273-7 in association with earlier emergency exemption request. This notice re-establishes those time-limited tolerances. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although these time-limited tolerances expire and are revoked on December 31, 2011, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on alfalfa, forage and alfalfa, hay after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of that application. EPA will take action to revoke these time-limited tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether it meets FIFRA's registration requirements for use on alfalfa, forage and alfalfa, hay or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of diflufenazuron by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for persons in any State other than USDA/ODA to use this pesticide on these crops under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for diflufenazuron, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish 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(b)(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 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 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. . . ."

Consistent with the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of this emergency exemption request and the time-limited tolerances for combined residues of diflufenazuron on alfalfa, forage and alfalfa, hay at 6 ppm. EPA's assessment of exposures and risk associated with establishing time-limited tolerances follows.

A. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute

and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>.

A summary of the toxicological endpoints for diflufenazuron used for human risk assessment is discussed in Unit III. B. of the final rule published in the **Federal Register** of September 19, 2002 (67 FR 59006) (FRL-7200-4).

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to diflufenazuron, EPA considered exposure under the time-limited tolerances established by this action as well as all existing diflufenazuron tolerances in (40 CFR 180.377). EPA assessed dietary exposures from diflufenazuron in food as follows:

- i. *Acute exposure.* No such effects were identified in the toxicological studies for diflufenazuron, therefore, a quantitative acute dietary exposure assessment is unnecessary.
- ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994-1996 and 1998 CSFII. As to residue levels in food, EPA used the established/recommended tolerances for all food commodities, 100 percent crop treated (PCT) information for all proposed and existing uses, and Dietary Exposure Evaluation Model (DEEMTM) Version 7.81 default processing factors for some processed commodities.
- iii. *Cancer.* The Agency has classified diflufenazuron as "Group E," evidence of non-carcinogenicity for humans, based on lack of evidence of carcinogenicity in rats and mice. There are also two metabolites of

diflubenzuron; PCA and CPU. PCA tested positive for splenic tumors in male rats and hepatocellular adenomas/carcinomas in male mice in a National Toxicology Program (NTP) study. Therefore, EPA classified PCA as a "Group B2" probable human carcinogen. The Agency determined for those commodities that contained PCA and CPU, the Q1* of PCA should be used to calculate the cancer risk from the sum of these two metabolites. Based on the submitted metabolism studies, there are two possible sources for dietary exposure to PCA and CPU: residues in mushrooms and residues in milk and liver. Because human exposure to PCA and CPU will not be affected by the proposed new uses, and EPA has previously concluded that exposure to these compounds is safe, therefore, the cancer dietary risk from PCA and CPU will not be addressed in this document. For a detailed discussion on the exposure and risks to PCA and CPU, please refer to the September, 2002 **Federal Register** document titled *Diflubenzuron; Pesticide Tolerances* (September 19, 2002, FR 67 59006); <http://www.epa.gov/fedrgstr/EPA-PEST/2002/September/Day-19/p23818.htm>.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for diflubenzuron in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of diflubenzuron. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of diflubenzuron and the major degradate CPU for chronic exposures are estimated to be 2.76 ppb for surface water and 0.208 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model DEEM™-Food Commodity Intake Database (FCID), Version 2.03). For chronic dietary risk assessment, the annual average concentration of 2.76 ppb was used to represent the drinking water contribution to chronic dietary exposure for diflubenzuron.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control,

indoor pest control, termiticides, and flea and tick control on pets).

Although there are no registered homeowner uses, there are registered uses for professional applications to outdoor residential and recreational areas to control mosquitoes, moths, and other insects. However, the potential for post-application residential exposure is expected to be limited, due to the low dermal absorption rate (0.5%) of diflubenzuron, and since it is only applied to the tree canopy, minimal non-occupational exposure is expected.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found diflubenzuron to share a common mechanism of toxicity with any other substances, and diflubenzuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that diflubenzuron does not have a common mechanism of toxicity with other substances. 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>.

C. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) 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 database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Based on the developmental and

reproductive toxicity studies, there is no indication of increased susceptibility of rats or rabbits to *in utero* or postnatal exposure.

3. *Conclusion.* There is a complete toxicity database for diflubenzuron and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA has determined that reliable data show that the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

- i. The toxicity database for diflubenzuron is complete.
- ii. There is no indication that diflubenzuron is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.
- iii. There is no evidence that diflubenzuron results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to diflubenzuron in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by diflubenzuron. There are currently no registered or proposed residential (non-occupational) uses of diflubenzuron for homeowners. Although there are no registered homeowner uses, there is potential for professional applications to outdoor residential and recreational areas. However, the potential for post-application residential exposures are expected to be limited. Due to the low dermal absorption rate (0.5%) of diflubenzuron, and since it is only applied to the tree canopy to control gypsy moths and mosquitoes, minimal bystander contact is expected.

D. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of

additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified, therefore, no acute dietary endpoint was selected. Therefore, diflubenzuron is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to diflubenzuron from food and water will utilize 12% of the cPAD for the U.S. population, 12% of the cPAD for (all infants less than 1 year old) and 38% of the cPAD for children 1-2 years old. There are no residential uses for diflubenzuron that result in chronic residential exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Diflubenzuron is not registered for any use patterns that would result in residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to diflubenzuron through food and water.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Diflubenzuron is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to diflubenzuron through food and water, which has already been addressed.

5. *Aggregate cancer risk for U.S. population.* Based on the available evidence, which included adequate carcinogenicity studies in rats and mice, and battery of negative mutagenicity studies, diflubenzuron has been classified as "Group E," evidence of non-carcinogenicity for humans, by the Agency. As noted in Unit IV.B.1.iii. of this document, the Agency has concluded that human exposure to PCA and CPU (metabolites of diflubenzuron) will not be affected by the proposed

new uses. EPA has previously found aggregate exposure to these compounds to be safe. (September 19, 2002, 67 FR 59006); at <http://www.epa.gov/fedrgstr/EPA-PEST/2002/September/Day-19/p23818.htm>.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to diflubenzuron residues.

V. Other Considerations

A. Analytical Enforcement Methodology

There are adequate enforcement methods, published in the Pesticide Analytical Manual (PAM, Vol. II), for determining diflubenzuron residues of concern. In addition, a new analytical methodology for plant commodities was successfully validated by an independent laboratory as well as by Agency chemists at the Analytical Chemistry Branch (ACB)/Biological and Economics Analysis Division (BEAD) in conjunction with an approved rice petition (PP 8F4925). The new methods were forwarded to the Food and Drug Administration (FDA) for publication in PAM Vol. II as Roman Numeral Methods. These methods can separately determine residues of diflubenzuron by gas chromatography/electron-capture detection (GC/ECD), CPU by GC/ECD, and PCA by GC/mass spectrometry (MS).

B. International Residue Limits

There are no Codex maximum residue limits established for diflubenzuron on alfalfa forage and hay.

VI. Conclusion

Therefore, time-limited tolerances are established for combined residues of the insecticide diflubenzuron, (N-[[[4-chlorophenyl]amino]carbonyl]-2,6-difluorobenzamide and its metabolites 4-chlorophenylurea and 4-chloroaniline, in or on alfalfa, forage and alfalfa, hay at 6 ppm. These tolerances expire and are revoked on December 31, 2011.

VII. Statutory and Executive Order Reviews

This final rule establishes tolerances under sections 408(e) and 408(l)(6) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions 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 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).

Since tolerances and exemptions that are established in accordance with sections 408(e) and 408(l)(6) of FFDCA, such as the tolerances 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. 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).

This action does not 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).

VIII. 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 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 180

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

Dated: November 7, 2008.

Deborah McCall,

Acting 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. In § 180.377(b), amend the table under the heading "Expiration/Revocation Date" by replacing the phrase "6/30/07" to read "12/31/11" for the entries "Alfalfa, forage" and "Alfalfa, hay."

[FR Doc. E8-28308 Filed 11-26-08; 8:45 am]

BILLING CODE 6560-50-S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2007-29083; Docket No. NHTSA-2007-28707]

Federal Motor Vehicle Safety Standards: Tires; Correction, Occupant Crash Protection; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; correcting amendments.

SUMMARY: This document corrects Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New pneumatic radial tires for light vehicles*, which specifies tire dimensions, test

requirements, and labeling requirements and which defines tire load ratings for certain types of light vehicle tires. The corrections relate to a definition for snow tires and tire marking requirements, which were inadvertently removed. This document also corrects FMVSS No. 208, *Occupant Crash Protection*, with respect to specifying a test tolerance for a procedure used to test air bag suppression systems and low risk deployment systems.

DATES: Effective December 29, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Rebecca Yoon, Office of the Chief Counsel, by telephone at (202) 366-2992, by fax at (202) 366-3820, or by mail at the following address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

FMVSS No. 139

FMVSS No. 139 specifies tire dimensions, test requirements, and labeling requirements, and defines tire load ratings for new pneumatic radial tires for use on certain motor vehicles that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less. The tire labeling requirements, S5.5(a) through (h) of the standard, were originally added to FMVSS No. 139 in November 2002 to maintain consistent labeling requirements for all tires for use on light vehicles.¹

S5.5(i), concerning the "Alpine Symbol" for snow tires, was added to FMVSS No. 139 in January 2006 to allow manufacturers to certify snow tires to special requirements for snow tires, and to help consumers identify those tires.² However, the January 2006 amendments adding S5.5(i) inadvertently did not reference this subparagraph (i) in the introductory paragraph of S5.5. To correct that oversight, the agency issued an August 2007 final rule intending to amend only the introductory paragraph of S5.5 to specify that the subparagraphs included (a) through (i).³ However, the rule inadvertently removed the nine subparagraphs (a) through (i) of S5.5. This document corrects the CFR by adding the inadvertently removed paragraphs of FMVSS No. 139.

Additionally, in the August 2007 final rule, the agency added a definition for "light truck (LT) tires" but inadvertently removed the definition of "snow tire" from the list of definitions in S3. The

"snow tire" definition is needed in the standard to make clearer how the standard applies to snow tires. This document corrects the CFR by adding the inadvertently removed snow tire definition.

We are also correcting FMVSS No. 139 to address another labeling requirement that had been inadvertently omitted from the standard when labeling requirements were moved from FMVSS No. 119 to FMVSS No. 139. This was the requirement that light truck tires load range C, D, and E be labeled with the tire load range designation on both sides of the tire. The agency did not intend to change (delete) the requirement then in FMVSS No. 119 that the tire load range designation be labeled on the tires.⁴ Today's document reinstates the labeling requirement.

FMVSS No. 208

FMVSS No. 208 requires passenger vehicles to be equipped with seat belts and frontal air bags for the protection of vehicle occupants in crashes. On July 24, 2007, NHTSA issued a final rule that established test procedures for installing child restraint systems (CRSs) to a child restraint anchorage system in a front passenger seating position in vehicles certified to meet advanced air bag requirements through the use of a suppression system or low risk deployment system.⁵

As part of the procedure for installing child restraints with a rigid ratchet mechanism built into the CRS, the agency stated in the preamble that a force of 475 ±25 Newtons (N) will be applied to the CRS (72 FR at 40256, columns 1 and 2). However, S20.2.1.6.2(g) and S22.2.1.6.2(h) of the regulatory text inadvertently did not specify the tolerance of ±25 N. The lack of a specified tolerance may prove to be misleading and needs to be clarified. This document corrects the CFR by adding the ±25 N tolerance to those sections of the standard.

List of Subjects in 49 CFR Part 571

Motor vehicles, Motor vehicle safety; Reporting and recordkeeping requirements; Tires.

■ Accordingly, 49 CFR part 571 is corrected by making the following correcting amendments:

⁴ Notice of proposed rulemaking (NPRM), 66 FR 65536, December 19, 2001. The only change to FMVSS No. 119 labeling requirements discussed in the preamble of the NPRM related to locating the type of ply, cord, and tube on one sidewall only, rather than both sides. 66 FR at 65564. Current tires are labeled with the C, D, and E tire load range designation on both sides of the tire.

⁵ 72 FR 40252.

¹ 67 FR 69600 (Nov. 18, 2002).

² 71 FR 877 (Jan. 6, 2006).

³ 72 FR 49207, 49209-10 (Aug. 28, 2007).

PART 571—[CORRECTED]

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.139 is amended by adding to S3, in alphabetical order, a definition of “Snow tire,” and revising S5.5 to read as follows:

§ 571.139 Standard No. 139—New pneumatic radial tires for light vehicles.

* * * * *

S3. *Definitions.*

* * * * *

Snow tire means a tire that attains a traction index equal to or greater than 110, compared to the ASTM E-1136 Standard Reference Test Tire when using the snow traction test as described in ASTM F-1805-00, Standard Test Method for Single Wheel Driving Traction in a Straight Line on Snow- and Ice-Covered Surfaces, and which is marked with an Alpine Symbol specified in S5.5(i) on at least one sidewall.

* * * * *

S5.5 *Tire markings.* Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches.

(a) The symbol DOT, which constitutes a certification that the tire conforms to applicable Federal motor vehicle safety standards;

(b) The tire size designation as listed in the documents and publications specified in S4.1.1 of this standard;

(c) The maximum permissible inflation pressure, subject to the limitations of S5.5.4 through S5.5.6 of this standard;

(d) The maximum load rating and for LT tires, the letter designating the tire load range;

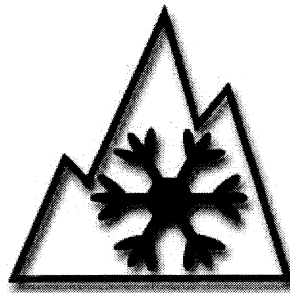
(e) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire;

(f) The actual number of plies in the sidewall, and the actual number of plies in the tread area, if different;

(g) The term “tubeless” or “tube type,” as applicable;

(h) The word “radial,” if the tire is a radial ply tire; and

(i) *Alpine Symbol.* A tire meeting the definition of a snow tire as defined in paragraph S3 may, at the option of the manufacturer, show the pictograph of a mountain with a snowflake as shown below. If the manufacturer chooses to mark the snow tire with the alpine symbol, the mountain profile must have a minimum base of 15 mm and a minimum height of 15 mm, and must contain three peaks with the middle peak being the tallest. Inside the mountain, there must be a six-sided snowflake having a minimum height of one-half the tallest peak.



* * * * *

■ 3. Section 571.208 is amended by revising S20.2.1.6.2(g) and S22.2.1.6.2(h), to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S20.2.1.6.2 * * *

* * * * *

(g) If the child restraint uses a linear sliding or ratcheting mechanism that requires the application of force to securely install the child restraint, within 25±5 seconds, apply a 475±25N force, that has no lateral component, aligned angularly ±10 degrees with a parallel plane located within ±100 mm of the plane formed by the linear mechanism. Release the force.

* * * * *

S22.2.1.6.2 * * *

* * * * *

(h) If the child restraint uses a linear sliding or ratcheting mechanism that requires the application of force to securely install the child restraint, within 25±5 seconds, apply a 475±25N force, that has no lateral component, aligned angularly ±10 degrees with a parallel plane located within ±100 mm

of the plane formed by the linear mechanism. Release the force.

* * * * *

Issued: November 21, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8-28096 Filed 11-26-08; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 574

[Docket No. NHTSA-2008-0187]

RIN 2127-AK11

Tire Registration and Recordkeeping

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In this final rule, we are amending our tire identification and recordkeeping regulation to codify existing interpretations regarding opportunities for electronic registration of tire sales and leases and to create new opportunities for the public to use electronic means to register new tires. This regulation requires manufacturer-owned tire distributors and dealers to register the names and addresses of the people to whom they sell or lease new tires, and currently specifies the use of standardized paper forms for this purpose. It also requires independent distributors and dealers to provide purchasers with standardized registration forms, with the tire identification number filled in, that they can complete and mail to the manufacturer or its designee. Today's rule accommodates and facilitates Internet and other electronic registration of tires, including voluntary registration of tires by independent dealers.

DATES: This final rule takes effect January 27, 2009. Optional immediate compliance with this final rule is permitted as of November 28, 2008.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than January 12, 2009.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, Mr. Jeff Woods,

Vehicle Dynamics Division, Office of Vehicle Safety Standards (Telephone: 202-366-6206) (Fax: 202-366-7002). Mr. Woods' mailing address is National Highway Traffic Safety Administration, NVS-122, 1200 New Jersey Avenue, SE., Washington, DC 20590.

For legal issues, Ms. Dorothy Nakama, Office of the Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820). Ms. Nakama's mailing address is National Highway Traffic Safety Administration, NCC-112, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Overview
- II. Background—Tire Registration Requirements
- III. January 2008 Notice of Proposed Rulemaking
 - A. Tires Sold by Independent Tire Dealers—Alternative Means of Tire Registration
 - B. Tires Sold by Dealers Controlled by Tire Manufacturers—Electronic Tire Registration
- IV. Public Comments and NHTSA's Response
- V. Final Rule
- VI. Statutory Basis for the Final Rule
- VII. Rulemaking Analyses and Notices
 - A. Executive Order 12866 and DOT Regulatory Policies and Procedures
 - B. Regulatory Flexibility Act
 - C. National Environmental Policy Act
 - D. Executive Order 13132 (Federalism)
 - E. Civil Justice Reform
 - F. Paperwork Reduction Act
 - G. National Technology Transfer and Advancement Act
 - H. Unfunded Mandates Reform Act
 - I. Plain Language
 - J. Regulation Identifier Number
 - K. Privacy Act

I. Overview

In today's final rule, we are amending Part 574, Tire Identification and Recordkeeping, to codify existing interpretations regarding opportunities for electronic registration of tire sales and leases and to create new opportunities for the public to use electronic means to register new tires. Part 574 requires manufacturer-owned tire distributors and dealers to register the names and addresses of the people to whom they sell or lease new tires, and currently specifies the use of standardized paper forms for this purpose. It also requires independent distributors and dealers to provide purchasers with standardized registration forms, with the tire identification filled in, that purchasers can complete and mail to the manufacturer or its designee.

Under the final rule, we make the following changes concerning

registration of tires sold by independent dealers and dealers owned or controlled by tire manufacturers:

Independent Tire Dealers

- *Use of electronic instead of paper registration.* Dealers may, in lieu of providing a paper registration form to the consumer, voluntarily register a tire by Internet or other electronic means, so long as such means were authorized by the tire manufacturer.

- *Informing consumers of opportunities for electronic registration.* If dealers use standardized paper registration forms, they may use one that identifies a Web site and/or other means (e.g., a telephone number) authorized by the tire manufacturer by which the consumer could register the tires instead of mailing in the form.

- *Added flexibility in paper registration.* Dealers have the option of providing to the consumer a mailable standardized paper registration form that includes the tire identification number (TIN) and the dealer's name and address (this is the current requirement set forth in Part 574), or using the same standardized paper registration form, but voluntarily completing the form and registering the tire by sending the form to the tire manufacturer or its designee.

- *Added flexibility in designing paper registration forms.* The figures showing the standardized paper registration form are removed from the CFR. Some requirements that were expressed by referring to the forms in the regulatory text are added to the regulatory text, but the regulation no longer specifies as many details concerning the format of the forms.

Dealers Owned or Controlled by Tire Manufacturers

- *Added flexibility in designing paper registration forms.* The regulation clarifies that dealers owned or controlled by tire manufacturers may register tires by electronic means, consistent with a past agency interpretation. The figure showing the form used for these tires is also removed from the CFR.

This final rule does not impose new obligations on tire dealers or tire manufacturers. Instead, it accommodates and facilitates Internet and other electronic registration of tires, including voluntary registration of tires by independent dealers. The rule also clarifies that tire manufacturers must meet requirements concerning retention of information for registration information submitted to them by electronic or other means they authorize, in addition to that submitted

to them on the standardized paper forms.

II. Background—Tire Registration Requirements

As originally enacted, the National Traffic and Motor Vehicle Safety Act of 1966 (now codified at Title 49 U.S.C. Chapter 301 *Motor Vehicle Safety*) did not include a requirement for tire registration. However, in May 1970, Congress amended the law to mandate that every tire manufacturer shall maintain records of the names and addresses of the first purchaser of tires produced by that manufacturer.¹ NHTSA was given the authority to establish procedures to be followed by manufacturers in establishing and maintaining such records, including procedures to be followed by distributors and dealers to assist manufacturers in securing the names and addresses of first purchasers. The names and addresses of purchasers and lessors are used by a tire or vehicle manufacturer to contact those people in the event that the tire manufacturer must conduct a campaign to recall and remedy tires that either fail to comply with an applicable Federal motor vehicle safety standard or to have a safety-related defect.

Pursuant to this authority, in a final rule published in the **Federal Register** (35 FR 17257) on November 10, 1970, NHTSA established the initial tire identification and recordkeeping requirements of 49 CFR part 574. The rule required all tire dealers to record the name and address of the purchaser to whom they sold the tire, along with the dealer's name and address, and forward that information to the tire manufacturer.

However, under the Motor Vehicle Safety and Cost Savings Authorization Act of 1982 (Pub. L. 97-331), Congress amended the Safety Act to mandate that the obligations of independent distributors and dealers be limited to giving "a registration form (containing the tire identification number) to the first purchaser." The tire purchaser could then mail the form to the tire manufacturer. Congress also mandated that NHTSA should prescribe a standardized registration form and that tire manufacturers had to ensure that they gave sufficient copies of these forms to their dealers.

Congress adopted these amendments after the House Committee on Energy and Commerce found in its report on the 1982 amendments that tire dealers whose business was owned or controlled by a tire manufacturer (these

¹ Public Law 91-265.

dealers accounted for just under 1/3 of tire sales) registered between 80 and 90 percent of the tires they sold.² At that time, however, independent tire dealers, which accounted for more than 2/3 of tire sales, registered only 20 percent of the tires they sold.

The changes mandated by the 1982 amendments were established in an interim final rule published on May 19, 1983 (48 CFR 22572). The regulation required tire manufacturers to provide both independent and non-independent distributors and dealers with standardized tire registration forms. The regulation specified the exact content of the forms given to independent distributors and dealers, and that no other information may appear on the forms.³ When an independent distributor or dealer sells or leases a tire to a consumer, the distributor or dealer must fill in the tire identification number and its name and address on a registration form and give the form to the consumer. The consumer may then fill in his or her name and address, add a stamp and mail the form to the manufacturer or its designee. In a follow-up final rule published on February 8, 1984 (49 FR 4755), the agency made slight revisions to the tire registration form to improve its clarity and also reduced the size of the form so that it could be mailed using post card postage.

As part of the agency's implementation of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106-414) that was enacted on November 1, 2000, the agency increased the tire registration record retention requirements for tire manufacturers from three years to five years. The record retention period was extended in a final rule published in the **Federal Register** (67 FR 45822) on July 10, 2002.

III. January 2008 Notice of Proposed Rulemaking

On January 24, 2008 (73 FR 4157), NHTSA published in the **Federal Register**, a notice of proposed rulemaking (NPRM) to amend the part 574 tire registration procedures to facilitate Internet and other electronic registration of tires by independent tire dealers. For a full explanation of these issues, please refer to the NPRM on pages 4158 through 4161.

Specifically, under our proposal:

- Independent tire dealers could, in lieu of providing a paper registration

form to the consumer, voluntarily register a tire by Internet or other electronic means, so long as such means were authorized by the tire manufacturer. These dealers would also have the option of providing to the consumer the mailable standardized paper registration form that includes the tire identification number (TIN) and the dealer's name and address (this is the current requirement set forth in part 574), or using the same standardized paper registration form, but voluntarily completing the form and registering the tire by sending the form to the tire manufacturer or its designee.

- The standardized paper registration form would be permitted to identify a Web site authorized by the tire manufacturer at which the consumer could register the tires instead of mailing in the form.

- We proposed to remove the figures showing the standardized paper registration form from the CFR. Some requirements that were expressed by referring to the forms in the regulatory text would be added to the regulatory text, but we proposed that the regulation would no longer specify as many details concerning the format of the forms.

- We also proposed regulatory text that would clarify that dealers owned or controlled by tire manufacturers may register tires by electronic means, consistent with a past agency interpretation. The figure showing the form used for these tires was also proposed to be removed.

We stated that our proposal was not intended to impose new obligations on tire dealers or tire manufacturers. Instead, it would accommodate and facilitate Internet and other electronic registration of tires, including voluntary registration of tires by independent dealers. We noted that we were proposing a provision that would clarify that tire manufacturers must meet requirements concerning retention of information for registration information submitted to them by electronic or other means they authorize, in addition to that submitted to them on the standardized paper forms.

The details of our proposal were as follows:

A. Tires Sold by Independent Tire Dealers—Alternative Means of Tire Registration

A number of issues concerning electronic registration of tires arose between 2005 and 2007 in connection with obtaining clearance of tire registration requirements under the Paperwork Reduction Act. In a March 21, 2007 (722 FR 1334) **Federal Register** notice, we stated that we were

considering revisions to update 49 CFR part 574 to allow, to the extent consistent with the agency's authority, for use of electronic and other possible means of registering new tires at the point of sale.

The statutory requirements relevant to independent tire dealers are found at 49 U.S.C. 30117(b)(2)(B), which reads as follows:

The Secretary shall require each distributor and dealer whose business is not owned or controlled by a manufacturer of tires to give a registration form (containing the tire identification number) to the first purchaser of a tire. The Secretary shall prescribe the form, which shall be standardized for all tires and designed to allow the purchaser to complete and return it directly to the manufacturer of the tire. The manufacturer shall give sufficient copies of forms to distributors and dealers.

Given the pre-Internet date of enactment of the statute, the statutory provision appears to contemplate a mail-in paper form ("the manufacturer shall give sufficient copies of forms to distributors and dealers"). Also, the legislative history (House report⁴) refers to forms that are suitable for mailing and addressed to the manufacturer or its designee.

One relevant issue is the effect of voluntary tire registration by independent tire dealers on their obligations under section 30117(b)(2)(B). While the statute provides for a program in which purchasers of tires from independent tire dealers may register their tires by returning a form to the tire manufacturer, a 1983 NHTSA letter to Congressman Timothy E. Wirth⁵ addressed the situation in which independent tire dealers may wish to register tires voluntarily for consumers. Invoking the principles of equitable interpretation, the agency concluded that voluntary registration would partially relieve independent dealers of their statutory obligations. Under those principles, a statutory requirement need not be literally applied in instances in which the underlying Congressional intent is otherwise satisfied. More specifically, the agency stated:

Based on the principles of equitable interpretation, we believe that an independent tire dealer or distributor who (1) registers tires by computer; (2) attaches a computer-printed invoice containing all of the information necessary for registration to a blank standardized registration form; and (3) furnishes the two documents to the customer when the tires are purchased; fully

² H.R. Rep. No. 576, 97th Cong. 2d Sess. 8-9 (1982).

³ July 18, 2003 letter from Jacqueline Glassman to Ann Wilson of RMA. Letter is available at: <http://isearch.nhtsa.gov/files/onlinetireregistration.html>.

⁴ H.R. Rep. No. 97-576, p. 8.

⁵ February 1983 letter from Diane K. Steed to the Honorable Timothy E. Wirth. Letter is available at: <http://isearch.nhtsa.gov/gm/83/1983-1.12.html>.

satisfies the tire registration amendments.

* * *

While, as discussed below, we now believe that this interpretation goes to some extent beyond what is necessary to satisfy Congressional intent, we believe the basic principle is correct. In particular, if an independent tire dealer voluntarily registers tires for the consumer, it serves no purpose to require the full procedures necessary to enable consumers to also register those tires.

Several other issues are whether the statute can be interpreted to permit the use of electronic forms in lieu of paper forms and, assuming that the answer to that issue is "yes," the meaning of the statutory command to "* * * give a registration form (containing the tire identification number) to the first purchaser * * *" in the context of electronic forms. As to the term "form," it could be interpreted broadly enough to include electronic as well as paper forms, notwithstanding the statutory language and legislative history mentioned above that suggests the forms are to be paper ones.

As to the term "give," it could readily be interpreted in the context of the statute to mean physically provide either "take away" means of registration (i.e., mailable form) or means of "on-the-spot" registration (i.e., an in-store computer terminal accessible to purchaser). It is not apparent how the term could be further interpreted to mean simply inform the purchaser about the opportunity to use means not physically present in the dealer's store (e.g., use of a computer terminal located at the purchaser's home or elsewhere.) It is even less apparent how such further interpretation could be given the term "give" given the additional requirement that the form given the purchaser "* * * contain the tire identification number * * *".

A possible scenario that could be viewed as meeting all of the statutory requirements would be one in which the purchaser was provided access to a computer at the dealership where the screen showed the form with the tire identification numbers already filled in, and the purchaser could register the tires with the manufacturer by entering his or her name and address and clicking on a button to register the tires. In preparing the NPRM, we did not know whether manufacturers and dealerships would be interested in an option along these lines, but noted that we were requesting comments on this type of approach. We also noted that a number of approaches for electronic registration by purchasers would appear

not to meet these statutory requirements, but could be viewed as supplemental means of transmitting tire registration to manufacturers.

In the NPRM, after discussing the statutory requirements, we stated our belief: (1) The regulation must include a basic procedure consistent with the statutory requirement that enables purchasers of tires from independent tire dealers to register their tires by returning a form with the TIN already filled in to the tire manufacturer; (2) the regulation may provide options under which an independent tire dealer may voluntarily register tires for consumers, in which case the dealer need not meet the full procedures necessary to enable consumers to register those tires; and (3) the regulation may accommodate means that tire manufacturers may provide for tire registration (e.g., Internet registration) that consumers may use instead of mailing in the form.

Voluntary Registration by Independent Dealers

After reviewing our 1983 interpretation to Congressman Wirth, we stated our belief that it went to some extent beyond what was necessary to satisfy Congressional intent. In particular, we stated our belief that electronic registration of the tires by independent dealers would satisfy the statutory requirements, without the need to provide an additional blank form to the purchaser. The purpose of the statutory requirement is to enable the purchaser to register the tire purchase with the manufacturer. As such, if the dealer registers the tires electronically for the purchaser and provides a blank form to the purchaser, confusion could result, since the purchaser might think there was a need to submit the paper form to the manufacturer.

Regarding the statement in the interpretation that the purchaser be given a computer-printed invoice with the information on the tire registration paper form, we stated our belief that that statement also exceeds what is necessary. The tire registration information is kept by the tire manufacturer (or its designee). There is no need for the purchaser to separately be given that information. Instead of duplicating the required information on the invoice given to the purchaser, we stated our belief that a written statement on the invoice regarding the registration of the tires by the dealer would be sufficient to inform the consumer that the tires have been registered.

We therefore proposed that independent tire dealers have the option of voluntarily electronically registering

tires with the tire manufacturer. We noted, however, that whether this option can be used depended on the tire manufacturer's providing a means to receive this information electronically, or designating an agent to do so for it. We stated we were not aware of what specific means might be used to provide electronic registration, such as specific software that identifies tire sales and then automatically uses the Internet to transmit the information to the tire manufacturer or its designee. However, we stated our belief that many company-controlled tire dealers have autonomous systems in place to register the tires as part of the sales transaction. Such systems do not require additional or separate actions by sales personnel to register the tires. The agency welcomed additional details on the methods that are currently in place and also other methods that might be used, including how independent tire dealers may be able to register tires electronically.

Our proposal also included an option in which independent tire dealers could use the standardized paper registration form, but voluntarily complete the form and register the tires by sending the form to the tire manufacturer or its designee.

One issue that arises with independent dealers being permitted to register tires voluntarily for consumers is whether they could charge a separate registration fee. Tentatively concluding that this should not be permitted, as it could discourage registration and cause confusion, we requested comments on this issue.

Another issue that arises with electronic registration of tires is the security of the information being transmitted. The proposed regulatory text would require that electronic registration be by secure means, e.g., use of https on the Web. We requested comments on the need for such a provision, and whether it should be more specific. We noted that in September 2005 we decided not to include an "encryption" requirement for electronic registration of child safety seats.⁶

We noted that registration by independent tire dealers would be voluntary. Nothing in the proposed rulemaking would require independent tire dealers to register tires for the purchaser.

For the new electronic registration requirements, NHTSA also proposed to permit the tire manufacturer to designate a third party to collect or store the tire registration information. Such third party designation is currently

⁶ 70 FR 53569, 53572-73, September 9, 2005.

allowed for the paper registration forms under 574.7, and we stated we were not aware of any reason not to extend third party designation to electronic tire registration methods.

Alternative Means of Registration by Tire Purchasers

Consistent with a 2003 interpretation letter to RMA, we included in the proposed regulatory text a provision stating that tire manufacturers may voluntarily provide means for tire registration via the Internet, by telephone or other electronic means.

Based in part on comments to NHTSA's requests for comment to extend OMB approval for the Part 574 collection of information, we tentatively concluded that including, at the tire manufacturer's option, a Web site address for purchasers to register tires could facilitate registration for tire purchasers, and also improve the quality of information received by the tire manufacturer.

We checked several tire manufacturers' Web sites, for both widely-known tire brands and lesser-known tire brands, and found in all but one case that the tire manufacturers already have Web site-based tire registration capability. Inclusion of Web site registration information would be performed at the option of the tire manufacturer. We proposed simple text to keep information on the form to a minimum: "Instead of mailing this form, you can register online at [insert tire manufacturer's Web site address]". This proposed language deviated slightly from the FMVSS No. 213 *Child restraint systems*, text which includes references to registering online on both sides of the form, although the text on the mailing label side of that form is on a part of the form that is removed prior to mailing. However, the tire registration form is not of that design, and much of the form space is needed for recording the tire identification numbers. We sought comments on the proposed text and location of the optional Web site registration information.

Other Possible Options for Tire Registration

We requested comments on whether the regulation should specify additional options for registering tires sold by independent tire dealers that would be consistent with our statutory authority. Several options were discussed in the NPRM at page 4163.

Registration Forms

As discussed above, for tires sold by independent tire dealers, NHTSA is required by statute to prescribe a

standardized tire registration form for all tires. Specifically, 49 U.S.C. 30117(b)(2)(B) provides "(t)he Secretary shall prescribe the form, which shall be standardized for all tires * * *."

The statute provides that tire manufacturers must give sufficient copies of the registration forms to distributors and dealers. Also, Part 574.8 permits distributors and dealers to use registration forms obtained from other sources.

Pursuant to the requirement to prescribe a standardized tire registration form, NHTSA has adopted requirements through rulemaking and placed them in Part 574. The details of some of the requirements, including size and data elements, are set in the regulatory text. The details of certain other requirements are not set out in the regulatory text. Instead, the regulatory text requires that forms conform in content and format to the forms depicted in the figures included in Part 574. See 574.7(a)(2).

To promote flexibility, in the NPRM, we proposed to remove the figures showing the forms in Part 574. To ensure that the forms remain standardized, we proposed to add some requirements to the regulatory text that are currently expressed by referring to the figures, but with fewer details concerning format. We also proposed to update the size standards to reflect the current U.S. Postal Service's "Domestic Mail Manual" (Updated 12-6-07) at Section 6.3 "Cards Claimed at Card Rates," that specifies physical standards that postcards must meet in order to be eligible for mailing at card rates.

Under our proposal, on the address side of the form, the following would continue to be required to be provided: The name and address of the manufacturer or its designee, and, in the upper right hand corner, the statement: "Affix a postcard stamp."

The other side of the form would continue to include the tire manufacturer's name (unless it already appears on the address side), and the statement: "IMPORTANT, In case of a recall, we can reach you only if we have your name and address." There would also continue to be a statement indicating that sending in the card will add a person to the manufacturer's recall list. However, we proposed that the regulation no longer specify that the statement indicate that a person "must" send in the card to be on the recall list, since manufacturers may provide alternative means of registering tires.

Under our proposal, if a tire manufacturer provides a Web site where its tires can be registered, it may (but is not required to) include the following

sentences: "Instead of mailing this form, you can register online at [insert tire manufacturer's registration Web site address]".

The form would also include the text: "Do it today."

The form would also continue to include space for recording the tire identification numbers for six tires. There would also continue to be shading to distinguish between areas of the form to be filled in by sellers and customers.

As indicated above, under our proposal, the regulation would no longer specify as many details concerning the format of the form.

We requested comments on the removal of these figures and on what requirements expressed by reference to the figures should be added to the regulatory text.

Registration Rates

We sought comments on the current registration rates of tires sold by independent tire dealers. Commenters were asked to provide information concerning the total number of such tires that are sold and the number of those tires that are currently being registered by each alternative means, *e.g.*, the number of tires registered by returning the paper form, the number registered using the tire manufacturer's Web site, etc. We requested that commenters provide the specific basis for any numbers or rates that are provided. We also requested comments on how and why these registration rates may change if the agency adopts the proposed rule.

B. Tires Sold by Dealers Controlled by Tire Manufacturers—Electronic Tire Registration

In the NPRM, we noted that the tire registration form in Figure 4 of Part 574 is the form that is to be filled out by company-controlled tire dealers and returned to the manufacturer upon the sale of new tires. We noted that we have no data on the continued use of this form, or what percentage of company-controlled dealers continue to use this form versus submit the registration information to the tire manufacturer using electronic means.

We reiterated that we have previously provided an interpretation letter to the RMA (July 18, 2003 agency letter) stating that while company-controlled dealers are permitted to register tires electronically:

This interpretation does not relieve non-independent distributors and dealers from the requirements of section 574.8(b) that they themselves record the purchaser's name and address, the tire identification number(s) of

the tire(s) sold, and a suitable identification of themselves as the selling dealer on a tire registration form and return the completed forms to the tire manufacturers or their designees. While we would interpret Part 574 to permit non-independent distributors and dealers to accomplish these tasks by electronic means, they may not transfer this responsibility to consumers.

In the NPRM, we proposed to include a provision expressly reflecting this existing option in the Part 574 requirements. Specifically, we proposed that electronic means be permitted as an alternative to the paper registration forms specified in § 574.7(b).

In the NPRM, we also noted that as to Part 574's requirements for these forms, requirements concerning data elements are set forth in the regulatory text, and the regulatory text also specifies that the forms must be similar in format and size to that in Figure 4. We noted that the statutory requirement that NHTSA prescribe a standardized tire registration form does not apply to ones for tires sold by dealers controlled by tire manufacturers.

To promote flexibility, in the NPRM, we proposed to remove Figure 4 showing the registration forms to be used. We proposed to add several requirements currently expressed by reference to the figure, and leave all other details to the tire manufacturer. Under our proposal, the form would continue to be required to include:

- A statement indicating where the form should be returned, including the name and mailing address of the manufacturer or its designee.
- The tire manufacturers' logo or other identification, if the manufacturer is not identified as part of the statement indicating where the form should be returned.
- The statement: "IMPORTANT; FEDERAL LAW REQUIRES TIRE IDENTIFICATION NUMBERS MUST BE REGISTERED."

We sought comments on the removal of this figure and on what requirements expressed by reference to the figure should be added to the regulatory text.

IV. Public Comments and NHTSA's Response

In response to the January 2008 NPRM, NHTSA received comments from: CIMS; Dealer Tire; the National Association of Trailer Manufacturers (NATM); the National Automobile Dealers Association (NADA); the Rubber Manufacturers Association (RMA); Ms. Barbara Sachau; Safety Research and Strategies, Inc. (SRS); the Small Business Administration's (SBA) Office of Advocacy; Specialty Equipment Market Association (SEMA); TBC

Corporation; and the Tire Industry Association (TIA).

Commenters generally supported our proposal, with some offering suggestions they believed would improve the rule. A number of commenters urged that we issue the final rule as soon as possible. While some commenters raised other issues about Part 574, none opposed our proposal.

RMA stated that it fully supports the proposed changes and urged the agency to issue the final rule in its entirety, and as expeditiously as possible. TIA stated that it enthusiastically supports the proposed changes. SEMA stated that it strongly supports the proposed rule.

SBA stated that it "strongly supports the proposed rule" and did not suggest any changes to the proposal. SBA stated that it heard from "a number of small businesses representing automobile and tire dealers who have expressed strong support for NHTSA's proposed rule." SBA further stated that the current tire registration program was nominated "as a regulation in need of review and reform under Advocacy's new Regulatory Review and Reform (r3) Initiative." SBA concluded that while Part 574 "was not selected as one of our final 'Top 10' r3 rules for 2008, it likely would have been if not for NHTSA's timely proposed rule that does exactly what the r3 submitter sought—for NHTSA to modernize its rule to allow for Internet registration of tires."

NADA generally supported the proposed rule. It offered three suggestions. First, tire manufacturers should be allowed to voluntarily list on their forms as many electronic filing methods as they choose (e.g., Web site, phone, fax, etc.). NADA stated that this appears to be provided for by proposed § 574.7(e), but not by § 574.7(a)(2)(iii)(B)(4), which it said should be revised commensurately. NADA stated that § 574.8(a)(1)(iii) should be revised to indicate that independent tire dealers may voluntarily register tires by any electronic manner listed on the form or by such other means as may be authorized by a tire manufacturer.

After considering this comment, NHTSA agrees that tire manufacturers should be permitted to voluntarily list on their forms as many electronic filing methods as they choose, and that independent tire dealers may voluntarily register by any electronic manner listed on the form or by such other means as may be authorized by a tire manufacturer. We agree that this will help maximize the rate of electronic tire registration. We have amended § 574.7(a)(2)(iii)(B)(4) to now read tire

manufacturers may voluntarily provide means for tire registration via the Internet, by telephone, or other electronic means. If a tire manufacturer voluntarily provides a Web site or other means by which its tires can be registered, it may (but is not required to) include a sentence listing one or more such means, beginning with the phrase "Instead of mailing this form, you can * * *" Example: Instead of mailing this form, you can register online at [insert tire manufacturer's registration Web site address].

We are amending § 574.8(a)(1)(iii) to read electronically transmit the following information on the tire registration form by any means listed on the form by the tire manufacturer, or by such other means as may be authorized by the tire manufacturer, to the tire manufacturer or its designee, using secure means (e.g., https on the Web), at no charge to the tire purchaser and within 30 days of the date of sale or lease:

NADA's second comment was that while NHTSA need not mandate that independent tire dealers inform purchasers or get their permission before voluntarily registering on their behalf, nothing in the final rule should prevent independent tire dealers from doing so. NHTSA notes that the final rule does not prevent independent tire dealers from doing this.

Third, NADA recommended that to more "appropriately distinguish between the different registration options, NHTSA should redraft § 574.8(a)(1) to read 'independent distributor and each independent dealer selling or leasing new tires to tire purchasers or lessors (hereinafter referred to as 'tire purchasers') shall comply with paragraph (a)(1)(i) of this section. In the alternative, independent distributors and independent dealers may elect to voluntarily comply with paragraphs (a)(1)(ii) or (a)(2)(iii) of this section.'"

NHTSA has decided not to adopt this recommendation. We believe the language proposed in the NPRM is clear in this area.

In the NPRM,⁷ we asked whether, if independent tire dealers voluntarily registered tires for their customers, they should be able to charge a separate registration fee. We tentatively concluded that this should not be permitted, as it could discourage registration and cause confusion. In response, CIMS and TIA agreed with the agency and both opposed permitting fees for independent tire dealers to voluntarily register tires for their

⁷ See page 4163.

customers. No other comments on this issue were received. Thus, in this final rule, we will not permit independent tire dealers to impose fees for voluntarily registering tires for their customers.

Besides its recommendation that NHTSA not permit independent tire dealers to charge customers to register their tires for them, TIA opposed mandatory installation of computer terminals in dealer showrooms for use of consumers to register their tires. TIA, however, did not object to voluntary installation of such computer terminals. In this final rule, we do not require independent dealers to provide computer terminals for use of its customers to register their new tires. However, nothing in this final rule prohibits independent dealers from voluntarily providing such computer terminals for their customers.

CIMS commented in support of the proposed changes to Part 574. It further recommended that in order to avoid confusion, NHTSA should "leave no doubt about the following points":

- Tire registration is still the law
- Tire dealers must still provide every customer with a tire registration form *or*
- Tire dealers must complete the registration process electronically on behalf of the customer.

NHTSA notes that independent tire dealers will also have the option of voluntarily completing the paper form and registering the tire by sending the form to the tire manufacturer or its designee. The agency agrees, however, with CIMS that it is important that independent tire dealers understand their responsibilities. We are currently developing information specifically for tire dealers similar to what the agency has now on NHTSA's Web site: <http://www.nhtsa.dot.gov>, for manufacturers.

SRS commented that the "current proposal does not do enough to close the considerable gaps that remain between tire recordkeeping, consumer notification in recalls, and the ability of the tire service professional to capture recalled tires." It recommended that NHTSA initiate rulemaking to promote adoption of Radio Frequency Identification Tags (RFID). SRS stated that if embedded in tires, RFIDs could contain all of the information now in TINs. When combined with scanners at service locations and a recall database, consumers and technicians can easily determine whether a given tire has been recalled.

While identification of recalled tires through RFIDs is an interesting concept, the agency notes that it could supplement but not replace tire registration, given the current statutory

requirement. Moreover, we note that there are many issues that would need to be addressed in order to implement such a program. Some of the issues include the need to develop the technology and the infrastructure to ensure RFID tags installed in tires from all manufacturers can be read with a standard scanner, the availability of standardized software for the scanner, and the availability of such scanners at tire dealers, including gas stations and car dealerships that sell new tires.

While we decline to initiate rulemaking in this area, we note that nothing in the rule prevents tire manufacturers, dealers and parties such as service centers from creating networks using RFIDs.

NATM stated that it has no fundamental objection to and supports what it called the important reform included in our proposal, but argued that in order to materially improve the effectiveness of future defective tire safety recall campaigns, the agency "must totally revamp Part 574." That organization stated that NHTSA's approach overlooks what it referred to as second-tier recordkeeping requirements, those impacting the motor vehicle manufacturer, and in particular, the trailer manufacturer of light- and medium-duty trailers. NATM stated:

The absence of coordination between tire and trailer manufacturers and the lack of clarity in the rules governing their respective recordkeeping roles are at the heart of the problem of second-tier tire record keeping. To address this fundamental problem NHTSA must revise Part 574 top to bottom, redesigning it to facilitate integrating the tire manufacturers and distributors into the complete tire recordkeeping chain by requiring and fostering coordination and cooperation among all tire suppliers and customers throughout the OEM chain of distribution down to the point of sale when the retail purchaser takes possession of his or her new motor vehicle, whether automobile, truck, or trailer.

NATM raised a variety of issues and made a number of suggestions related to this general area.

In the January 2008 NPRM, NHTSA proposed only to change requirements concerning the means by which information about the retail customers of new tires is collected, i.e., to facilitate electronic registration of tires. We did not propose to change the basic nature or scope of Part 574 or requirements concerning the various responsibilities of tire manufacturers, dealers, and distributors, motor vehicle manufacturers, etc.

Because NATM's comment addresses requirements that NHTSA did not propose to change, its suggestions are largely outside the scope of this rulemaking. In its comment, NATM

cited a statement in the preamble that the agency intended the scope of the proposal to be broad. However, in the sentence immediately preceding that statement, the agency stated that it was requesting comments on whether the regulation should specify additional options for registering tires sold by independent tire dealers that would be consistent with our statutory authority. Nothing in our proposal indicated that we were considering totally "revamping" Part 574.

One of NATM's suggestions was that we amend § 574.10 to extend the electronic communication option to motor vehicle manufacturers. That section requires motor vehicle manufacturers to maintain records concerning tires and purchasers. However, it does not specify how these records must be maintained, and thus does not prevent motor vehicle manufacturers from using electronic methods.

While we will consider NATM's comment advocating a significant revision of Part 574 as a suggestion for future rulemaking, we will not consider that request as part of this rulemaking.

V. Final Rule

For the reasons discussed above, we are adopting as a final rule the requirements we proposed in our January 2008, with minor adjustments. As explained in our discussion of the comments from NADA, we have amended § 574(a)(2)(iii)(B)(4) and § 574.8(a)(1)(iii) in light of its recommendations. In general, the commenters to the NPRM agreed with the proposal. Thus, no other changes have been made to the regulatory text proposed in the NPRM.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking action has been determined not to be significant under that Executive Order or those policies and procedures.

In this document, NHTSA amends Part 574 to permit collection of the names and addresses of first purchasers of new tires by Internet and other electronic means. Nothing in this final rule requires any tire dealer to use these new electronic procedures. All collection of the names and addresses of first purchasers of new tires may continue to be collected by the existing means utilizing paper forms. However,

we believe that permitting electronic means of tire registration will increase the rate of registrations, which will in turn increase the effectiveness of future tire recalls and thus improve motor vehicle safety.

There are some cost impacts associated with increased registrations of tires by electronic means. Since the new options are voluntary, we do not know the extent to which they will be utilized by independent tire dealers and tire manufacturers. However, we are providing the following analysis to show the cost impacts.

Increased Registrations by Consumers Using the Internet

Under today's final rule, tire manufacturers can provide, on a voluntary basis, Internet registration information on the tire registration form that is given to purchasers by independent tire dealers. Consumers can then register their tires online instead of filling out the paper form and

mailing it to the tire manufacturer or its designee. The cost of printing this information on the form is negligible, and therefore there is no cost increase to tire manufacturers that are responsible for printing the forms and providing them to independent tire dealers. However, the tire manufacturers offering the option of Internet-based tire registration on their Web sites will incur some cost to include a registration site. The agency has found that most tire manufacturers already have tire registration sites included on their Web sites. Web site registration will save consumers the cost of a postcard postage stamp, and will save costs for tire manufacturers because they (or their designee) will not have to transcribe the information on the paper forms into a tire registration database.

In the table which follows, we are providing estimates of the monetized costs associated with various rates of increased tire registration using the Internet. Under this scenario, paper

forms will continue to be provided to purchasers, but the additional registrations will occur via the Internet rather than by the forms being mailed in. Therefore, although tire registrations will increase, mailing and other costs associated with the paper form will remain the same. We assume, for purposes of these estimates, that the costs associated with the current level of tire registration will not change. The additional costs associated with this scenario will be the time consumers spend registering tires via the Internet that they otherwise would not register. We also assume that because the tire registration information is collected using purely electronic means, there is no additional labor burden for the tire manufacturer for recordkeeping associated with these additional registrations. To monetize the costs of consumers filling out paper forms or using the Internet, a labor rate of \$14.61 per hour is used.⁸

CONSUMER COST PROJECTIONS ASSOCIATED WITH INCREASED TIRE REGISTRATIONS WITH CONSUMERS REGISTERING TIRES USING THE INTERNET

	Current tire registrations	Future tire registrations using internet-based registration by consumers		
		10 Percent increase	15 Percent increase	20 Percent increase
Consumer Hour Burden Estimates:				
Number of Consumers	10,000,000	11,000,000	11,500,000	12,000,000
Total Tire Registrations	54,000,000	59,400,000	62,100,000	64,800,000
Tire Registration Hours	225,000	247,500	258,750	270,000
Monetized Costs (Consumer time valued at @ \$14.61/Hour)	\$3,287,250	\$3,615,975	\$3,780,338	\$3,944,700

Voluntary Registration by Independent Tire Dealers

Under today's final rule, independent tire dealers may voluntarily register tires for consumers by electronic means, if this is authorized by the tire manufacturer. Dealers that do this will incur additional costs to upgrade their computer systems, with both initial startup costs and then costs for periodic maintenance of the systems. We assume that many independent tire dealers, especially the larger ones, already collect tire purchaser information as part of the sales process. For these manufacturers, we believe it may be possible to upgrade the sales system to include automatic electronic registration on behalf of the purchaser. We do not know the details of how this process may work, which will be up to the tire manufacturer and the independent tire dealers. The process might also include companies designated by the tire

manufacturers to provide services in this area. We also do not know what actual startup and annual costs might be to independent tire dealers. However, once these systems are installed, tire registration rates could be 100 percent for tires sold through these large independent dealers. This compares with overall current registration rates of 10 percent for tires sold through independent dealers.

The costs associated with voluntary tire registration by independent tire dealers will be offset, or partially offset, by the fact that these dealers will no longer need to provide paper forms to consumers, or fill out these forms with tire identification numbers.

The agency has estimated that there are a total of 59,000 tire dealers in the U.S., including 13,000 that are company-controlled dealers. The remaining 46,000 tire dealers include

20,000 car and truck dealers and 26,000 independent tire dealers.

There are two unknowns for estimating the cost impacts on independent tire dealers—how many independent dealers will voluntarily upgrade computer systems to register tires, and what the cost of these computer systems will be in terms of initial cost and annual maintenance. Each year, a number of independent dealers will install or upgrade computer systems, and they continue to maintain their systems in subsequent years. We assume that an initial installation cost of providing an upgraded system is \$750 and that annual maintenance thereafter is \$200. We do not know whether each tire manufacturer will work directly with each independent tire dealer, or whether third party designees will provide an interface service for all tire manufacturers and independent tire dealers. We note that third party

⁸ The median hourly rate among all occupations, May 2006, according to the Bureau of Labor

Statistics; see http://www.bls.gov/oes/current/oes_nat.htm#b00-0000.

designees can provide efficiencies of having a single contact company that can be the interface for an independent tire dealer and multiple tire manufacturers.

We are providing cost estimates assuming that 30 percent of independent tire dealers will participate in such a voluntary program, with 10 percent beginning the first year (4,600

dealers), an additional 10 percent beginning the second year, and the third 10 percent beginning the third year. These costs can be summarized as follows:

Year	Startup costs for computer systems	Annual maintenance costs	Total cost
2009	\$3.45 M	0	\$3.45 M
2010	3.45 M	0.92 M	4.37 M
2011	3.45 M	1.84 M	5.29 M
2012 and Beyond	0	2.76 M	2.76 M

Since the final rule establishes collection of information procedures to be used entirely at the discretion of the tire dealer, and the estimated paperwork burdens of tire dealers electing to use these procedures are not expected to exceed \$100 million annually, the agency does not consider this rulemaking to be “economically significant,” as defined by E.O. 12866. Moreover, the impacts are sufficiently small that the agency has not prepared a full regulatory evaluation.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration’s regulations at 13 CFR part 121 define a small business, in part, as a business entity “which operates primarily within the United States.” (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. As explained above, NHTSA amends Part 574 by permitting collection of the names and addresses of first purchasers of new tires by Internet and other computerized means. Electronic collection is

permitted in place of paper forms. This regulatory flexibility analysis does not apply to manufacturer-owned tire dealers, because they are not considered small businesses under SBA’s affiliation rule at 5 CFR 121.103(a)(1) which states in part: “Concerns and entities are affiliates of each other when one controls or has the power to control the other * * *.” The tire manufacturer either “controls or has the power to control” dealerships that it owns.

Under SBA’s size standard regulations (at 5 CFR part 121), “tire dealers” are classified under North American Industry Classification System (NAICS) Code 441320 with a size standard of average yearly sales of \$6 million. “New car dealers” are classified under NAICS Code 441110 with a size standard of average yearly sales of \$24.5 million. “Used car dealers” are classified under NAICS Code 441120 with a size standard of average yearly sales of \$19.5 million.

In its February 27, 2006 comments to NHTSA, NADA stated that of its “20,000 franchised automobile and truck dealers who sell new and used motor vehicles,” a “significant number are small businesses as defined by the SBA.” At that time, NADA did not specify the number that would be considered “small businesses.” In the **Federal Register** of March 21, 2007 (54 FR 133440), we estimated the number of independent tire dealers to be 26,000. In the January 2008 NPRM to amend Part 574, we stated our assumption that all NADA members are small businesses and that therefore, the total number of independent tire dealers that are small businesses would be 46,000.

In its comment to the NPRM, NADA provided a clarification, stating that “NADA suggests that approximately 40 percent of the 22,000 dealerships nationwide fall within SBA’s current small business definition in annual gross receipts 73 FR 4166.” NADA was referring to that part of its membership that is independent motor vehicle dealers. Forty percent of 22,000 is 8,800

or the number of NADA members that are small businesses. The previous estimate of 26,000 tire dealers plus NADA’s small business (and therefore independent) motor vehicle dealers numbering 8,800 equals 34,800 small business independent tire dealers. 34,800 is a smaller figure than the 46,000 small business independent tire dealers estimated in the NPRM.

I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification is that this final rule will not substantively change existing 49 CFR part 574 requirements for small businesses that are independent tire dealers. Adherence to the electronic collection of information procedures is voluntary for independent tire dealers. The statement on the paper form giving Web site information about online registration of new tires or other electronic means of registration (and the paper form itself) are to be provided by the tire manufacturer. If independent dealers choose not to adopt electronic tire registration procedures, the responsibilities of the independent dealer remains the same, i.e., to pass out the paper forms to first purchasers of new tires.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

NHTSA has examined today’s final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that this final rule does not have federalism

implications because 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.”

E. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The Federalism effect of this final rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. These final changes to the tire registration and recordkeeping rule affect the scope of the rule’s “collection of information,” as that term is defined by OMB at 5 CFR part 1320. In the January 24, 2008 NPRM (see pages 4167–4168), we described how the proposed rule would affect the scope of the collection of information. Given that the various proposed options would be voluntary, we stated we did not know to what extent they would be utilized by independent tire dealers, tire manufacturers and consumers. Therefore, based on the available information, we provided the following estimates of burden.

The same information (name and address of the purchaser) would be collected regardless of the format, paper form, or typing in information on a company Web site. Because some

people type faster and some people write faster, we stated our belief that the amount of time it will take to provide information about the name and address of the purchaser would be very roughly the same, regardless of the format. To the extent more consumers registered their tires, actual burdens realized could thus increase concomitantly with the higher registration rates. On the other hand, it may be possible for tire manufacturers and independent tire dealers to develop electronic systems, tied in with the systems used for monitoring inventory and recording sales information, that could automatically register the tires with the tire manufacturer at little additional cost.

We stated our belief that virtually all recordkeeping by tire manufacturers is already done electronically. We estimated that it takes roughly 25,000 hours to transfer handwritten data to an electronic format for storage. Because, with Web site-based information, there would be no change in format (i.e., going from electronic reporting to electronic storage), we stated our belief that there would be virtually no burden hours imposed in transferring information provided on a tire manufacturer’s Web site to a recordkeeping site. For these reasons, we stated our belief that the recordkeeping burden hours would remain at 25,000 hours.

We solicited comments on the proposed changes in the collection of information associated with Part 574 and on our analysis of how the changes will affect the number of burden hours affecting the public. We provided a 60-day comment period on the proposed collection of information.

We received no comments specifically addressing this Paperwork Reduction Act analysis. Therefore, when this final rule takes effect, the total annual tire registration and recordkeeping hours associated with Part 574 (OMB Clearance No. 2127–0050) will remain at 250,000 hours per year.

G. 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) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After carefully reviewing the available information, NHTSA has determined that there are no voluntary consensus standards relevant to this rulemaking, as the information to be collected and sent to tire manufacturers is needed only in the event of a tire recall. Accordingly, this rule is in compliance with Section 12(d) of NTTAA.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to 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 NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of more than \$100 million annually. Accordingly, the agency has not prepared an Unfunded Mandates assessment.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public’s needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in comments to the docket number cited in the heading of this final rule.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

K. 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 19477–19478) or you may visit <http://docketsinfo.dot.gov/>.

List of Subjects in 49 CFR Part 574

Labeling, Motor vehicle safety, Reporting and recordkeeping requirements, and Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 574 as follows:

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

■ 1. The authority for part 574 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 574.7 is amended by revising paragraphs (a)(2) and (a)(3), removing figures 3a, 3b, and 4 immediately following paragraph (d), and adding new paragraphs (e) and (f) to read as follows:

§ 574.7 Information requirements—tire manufacturers, new tire brand name owners.

(a)(1) * * *

(2) Each tire registration form provided to independent distributors and dealers pursuant to paragraph (a)(1) of this section shall contain space for recording the information specified in paragraphs (a)(4)(i) through (a)(4)(iii) of this section. Each form shall:

(i) Have the following physical characteristics:

(A) Be rectangular;

(B) Be not less than 3½ inches high, 5 inches long, and 0.007 inches thick;

(C) Be not more than 4¼ inches high, 6 inches long, and 0.016 inch thick.

(ii) On the address side of the form, be addressed with the name and address of the manufacturer or its designee, and include, in the upper right hand corner, the statement “Affix a postcard stamp.”

(iii) On the other side of the form:

(A) Include the tire manufacturer's name, unless it appears on the address side of the form;

(B) Include a statement explaining the purpose of the form and how a consumer may register tires. The statement shall:

(1) Include the heading “IMPORTANT”.

(2) Include the sentence: “In case of a recall, we can reach you only if we have your name and address.”

(3) Indicate that sending in the card will add a person to the manufacturer's recall list.

(4) A tire manufacturer may voluntarily provide means for tire registration via the Internet, by telephone or other electronic means. If a tire manufacturer voluntarily provides a Web site or other means by which its tires can be registered, it may (but is not required to) include a sentence listing one or more such means, beginning with the phrase “Instead of mailing this form, you can * * *.” Example: Instead of mailing this form, you can register online at [insert tire manufacturer's registration Web site address].

(5) Include the sentence: “Do it today.”

(C) Include space for recording tire identification numbers for six tires.

(D) Use shading to distinguish between areas of the form to be filled in by sellers and customers.

(1) Include the statement: “Shaded areas must be filled in by seller.”

(2) The areas of the form for recording tire identification numbers and information about the seller of the tires must be shaded.

(3) The area of the form for recording the customer name and address must not be shaded.

(E) Include, in the top right corner, the phrase “OMB Control No. 2127–0050”.

(3) Each tire registration form provided to distributors and dealers that

are not independent distributors or dealers pursuant to paragraph (a)(1) of this section must contain space for recording the information specified in paragraphs (a)(4)(i) through (a)(4)(iii) of this section. Each form must include:

(A) A statement indicating where the form should be returned, including the name and mailing address of the manufacturer or its designee.

(B) The tire manufacturers' logo or other identification, if the manufacturer is not identified as part of the statement indicating where the form should be returned.

(C) The statement: “IMPORTANT: FEDERAL LAW REQUIRES TIRE IDENTIFICATION NUMBERS MUST BE REGISTERED”.

(D) In the top right corner, the phrase “OMB Control No. 2127–0050”.

* * * * *

(e) Tire manufacturers may voluntarily provide means for tire registration via the Internet, by telephone or other electronic means.

(f) Each tire manufacturer shall meet the requirements of paragraphs (b), (c) and (d) of this section with respect to tire registration information submitted to it or its designee by any means authorized by the manufacturer in addition to the use of registration forms.

■ 3. Section 574.8 is revised to read as follows:

§ 574.8 Information requirements—tire distributors and dealers.

(a) *Independent distributors and dealers.*

(1) Each independent distributor and each independent dealer selling or leasing new tires to tire purchasers or lessors (hereinafter referred to in this section as “tire purchasers”) shall comply with paragraph (a)(1)(i), (a)(1)(ii) or (a)(1)(iii) of this section:

(i) At the time of sale or lease of the tire, provide each tire purchaser with a paper tire registration form on which the distributor or dealer has recorded the following information:

(A) The entire tire identification number of the tire(s) sold or leased to the tire purchaser, and

(B) The distributor's or dealer's name and street address. In lieu of the street address, and if one is available, the distributor or dealer's e-mail address or Web site may be recorded. Other means of identifying the distributor or dealer known to the manufacturer may also be used.

(ii) Record the following information on a paper tire registration form and return it to the tire manufacturer, or its designee, on behalf of the tire purchaser, at no charge to the tire purchaser and

within 30 days of the date of sale or lease:

(A) The purchaser's name and address,

(B) The entire tire identification number of the tire(s) sold or leased to the tire purchaser, and

(C) The distributor's or dealer's name and street address. In lieu of the street address, and if one is available, the distributor or dealer's e-mail address or Web site may be recorded. Other means of identifying the distributor or dealer known to the manufacturer may also be used.

(iii) Electronically transmit the following information on the tire registration form by any means listed on the form by the tire manufacturer, or by such other means as may be authorized by the tire manufacturer, to the tire manufacturer or its designee, using secure means (e.g., https on the Web), at no charge to the tire purchaser and within 30 days of the date of sale or lease:

(A) The purchaser's name and address,

(B) The entire tire identification number of the tire(s) sold or leased to the tire purchaser, and

(C) The distributor's or dealer's name and street address. In lieu of the street address, and if one is available, the distributor or dealer's e-mail address or Web site may be recorded. Other means

of identifying the distributor or dealer known to the manufacturer may also be used.

(2) Each independent distributor or dealer that complies with paragraph (a)(1)(i) or (ii) of this section shall use either the tire registration forms provided by the tire manufacturers pursuant to § 574.7(a) or registration forms obtained from another source. Paper forms obtained from other sources must comply with the requirements specified in § 574.7(a) for forms provided by tire manufacturers to independent distributors and dealers.

(3) Multiple tire sales or leases by the same tire purchaser may be recorded on a single paper registration form or in a single Web site transaction.

(4) Each independent distributor or dealer that is complying with paragraph (a)(1)(iii) with respect to a sale or lease shall include a statement to that effect on the invoice for that sale or lease and provide the invoice to the tire purchaser.

(b) *Other distributors and dealers.*

(1) Each distributor and each dealer, other than an independent distributor or dealer, selling new tires to tire purchasers:

(i) shall submit, using paper registration forms or, if authorized by the tire manufacturer, secure electronic means, the information specified in § 574.7(a)(4) to the manufacturer of the

tires sold, or to the manufacturer's designee.

(ii) shall submit the information specified in § 574.7(a)(4) to the tire manufacturer or the manufacturer's designee, not less often than every 30 days. A distributor or dealer selling fewer than 40 tires of all makes, types and sizes during a 30 day period may wait until a total of 40 new tires is sold. In no event may more than six months elapse before the § 574.7(a)(4) information is forwarded to the respective tire manufacturers or their designees.

(c) Each distributor and each dealer selling new tires to other tire distributors or dealers shall supply to the distributor or dealer a means to record the information specified in § 574.7(a)(4), unless such means has been provided to that distributor or dealer by another person or by a manufacturer.

(d) Each distributor and each dealer shall immediately stop selling any group of tires when so directed by a notification issued pursuant to 49 U.S.C. 30118, *Notification of defects and noncompliance*.

Issued on: November 19, 2008.

David Kelly,

Acting Administrator.

[FR Doc. E8-28094 Filed 11-26-08; 8:45 am]

BILLING CODE 4910-59-P

Proposed Rules

Federal Register

Vol. 73, No. 230

Friday, November 28, 2008

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN 3150-A147

[NRC-2008-0404 and NRC-2008-0482]

Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation and Waste Confidence Decision Update: Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule and update and proposed revision of waste confidence decision; Extension of comment period.

SUMMARY: On October 9, 2008, the Nuclear Regulatory Commission (NRC) published for public comment a proposal to amend its generic determination of no significant environmental impact for the temporary storage of spent fuel after cessation of reactor operation codified at 10 CFR 51.23(a) (73 FR 59547) and a related update and proposed revision of its 1990 Waste Confidence Decision (73 FR 59551). The comment period for this proposed rule and for the proposed revisions of its Waste Confidence Decision was to have expired on December 8, 2008. A number of requests for extension of the comment period have been received. The NRC has decided to extend the comment period for an additional 60 days.

DATES: The comment period has been extended and now expires on February 6, 2009. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any one of the following methods. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information,

the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC-2008-0404] or Docket ID [NRC-2008-0482]. Address questions about NRC dockets to Carol Gallagher 301-415-5905; e-mail Carol.Gallagher@nrc.gov.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301-415-1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301-414-1101.

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

The NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

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

FOR FURTHER INFORMATION CONTACT: Neil Jensen, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-8480, e-mail, neil.jensen@nrc.gov.

Dated at Rockville, Maryland, this 21st day of November, 2008.

For the Nuclear Regulatory Commission.

Kenneth R. Hart,

Acting Secretary of the Commission.

[FR Doc. E8-28278 Filed 11-26-08; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-1207; Directorate Identifier 2007-NE-47-AD]

RIN 2120-AA64

Airworthiness Directives; Honeywell International Inc. ALF502L-2 and ALF502L-2C Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Honeywell International Inc. ALF502L-2 and ALF502L-2C turbofan engines with certain high-pressure compressor (HPC) first stage discs installed. This proposed AD would require performing a dimensional inspection to determine if excessive disc balance material was removed and a magnetic particle inspection if the disc passes the dimensional inspection. This proposed AD results from reports of discs found with excessive material removed from the balancing material of the disc. We are proposing this AD to prevent the discs from fracturing before reaching the currently published life limit. A disc fracture could result in an uncontained failure of the disc and damage to the airplane.

DATES: We must receive any comments on this proposed AD by January 27, 2009.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200

New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** (202) 493-2251.

You can get the service information identified in this proposed AD from Honeywell International Inc. 111 S. 34th Street, Phoenix, AZ 85034-2802, U.S.A.; telephone (800) 601-3099, Web site <http://portal.honeywell.com/wps/portal/aero>.

FOR FURTHER INFORMATION CONTACT:

Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712-4137; e-mail: robert.baitoo@faa.gov; telephone (562) 627-5245; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2008-1207; Directorate Identifier 2007-NE-47-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

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

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

Discussion

The HPC first stage disc has an area from which too much material could be removed during the balancing operation. We received reports of two HPC first stage discs with too much material removed from the balance material of the disc. Honeywell revised the engine overhaul manual to clarify the limits for removed balance material. Removing too much material from the balance area of the disc may result in a reduced fatigue life of the disc. This condition, if not corrected, could result in the disc fracturing before reaching its currently published life limit. A disc fracture could result in an uncontained failure of the disc and damage to the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of Honeywell Alert Service Bulletin (ASB) ALF/LF A72-1102, dated April 24, 2007, that describes procedures for inspecting the HPC first stage disc for missing balance material.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require at the next shop visit, but not later than 2,500 cycles-in-service after the effective date of this proposed AD, inspecting the HPC first stage disc for excessive missing balance material and a magnetic particle inspection.

Costs of Compliance

We estimate that this proposed AD would affect 148 engines installed on airplanes of U.S. registry. We also estimate that it would take about 3 work-hours per engine to perform the proposed actions, and that the average labor rate is \$80 per work-hour. Required parts would cost about \$21,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be \$3,143,520.

Authority for this Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed AD:

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Honeywell International Inc. (Formerly AlliedSignal and Lycoming): Docket No. FAA-2008-1207; Directorate Identifier 2007-NE-47-AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by January 27, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Honeywell International Inc. ALF502L-2 and ALF502L-2C turbofan engines with high pressure compressor (HPC) first stage discs, part numbers (P/Ns) 2-101-331-03, 2-101-331-04, and 2-101-331-10, installed. These engines are installed on, but not limited to, Bombardier CL-600-1A11 airplanes.

Unsafe Condition

(d) This AD results from reports of discs found with excessive material removed from the balancing material of the disc. We are issuing this AD to prevent the discs from fracturing before reaching the currently published life limit. A disc fracture could result in an uncontained failure of the disc and damage to the airplane.

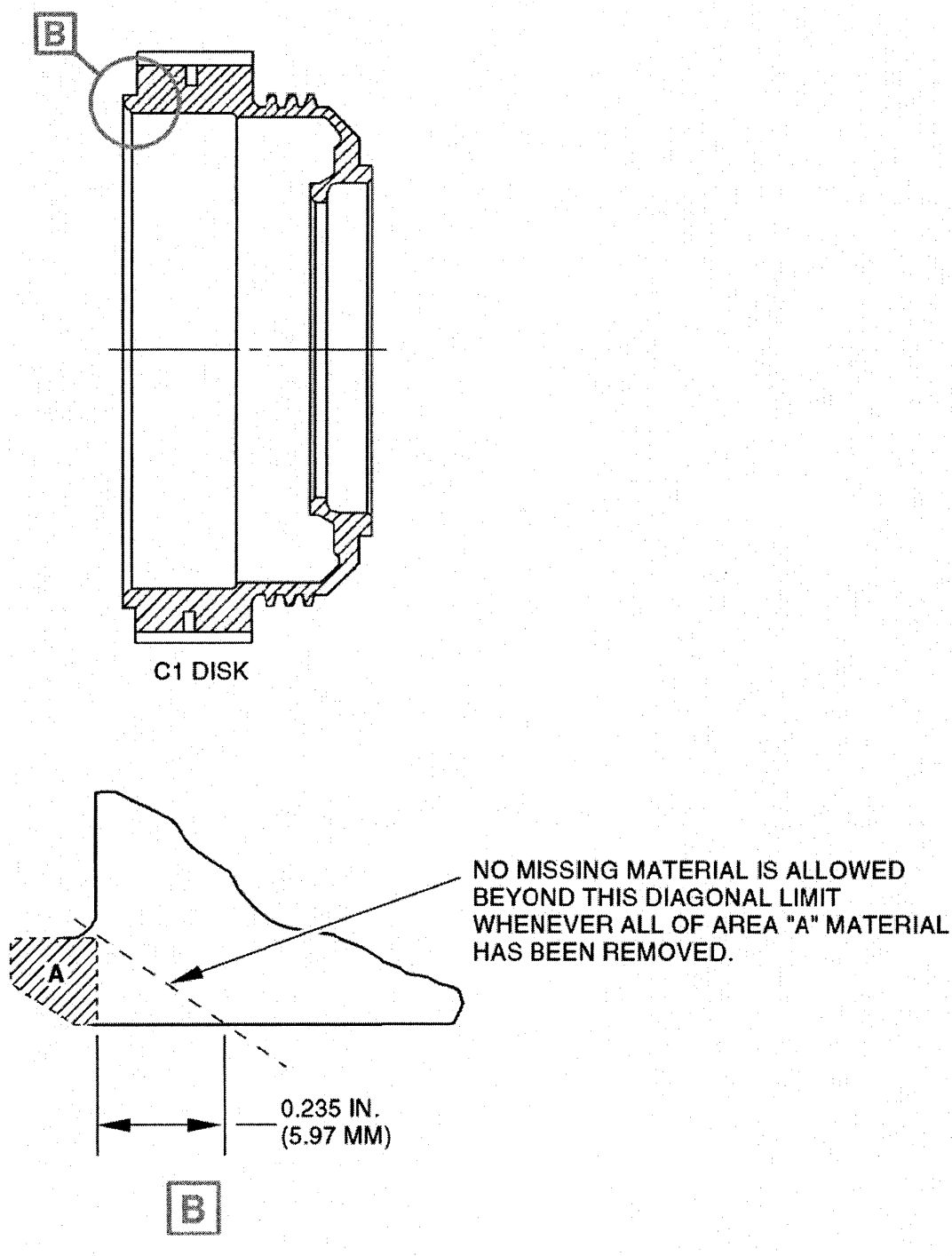
Compliance

(e) You are responsible for having the actions required by this AD performed at the next shop visit, but not later than 2,500 cycles-in-service after the effective date of this AD, unless the actions have already been done.

Visual Inspection

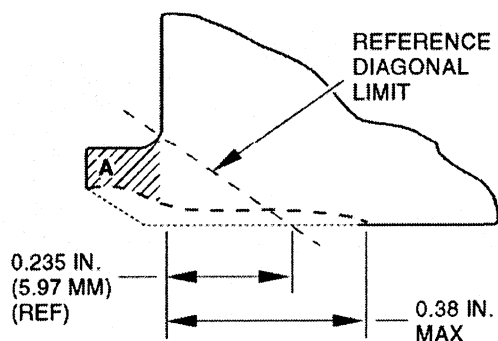
(f) For discs with 5,000 or more cycles-since-new on the effective date of this AD, perform a dimensional inspection of the HPC first stage disc to determine if excessive disc balance material was removed. See the following Figure 1 for limits.

BILLING CODE 4910-13-P

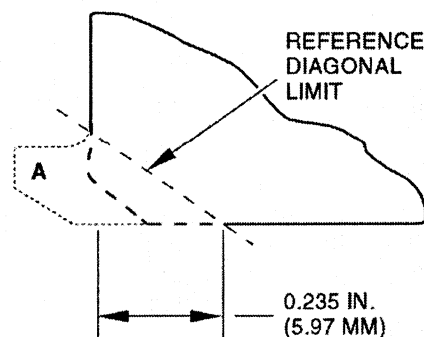


ID-191117

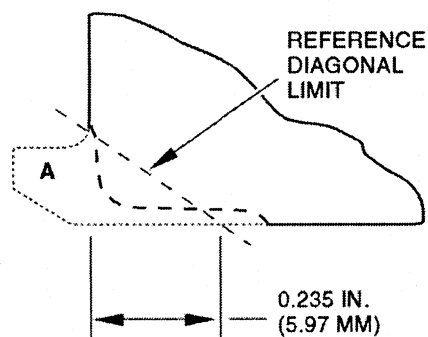
Limits for Removed Balance Material, Disc Forward Flange
Figure 1 (Sheet 1 of 2)

EXAMPLES OF ACCEPTABLE REMOVED MATERIAL CONDITION

Any remaining Area 'A' lip material is sufficient to permit axial material removal up to 0.38 inch (9.7 mm) limit. Surface shall have a smooth contour and 0.020 inch (0.51 mm) minimum blend radius.



Removal of all Area 'A' material is permitted when axial material removal is less than 0.235 inch (5.97 mm) diagonal limit. Surface shall have a smooth contour and 0.020 inch (0.51 mm) minimum blend radius.

EXAMPLE OF UNACCEPTABLE REMOVED MATERIAL CONDITION

No Area 'A' material remaining and 0.235 inch (5.97 mm) diagonal limit is exceeded.

ID-189762

Limits for Removed Balance Material, Disc Forward Flange
Figure 1 (Sheet 2 of 2)

BILLING CODE 4910-13-C

(g) Replace disc if excessive disc balance material was removed. See limits in Figure 1 of this AD.

(h) If removed balance material is acceptable, perform a magnetic particle inspection of the disc rim and slots for cracks using a 3 to 7 power magnification glass. The Engine Overhaul Manual, 72-34-11, Inspection/Check, contains information on the magnetic particle inspection.

(i) Replace disc if you find any cracks.

Alternative Methods of Compliance

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

Related Information

(k) Honeywell Alert Service Bulletin ALF/LF A72-1102, dated April 24, 2007, contains information that pertains to the subject of this AD.

(l) Contact Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712-4137; e-mail: robert.baitoo@faa.gov; telephone (562) 627-5245; fax (562) 627-5210, for more information about this AD.

Issued in Burlington, Massachusetts, on November 21, 2008.

Peter A. White,

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

[FR Doc. E8-28269 Filed 11-26-08; 8:45 am]

BILLING CODE 4910-13-P

FEDERAL TRADE COMMISSION**16 CFR Part 255****Guides Concerning the Use of Endorsements and Testimonials in Advertising**

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed changes to Guides. Request for public comments.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") is seeking public comment on proposed revisions to its Guides Concerning the Use of Endorsements and Testimonials in Advertising ("the Guides").

DATES: Written comments must be received by January 30, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form.

Comments should refer to “Endorsement Guides Review, Project No. P034520” 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 Commission 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-endorsements>) (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-endorsements>). If this Notice appears at (<https://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.

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).

A comment filed in paper form should include the “Endorsement Guides Review, Project No. P034520” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex S), 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.

The Federal Trade Commission Act (“FTC Act”) and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.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>).

FOR FURTHER INFORMATION CONTACT: Shira Modell, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C., 20580; (202) 326-3116.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. OVERVIEW OF THE CURRENT GUIDES

II. HISTORY OF THE GUIDES

III. DISCUSSION OF COMMENTS RECEIVED IN RESPONSE TO REGULATORY REVIEW NOTICE

IV. SECTION-BY-SECTION DESCRIPTION OF PROPOSED AMENDMENTS

V. PROPOSED REVISED ENDORSEMENT AND TESTIMONIAL GUIDES

VI. INVITATION TO COMMENT

I. OVERVIEW OF THE CURRENT GUIDES

The Guides, 16 C.F.R. Part 255, are designed to assist businesses and others in conforming their endorsement and testimonial advertising practices to the requirements of Section 5 of the FTC Act. Although the Guides interpret laws administered by the Commission, and thus are advisory in nature, proceedings to enforce the requirements of law as explained in the Guides can be brought under the FTC Act. In any such proceeding, the Commission would have the burden of proving that a particular use of an endorsement or testimonial was deceptive.

The Guides define both endorsements and testimonials broadly to mean any advertising message that consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser. 16 C.F.R. §§ 255.0(a) and (b). The Guides state that endorsements must reflect the honest opinions, findings, beliefs, or experience of the endorser. 16 C.F.R. § 255.1(a). Furthermore, endorsements may not contain any representations that would be deceptive, or could not be substantiated, if made directly by the advertiser. *Id.*

The Guides advise that an advertisement employing a consumer endorsement on a central or key attribute of a product will be interpreted as representing that the endorser’s experience is representative of what consumers will generally achieve. 16 C.F.R. § 255.2(a). If an advertiser does not have adequate substantiation that the endorser’s experience is representative, the advertisement should clearly and conspicuously disclose either what the generally expected performance would be in the depicted circumstances or the limited applicability of the endorser’s experience to what consumers may generally expect to achieve. *Id.*

The Guides define an expert endorser as someone who, as a result of experience, study, or training, possesses knowledge of a particular subject that is superior to that generally acquired by ordinary individuals. 16 C.F.R. § 255.0(d). An expert endorser’s qualifications must, in fact, give him or her the expertise that he or she is represented as possessing with respect to the endorsement. 16 C.F.R. § 255.3(a). Moreover, an expert endorsement must be supported by an actual exercise of expertise and the expert’s evaluation of the product must have been at least as extensive as someone with the same degree of expertise would normally

need to conduct in order to support the conclusions presented. 16 C.F.R. § 255.3(b).

Among other things, the Guides also state that:

(1) Advertisements presenting endorsements by what are represented to be “actual consumers” should utilize actual consumers, or clearly and conspicuously disclose that the persons are not actual consumers. 16 C.F.R. § 255.2(b).

(2) An organization’s endorsement must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization. 16 C.F.R. § 255.4.

(3) When there is a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (*i.e.*, the connection is not reasonably expected by the audience), such connection must be fully disclosed. 16 C.F.R. § 255.5.

II. HISTORY OF THE GUIDES

In December 1972, the Commission published for public comment proposed Guides Concerning the Use of Endorsements and Testimonials in Advertising, 37 Fed. Reg. 25548 (1972). Extensive comment was received from interested parties. On May 21, 1975, the Commission promulgated three sections of the 1972 proposal as final guidelines (16 C.F.R. §§ 255.0, 255.3, and 255.4) and republished three others, in modified form, for additional public comment. 40 Fed. Reg. 22127 (1975); 40 Fed. Reg. 22146 (1975). Public comment was received on the three re-proposed guidelines, as well as on one of the final guidelines. On January 18, 1980, the Commission promulgated three new sections as final guidelines (16 C.F.R. §§ 255.1, 255.2, and 255.5) and modified one example to one of the final guidelines adopted in May 1975 (16 C.F.R. § 255.0 Example 4). 45 Fed. Reg. 3870 (1980).

In January 2007, as part of its ongoing regulatory review process, the Commission published a **Federal Register** notice seeking comment on the overall costs, benefits, and regulatory and economic impact of its Guides Concerning the Use of Endorsements and Testimonials in Advertising. 72 Fed. Reg. 2214 (Jan. 18, 2007). The Commission simultaneously put on the public record and requested comment on two reports on consumer research regarding the messages conveyed by consumer endorsements, as well as several other endorsement-related issues, including the use of so-called “disclaimers of typicality” accompanying testimonials that do not

represent experiences consumers will generally achieve with the advertised product.² The first report, “The Effect of Consumer Testimonials and Disclosures of Ad Communication for a Dietary Supplement” (“the Endorsement Booklet Study”), was designed to examine whether consumer endorsements communicate product efficacy and typicality, and whether any of several prominent disclosures qualify or limit the claims conveyed by the ads. The second report, “Effects of Consumer Testimonials in Weight Loss, Dietary Supplement and Business Opportunity Advertisements” (“the Second Endorsement Study”), was designed to explore the communication of product efficacy and typicality by advertisements containing testimonials of individuals who claimed to have achieved specific (that is, numerically quantified) results with the advertised product or system. Those reports are discussed in Part IV, below.

The Commission received 22 comments in response to its regulatory review notice.³ Having considered those comments, as well as the staff’s consumer research, and its own extensive consumer protection experience, the Commission now proposes various amendments to the Guides and invites comments on these proposed changes.

III. DISCUSSION OF COMMENTS RECEIVED IN RESPONSE TO REGULATORY REVIEW NOTICE

A number of the comments specifically praised the current Guides

for striking an appropriate balance between protecting consumers and allowing advertisers to communicate creatively and effectively to potential customers.⁴ Several others also noted that the Guides are beneficial and should be retained;⁵ one commenter stated that Guides were needed even more today than when they were originally issued.⁶ One comment suggested that the current Guides are more restrictive than necessary to protect consumers.⁷

Most of the comments submitted in response to the January 2007 **Federal Register** notice, however, responded to specific questions the Commission posed concerning the provisions of the current Guides that address (1) the use of consumer endorsements reflecting experiences exceeding those that consumers can generally expect to achieve with the advertised product, or (2) the disclosure of material connections between advertisers and endorsers. Those comments are discussed in Part IV, below, in the context of the specific Guide provisions to which they relate.

In addition, a few comments addressed other issues. For example, several noted that advertisers have started using some new technologies to reach consumers in recent years.⁸ Two suggested that the Commission consider whether the Guides should be revised to deal with new types of advertising (*e.g.*, to include examples using email or the Internet).⁹ Another noted that unlike the case with traditional media, the marketer is not in complete control of the message when certain of these new technologies are used; for example, in word-of-mouth marketing, the marketer may initially share information with one consumer, but subsequent exchanges between that consumer and others are outside the marketer’s control.¹⁰ This commenter pointed out that the current Guides have one standard for both traditional advertising and non-traditional (unmeasured) marketing, despite “the vastly different levels of control that can be exercised by marketers using embedded advertising

² The reports are available on the Commission’s website, www.ftc.gov/opa/2007/01/fyi0707.shtm, or from the Commission’s Public Reference Office, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

³ Brittany Adams (“Adams”); American Association of Advertising Agencies/American Advertising Federation (“AAAA/AAF”); American Herbal Products Association (“AHPA”); Association of National Advertisers (“ANA”); Attorneys General of 33 States and Territories and Hawaii Office of Consumer Protection (“Attorneys General”); Stephen Calkins (“Calkins”); Center for Obesity Research and Education (“CORE”); Council of Better Business Bureaus, Inc. (“CBBB”); Electronic Retailing Association/Council for Responsible Nutrition (“ERA/CRN”); FreedomWorks; Jenny Craig, Inc. (“Jenny Craig”); Kelly Drye Collier Shannon (“Kelley Drye”); National Association of Consumer Agency Administrators (“NACAA”); Natural Products Association (“NPA”); NutriSystem, Inc. (“NutriSystem”); James Petkun (“Petkun”); Product Partners, LLC (“Product Partners”); Richard Pu (“Pu”); Jay Satz, Ph.D. (Vice President of Program and Product Development, NutriSystem, Inc.) (“Satz”); Senator Arlen Specter (“Specter”); Washington Legal Foundation (“WLF”); and Word of Mouth Marketing Association (“WOMMA”). With the exception of certain confidential materials submitted by NutriSystem, the comments are available online at (<http://www.ftc.gov/os/comments/endorsementguides/index.shtm>).

⁴ ANA, at 2, 6; AAAA/AAF, at 2; Specter, at 1; ERA/CRN, at 5-6.

⁵ Petkun, at 1; NACAA, at 1; Attorneys General, at 1; Jenny Craig, at 1; AHPA, at 3-5.

⁶ CBBB, at 2.

⁷ Kelley Drye, at 2.

⁸ Petkun, at 1-2; AHPA, at 6; WOMMA, at 4. *See also* Jenny Craig, at 1 (suggesting that the Commission focus its review of the Guides on how to contemporize them in light of new technologies and marketing practices).

⁹ AHPA, at 6-7; Jenny Craig, at 1.

¹⁰ WOMMA, at 5.

versus word of mouth and non-traditional (unmeasured) media.”¹¹

The Commission agrees that it would be useful to illustrate the application of the Guides’ long-established principles to new media. Although these fields are still evolving, the Commission is proposing to include in the Guides several new examples that address the issues of advertiser and endorser liability and disclosure of material connections in various high-tech contexts.¹²

IV. SECTION-BY-SECTION DISCUSSION OF PROPOSED REVISIONS TO GUIDES, COMMENTS RECEIVED IN RESPONSE TO JANUARY 2007 FEDERAL REGISTER NOTICE, AND REQUESTS FOR ADDITIONAL COMMENT

The Commission has concluded that the Guides should be retained, but that a number of revisions are appropriate. Many of the proposed changes are simply clarifications or additional examples of the principles embodied in the existing Guides. Others enunciate basic principles that are not expressly set forth in the current Guides, but have been established in Commission enforcement actions. Several represent substantive changes from the current Guides, based upon increased knowledge of how consumers view endorsements and taking into consideration the comments submitted in response to the January 2007 Regulatory Review notice.

The Commission seeks comments on these proposed revisions, which are discussed below by Section.¹³

A. Section 255.0—Definitions

The Guides currently begin with a definitions section, which the Commission proposes to expand to include an introductory subsection explaining the purpose of the Guides. This new Section 255.0(a) would note that the Guides are administrative interpretations of laws enforced by the

Commission and provide the basis for voluntary compliance with the law by advertisers and endorsers.¹⁴ It would also indicate that, although the Guides set forth the general principles that the Commission will apply in examining endorsements, the question of whether a particular endorsement or testimonial is deceptive will depend on the specific factual circumstances of the advertisement at issue. Other Commission guides begin with similar statements.¹⁵

Current Section 255.0(b) defines an endorsement as any advertising message that consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser. The Commission proposes revising that section to clarify that in determining whether statements in an ad constitute an endorsement, it does not matter whether the statements made by an endorser are identical to or different than those made by the sponsoring advertiser. Similarly, the Commission proposes a minor modification of Example 4 (deleting from the penultimate sentence the reference to the views of the sponsoring advertiser) to make it clear that the only relevant criterion in determining whether a statement is an endorsement is whether consumers believe it reflects the endorser’s views.

Example 1 to Section 255.0 currently provides one example of an endorsement and also illustrates the principle that an endorsement may not be presented out of context or reworded so as to distort the endorser’s opinion. The Commission proposes to add a cross-reference to Section 255.1(b), which states this principle explicitly.

The Commission proposes adding a new Example 6 to Section 255.0, to illustrate that the determination of whether a speaker’s statement is an endorsement depends solely on whether consumers believe that it represents the endorser’s own view. Specifically, the new example clarifies that whether the person making the statement is speaking from a script, or giving the endorsement in his or her words, is irrelevant to the determination.

The Commission also proposes adding a new Example 7 to Section 255.0, to illustrate that well-known persons can appear in advertising without being deemed endorsers.

B. Section 255.1—General Considerations

Section 255.1 sets forth principles that apply to endorsements generally (e.g., endorsements must reflect the honest opinions or experience of the endorser, and may not convey any representation that would be deceptive if made directly by the advertiser). The Commission proposes one significant revision to this section of the Guides, the addition of a new Section 255.1(d) explicitly recognizing two principles that the Commission’s law enforcement activities have already made clear. The first is that advertisers are subject to liability for false or unsubstantiated statements made through endorsements, or for failing to disclose material connections between themselves and their endorsers. The second is that endorsers may also be subject to liability for their statements. The Commission has brought law enforcement actions against both expert endorsers and well-known personalities (i.e., celebrities) who have acted as endorsers. E.g., *FTC v. National Urological Group, Inc.*, No. 04-CV-3294-CAP, 2008 U.S. Dist. LEXIS 44145, at *24-25 (N.D. Ga. June 4, 2008) (order granting FTC’s motion for summary judgment finds expert liable for deceptive endorsement); *Snore Formula, Inc.*, 136 F.T.C. 214 (2003) (consent order); *James L. McElhaney, M.D.*, 116 F.T.C. 1137 (1993) (consent order); *Leroy Gordon Cooper, Jr.*, 94 F.T.C. 674 (1979) (consent order); and *Cooga Mooga, Inc.*, 92 F.T.C. 310 (1978) (consent order). Two new examples illustrate situations in which the Commission could impose liability on expert and celebrity endorsers; both of these examples note that the advertiser is also liable for misrepresentations made through the endorsement. A third new example illustrates the potential liability of advertisers who use bloggers to promote their products and of the bloggers themselves.

The Commission also proposes two minor revisions to Section 255.1(a). First, to make it clear that the Guides cover the communication of both express and implied representations, the phrase “may not convey any express or implied representation” is being added to the second sentence of that provision (which currently states that endorsements may not contain any representations that would be deceptive if made directly by the advertiser). Second, an additional cross-reference is being added at the end of revised Section 255.1(a). Currently, the only cross-reference is to an example in Section 255.3, in which an endorsement by an expert testing organization is used

¹¹ *Id.* at 9.

¹² One comment said that the Guides should provide for a private cause of action and recovery of attorneys’ fees, so that the private bar would have an incentive to bring legal actions on behalf of consumers injured by noncompliant advertisers. *Pu*, at 1. As noted above, the Guides merely provide insight into how the Commission interprets existing laws, and do not, in and of themselves, create substantive law.

¹³ The Commission also intends to make a number of non-substantive changes to improve syntax or to update examples to reflect changes that have occurred over the past twenty-five years. For instance, in Example 2 to Section 255.1, the “executive secretary” is being changed to an “administrative assistant” and the product in question is being updated from an “electric typewriter” to a “computer keyboard.” Such changes are not discussed below.

¹⁴ Subsection (a), (c), and (d) of the current Guides would be redesignated as subsections (c), (d) and (e), respectively.

¹⁵ See, e.g., Guides for Private Vocational and Distance Education Schools, 16 C.F.R. § 254.0(b); Guides for the Use of Environmental Marketing Claims, 16 C.F.R. § 260.1.

to illustrate the principle that “a valid endorsement may constitute all or part of an advertiser’s substantiation.” As revised, the cross-references would refer to Sections 255.2(a) and (b) regarding the substantiation of claims conveyed by consumer endorsements, discussed below, as well as to Section 255.3.

C. Section 255.2—Consumer Endorsements

Section 255.2 of the Guides provides guidance specific to the use of consumer endorsements, commonly referred to as testimonials. The Commission proposes to add a new Section 255.2(a) to articulate several fundamental principles that are not expressly set forth in the current Guides, to modify the existing Section 255.2(a), and to delete the existing Section 255.2(c).

1. New Section 255.2(a)

The Commission’s proposed new Section 255.2(a) would state that an advertisement employing endorsements by one or more consumers about the performance of an advertised product or service will be interpreted as a representation that the product or service is effective for the purpose represented in the endorsement. Consumer endorsements convey not only that the advertised product or service worked for the consumers depicted in the advertisement, but also that it will work for others. This is the natural implication of an advertiser’s use of a consumer endorsement, and this view is supported by the consumer research conducted for the Commission. Specifically, in the Endorsement Booklet Study, between 50.0% and 75.0% of the respondents who were exposed to a promotional booklet with testimonials touting the advertised supplement’s use for breathing problems, low energy, and pain said that the booklet claimed or implied that the product was effective for reducing breathing problems, increasing energy levels, and relieving chronic or persistent pain. (See Table 2b of the Endorsement Booklet Study.)

New Section 255.2(a) also states that an advertiser who uses consumer endorsements must possess and rely upon adequate substantiation to support efficacy claims made through endorsements, just as the advertiser would be required to do if it had made the representation directly.¹⁶ It also

notes that consumer endorsements themselves do not constitute competent and reliable scientific evidence; anecdotal evidence about the individual experience of consumers is not sufficient to substantiate claims requiring scientific evidence.¹⁷ Even if those experiences are genuine, they may be attributable to a placebo effect or other factors unrelated to the advertised product or service.¹⁸

2. Renumbered Section 255.2(b)

Current Section 255.2(a), which would be renumbered Section 255.2(b), presently provides that an advertisement employing an endorsement reflecting the experience of an individual or a group of consumers on a central or key attribute of the product or service will be interpreted as representing that the endorser’s experience is representative of what consumers will generally achieve with the advertised product in actual, albeit variable, conditions of use. The newly available empirical evidence (as well as the Commission’s findings in several litigated cases¹⁹) supports the

policy with respect to advertising substantiation in the *FTC Policy Statement Regarding Advertising Substantiation*, 48 Fed. Reg. 10,471 (1984), reprinted in *Thompson Medical Co.*, 104 F.T.C. 648, 839 (1984), *aff’d*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987). The Commission’s determination of what constitutes a reasonable basis for objective product claims is determined by weighing a number of factors, including: (1) the type and specificity of the claim; (2) the type of product; (3) the consequences of a false claim; (4) the benefits of a truthful claim; (5) the ease and cost of developing substantiation for the claim; and (6) the level of substantiation experts in the field believe is reasonable. *Thompson Medical*, 104 F.T.C. at 839-40; *Pfizer, Inc.*, 81 F.T.C. 23, 64 (1972).

¹⁷ *FTC v. QT, Inc.*, No. 07-1662, 2008 U.S. App. LEXIS 33, at *6-7 (7th Cir. Jan. 3, 2008) (testimonials “are not a form of proof”); *Removatron Int’l Corp.*, 111 F.T.C. 206, 302 (1988), *aff’d*, *Removatron Int’l Corp. v. FTC*, 884 F.2d 1489 (1st Cir. 1989).

¹⁸ See *FTC v. Pantron I Corp.*, 33 F.3d 1088 (9th Cir. 1994), *cert. denied*, 514 U.S. 1083 (1995) (consumer satisfaction surveys and studies demonstrating the placebo effect are insufficient to meet “competent and reliable scientific evidence” standard); *QT*, 2008 U.S. App. LEXIS 33, at *6-7 (“A person who experiences a reduction in pain after donning the bracelet may have enjoyed the same reduction without it.”).

¹⁹ *Brake Guard Prods., Inc.*, 125 F.T.C. 138, 244 (1998) (testimonials used in advertising for aftermarket braking device claimed that reduced stopping distances and wheel lockup “were typically experienced by consumers”); *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 173 (1984) (testimonials touting fuel economy benefits achieved from automotive engine attachment conveyed that these experiences were typical); *Porter & Dietsch, Inc.*, 90 F.T.C. 770, 872-73 (1977) (testimonials from consumers who had lost substantial amounts of weight conveyed the message that extraordinarily large weight losses were typical or ordinary), *modified sub nom.*, *Porter Dietsch, Inc. v. FTC*, 605 F.2d 294 (7th Cir. 1979) (sustaining Commission’s findings that representations made in advertising were false, but modifying portions of remedial order).

Guides’ position that consumers interpret advertisements containing endorsements as representing that the results achieved by the endorsers are generally representative of what new users can expect. In the Endorsement Booklet Study, between 41.2% and 70.5% of respondents indicated that the dietary supplement in question would reduce breathing problems, increase energy levels, and relieve pain in at least half of the people who try it. (See Table 3b of the Endorsement Booklet Study.)

In the Second Endorsement Study, ads featuring individuals who claimed certain specifically quantified benefits from having used the advertised weight loss program, cholesterol lowering supplement, or business opportunity (e.g., “I am earning an extra \$2,200 a month”) conveyed to between 31.23% and 57.81% of respondents that at least half of new users would achieve results similar to the endorsers featured in the advertisements. (See Tables 2a and 5a of the Second Endorsement Study).²⁰ For example, 32.69% of consumers exposed to an ad in which endorsers claimed to have lost between 48 and 72 pounds thought the ad conveyed that at least half of new users would lose at least 48 pounds. (See Table 2a of the Second Endorsement Study.)

Nevertheless, the Commission believes that certain advertisements employing testimonials may not convey that the endorser’s experience is representative of what consumers will generally achieve with the advertised product or service. For example, if an advertisement for a casino features a \$100,000 slot machine winner, consumers likely understand from the nature of gambling that the winner’s experience is not generally representative of those who use the casino’s slot machines. The Commission therefore proposes to qualify the currently unequivocal language of renumbered Section 255.2(b) to state that “an advertisement employing an endorsement reflecting the experience of an individual or a group of

²⁰ As discussed below, several commenters criticized various aspects of the two staff research reports that the Commission placed on the public record in January 2007. One asserted that the data contained in those reports did not account for “yeasaying,” the tendency of some consumers to answer questions affirmatively, regardless of what an ad actually said. In fact, both surveys did have test conditions that accounted for yeasaying and prior beliefs, and the results of those conditions were included in the staff’s reports. However, in the interest of greater clarity, the Commission is placing on the public record in connection with the Second Endorsement Study new Tables 1a, 2a, 4a, and 5a, which expressly account for the responses obtained for these conditions by adjusting the data obtained from the other test cells.

¹⁶ New Section 255.2(a) thus elaborates on the general principle in current Section 255.1, which states that endorsements may not contain representations that would be deceptive if made directly by the advertiser.

An advertiser must have a “reasonable basis” for efficacy claims. The Commission articulated its

consumers on a central or key attribute of the product or service will *likely* be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product in actual, albeit variable, conditions of use" (emphasis added).

As currently written, renumbered Section 255.2(b) also provides that in the event an advertiser does not have adequate substantiation that the experience described by the endorser is representative of what consumers will generally achieve, the advertiser can either: (1) clearly and conspicuously disclose what the generally expected performance would be in the depicted circumstances, or (2) disclose the limited applicability of the endorser's experience to what consumers may generally expect to achieve, *i.e.*, that the depicted results are not representative. The Commission has long been concerned about potential deception arising from the use of the second category of disclosures, which are often referred to as "disclaimers of typicality."

In its 1975 **Federal Register** notice promulgating several sections of the Guides in final form and republishing several others (including this section) for comment, the Commission stated that consumers view endorsements about product performance as conveying a typicality claim under the depicted circumstances and that if the represented performance was not typical, the ad should clearly and conspicuously disclose what the typical or ordinary performance would be in the depicted circumstances. 40 Fed. Reg. 22146, 22147 (May 21, 1975). Five years later, when it adopted current Section 255.2(a), the Commission stated that it strongly favored consumer endorsements depicting typical experiences but recognized that endorsements depicting non-typical experiences might not be deceptive if they were accompanied by adequate disclosures. 45 Fed. Reg. 3870, 3871 (Jan. 18, 1980). The Commission went on to say that "[g]enerally, a disclaimer alone probably will not be considered sufficient to dispel the representation that the experience is typical, but . . . the Commission is not prepared to hold that in every instance a bare disclaimer would be inadequate . . ." *Id.* Accordingly, although reliance on a disclaimer would not be a *per se* violation of Section 5 of the FTC Act, the net effect of an endorsement with a disclaimer would be "studied to determine if the ad has the capacity to deceive." *Id.* However, notwithstanding its concern about advertisers attempting

to use disclosures to disclaim typicality messages conveyed by consumer endorsements, the Commission ultimately decided to provide a safe harbor for such disclaimers.

Since that time, the Commission has brought a number of enforcement actions against marketers for deceptive advertising containing consumer endorsements. Many of these endorsements have been accompanied by statements that purport to inform consumers that the experiences of the featured endorsers are not representative of what consumers can expect. The disclosures are often buried in fine print footnotes or flashed as video superscripts too quickly for consumers to read them. Not only are the disclosures far from clear and conspicuous, but usually they merely say "results not typical" or "results may vary" or similar statements that do little to inform consumers how rare or extreme the featured results are.

The results of the staff's Endorsement Booklet Study and the Second Endorsement Study further confirm that the concerns expressed by the Commission in 1980 about advertisers attempting to use disclosures to disclaim typicality messages conveyed by consumer endorsements were well-founded. In the Endorsement Booklet Study, despite the presence of strongly worded, highly prominent disclaimers of typicality, between 44.1% and 70.5% of respondents indicated that the dietary supplement in question would reduce breathing problems, increase energy levels, and relieve pain in at least half of the people who try it. (See Table 3b of the Endorsement Booklet Study).

In the Second Endorsement Study, consumer testimonials communicated to a substantial number of respondents that the results claimed by the testimonialists were generally representative of the results that other consumers could expect. Even with the disclosures "Results not typical" and "These testimonials are based on the experiences of a few people. You are not likely to have similar results," between 22.58% and 50.75% of respondents thought that at least half of new users would achieve results similar to those experienced by the endorsers featured in the advertisements. (See Tables 2 and 5 of the Second Endorsement Study.)²¹

²¹ The 22.58% figure is the percentage of respondents who, after seeing testimonialists tout 48-72 pound losses in an ad with the "Experiences of a few" disclaimer, said that at least half of new users would lose at least 48 pounds. (See Table 2.) The 50.75% figure is the percentage who, after seeing testimonialists say their cholesterol dropped 30-90 points, said that at least half of new users of the dietary supplement would experience drops of

By contrast, the disclosure of actual expected results significantly reduced the communication that the experiences depicted are generally representative. (See Table 2 of the Second Endorsement Study.) This was particularly true when there was a large difference between the amounts claimed by the testimonialists and the disclosed actual expected results. Of the consumers exposed to an ad in which endorsers claimed to have lost between 48 and 72 pounds—but which clearly disclosed that the average user loses 10 pounds—only 3.23% thought the ad conveyed that at least half of new users would lose at least 48 pounds. This figure is almost identical to the 3.13% who—after seeing an ad with no numbers—thought that the average user would lose at least 48 pounds.

In light of these studies and its own history of law enforcement challenges to misleading testimonials, the Commission asked in January 2007 for comment on: (1) the potential effects on advertisers and consumers if the Guides called for clear and conspicuous disclosure of generally expected results whenever the testimonial is not generally representative of what consumers can generally achieve with the advertised product—*i.e.*, if disclosing the limited applicability of the depicted results no longer provided a "safe harbor" for the use of testimonials relating non-typical experiences; and (2) what information, other than what is required to substantiate an efficacy or performance claim, would be required for an advertiser to determine generally expected results, and how difficult it would be for advertisers to make this determination. Most of the comments the Commission received focused specifically on these issues.

a. Comments supporting revision of the Guides' provisions concerning the disclaimer of typicality

Several comments stated that advertisers should not be able to use nonrepresentative testimonials and merely accompany them with disclaimers stating that those results were not typical.²² One said that the

at least 30 points, despite a "Results not typical" disclaimer. (See Table 5.) Subtracting from these figures the results of their respective "no numbers" conditions (3.13% and 0%)—in which consumers saw ads featuring multiple testimonials that touted the product but did not provide any numerical statement of the results achieved by the testimonialists—yields adjusted figures of 19.45% and 50.75%. As noted below, these "no numbers" conditions capture the effects of both yeasaying and prior beliefs.

²² Calkins, at 1; CBBB, at 2-3; Adams, at 1.

current Guides invite weight-loss testimonials that advertisers know to be false and deceptive, simply by pairing the claim with a “results not typical” disclaimer.²³

Two other commenters stated that the Guides should require that endorsements reflect typical consumer experience.²⁴ One of them opined that even requiring that atypical testimonials include disclosure of typical results would not eliminate deception.²⁵ The other stated that if the Guides do continue to permit the use of nonrepresentative testimonials, the disclaimer of typicality should appear through the entire testimonial *and* be accompanied by disclosure of typical results.²⁶ Another commenter stated that consumer testimonials should be accompanied by a clear and conspicuous disclosure describing the typical results obtained, or at least that the Guides should ensure that the “results not typical” disclosure actually changes the net impression of the advertisement.²⁷

b. Comments opposing revision of the Guide provisions concerning the disclaimer of typicality

Other commenters stated that the Guides should continue to allow nonrepresentative testimonials to be accompanied by disclaimers of typicality, and should not require disclosure of generally expected results. Virtually all of the comments urging the Commission to retain Section 255.2(a) of the Guides in its current form made one or more of the following arguments:

i. “Aspirational” testimonials serve an important purpose, and both advertisers and consumers would be adversely affected if disclosure of generally expected results were required.

(a) “Aspirational” testimonials motivate consumers without misleading them.

Several of the commenters asserted that in the weight-loss field, “aspirational” or “inspirational” testimonials that truthfully relate the experiences of consumers who have successfully lost weight using the advertised product or program are

important advertising tools.²⁸ Even though those testimonials might not reflect what consumers typically experience with that particular product or program, they remind customers of their own fitness goals and motivate them to try to achieve similar results by starting responsible weight loss programs.²⁹

According to two commenters who stressed the importance of “aspirational” testimonials in weight-loss advertising, consumers understand that the weight loss achieved by the testimonialist does not necessarily reflect the experience they will have using the product or program.³⁰ As one put it, the “variables that affect the rate and extent to which a person can lose weight are so varied and well-known to the viewer . . . that it is difficult to believe that consumers are not capable of understanding that their result may be different from those that are shown in advertising depending on multiple factors, but that success nonetheless, is absolutely achievable.”³¹ Thus, a 150-pound person who sees a testimonial from a woman who lost 100 pounds knows she will not lose 100 pounds but that she could lose 20-30 pounds; conversely, a 400 pound person who sees the same ad “could equally see that there is hope for them to lose over 200 pounds.”³²

The Commission agrees that “aspirational” testimonials are commonly used in the marketing of weight-loss products and programs, and that they may induce consumers to purchase or enroll in these products or programs.³³ However, the fact that a

²⁸ Product Partners, at 2-3, 5; Jenny Craig, at 2; CORE, at 3; NutriSystem, at 26.

²⁹ Product Partners, at 2, 5; Jenny Craig, at 2; CORE, at 3.

³⁰ Product Partners, at 3; Jenny Craig, at 2. However, neither Product Partners nor Jenny Craig provided quantitative evidence supporting their view that consumers are not misled by “aspirational” testimonials.

³¹ Product Partners, at 3.

³² *Id.* at 3.

³³ For a discussion of consumer testimonials and disclaimers in the context of weight-loss advertising, see *Weight-Loss Advertising: An Analysis of Current Trends, A Federal Trade Commission Staff Report* (Sept. 2002) (available at www.ftc.gov/bcp/reports/weightloss.pdf). The staff's report highlights the troubling use of consumer testimonials claiming extreme weight loss in weight-loss advertising, a particular concern given the apparent prevalence of weight-loss fraud.

In October 2007, the Commission issued a report on consumer fraud in the United States. The survey found that more consumers were victims of fraudulent weight-loss products than of any of the other specific frauds covered by the survey. For purposes of the study, weight-loss products included nonprescription drugs, dietary supplements, skin patches, creams, wraps, or earrings that were promoted as making it easy for consumers to lose a substantial amount of weight

testimonial is truthful or is being used to promote a product or program that advocates responsible lifestyle changes (*i.e.*, reduced caloric intake and increased caloric expenditure) does not necessarily prevent it from conveying a misleading message to consumers. If consumers are deciding to purchase a product or enroll in a program based on advertising that conveys to them that they are likely to achieve results similar to the testimonialists, and the advertiser lacks substantiation for that representation, then those consumers are being misled.

Moreover, as the Commission has stated, “An interpretation [of an advertisement] may be reasonable even though it is not shared by a majority of consumers in the relevant class, or by particularly sophisticated consumers. A material practice that misleads a significant minority of reasonable consumers is deceptive.”³⁴ As with all advertising, the fundamental question to be answered is whether, taken in its entirety,³⁵ an advertisement that uses testimonials is likely to convey to reasonable consumers a message that is false or for which the advertiser does not have substantiation. The substantiation requirements for advertisements that convey performance claims are the same, whether the claim is made with or without the use of testimonials. Advertisers cannot use testimonials to convey claims they could not make through other means.

(b) Requiring disclosure of the results consumers generally achieve with the advertised product or program would impose a substantial burden on advertisers.

Several commenters stated that determining generally representative results would be very difficult for certain advertisers. According to some commenters, in the weight-loss field, for example, determining generally representative results would necessitate computations across a diverse customer base (men, women, young, old, obese, and non-obese), a difficult and costly endeavor that would require ongoing monitoring of customers' progress and

or allowing them to lose weight without diet or exercise. Federal Trade Commission, *Consumer Fraud in the United States: The Second FTC Survey* at 15, S-1 (Oct. 2007 staff report) (available at www.ftc.gov/opa/2007/10/fraud.pdf).

³⁴ FTC Policy Statement on Deception, *appended to Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174, 177 n.20 (1984) (citation omitted) (hereafter “Deception Policy Statement”).

³⁵ “[I]n advertising the Commission will examine ‘the entire mosaic, rather than each tile separately.’” *Id.* at 179 (quoting *FTC v. Sterling Drug*, 317 F.2d 669, 674 (2d Cir. 1963)).

²³ Calkins, at 1.

²⁴ NACAA, at 2; Attorneys General, at 3.

²⁵ Attorneys General, at 3.

²⁶ NACAA, at 2.

²⁷ CBBB, at 3 (noting that the BBBs receive thousands of complaints against companies that rely heavily on the use of nonrepresentative consumer testimonials, and that, in the BBB's experience, consumers frequently believe they will achieve similar results despite the presence of “results not typical” disclaimers).

frequent updating of calculations.³⁶ One commenter stated that it was impossible for an advertiser whose weight-loss program promoted both exercise and diet to know what is typical.³⁷ Another stated that when the effectiveness of the products depends on variables associated with individual use, typicality either cannot be shown or shown only with great difficulty so that advertisers in these businesses would not be able to use testimonials, even though advertisers in other fields would be able to continue doing so.³⁸

One commenter suggested that a disclosure requirement would incorrectly assume that all types of claims can be measured by generally expected results, even though preference claims or personal experience claims for certain products—such as video games, movies, and restaurants—are not susceptible to such measurements.³⁹ If the Guides called for non-representative testimonials to be accompanied by disclosure of generally expected results, these advertisers would have to have studies showing the likeability of their products before they could use endorsements; as a result, many would stop using testimonials.⁴⁰ This commenter also opined that such a change would mean that advertisements using testimonials would be subject to stricter substantiation requirements than advertisements making the same claim without the use of testimonials.⁴¹

Several commenters also suggested that requiring disclosure of generally expected results could create competitive disadvantages for certain businesses, thereby upsetting the level playing field that exists under the current Guides for, among others, new businesses attempting to compete with established enterprises.⁴² Others stated

that the burden of any new disclosure requirements would, ironically, fall on marketers of responsible weight loss programs (those complying with government recommendations of decreased caloric intake and increased physical activity) because they would expend resources to comply with the requirements, while marketers of pills and supplements with no scientific support would ignore those requirements or manipulate their data to produce fictitious averages.⁴³

At the outset, the Commission notes that such a change in the Guides would not mean that advertising using testimonials would be subject to stricter legal standards than other advertising—to the contrary, it would merely eliminate a safe harbor that has allowed advertisers to avoid the general requirement that they be able to substantiate all material claims conveyed by their advertising to reasonable consumers.

The Commission does recognize that a revision of renumbered Section 255.2(b) calling for non-typical testimonials to be accompanied by disclosure of the results consumers generally achieve with the advertised product would increase costs for those advertisers who have not previously tracked consumers' experiences with their products, and could present an impediment to the use of such testimonials by certain advertisers. The commenters, however, may be overestimating those costs. In the vast majority of cases—particularly those for legitimate products and programs whose efficacy has already been demonstrated by competent and reliable scientific evidence—that information is likely to be present.

The Commission also believes that, for most products, it is possible to devise a methodologically sound means of determining the generally expected

results.⁴⁴ Moreover, other alternatives may be available. For example, an advertiser may use testimonials from a defined subset of users for which it *can* determine the typical results.⁴⁵ Or, given the Commission's proposal to revise the Guides so that they no longer provide unequivocally that testimonials will convey typicality claims, the advertiser could write its ad in such a way that consumers would not take away the message that they can expect to achieve the same results as the testimonialist.⁴⁶

Moreover, the Commission does not assume that the use of testimonials necessarily gives rise to typicality messages, and thus to a need for disclosures, regardless of the nature of the product. Advertisements that use testimonials to promote products for which consumers' reactions are inherently subjective and their endorsements thus merely statements of personal opinion (e.g., restaurants or games) are less likely to convey typicality messages than ads using testimonials to make objective, quantifiable claims (e.g., pounds lost, money saved).⁴⁷ Indeed, Section 255.2(a) of the Guides speaks of “what consumers will generally achieve with the advertised product in actual, albeit variable, conditions of use.”⁴⁸ The concept of using a product to achieve certain results implies a factual scenario very different from testimonials expressing opinions about a particular book or movie. Accordingly, unless an advertisement made a claim such as “preferred 2-1 over the best-selling video game,” the advertiser would not

³⁶ NutriSystem, at 26-27; CORE, at 3 (noting that there is no “average” consumer); Satz at 2, 11; Kelley Drye, at 17 (practical result of such a requirement would be de facto prohibition on use of testimonials).

³⁷ Product Partners, at 5.

³⁸ ERA/CRN, at 10 and 12 (marketers of dietary supplements would face substantial hurdles in substantiating typicality of health or safety claims made by consumer testimonials).

³⁹ AAAA/AAF, at 11.

⁴⁰ *Id.* at 11-12 (also noting that new requirements might cause other advertisers to stop using testimonials, too). See also ANA, at 10 (advertisers would not be able to use testimonials to make claims about products that rely on subjective variables, because they would not be able to adequately determine typical experience); AHPA, at 10-11 (some advertisers might cease using endorsements if unable or unwilling to afford the cost of measuring generally expected performance).

⁴¹ AAF/AAAA, at 12.

⁴² ERA/CRN, at 9-12 (new advertisers would be placed on unequal footing with established competitors because they would have to establish

baseline results before they would be able to determine typicality; also, advertisers who have evidence of a product's efficacy but not of typicality would not be able to use testimonials, even though a competitor who has typicality substantiation could). See also AHPA, at 10-11 (requiring disclosure of generally expected results would increase costs for advertisers who do not already have substantiation for claims made in endorsements; as a result, it might reduce use of endorsements if advertisers are unwilling or unable to pay the cost of measuring generally expected results).

⁴³ NutriSystem, at 27-28; Freedomworks, at 2-3 (“one-size-fits-all disclaimer” would create significant burdens for legitimate advertisers who would abide by the Guides, while unscrupulous operators would disregard them); Satz, at 10 (advertisers who are already making unsubstantiated weight-loss claims will not comply with Guide provisions calling for disclosure of additional information).

⁴⁴ As noted below, the Commission is specifically seeking comment on whether there are product categories for which such a change in the Guides would prevent advertisers from using endorsements in advertising even though the advertiser believes that the endorsers' experiences are or likely are generally representative of what consumers can expect to achieve with the product.

⁴⁵ For example, an advertisement depicting the atypical results of women who used a program for a year could clearly and conspicuously disclose the average results of women who remained in the program for a year.

⁴⁶ The Commission is proposing to include such an example in the revised Guides. See Section 255.2, Example 4, below.

⁴⁷ See Deception Policy Statement, 103 F.T.C. at 181 (“Certain practices . . . are unlikely to deceive consumers acting reasonably. Thus, the Commission generally will not bring advertising cases based on subjective claims (taste, feel, appearance, smell) or on correctly stated opinion claims if consumers understand the source and limitations of the opinion.”) (footnote omitted).

⁴⁸ When the Commission first proposed Section 255.2 in 1975, it noted that Section 255.2(a) “recites the general principle that endorsements reflecting the experience of an individual consumer will be interpreted as representing the typical *performance* of the product under like circumstances.” 40 Fed. Reg. at 22147 (emphasis added).

need a likeability study before using endorsements in which consumers stated how much they enjoyed the game.⁴⁹

Although requiring disclosure of generally expected results might impede the ability of newly established companies to use testimonials, such an outcome would not necessarily be inappropriate. Businesses are entitled to compete based on truthful, nonmisleading advertising claims, but they are not entitled to use techniques that mislead consumers. If a company does not have adequate substantiation for an ad that said "you will lose 20 pounds in 10 weeks using our product," it cannot have a testimonialist convey the same message in an advertisement that merely includes a small disclaimer that says "results not typical." Until such time as it has an adequate data to determine what results consumers can expect from its product, a company might have to tout other aspects of its program (e.g., that it provides easy-to-follow menus with inexpensive, low-calorie, pre-made food). Moreover, it is likely that in most instances, the evidence substantiating the efficacy claim will provide sufficiently meaningful information to establish the parameters of the generally expected results. The Commission is also mindful that marketers of unproven, "miracle in a bottle" weight-loss products might either ignore revised Guides or fabricate exaggerated data for use in disclosures accompanying their testimonials, thereby putting marketers of legitimate weight-loss programs at a competitive disadvantage. Advertising by these marketers would likely attract the Commission's attention, however, prompting enforcement actions to enjoin these practices. Moreover, as a matter of policy, this argument could not justify allowing a safe harbor for claims the Commission had determined were deceptive. If consumers are being misled by the widespread use of inadequately qualified, non-typical testimonials, the fact that some scofflaws will continue trying to defraud consumers does not outweigh the considerations in favor of revising the Guides.

(c) Even if advertisers could determine the results consumers generally achieve with the advertised product or program, disclosing those results would confuse consumers.

Several commenters asserted that even if advertisers of weight-loss

programs attempted to comply with a new requirement to disclose generally expected results, disclosure of the resulting "average" weight loss results would not only be confusing to consumers—because of the amount of information advertisers would have to provide in order to enable them to interpret those averages—but could also discourage them from even starting a weight-loss program that might be the first step to a healthier lifestyle.⁵⁰

The commenters did not submit any empirical evidence supporting their contentions that disclosure of generally expected results would be confusing to consumers, and would even deter them from starting a new weight loss program. Absent such evidence, the Commission doubts that disclosure of average weight-loss results—whether presented separately by gender or simply as a single figure⁵¹—would be less confusing to consumers than the information they currently receive: data from statistical outliers with no indication as to what most consumers achieve.⁵² It may also be that insofar as the current Guides provide no incentive for a company to track and analyze consumers' success (or lack thereof) with its product or program, they actually decrease the amount of useful information that could be made available to consumers.

Turning to the commenters' contention that such a change in the Guides would discourage consumers from even attempting to lose weight, the Commission notes two points. First, no commenters submitted empirical evidence that "aspirational" testimonials actually benefit consumers. Indeed, it seems just as likely that consumers induced into buying a weight-loss product or enrolling in a program based on what are, in effect,

⁵⁰ CORE, at 3-4 (averages are inherently misleading; consumers may be discouraged from doing anything about their weight); Satz, at 10-11 (averages would be misleading and discouraging); Product Partners, at 4 (a consumer who needed to lose 75 pounds might not bother starting a weight-loss program if ads for that program disclosed that the average consumer lost only 30 pounds). *See also* NutriSystem, at 26-27 (averages would not be useful because consumers' needs and objectives are so disparate); CORE, at 3 (companies would have to interpret so much data to accurately interpret averages that FTC's efforts to make claims easy to understand would be undermined); Jenny Craig, at 2 (consumers will be deluged with confusing data of limited utility).

⁵¹ For example, a disclosure might state "the average man loses 2 pounds per week on our program; the average woman loses 1 pound per week" or "the average person loses between 1 and 2 pounds per week."

⁵² The Commission notes in this regard that consumers did not appear to be confused by disclosure of average weight loss results in the Second Endorsement Study.

statistical outliers, may be more easily frustrated by their lack of comparable success—and give up sooner—than consumers who have realistic expectations based on accurate information. Second, although the commenters simply assume that advertising using non-typical testimonials would not be "aspirational" if the ads disclosed the generally expected results, there is no apparent reason why consumers might not think they can do better than the average. For example, an advertisement that features highly successful testimonialists but discloses the results consumers generally achieve could provide positive motivation to consumers by conveying to them that they can expect to lose about 30 pounds on that program over six months, but that if they are conscientious and stay on the program longer than the average consumer, they might even lose 75 pounds—like the testimonialist.

ii. Rather than change the Guides, the FTC should continue bringing law enforcement actions to stop deceptive advertising using testimonials. Alternatively, the FTC should exempt advertisers of proven weight-loss products and programs from having to disclose generally expected results when they use nonrepresentative testimonials.

A number of commenters stated that the Commission has successfully used post-market law enforcement actions to address deceptive advertising, and should continue to do so, rather than revise the Guides to impose disclosure requirements that affect all advertisers and may chill dissemination of helpful information.⁵³ One specifically noted that in the last five years, the FTC has created an enforcement climate (including its identification of "Red Flag" claims and issuance in January 2007 of four cases challenging allegedly deceptive weight-loss claims) that should provide a powerful deterrent against deceptive weight-loss advertising.⁵⁴ Another urged the

⁵³ Product Partners, at 2; Jenny Craig, at 2-3; ERA/CRN, at 6-7; AAF/AAAA, at 5-8 (noting also enforcement of the principles embodied in the Guides by the States and by private litigants, as well as industry self-regulatory programs, and suggesting that revision of the Guides would require self-regulatory entities to revise their own standards); ANA, at 7 (noting enforcement actions by FTC and other authorities challenging deceptive testimonials); CORE, at 4-5; Satz, at 8-10. *See also* Specter, at 2; Freedomworks, at 1-3; NutriSystem at 15, 29 (urging Commission not to subject marketers of weight-loss products and programs to additional disclosure requirements).

⁵⁴ NutriSystem, at 17-19. The staff's 2003 "Red Flags" guide identified seven common weight-loss claims made for products available over-the-counter

⁴⁹ If there were a financial or other relationship between the advertiser and the endorser that would affect the credibility of the endorsement, that relationship would have to be disclosed under Section 255.5 of the Guides.

Commission to continue using its Red Flags guide and other means to pursue deceptive weight-loss advertising, rather than change the Guides.⁵⁵ One noted that the Commission has filed comments with the FDA stressing both the value of commercial speech that gives consumers access to useful information and the advantages of the Commission's post-market law enforcement approach over the use of pre-market regulation of commercial speech.⁵⁶

Several of these commenters also asserted that there are important differences between weight-loss products and programs that are based on recognized principles of reduced calorie consumption and increased energy expenditure, on the one hand, and unsubstantiated "miracle in a bottle" products that are not based on science, on the other, and that if the Commission does decide to revise Section 255.2(a) (notwithstanding their arguments to the contrary), it should distinguish between the two.⁵⁷ According to these commenters, weight-loss programs based on reduced caloric intake and increased energy expenditure present no risk to consumers, nor does advertising for these programs that contains truthful testimonials.⁵⁸ Accordingly, these commenters urge, if the Commission does revise the Guides to require disclosure of typical results, it should exempt efficacious meal replacement programs that conform to government recommendations for responsible weight loss.⁵⁹

Contrary to the views expressed by several commenters, revising the Guides to state that non-typical testimonials should be accompanied by clear and conspicuous disclosure of generally expected results would not represent a departure from the agency's traditional use of post-market law enforcement actions. As noted above, the Guides merely set forth the general principles that the Commission will apply in examining endorsements within the

confines of its traditional Section 5 authority; they do not provide an independent source of legal authority. Thus, even if the Commission were to revise the Guides with respect to the use of non-typical testimonials 255.2(a), it would continue to enforce Section 5 by means of post-market law enforcement actions, with the question in each case being whether a particular advertisement conveyed a false or unsubstantiated message to consumers in violation of Section 5. Nor is there any reason to expect that the Red Flags guides would not continue to be used in evaluating cases for investigation and enforcement action.

Finally, it would not be appropriate to exempt the marketers of certain kinds of weight-loss products and programs from Section 255.2(a) of the Guides. As noted above, the purpose of the Guides is to assist businesses in conforming their advertising to the requirements of Section 5 of the FTC Act. Consumers can be deceived by an advertisement even for a "legitimate" weight-loss program, if the ad conveys that the testimonialist's experience is representative of what consumers can generally expect, and the advertiser cannot substantiate that claim.

iii. The Commission's consumer survey evidence does not provide a reliable basis for such a change in the Guides.

A number of commenters asserted that the staff's two consumer research reports do not provide a reliable basis for the potential revision about which the Commission inquired. Some comments simply raised concerns about specific elements of the design or analysis of the studies; one provided a report summarizing the proceedings of two focus groups it had sponsored; and another included two reports by a marketing professor raising a number of issues concerning the studies.

Specifically, some of the commenters suggested that the design of the studies (e.g., testing only four print ads, three of which were for dietary supplements or weight-loss programs) and the demographic breakdown of the consumers who participated (80% of the respondents in the first study were over age 60) was such that their results cannot be extrapolated to other media or products.⁶⁰ Others questioned the statistical power of the studies, and asked the Commission to submit them to outside experts for review to determine whether they have utility in the Commission's review of the Guides;⁶¹ suggested that the studies did

not discern what the language contained in the ads actually conveyed to consumers, but only what consumers remembered after having previously read the ads;⁶² or suggested that the claims used in both surveys were the kind that the Commission has warned consumers to be suspicious about—i.e., touting "secret ingredients" and promising "amazing results"—rather than more moderated and scientifically supported testimonials, and that somewhat older respondents in the Endorsement Booklet Study might not have access to information on the Internet that can help consumers in choosing healthcare products.⁶³

The Commission acknowledges that the staff's research did not attempt to determine what messages consumers take away from testimonials and disclaimers in all media and for all products. The Commission is not aware of any reason to expect that the results would be different with other media or products, however; nor did the commenters provide any empirical evidence supporting that proposition.⁶⁴ Furthermore, with respect to the statistical power of the Endorsement Booklet Study, it is correct that the treatment cells used in that study were smaller than those used in the Second Endorsement Study. However, the communication of typicality was so high in all of the cells in the Endorsement Booklet Study that it is reasonable to conclude that the disclaimers were having no practical effect. Similarly, although the respondents in the Endorsement Booklet Study were somewhat older than the average population (because of the intended audience for the advertising at issue in the law enforcement investigation that prompted this research), the results are consistent with those seen in the Second Endorsement study and thus support those conclusions.

According to the commenter that sponsored its own focus groups, the FTC's studies do not adequately illustrate the complexity of consumer perception and understanding of testimonials.⁶⁵ In contrast, this commenter stated, the focus groups showed that consumers understand that testimonials relate individual experiences of satisfied customers

(including nonprescription drugs, dietary supplements, creams, wraps, devices, and patches) that were scientifically infeasible at that time, and that remain scientifically infeasible. The guide is an educational brochure intended to assist the media in identifying deceptive weight-loss claims prior to publication.

⁵⁵ Jenny Craig, at 2.

⁵⁶ NutriSystem, at 8-9, 11-16 and Exhibit A.

⁵⁷ Satz, at 2-3 (the real problem is deceptive testimonials by purveyors of fad diet pills and supplements); CORE at 2; NutriSystem, at 30-31.

⁵⁸ CORE, at 4; NutriSystem, at 28-31; Satz, at 9.

⁵⁹ Satz, at 3; NutriSystem, at 30-31 (FTC should exempt advertisers who do not make "Red Flag" claims from disclosure requirements); Specter, at 2 (if Guides are revised, FTC should avoid placing burdensome restrictions on useful products); Satz, at 12.

⁶⁰ ANA, at 8; AAAA/AAF, at 12-15.

⁶¹ AHPA, at 7-10.

⁶² WLF, at 1, 7.

⁶³ NPA, at 2-3.

⁶⁴ Indeed, insofar as consumers are able to control how long they view a print ad—unlike, for example, a television commercial—there is some reason to believe they would be more likely to notice and read "results not typical" disclaimers in print ads than in other media.

⁶⁵ Kelley Drye, at 2, 15-16.

(often, “best case” results), are inherently skeptical of testimonial-based advertising, and do not expect that they would get the same results as the testimonialists.⁶⁶ This commenter further said that the focus group discussions showed that, given consumers’ understanding of the limited applicability of testimonials, nothing more than a “results not typical” disclaimer is needed.⁶⁷

The Commission notes that the process by which consumers view (and discuss) advertising in a focus group is very different from how they ordinarily experience it.⁶⁸ Focus groups are very dependent on group dynamics, and one or two participants can dominate the discussion and even influence other participants.⁶⁹ Accordingly, the Commission believes that general impressions gained from focus group discussions are not as informative as a well-designed copy test involving hundreds of consumers.

Finally, the issues raised by marketing professor Thomas Maronick, Ph.D., on behalf of ERA/CRN⁷⁰ included: (1) whether the questions used to qualify respondents for participation in the study (“screener questions”) sensitized them to the issues in the study, thereby potentially affecting their responses; (2) whether the age distribution of the respondents in the Second Endorsement Study suggests that the marketing firm did not follow instructions; (3) whether the instructions given to respondents

when they were shown the ads used in the test caused them to read the ads more carefully than they ordinarily would have, thereby increasing the probability of seeing the performance claims; (4) that the statistics reported in the studies were not offset for “yeasaying” (*i.e.*, the tendency for some consumers to answer affirmatively to a question even when the ad contained no information related to the question); and (5) that if the consumers who answered “about half” to a question probing the communication of typicality were counted as *not* regarding the testimonial claims as typical, there would not be a statistically significant difference between the proportion of consumers who took a typicality claim and those who did not for the business opportunity and dietary supplement advertisements.⁷¹ Based on these reports, this commenter asserted, the studies cannot be relied on to measure what messages consumers take from the ads tested or the effectiveness of disclosures.⁷²

With respect to Dr. Maronick’s first concern, the Commission notes that screening is a universal and necessary part of copy test research, because it is important to test consumers who might potentially buy such a product or service. Although it might have been desirable to have included in the Second Endorsement Study “clutter” questions asking consumers about product categories other than those that were the subject of the advertisements used in the research, there is no reason to believe that the short advance warning of the general product category led to biased interpretations of testimonial claims.

Second, the fact that respondents’ ages were not evenly distributed across the spectrum in the Second Endorsement Study actually shows that the individuals conducting the screening were following instructions: they had been instructed to obtain specific percentages of respondents in the 18-44 years and 45+ groups for each of the product categories in the study.⁷³ Third, consumer surveys vary in terms of how many times respondents are allowed to view the ad in question, and what the interviewers say to them when they show them the ads. Sometimes, consumers are shown an ad only once and instructed to look at it as they would in a magazine or newspaper. Consumers often see advertisements

more than once, however, in the real world. In the Second Endorsement Study, consumers were told to read the advertisement “carefully,” and then, after only being asked the name of the product being advertised, were shown the ad a second time, told to look at it carefully, and then asked additional questions after the ad had been removed from view. To the extent these procedures might have caused respondents to study the ad more carefully than they ordinarily would, and thus increased the probability of taking away messages of efficacy and typicality, they should also have increased the probability that respondents would see the tested disclaimers. Accordingly, the procedure used in this study actually confirms the data showing that most of the disclaimers did not have an appreciable impact on consumer take-away.

Fourth, with respect to “yeasaying,” Dr. Maronick counted as “yeasayers” both consumers who replied that the ad said something when it did not, *and* respondents who said the ad did not say something when it in fact did. In fact, the latter category does not constitute bias, but merely reflects that some respondents did not see a component of the ad and accurately reported that fact.⁷⁴

In addition, even though the data coming from questions that asked for numerical—as opposed to “yes” and “no” answers—should not have been subject to yeasaying, both studies included treatment cells that would capture the effects of both yeasaying and prior beliefs. In the Endorsement Booklet Study report, Tables 2b and 3b presented data that were adjusted using responses provided by a group that saw a letter touting the product but not mentioning any specific health conditions or diseases; these analyses

⁶⁶ *Id.* at 7-10. A majority of the focus group members also expressed the belief that consumer testimonialists generally receive some compensation for their endorsement, even though the Guides presume otherwise (*i.e.*, the Guides require disclosure of compensation when it is paid). *Id.* at 13-14.

⁶⁷ *Id.* at 10-13.

⁶⁸ Here, the focus group participants reviewed the ad they were given, wrote their reactions, thoughts, and questions down on a pad, and then engaged in a lengthy, guided discussion with the focus group moderator. StrategyOne, *Testimonial Advertising Focus Group Research*, at 16-17 (attached to Kelley Drye comment).

⁶⁹ See *Thompson Medical Co., Inc.*, 104 F.T.C. 648, 835 n.82 (1984), *aff’d*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987) (“Because focus group studies are conducted with very few respondents obtained through nonprobability samples, and because the interviews are conducted in an unstructured group format, it is difficult to draw generalizable conclusions from them. Indeed it is not unusual to obtain conflicting results from focus groups.”). See also A.B. Blankenship & George Edward Breen, *State of the Art Marketing Research* 227 (1993) (“[F]ocus group findings and ideas are not projectable. It would be a mistake to assume that what two or three focus groups say is true of all similar people in the market. The focus group can guide and ‘focus’ further research, but that is all it can do.”).

⁷⁰ ERA/CRN, at 14-15 and Appendices 2 and 3 (submitting reports of Thomas J. Maronick, Ph.D.). See also Product Partners, at 5 (agreeing with Dr. Maronick’s reports).

⁷¹ ERA/CRN, at Attachments 2 and 3.

⁷² *Id.* at 14.

⁷³ See Second Endorsement Study, at 4 (separate age and gender quotas established for each of the three products).

⁷⁴ Dr. Maronick noted that some respondents in the Endorsement Booklet Study reported that they had not seen any disclaimers in the ads they had viewed, even though those ads had, in fact, contained disclaimers. ERA/CRN, at Appendix 2, p. 10. The Commission believes that whether or not these respondents subsequently reported having seen a disclosure is not relevant to the overall conclusions about the ads’ communication of efficacy and typicality. The respondents viewed the ads in realistic conditions: they were given a booklet containing the ads and allowed to take whatever amount of time they needed to read it before being asked any questions about the messages communicated by the booklet. That they did not report seeing disclaimers does not mean they did not actually see them; they simply may not have recognized them as such. More important, Dr. Maronick’s focus on these consumers overlooks the fact that despite the presence of highly prominent disclaimers, a sizeable percentage of respondents in the Endorsement Booklet Study took away messages of efficacy and typicality, and that the results of the Endorsement Booklet Study are consistent with those of the larger Second Endorsement Study.

showed that the effects of testimonials on efficacy and typicality assessments were strong even after accounting for yeasaying and prior beliefs. The Second Endorsement Study included ads featuring multiple testimonials that touted the product but did not provide any numerical statement of the results that had been achieved by the testimonialist. Tables 1, 2, 4, and 5 in the Second Endorsement Study show that the communication of efficacy and typicality in these “no numbers” test conditions was generally quite modest.⁷⁵ However, as noted above, the Commission is putting on the public record new Tables 1a, 2a, 4a, and 5a that present the results adjusted for the responses obtained in these “no numbers” conditions.

Finally, although Dr. Maronick calculates what the results would be for communication of typicality in the Second Endorsement Study if respondents who answered “about half” when asked how many new users could expect to achieve the results achieved by the testimonialists were tallied with those who said “some,” “very few,” or “none,” rather than with those who said “all” or “most,” he does not offer any reason why that approach would be more appropriate than the approach taken by the study authors. Indeed, in lay terms, “about half” is consistent with the concept of generally expected results, and thus respondents giving that answer were properly grouped in the Second Endorsement Study. However, even adopting Dr. Maronick’s approach, there can be no question that a substantial percentage of the respondents in all three conditions took away the message that new users could generally expect to achieve results similar to those achieved by the testimonialists.⁷⁶

After reviewing the staff’s consumer research reports (including the new tables), as well as all of the issues raised by the commenters, the Commission believes that the results of the staff’s studies do provide useful empirical evidence concerning the messages that testimonials convey to consumers and the effects of various types of

disclaimers on the communication of efficacy and typicality claims.⁷⁷

iv. Disallowing the use of non-typical testimonials accompanied by disclaimers of typicality would raise Constitutional issues.

Eight comments raised First Amendment concerns.⁷⁸ These comments argued that the revision about which the Commission inquired in its **Federal Register** Notice would not pass constitutional scrutiny, or at least, would raise grave First Amendment concerns.

The comments generally did not dispute that the Commission could appropriately restrict *deceptive* testimonials consistent with the First Amendment.⁷⁹ But they argued in favor

⁷⁷ See *Kraft, Inc.*, 114 F.T.C. 40, 126 n.13 (1991), *aff’d*, 970 F.2d 311 (7th Cir. 1992) (agreeing that the design of the questionnaire used in the staff’s consumer survey “was not without its flaws, and that alternative or additional means could have been used” to minimize yeasaying bias, but that, on balance, the results were of some probative value); *Telebrands Corp.*, 140 F.T.C. 278, 324 n.45 (2005) (“While the copy test may be flawed for its failure to excise from the control ad all of the elements that communicated the challenged claims, copy tests do not have to be flawless to be reasonably reliable and probative.”) (citing *Novartis Corp.*, 127 F.T.C. 580, 699 n.24 (1999), *aff’d*, 223 F.3d 783 (D.C. Cir. 2000); *Stouffer Foods Corp.*, 118 F.T.C. 746, 807 (1994); *Bristol-Myers Co.*, 85 F.T.C. 688, 744 (1975)).

⁷⁸ WLF, NutriSystem, ERA/CRN, and ANA raised substantive constitutional objections, with NutriSystem attaching to its comment a legal opinion addressing the issue. Three comments cited general First Amendment concerns and urged the Commission to use caution in any revisions to the Guides. FreedomWorks, at 1-3; Specter, at 1-2; AHPA, at 6. One comment noted the constitutional concerns raised by another comment, and joined in that comment. Product Partners, at 3 (citing concerns raised by the joint ERA/CRN comment).

⁷⁹ The standard for analyzing First Amendment issues involving commercial speech such as advertising was set forth in *Central Hudson Gas & Elec. Corp. v. Public Service Comm’n of New York*, 447 U.S. 557, 566 (1980). Under that standard, the first question is whether the speech at issue concerns unlawful activity or is misleading. If so, the speech is not entitled to constitutional protection and may be freely regulated. If the speech at issue concerns lawful activity or is not misleading, the government restriction is analyzed under the following test: (1) the government must assert a substantial interest in support of the restriction; (2) the government must demonstrate that the restriction directly advances the asserted government interest; and (3) the restriction must not be more extensive than necessary to serve that interest. *Id.*

The Supreme Court specifically noted in *Central Hudson* that the very nature of commercial speech permits government regulation, even though the First Amendment otherwise generally prohibits content-based regulation:

First, commercial speakers have extensive knowledge of both the market and their products. Thus, they are well situated to evaluate the accuracy of their messages and the lawfulness of the underlying activity. . . . In addition, commercial speech, the offspring of economic self-interest, is a hardy breed of expression that is not “particularly susceptible to being crushed by overbroad regulation.”

of case-by-case analysis rather than broader across-the-board restrictions, and contended that consumers are adequately protected from potential deception by the current practices of: (1) requiring that the testimonialist’s experience be truthful and substantiated, and (2) adding a simple disclaimer that the stated results are not typical.⁸⁰

Some comments stated that government restrictions on commercial speech must not be more restrictive than necessary, and that requiring disclosure of generally expected results would go beyond the means necessary to achieve the FTC’s interest in preventing deception.⁸¹ Others asserted that a revision of the Guides calling for disclosure of typical results when testimonials reporting atypical experience are used would not advance a substantial government interest.⁸² Some argued that such a change in the Guides would prohibit not just false or misleading messages but would also chill truthful speech because some advertisers might be deterred from using truthful testimonials if they could be found liable for violating Section 5 of the FTC Act.⁸³

The Commission agrees that non-deceptive commercial speech is entitled to First Amendment protection, as set forth in *Central Hudson*. A revision of the Guides calling for disclosure of generally expected results would

Id. at 564 n.6 (citation omitted).

⁸⁰ See, e.g., NutriSystem, at Exhibit A, p. 15; ERA/CRN, at 8; ANA, at 10.

⁸¹ ERA/CRN at 8-9 (Commission already has all the tools it needs to prevent misleading testimonials; less restrictive alternative would be for the Commission to clarify what it means by “clear and conspicuous disclosures”); ANA, at 10 (change would burden advertisers who disseminate truthful and non-misleading testimonials, as well as those who transmit misleading information); NutriSystem, at Exhibit A, pp. 16-17, 20 (change inquired about in the **Federal Register** notice would be an overly broad and unduly burdensome pre-market restriction on commercial speech when applied to advertising for the meal replacement sector of the weight loss industry). See also Specter, at 1-2 (noting concerns expressed by others that disallowance of the disclaimer of typicality could “result in an overly broad suppression of speech because narrower regulations that achieve the FTC’s goals are available”); Freedomworks, at 2 (FTC’s proposed “standardized, mandatory disclaimer statement” is broader than necessary to prevent deception). But see WLF, at 7 (although the means chosen to regulate commercial speech must be narrowly tailored, it need not be the least severe means available to achieve the regulatory objective).

⁸² ANA, at 10 (comprehensive regulation of endorsements that already exists means modification of Guides would not directly and materially advance a substantial government interest); ERA/CRN, at 8 (no legitimate government interest in requiring substantiation of typicality when the testimonial is truthful, because no risk that consumers will be deceived).

⁸³ ERA/CRN, at 7-8 (footnote omitted); ANA, at 10-11.

⁷⁵ In the case of the cholesterol and business opportunity ads that did not include numbers, the percentage of subjects who responded saying at least 30 points or \$1,200, was 1.54% and 4.69%, respectively, for Communication (Table 4) and 0% and 3.13%, respectively for typicality (Table 5). The percentages were somewhat higher for the weight-loss ad, ranging from 7.81% for typicality (Table 2) to 12.5% for communication (Table 1) at the 24 point level.

⁷⁶ See above note 34 and accompanying text (a practice is deceptive if a “significant minority” of reasonable consumers are misled) (quoting Deception Policy Statement).

comport with that standard, however, if such disclosure is necessary to eliminate a deceptive message of typicality conveyed by the advertiser's use of atypical consumer endorsements.⁸⁴

As noted above, the Commission is proposing to revise renumbered Section 255.2(b) to provide that endorsements about product performance are *likely* to convey an implied claim that the stated results are typical under the depicted circumstances, thereby revisiting its 1980 conclusion that such endorsements *necessarily* convey such a claim. The Commission's extensive law enforcement experience with consumer testimonials since 1980,⁸⁵ its expertise in ad interpretation, and the staff's two consumer research studies would provide an ample basis for concluding that consumers are likely to interpret unqualified endorsements about product performance as representations of the results typically achieved. *See generally FTC v. Colgate Palmolive*, 380 U.S. 374, 391-92 (1964); *Kraft, Inc. v. FTC*, 970 F.2d 311, 319-20 (7th Cir. 1992); *Thompson Medical Co., Inc. v. F.T.C.*, 791 F.2d 189, 197 (D.C. Cir. 1986). Moreover, a representation of typicality is deceptive if the results related by the endorser are not what consumers can generally expect from use of the product or service, and deceptive speech is not protected by the First Amendment.⁸⁶ Indeed, the Supreme Court has repeatedly stated that the government can restrict, or even ban, such speech. *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985).⁸⁷ Thus, the Commission may appropriately restrict the use of

consumer endorsements that convey the false or unsubstantiated message that the results experienced by the testimonialists are typical of those consumers can generally expect.

In such circumstances, providing a safe harbor for testimonials that are accompanied by a clear and conspicuous disclosure of the results generally achieved by consumers does not offend the First Amendment.⁸⁸ Likewise, failure to embrace a blanket safe harbor for the use of disclaimers such as "results not typical" in the context of Commission guidance where the available evidence suggests that such disclaimers are ineffective would not raise any significant First Amendment issues, particularly when the Guides recognize that not every testimonial will convey a typicality claim, *and*, as discussed below, also do not rule out the possibility that a strong disclaimer of typicality could be effective in the context of a particular advertisement.

Even if analyzed under the more rigorous three-part test set forth in *Central Hudson* for restrictions on speech involving lawful activity that is not misleading, a revision to the Guides providing a safe harbor only for disclosure of "generally expected results" when advertisers cannot substantiate that consumers can generally expect the result achieved by the testimonialist would pass First Amendment scrutiny.⁸⁹ First, the Commission's interest in requiring this disclosure is to prevent deception. The Court repeatedly has held that preventing fraud and deception is a substantial state interest. *Edenfeld v. Fane*, 507 U.S. 761, 769 (1993) ("there is no question that [the government's] interest in ensuring the accuracy of commercial information is substantial");

Pearson v. Shalala, 164 F.3d 650, 655-56 (D.C. Cir. 1999).

Second, disclosure of generally expected results would directly and materially advance the government's interest in preventing deception, by providing consumers additional factual information about the advertised product or service, and allowing them to assess the information accurately.⁹⁰ Again, the Commission's established expertise in the area of deceptive consumer endorsements and the staff's two consumer research studies provide an adequate basis for the Commission's decision that inadequately qualified testimonials that convey, incorrectly, that the results experienced by the testimonialist are typical, are likely to mislead reasonable consumers, and that more detailed disclosure reduces the potential for deception. *See Florida Bar v. Went for It, Inc.*, 515 U.S. 618, 629 (1995); *Zauderer*, 471 U.S. at 652-53 (citing *FTC v. Colgate Palmolive*, 380 U.S. 374 (1964)). It bears repeating in this context that under Commission law, an advertisement can be capable of several reasonable interpretations, and if any one of them is misleading, the advertisement is deceptive in violation of Section 5. *See Deception Policy Statement*, 103 F.T.C. at 178.

And third, disclosure of "generally expected results" would not be more extensive than reasonably necessary to serve the government's interest in preventing deception.⁹¹ The commenters do not contest that the Commission can require clear and conspicuous disclaimers to eliminate a deceptive impression of typicality. A disclaimer beyond "results not typical" can be justified by the studies that the Commission put on the public record in January 2007, which show that the simple disclosure is not adequate, while disclosure of average results greatly reduces the potential for deception. Moreover, the Guides would be calling for *more* speech, not less: they would not ban the use of atypical endorsements or even the use of "results not typical" disclaimers, but instead would advise advertisers who choose to use testimonials that convey a typicality message to include additional

⁸⁴ See WLF, at 9 & n.3 (FTC can insist on use of the most effective, reasonable disclaimers, including disclosure of average participant in weight loss program, if such a statistic can be readily computed).

⁸⁵ That experience includes several administrative litigations. *See* note 19, above.

⁸⁶ Indeed, with one exception, the commenters do not argue that consumers are unlikely to take a misleading impression from endorsements stating atypical results. Instead, the focus appears to be the choice of remedy needed to cure the misleading impression.

⁸⁷ In *Zauderer*, the Supreme Court upheld a disciplinary ruling against an attorney who had disseminated an advertisement informing potential clients that certain cases were handled on a contingent-fee basis, and that "[i]f there is no recovery, no legal fees are owed by our clients," but failing to disclose that those clients would, nonetheless, be liable for litigation "costs." The Court noted that the State of Ohio had "not attempted to prevent attorneys from conveying information to the public; it has only required them to provide somewhat more information than they otherwise might be inclined to present." 471 U.S. at 650. The Court then held that an advertiser's rights were adequately protected as long as disclosure requirements were "reasonably related" to the State's interest in preventing deception. *Id.* at 651 & n.14.

⁸⁸ See 44 *Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 498 (1996) ("the State may require commercial messages to 'appear in such a form, or include such additional information, warnings, and disclaimers, as are necessary to prevent its being deceptive'" (quoting *Virginia Bd. of Pharmacy v. Virginia Citizens Consumers Council, Inc.*, 425 U.S. 748, 772 n.24 (1976))).

⁸⁹ It should be reiterated in this regard that the Guides are not an independent source of legal authority for the Commission; any law enforcement action would be based on a case-specific investigation. *See* Letter from Landis S. Plummer, Acting Secretary, to Jonathan W. Emord, Esq., at p. 2 (Apr. 1, 2004) (noting that Commission does not pre-review advertising, but might commence investigation after an advertisement has been disseminated to determine whether specific claims may be false or unsubstantiated) (available at www.ftc.gov/os/2004/04/040420healthrulemaking.pdf). Even if the FTC eliminated the safe harbor for disclosing the non-typicality of the endorser's experience, it would have the burden in any subsequent law enforcement action of proving that the ad in question was deceptive.

⁹⁰ See *Pearson v. Shalala*, 164 F.3d at 656-57 (finding that FDA's prohibition of certain health claims "would appear to advance directly its interest in protecting against consumer fraud" but ultimately invalidating regulations because the government failed to show the ban on health claims met *Central Hudson's* "reasonable fit" requirement).

⁹¹ The First Amendment does not require that the fit be the "least restrictive means" possible. Rather, the fit must be reasonable. *Board of Trustees of S.U.N.Y. v. Fox*, 492 U.S. 469, 480 (1989). *See also* WLF, at 7.

information to prevent a misleading impression. Therefore, there is a reasonable fit.⁹²

c. Proposed revisions to the Guides' provisions concerning disclaimers of typicality

Based upon the staff's empirical research and its law enforcement experience, the Commission believes that disclaimers regarding the limited applicability of an endorser's experience to what consumers may generally expect to achieve are unlikely to be effective, and therefore that the Guides' current safe harbor for such disclaimers should be eliminated. Accordingly, and having considered the comments submitted in response to the January 2007 **Federal Register** notice, the Commission now proposes to revise the renumbered Section 255.2(b) not only to provide that testimonials reflecting consumer experience on a key attribute of the product will *likely* be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product in actual, albeit variable, conditions of use, but also to provide that when testimonials do so convey, and the advertiser does not possess adequate substantiation for this representation, the advertiser should clearly and conspicuously disclose the generally expected performance in the depicted circumstances.

The Commission specifically seeks comment on whether there are product categories for which this requirement would prevent advertisers from using endorsements even though the advertiser believes that the endorsers' experiences *are* or *likely* are generally representative. For any such product categories, the Commission seeks information concerning the costs and benefits to the advertiser, to competition, and to consumers of the inability to use such endorsements in advertisements, together with any supporting empirical data.

Finally, as noted above, notwithstanding the results of the staff's consumer research, the Commission cannot rule out the possibility that a strong disclaimer of typicality could be effective in the context of a particular advertisement. Therefore, the

Commission also proposes adding a footnote to this subsection acknowledging this possibility. The footnote also notes that an advertiser employing a strong disclaimer will avoid the risk of FTC law enforcement action if it has valid empirical testing demonstrating that the net impression of its advertisement is non-deceptive. The Commission seeks comment on these proposed revisions.

3. Current Section 255.2(c)

The Commission proposes to eliminate Section 255.2(c) in the current Guides, which prohibits efficacy claims in consumer endorsements for drugs or devices unless the advertiser has adequate scientific substantiation for the claims and the claims are not inconsistent with any determination by the Food and Drug Administration concerning the drug or device. The Commission believes this section to be unnecessary. Revised Sections 255.2(a) and 255.2(b) effectively prohibit consumer endorsements for drugs or devices unless the advertiser has adequate scientific substantiation for any efficacy claims conveyed by the ads.

4. New Examples for Renumbered Section 255.2

The Commission is also proposing to add five new examples to Section 255.2. The first, new Example 1, involving consumer endorsements for a baldness treatment, illustrates that testimonials can convey an efficacy claim, even though the advertisement in which they appear makes no other representations about the product.⁹³ The example also shows that the advertiser must have substantiation for that efficacy claim—in the case of a baldness cure, competent and reliable scientific evidence—and that the ad will likely communicate that the endorsers' experiences are representative of what new users of the product can generally expect. New Example 1 also illustrates that an advertiser is unlikely to avoid liability under Section 5 simply by attempting to disclaim the typicality representations made through consumer endorsements. Specifically, new Example 1 provides that if the advertiser

does not have adequate substantiation that new users typically will experience results similar to the spectacular results experienced by the testimonialists, the advertisement will be deceptive.

This example illustrates a long-standing principle that *pro forma* statements or disclaimers may not cure otherwise deceptive messages.⁹⁴ The Commission's consumer research also supports this proposition. In the Endorsement Booklet Study, ads with prominent, strong disclosures still communicated efficacy claims to substantial percentages of consumers. Specifically, even with the disclosure used in Example 1—"Notice: These testimonials do not prove our product works. You should not expect to have similar results."—between 53.0% and 64.7% of the respondents took away the claim that the advertised supplement was effective for reducing breathing problems, increasing energy levels, and relieving chronic or persistent pain. (See Table 2b of the Endorsement Booklet Study.)

In new Example 2, endorsements are provided by three individuals who describe their monthly savings from using the advertised heat pump. The ad is interpreted as conveying that such savings represent what consumers who buy the company's heat pump can generally expect to experience, and, in this example, the advertiser does not have substantiation for this representation because fewer than 20% of purchasers will save even the smallest amount mentioned in the ad. As discussed above, the Commission's consumer research shows that consumers interpret testimonials to convey that about half of new consumers could expect the claimed results. Nonetheless, the Commission is not presently prepared to incorporate a specific numerical standard for "generally representative" that would apply to all endorsements for all products. Instead, new Example 2 clearly indicates that fewer than 20% is not generally representative.⁹⁵

New Example 2 also clearly indicates that disclaimers such as "Results not typical" or "These testimonials are based on the experiences of a few people and you are not likely to have similar results" will be insufficient to prevent the ad from being deceptive. The example states that the ad is less likely to be deceptive if it clearly and conspicuously discloses the generally

⁹² Some commenters suggest that a more detailed disclosure remedy would be overinclusive because not all consumers might be misled. Even if true, the restriction would still be sufficiently and reasonably tailored. See *Florida Bar*, 515 U.S. at 555 (rejecting argument that restriction against in-person solicitation was overinclusive insofar as it banned information even to citizens whose injuries were relatively minor or might keep consumers from learning about their legal rights at a time when others might be contacting them).

⁹³ The Commission is proposing to delete the existing Example 1 in Section 255.2 because it is inconsistent with the Commission's proposed revisions to the Guides. The current Examples 2 and 3 would be renumbered as Examples 5 and 6 in the revised Guides. The Commission is also proposing a minor edit to the last sentence of renumbered Example 5: the phrase "probably represents a promise to consumers that this is the typical result" would be changed to "represents that this is the typical result. . ." The Commission believes that the use of poll results conveys a virtually express typicality claim.

⁹⁴ Deception Policy Statement, 103 F.T.C. at 180.

⁹⁵ Existing Example 1 appears to interpret "generally representative" as "a significant proportion," a phrase that is ambiguous and arguably could be a small percentage of consumers.

expected savings and the advertiser has adequate substantiation for that claim. Finally, new Example 2 illustrates several of the multiple ways such a disclosure could be phrased.

New Example 3 illustrates that use of the recommended disclosure does not obviate the need to have substantiation for the efficacy claims conveyed by the ad. In this example, an ad for a cholesterol-lowering product features an individual who claims to have reduced his serum cholesterol level by 120 points, without any lifestyle changes. A well-conducted clinical study shows that the product reduces the cholesterol levels of individuals with elevated cholesterol by 15% and the advertisement clearly and conspicuously discloses this fact. The example makes clear that the advertiser must have adequate substantiation that the product is capable of causing the specific results claimed by the endorser—a 120-point reduction in serum cholesterol without any lifestyle changes. Without that substantiation, the ad will be deceptive even with the disclosure of the generally expected results.

In new Example 4, the endorsement itself so clearly describes the limited and truly exceptional circumstances under which the endorser achieved the results claimed (six months of eating nothing but raw vegetables, six hours of vigorous exercise every day, and use of the advertised product enabled a 250-pound woman to lose 110 pounds), that the ad is unlikely to convey that consumers who use the advertised product under ordinary and typical circumstances should generally expect to achieve the results achieved by the endorser. Nonetheless, the advertiser must have substantiation for any performance claims conveyed by the endorsement (e.g., that the advertised product causes substantial weight loss). Finally, the example illustrates that a vague reference to the extreme circumstances under which the depicted results were achieved (“together with diet and exercise”) will likely be insufficient to avoid communicating that the depicted results are representative.

New Example 7 illustrates another situation in which consumer endorsements will not trigger an obligation for the advertiser to determine whether the testimonialist's experience is typical of what other consumers can expect. Consumers should realize that the positive reviews given by three individuals exiting a movie theater are inherently subjective, and that they may not have the same reaction.

D. Section 255.3—Expert Endorsements

Section 255.3 provides guidance with respect to expert endorsements. The Commission is proposing the addition of two new examples to this section, the modification of two examples in the current Guides, and the deletion of another.⁹⁶

New Example 2 provides additional illustration of the principle that an expert endorser must possess the level of expertise that the ad implies he or she has. This illustration notes that if an endorser of a hearing aid is simply referred to as “Doctor” during the course of an advertisement, the likely implication—given the nature of the product being advertised—is that the endorser is a medical doctor with substantial experience in the area of hearing. If the endorser is not a medical doctor with substantial experience in audiology (in this example the endorser has a doctorate in exercise physiology), the endorsement is likely deceptive. The example notes that a non-medical “doctor” or a physician without substantial experience in the area of hearing can endorse the product, but if the endorser is referred to as “doctor,” the advertisement must make clear the nature and limits of the endorser's expertise.

Example 2 in the current Guides addresses an endorsement by an institution whose name implies that the entity is a bona fide independent testing organization with appropriate expertise. The current example (renumbered Example 3) assumes that such is the case. The Commission proposes to add a sentence to clarify that if the endorser is not such a bona fide independent testing organization (e.g., if it was established and operated by the advertiser), the endorsement would be deceptive.

Example 3 in the current Guides discusses a hospital's endorsement of a non-prescription drug. In this example (which would be renumbered Example 4), the hospital has selected that particular product over its competitors because the manufacturer sells individually packaged doses to institutional users, although not to the general public. The Commission proposes to supplement the reasons currently given as to why this example is deceptive, to include the fact that the

basis for the hospital's decision is not disclosed to consumers.

Example 4 in the current Guides suggests that if the president of a home cleaning company says that he or she uses a particular brand of cleanser in his or her business, this conveys that the individual believes that the advertised cleanser is at least as effective as other cleansers. The Commission has rewritten this example (renumbered as Example 5) to clarify why the endorser is considered an expert, and to indicate more clearly that the expert is comparing the cleanser to the product's leading competitors that the expert has tried and that the basis of this comparison is the cleanser's performance.

New Example 6 is intended to provide an example of an instance when an expert's endorsement is not supported by an adequate exercise of expertise. The example posits the situation where a medical doctor states that a drug will safely allow consumers to lower their cholesterol by 50 points after having reviewed only letters from satisfied consumers or the results of a rodent test. The example is premised on the assumption that these are not the types of evidence that others with the same degree of expertise would consider adequate to support conclusions about the product's safety and efficacy.

E. Section 255.4—Endorsements by Organizations

Section 255.4 provides guidance specific to the use of endorsements by organizations. The Commission is not proposing any substantive revisions to this section.

F. Section 255.5—Disclosure of Material Connections

Section 255.5 of the current Guides states that advertisers must disclose connections between themselves and their endorsers that might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience). It also indicates that consumers will ordinarily expect that endorsers who are well-known personalities (i.e., celebrities) or experts will be compensated for their endorsements; therefore, unless the advertiser represents that a celebrity or expert endorser has given an endorsement without compensation, the advertiser need not disclose the payment of compensation to that endorser. The Guides make no distinction between an endorser who receives a flat fee for the endorsement and one who earns a royalty for each product sold after the

⁹⁶ Examples 2 to 4 in the current Guides would be renumbered as Examples 3 to 5. Example 5 in the current Guides would be deleted because the Commission believes it is anachronistic. Consumers today would be unlikely to view the association as an expert in the field of nutrition and would likely assume that the endorsement was based on compensation, rather than on an evaluation of the product's nutritive value.

ad containing the endorsement is disseminated.

The Commission believes that the requirement that advertisers disclose material connections with their endorsers is appropriate and should be retained. The Commission proposes to delete the second sentence of current Section 255.5, however, because it believes: (1) that consumers' expectations about celebrities and about experts may not be completely congruent; and (2) that even with respect to celebrities, knowledge of the individual's connections with the product's marketer may be material to consumers for endorsements made in certain nontraditional contexts. In other words, the assumptions behind the across-the-board statement in the second sentence of current Section 255.5 no longer appear warranted.

With respect to celebrities, the Commission does not believe that it is relevant to consumers how or how much these individuals are compensated for their services in the context of conventional advertising. Accordingly, Example 2 is being revised to clarify that a royalty payment paid to an actor for each product sold need not be disclosed.

Unlike the case with celebrities, however, there could be situations in which the nature or amount of an expert's compensation might be relevant to consumers. Stated differently, although consumers likely expect that an expert will be paid for the time he or she spends conducting the analysis necessary to render an expert opinion, there could be certain compensation arrangements the knowledge of which would affect consumer purchase decisions.

Several Commission cases have specifically challenged an advertiser's failure to disclose an expert endorser's financial interest in promoting the sale of the advertised product,⁹⁷ and in new Example 4, these kinds of relationships are deemed likely to materially affect the weight that consumers give to a physician's endorsement of an anti-snoring product. The Commission

specifically seeks comment on this example: if consumers know that an expert has a significant financial interest in sales of the product (such as an ownership interest in the company or compensation based on product sales), is this information likely to affect their assessments of the expert's credibility? Are there also other financial compensation arrangements (e.g., lump sum payments over a certain threshold) that would also be relevant to consumers' assessment of the expert's credibility?

The Commission further notes that even with respect to celebrities, distinctions would appear to arise between endorsements made in conventional advertising and those made in nontraditional contexts. In the latter context, as discussed below, disclosure may be necessary.

In its January 2007 Regulatory Review notice, the Commission referred to a 2003 petition from the consumer advocacy organization Commercial Alert, which suggested an exception to the principle that consumers will ordinarily expect that endorsers who are well-known personalities are compensated for their endorsements: when celebrities are paid for touting the performance of brand-name drugs on talk shows and other television programs, but do not mention on the air their financial ties to the drug's manufacturer. 72 Fed. Reg. at 2217. The Commission asked for any extrinsic evidence regarding consumer expectations about celebrity endorsements made during interviews, and specifically solicited written public comment on whether knowledge that a celebrity endorsing a product during such an interview is being paid for doing so would affect the weight or credibility consumers give to the celebrity's endorsement.

Two comments specifically addressed these issues, although neither submitted any extrinsic evidence about consumers' expectations. One noted that when a celebrity speaks favorably about his or her own use of a product in an interview, rather than in a conventional ad, it seems even more sincere; consequently, if the celebrity's compensation is not disclosed, his or her opinion may be taken as even more legitimate.⁹⁸

Another commenter suggested that absent evidence that celebrities were frequently endorsing products in contexts other than conventional advertising, the FTC should not address this practice in the Guides.⁹⁹ This

commenter noted that celebrities often appear publicly wearing brand name clothing and suggested that it would be extremely difficult to distinguish those situations when consumers would expect them to be compensated from those when they would not.

Furthermore, the commenter said, celebrities retain their right under the First Amendment to speak on public issues, and many of their public statements would likely be noncommercial speech.

A third comment suggested that the real problem with celebrity endorsements is the failure of advertisers to disclose the compensation celebrities receive when they endorse prescription drugs.¹⁰⁰ According to this commenter, because the Food and Drug Administration assumes that consumers understand celebrities are compensated for drug endorsements, the FTC does not challenge these endorsements even though prescription drugs—in the view of this commenter—pose more risks to consumer health than do dietary supplements.¹⁰¹

The Commission believes that when celebrities are paid spokespersons, their endorsements are commercial messages, regardless of whether they are disseminated in a traditional advertising context—i.e., a television commercial or print ad—or elsewhere. In the context of an interview, there is no reason for consumers to suspect that the endorsement is anything more than a spontaneous mention by a celebrity who has no apparent connection with the product's marketer.

The Commission is proposing a new Example 3 to address this issue.¹⁰² This example makes it clear that consumers would not expect a celebrity endorsing a product during a routine interview to be paid for doing so, and that knowledge of such a financial interest would likely affect the weight or credibility consumers give to the celebrity's endorsement. In order to avoid the possibility of deception, the celebrity's financial connection to the advertiser should be disclosed.

New Example 3 then goes on to distinguish this situation from one in which the celebrity appears during the interview wearing clothes bearing the insignia of a company with which she has an endorsement contract, but does not mention the company or discuss the clothes. No disclosure is required because she is not making any representation about the clothes. The

⁹⁷ See, e.g., *Med Gen, Inc.*, 134 F.T.C. 1 (2002) (consent agreement) (failing to disclose that an expert was an investor in the advertiser and may have a financial interest in promoting the sale of the advertised product); *Body Wise Int'l, Inc.*, 120 F.T.C. 704 (1995) (consent agreement) (failing to disclose that expert endorsers are Body Wise distributors and may have a financial interest in promoting the sale of the advertised product); *Numex Corp.*, 116 F.T.C. 1078 (1993) (consent agreement) (failing to disclose that expert endorsers indirectly owned stock in the advertiser, that they were to receive payments for each unit of the advertised product sold, and that one was an officer and director of the advertiser while the other was an officer).

⁹⁸ Adams, at 2.

⁹⁹ WLF, at 10.

¹⁰⁰ NPA, at 4.

¹⁰¹ *Id.* at 4-5.

¹⁰² Example 3 in the current Guides would be renumbered as Example 5.

Commission requests comment on both parts of new Example 3.

The Commission is also proposing the addition of several other new examples to Section 255.5. New Example 6 addresses the situation where “extras” who want to work in commercials are recruited to use a product in order to give endorsements in exchange for compensation and exposure. Viewers would not expect that “consumer endorsers” are actors who were asked to use the product so that they could appear in the commercial or that they were compensated. The example states that an advertisement that fails to disclose these facts is deceptive.

New Examples 7, 8, and 9 apply the general principle that material connections between the endorser and the advertiser should be disclosed to several new forms of marketing—blogs, discussion boards, and “street teams.” The Commission specifically seeks comment on these examples, with particular focus on the expectations held by consumers as to the relationships that exist between advertisers and endorsers in these new marketing contexts.

The Commission notes in this regard that WOMMA, a trade association whose members are engaged in word-of-mouth and other new types of marketing, stated in its comment that the relationship between endorsers and advertisers should not be concealed, and that the principles of transparency that form the basis of its code of ethics require, among other things, that endorsers not misrepresent their opinions or their identities (for example, by creating artificial entities to endorse products).¹⁰³ The Commission has long believed that industry self-regulatory codes play an important role in consumer protection, and that the development of ethical standards emphasizing transparency for marketers who engage in new forms of marketing is an important step to this end.

Finally, the Attorneys General suggested in their comment that the Commission add a new provision to the Guides providing that when an advertisement relies on a study that was sponsored by the advertiser itself, the advertisement should clearly disclose this information.¹⁰⁴ The Attorneys General note that although the Guides require the disclosure of material connections between endorsers and advertisers, current Example 1 under Section 255.5 specifies that an advertiser’s payment of expenses to the entity that conducted a touted study

need not be disclosed in the advertisement. The Attorneys General believe that the advertiser’s funding of the study would, in fact, be a material factor for consumers to consider in deciding how much weight or credibility to give the endorsement.¹⁰⁵

The Commission is not proposing to change Example 1 substantively at this time, but it is proposing certain modifications to provide additional factual background and to explain why disclosure of the funding for that test would not be required. The Commission seeks comment on these modifications, and on the suggestion made by the Attorneys General that there is a discrepancy between Section 255.5 of the Guides and current Example 1. The Commission also particularly seeks extrinsic evidence of consumer understanding concerning this issue.

V. PROPOSED REVISED ENDORSEMENT AND TESTIMONIAL GUIDES

FTC Guides Concerning Use of Endorsements and Testimonials in Advertising

Sec. 255.0 Purpose and definitions.

255.1 General considerations.

255.2 Consumer endorsements.

255.3 Expert endorsements.

255.4 Endorsements by organizations.

255.5 Disclosure of material connections.

Authority: 38 Stat. 717, as amended; 15 U.S.C. 41 - 58.

§ 255.0 Purpose and definitions.

(a) The Guides in this part represent administrative interpretations of laws enforced by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. Specifically, the Guides address the application of Section 5 of the FTC Act (15 U.S.C. § 45) to the use of endorsements and testimonials in advertising. The Guides provide the basis for voluntary compliance with the law by advertisers and endorsers. Practices inconsistent with these Guides may result in corrective action by the Commission under Section 5 if, after investigation, the Commission has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute.

The Guides set forth the general principles that the Commission will use in evaluating endorsements and testimonials, together with examples illustrating the application of those principles. The Guides do not purport to cover every possible use of

endorsements in advertising. Whether a particular endorsement or testimonial is deceptive will depend on the specific factual circumstances of the advertisement at issue.

(b) For purposes of this part, an endorsement means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser. The party whose opinions, beliefs, findings, or experience the message appears to reflect will be called the endorser and may be an individual, group, or institution.

(c) The Commission intends to treat endorsements and testimonials identically in the context of its enforcement of the Federal Trade Commission Act and for purposes of this part. The term endorsements is therefore generally used hereinafter to cover both terms and situations.

(d) For purposes of this part, the term product includes any product, service, company or industry.

(e) For purposes of this part, an expert is an individual, group, or institution possessing, as a result of experience, study, or training, knowledge of a particular subject, which knowledge is superior to what ordinary individuals generally acquire.

Example 1: A film critic’s review of a movie is excerpted in an advertisement. When so used, the review meets the definition of an endorsement because it is viewed by readers as a statement of the critic’s own opinions and not those of the film producer, distributor, or exhibitor. Any alteration in or quotation from the text of the review that does not fairly reflect its substance would be a violation of the standards set by this part because it would distort the endorser’s opinion. [See § 255.1(b).]

Example 2: A TV commercial depicts two women in a supermarket buying a laundry detergent. The women are not identified outside the context of the advertisement. One comments to the other how clean her brand makes her family’s clothes, and the other then comments that she will try it because she has not been fully satisfied with her own brand. This obvious fictional dramatization of a real life situation would not be an endorsement.

Example 3: In an advertisement for a pain remedy, an announcer who is not familiar to consumers except as a

¹⁰³ WOMMA, at 10.

¹⁰⁴ Attorneys General, at 3.

¹⁰⁵ *Id.*

spokesman for the advertising drug company praises the drug's ability to deliver fast and lasting pain relief. He purports to speak, not on the basis of his own opinions, but rather in the place of and on behalf of the drug company. The announcer's statements would not be considered an endorsement.

Example 4: A manufacturer of automobile tires hires a well-known professional automobile racing driver to deliver its advertising message in television commercials. In these commercials, the driver speaks of the smooth ride, strength, and long life of the tires. Even though the message is not expressly declared to be the personal opinion of the driver, it may nevertheless constitute an endorsement of the tires. Many consumers will recognize this individual as being primarily a racing driver and not merely a spokesperson or announcer for the advertiser. Accordingly, they may well believe the driver would not speak for an automotive product unless he actually believed in what he was saying and had personal knowledge sufficient to form that belief. Hence, they would think that the advertising message reflects the driver's personal views. This attribution of the underlying views to the driver brings the advertisement within the definition of an endorsement for purposes of this part.

Example 5: A television advertisement for a particular brand of golf balls shows a prominent and well-recognized professional golfer practicing numerous drives off the tee. This would be an endorsement by the golfer even though she makes no verbal statement in the advertisement.

Example 6: An infomercial for a home fitness system is hosted by a well-known entertainer. During the infomercial, the entertainer demonstrates the machine and states that it is the most effective and easy-to-use home exercise machine that she has ever tried. Even if she is reading from a script, this statement would be an endorsement, because consumers are likely to believe it reflects the entertainer's views.

Example 7: A television advertisement for a housewares store features a well-known female comedian and a well-known male baseball player engaging in light-hearted banter about products each one intends to purchase for the other. The comedian says that she will buy him a Brand X, portable, high-definition television so he can finally see the strike zone. He says that he will get her a Brand Y juicer so she can make juice with all the fruit and vegetables thrown at her during her performances. The comedian and

baseball player are not likely to be deemed endorsers because consumers will likely realize that the individuals are not expressing their own views.

§ 255.1 General considerations.

(a) Endorsements must reflect the honest opinions, findings, beliefs, or experience of the endorser. Furthermore, an endorsement may not convey any express or implied representation that would be deceptive if made directly by the advertiser. [See §§ 255.2(a) and (b) regarding substantiation of representations conveyed by consumer endorsements. See also Example 3 to Guide 3 (§ 255.3) illustrating how a valid endorsement by an expert endorser may constitute all or part of an advertiser's substantiation, depending on the claim.]

(b) The endorsement message need not be phrased in the exact words of the endorser, unless the advertisement affirmatively so represents. However, the endorsement may not be presented out of context or reworded so as to distort in any way the endorser's opinion or experience with the product. An advertiser may use an endorsement of an expert or celebrity only so long as it has good reason to believe that the endorser continues to subscribe to the views presented. An advertiser may satisfy this obligation by securing the endorser's views at reasonable intervals where reasonableness will be determined by such factors as new information on the performance or effectiveness of the product, a material alteration in the product, changes in the performance of competitors' products, and the advertiser's contract commitments.

(c) When the advertisement represents that the endorser uses the endorsed product, the endorser must have been a bona fide user of it at the time the endorsement was given. Additionally, the advertiser may continue to run the advertisement only so long as it has good reason to believe that the endorser remains a bona fide user of the product. [See § 255.1(b) regarding the "good reason to believe" requirement.]

(d) Advertisers are subject to liability for false or unsubstantiated statements made through endorsements, or for failing to disclose material connections between themselves and their endorsers [see § 255.5]. Endorsers also may be liable for statements made in the course of their endorsements.

Example 1: A building contractor states in an advertisement that he uses the advertiser's exterior house paint because of its remarkable quick drying properties and durability. This endorsement must comply with the

pertinent requirements of Section 255.3 (Expert Endorsements). Subsequently, the advertiser reformulates its paint to enable it to cover exterior surfaces with only one coat. Prior to continued use of the contractor's endorsement, the advertiser must contact the contractor in order to determine whether the contractor would continue to specify the paint and to subscribe to the views presented previously.

Example 2: A television advertisement portrays a woman seated at a desk on which rest five unmarked computer keyboards. An announcer says, "We asked X, an administrative assistant for over ten years, to try these five unmarked keyboards and tell us which one she liked best." The advertisement portrays X typing on each keyboard and then picking the advertiser's brand. The announcer asks her why, and X gives her reasons. This endorsement would probably not represent that X actually uses the advertiser's keyboard at work. In addition, the endorsement also may be required to meet the standards of Section 255.3 (Expert Endorsements).

Example 3: An ad for an acne treatment features a dermatologist who claims that the product is "clinically proven" to work. Before giving the endorsement, she received a write-up of the clinical study in question, which indicates flaws in the design and conduct of the study that are so serious that they preclude any conclusions about the efficacy of the product. The dermatologist is subject to liability for the false statements she made in the advertisement. The advertiser is also liable for misrepresentations made through the endorsement.

Example 4: A well-known celebrity appears in an infomercial for an oven roasting bag that purportedly cooks every chicken perfectly in thirty minutes. During the shooting of the infomercial, the celebrity watches five attempts to cook chickens using the bag. In each attempt, the chicken is undercooked after thirty minutes and requires sixty minutes of cooking time. In the commercial, the celebrity places an uncooked chicken in the oven roasting bag and places the bag in one oven. He then takes a chicken roasting bag from a second oven, removes from the bag what appears to be a perfectly cooked chicken, tastes the chicken, and says that if you want perfect chicken every time, in just thirty minutes, this is the product you need. A significant percentage of consumers are likely to believe the celebrity's statements represent his own views even though he is reading from a script. The celebrity is subject to liability for his statement

about the product. The advertiser is also liable for misrepresentations made through the endorsement.

Example 5: A skin care products advertiser participates in a blog advertising service. The service matches up advertisers with bloggers who will promote the advertiser's products on their personal blogs. The advertiser requests that a blogger try a new body lotion and write a review of the product on her blog. Although the advertiser does not make any specific claims about the lotion's ability to cure skin conditions and the blogger does not ask the advertiser whether there is substantiation for the claim, in her review the blogger writes that the lotion cures eczema and recommends the product to her blog readers who suffer from this condition. The advertiser is subject to liability for false or unsubstantiated statements made through the blogger's endorsement. The blogger also is subject to liability for representations made in the course of her endorsement. The blogger is also liable if she fails to disclose clearly and conspicuously that she is being paid for her services. [See § 255.5.]

In order to limit its potential liability, the advertiser should ensure that the advertising service provides guidance and training to its bloggers concerning the need to ensure that statements they make are truthful and substantiated. The advertiser should also monitor bloggers who are being paid to promote its products and take steps necessary to halt the continued publication of deceptive representations when they are discovered.

§ 255.2 Consumer endorsements.

(a) An advertisement employing endorsements by one or more consumers about the performance of an advertised product or service will be interpreted as representing that the product or service is effective for the purpose depicted in the advertisement. Therefore, the advertiser must possess and rely upon adequate substantiation, including, when appropriate, competent and reliable scientific evidence, to support such claims made through endorsements in the same manner the advertiser would be required to do if it had made the representation directly, *i.e.*, without using endorsements. Consumer endorsements themselves are not competent and reliable scientific evidence.

(b) An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will likely be interpreted as representing that the endorser's

experience is representative of what consumers will generally achieve with the advertised product in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation. If the advertiser does not have substantiation that the endorser's experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation.¹⁰⁶

(c) Advertisements presenting endorsements by what are represented, directly or by implication, to be "actual consumers" should utilize actual consumers in both the audio and video, or clearly and conspicuously disclose that the persons in such advertisements are not actual consumers of the advertised product.

Example 1: A brochure for a baldness treatment consists entirely of testimonials from satisfied customers who say that after using the product, they had amazing hair growth and their hair is as thick and strong as it was when they were teenagers. The advertiser must have competent and reliable scientific evidence that its product is effective in producing new hair growth.

The ad will also likely communicate that the endorsers' experiences are representative of what new users of the product can generally expect. Therefore, even if the advertiser includes a disclaimer such as, "Notice: These testimonials do not prove our product works. You should not expect to have similar results," the ad is likely to be deceptive unless the advertiser has adequate substantiation that new users typically will experience results similar

¹⁰⁶ The Commission tested the communication of advertisements containing testimonials that clearly and prominently disclosed either "Results not typical" or the stronger "These testimonials are based on the experiences of a few people and you are not likely to have similar results." Neither disclosure adequately reduced the communication that the experiences depicted are generally representative. Based upon this research, the Commission believes that similar disclaimers regarding the limited applicability of an endorser's experience to what consumers may generally expect to achieve are unlikely to be effective.

Nonetheless, the Commission cannot rule out the possibility that a strong disclaimer of typicality could be effective in the context of a particular advertisement. Although the Commission would have the burden of proof in a law enforcement action, the Commission notes that an advertiser possessing reliable empirical testing demonstrating that the net impression of its advertisement with such a disclaimer is non-deceptive will avoid the risk of the initiation of such an action in the first instance.

to those experienced by the testimonialists.

Example 2: An advertisement disseminated by a company that sells heat pumps presents endorsements from three individuals who state that after installing the company's heat pump in their homes, their monthly utility bills went down by \$100, \$125, and \$150, respectively. The ad will likely be interpreted as conveying that such savings are representative of what consumers who buy the company's heat pump can generally expect. The advertiser does not have substantiation for that representation because, in fact, less than 20% of purchasers will save \$100 or more. A disclosure such as, "Results not typical" or, "These testimonials are based on the experiences of a few people and you are not likely to have similar results" is insufficient to prevent this ad from being deceptive because consumers will still interpret the ad as conveying that the specified savings are representative of what consumers can generally expect. The ad is less likely to be deceptive if it clearly and conspicuously discloses the generally expected savings and the advertiser has adequate substantiation that homeowners can achieve those results. There are multiple ways that such a disclosure could be phrased, *e.g.*, "the average homeowner saves \$35 per month," "the typical family saves \$50 per month during cold months and \$20 per month in warm months," or "most families save 10% on their utility bills."

Example 3: An advertisement for a cholesterol-lowering product features an individual who claims that his serum cholesterol went down by 120 points and does not mention having made any lifestyle changes. A well-conducted clinical study shows that the product reduces the cholesterol levels of individuals with elevated cholesterol by an average of 15% and the advertisement clearly and conspicuously discloses this fact. Despite the presence of this disclosure, the advertisement would be deceptive if the advertiser does not have adequate substantiation that the product can produce the specific results claimed by the endorser (*i.e.*, a 120-point drop in serum cholesterol without any lifestyle changes).

Example 4: An advertisement for a weight-loss product features a formerly obese woman. She says in the ad, "Every day, I drank 2 WeightAway shakes, only ate raw vegetables, and exercised vigorously for six hours at the gym. By the end of six months, I had gone from 250 pounds to 140 pounds." The advertisement accurately describes the woman's experience, and such a

result is within the range that would be generally experienced by an extremely overweight individual who consumed WeightAway shakes, only ate raw vegetables, and exercised as the endorser did. Because the endorser clearly describes the limited and truly exceptional circumstances under which she achieved her results, the ad does not convey that consumers who weigh substantially less or use WeightAway under less extreme circumstances should generally expect to lose something in the vicinity of 110 pounds in six months. The advertiser must have substantiation, however, for any performance claims conveyed by the endorsement (e.g., that WeightAway is an effective weight loss product).

If, in the alternative, the advertisement simply says that the endorser lost 110 pounds in six months using WeightAway together with diet and exercise, the advertisement would likely convey that her results were representative of what consumers can generally expect to lose with WeightAway.

Example 5: An advertisement presents the results of a poll of consumers who have used the advertiser's cake mixes as well as their own recipes. The results purport to show that the majority believed that their families could not tell the difference between the advertised mix and their own cakes baked from scratch. Many of the consumers are actually pictured in the advertisement along with relevant, quoted portions of their statements endorsing the product. This use of the results of a poll or survey of consumers represents that this is the typical result that ordinary consumers can expect from the advertiser's cake mix.

Example 6: An advertisement purports to portray a "hidden camera" situation in a crowded cafeteria at breakfast time. A spokesperson for the advertiser asks a series of actual patrons of the cafeteria for their spontaneous, honest opinions of the advertiser's recently introduced breakfast cereal. Even though the words "hidden camera" are not displayed on the screen, and even though none of the actual patrons is specifically identified during the advertisement, the net impression conveyed to consumers may well be that these are actual customers, and not actors. If actors have been employed, this fact should be clearly and conspicuously disclosed.

Example 7: An advertisement for a recently released motion picture shows three individuals coming out of a theater, each of whom gives a positive statement about the movie. These

individuals are actual consumers expressing their personal views about the movie. The advertiser does not need to have substantiation that their views are representative of the opinions that most consumers will have about the movie because this advertisement is not likely to convey a typicality message.

If the motion picture studio had approached these individuals outside the theater and offered them free tickets if they would talk about the movie on camera afterwards, that arrangement should be clearly and conspicuously disclosed. [See § 255.5.]

§ 255.3 Expert endorsements.

(a) Whenever an advertisement represents, directly or by implication, that the endorser is an expert with respect to the endorsement message, then the endorser's qualifications must in fact give the endorser the expertise that he or she is represented as possessing with respect to the endorsement.

(b) Although the expert may, in endorsing a product, take into account factors not within his or her expertise (e.g., matters of taste or price), the endorsement must be supported by an actual exercise of that expertise in evaluating product features or characteristics with respect to which he or she is expert and which are relevant to an ordinary consumer's use of or experience with the product and are available to the ordinary consumer. This evaluation must have included an examination or testing of the product at least as extensive as someone with the same degree of expertise would normally need to conduct in order to support the conclusions presented in the endorsement. To the extent that the advertisement implies that the endorsement was based upon a comparison, such comparison must have been included in the expert's evaluation; and as a result of such comparison, the expert must have concluded that, with respect to those features on which he or she is expert and which are relevant and available to an ordinary consumer, the endorsed product is at least equal overall to the competitors' products. Moreover, where the net impression created by the endorsement is that the advertised product is superior to other products with respect to any such feature or features, then the expert must in fact have found such superiority. [See § 255.1(d) regarding the liability of endorsers.]

Example 1: An endorsement of a particular automobile by one described as an "engineer" implies that the endorser's professional training and

experience are such that he is well acquainted with the design and performance of automobiles. If the endorser's field is, for example, chemical engineering, the endorsement would be deceptive.

Example 2: An endorser of a hearing aid is simply referred to as "Doctor" during the course of an advertisement. The ad likely implies that the endorser is a medical doctor with substantial experience in the area of hearing. If the endorser is not a medical doctor with substantial experience in audiology, the endorsement would likely be deceptive. A non-medical "doctor" (e.g., an individual with a Ph.D. in exercise physiology) or a physician without substantial experience in the area of hearing can endorse the product, but if the endorser is referred to as "doctor," the advertisement must make clear the nature and limits of the endorser's expertise.

Example 3: A manufacturer of automobile parts advertises that its products are approved by the "American Institute of Science." From its name, consumers would infer that the "American Institute of Science" is a bona fide independent testing organization with expertise in judging automobile parts and that, as such, it would not approve any automobile part without first testing its efficacy by means of valid scientific methods. If the American Institute of Science is not such a bona fide independent testing organization (e.g., if it was established and operated by an automotive parts manufacturer), the endorsement would be deceptive. Even if the American Institute of Science is an independent bona fide expert testing organization, the endorsement may nevertheless be deceptive unless the Institute has conducted valid scientific tests of the advertised products and the test results support the endorsement message.

Example 4: A manufacturer of a non-prescription drug product represents that its product has been selected over competing products by a large metropolitan hospital. The hospital has selected the product because the manufacturer, unlike its competitors, has packaged each dose of the product separately. This package form is not generally available to the public. Under the circumstances, the endorsement would be deceptive because the basis for the hospital's choice—convenience of packaging—is neither relevant nor available to consumers, and the basis for the hospital's decision is not disclosed to consumers.

Example 5: A woman who is identified as the president of a commercial "home cleaning service"

states in a television advertisement that the service uses a particular brand of cleanser, instead of leading competitors it has tried, because of this brand's performance. Because cleaning services extensively use cleansers in the course of their business, the ad likely conveys that the president has knowledge superior to that of ordinary consumers. Accordingly, the president's statement will be deemed to be an expert endorsement. The service must, of course, actually use the endorsed cleanser. In addition, because the advertisement implies that the cleaning service has experience with a reasonable number of leading competitors to the advertised cleanser, the service must, in fact, have such experience, and, on the basis of its expertise, it must have determined that the cleaning ability of the endorsed cleanser is at least equal (or superior, if such is the net impression conveyed by the advertisement) to that of leading competitors' products with which the service has had experience and which remain reasonably available to it. Because in this example the cleaning service's president makes no mention that the endorsed cleanser was "chosen," "selected," or otherwise evaluated in side-by-side comparisons against its competitors, it is sufficient if the service has relied solely upon its accumulated experience in evaluating cleansers without having performed side-by-side or scientific comparisons.

Example 6: A medical doctor states in an advertisement for a drug that the product will safely allow consumers to lower their cholesterol by 50 points. If the materials the doctor reviewed were merely letters from satisfied consumers or the results of a rodent study, the endorsement would be deceptive assuming that those materials are not what others with the same degree of expertise would consider adequate to support this conclusion about the product's safety and efficacy.

§ 255.4 Endorsements by organizations.

Endorsements by organizations, especially expert ones, are viewed as representing the judgment of a group whose collective experience exceeds that of any individual member, and whose judgments are generally free of the sort of subjective factors that vary from individual to individual. Therefore, an organization's endorsement must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization. Moreover, if an organization is represented as being expert, then, in conjunction with a proper exercise of its

expertise in evaluating the product under § 255.3 (expert endorsements), it must utilize an expert or experts recognized as such by the organization or standards previously adopted by the organization and suitable for judging the relevant merits of such products. [See § 255.1(d) regarding the liability of endorsers.]

Example: A mattress seller advertises that its product is endorsed by a chiropractic association. Because the association would be regarded as expert with respect to judging mattresses, its endorsement must be supported by an evaluation by an expert or experts recognized as such by the organization, or by compliance with standards previously adopted by the organization and aimed at measuring the performance of mattresses in general and not designed with the unique features of the advertised mattress in mind. (See also § 255.3, Example 5.)

§ 255.5 Disclosure of material connections.

When there exists a connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (*i.e.*, the connection is not reasonably expected by the audience), such connection must be fully disclosed. For example, when the endorser is neither represented in the advertisement as an expert nor is known to a significant portion of the viewing public, then the advertiser should clearly and conspicuously disclose either the payment or promise of compensation prior to and in exchange for the endorsement or the fact that the endorser knew or had reasons to know or to believe that if the endorsement favors the advertised product some benefit, such as an appearance on TV, would be extended to the endorser. Additional guidance concerning endorsements by celebrities and experts is provided by the examples below.

Example 1: A drug company commissions research on its product by an outside organization. The drug company determines the overall subject of the research (*e.g.*, to test the efficacy of a newly developed product) and pays a substantial share of the expenses of the research project, but the research organization determines the protocol for the study and is responsible for conducting it. A subsequent advertisement by the drug company mentions the research results as the "findings" of that research organization. Where, as here, the design and conduct of the research project are controlled by the outside research organization, the

weight consumers place on the reported results would not likely be materially affected by knowing that the advertiser had funded the project. Therefore, the advertiser's payment of expenses to the research organization need not be disclosed in this advertisement.

Example 2: A film star endorses a particular food product. The endorsement regards only points of taste and individual preference. This endorsement must, of course, comply with § 255.1; but regardless of whether the star's compensation for the commercial is a \$1 million cash payment or a royalty for each product sold by the advertiser during the next year, no disclosure is required because such payments likely are ordinarily expected by viewers.

Example 3: During an appearance by a well-known professional tennis player on a television talk show, the host comments that the past few months have been the best of her career and during this time she has risen to her highest level ever in the rankings. She responds by attributing the improvement in her game to the fact that she is seeing the ball better than she used to, ever since having laser vision correction surgery at a clinic that she identifies by name. She continues talking about the ease of the procedure, the kindness of the clinic's doctors, her speedy recovery, and how she can now engage in a variety of activities without glasses, including driving at night. The athlete does not disclose that, even though she does not appear in commercials for the clinic, she has a contractual relationship with it, and her contract pays her for speaking publicly about her surgery when she can do so. Consumers would not expect that a celebrity discussing a medical procedure in a television interview to be paid for doing so, and knowledge of such payments would likely affect the weight or credibility consumers give to the celebrity's endorsement. Without a clear and conspicuous disclosure that the athlete has been engaged as a spokesperson for the clinic, this endorsement is likely to be deceptive. Furthermore, if consumers are likely to take away from her story that her experience was typical of those who undergo the same procedure at the clinic, the advertiser must have substantiation for that claim.

Assume that during that same appearance, the tennis player is wearing clothes bearing the insignia of an athletic wear company with whom she also has an endorsement contract. Although this contract requires that she wear the company's clothes not only on the court but also in public appearances,

when possible, she does not mention them or the company during her appearance on the show. No disclosure is required because no representation is being made about the clothes in this context.

Example 4: An ad for an anti-snoring product features a physician who says that he has seen dozens of products come on the market over the years and, in his opinion, this is the best ever. Consumers would expect the physician to be reasonably compensated for his appearance in the ad. Consumers are unlikely, however, to expect that the physician receives a percentage of gross product sales or that he owns part of the company, and either of these facts would likely materially affect the credibility that consumers attach to the endorsement. Accordingly, the advertisement should clearly and conspicuously disclose such a connection between the company and the physician.

Example 5: An actual patron of a restaurant, who is neither known to the public nor presented as an expert, is shown seated at the counter. He is asked for his "spontaneous" opinion of a new food product served in the restaurant. Assume, first, that the advertiser had posted a sign on the door of the restaurant informing all who entered that day that patrons would be interviewed by the advertiser as part of its TV promotion of its new soy protein "steak." This notification would materially affect the weight or credibility of the patron's endorsement, and, therefore, viewers of the advertisement should be clearly and conspicuously informed of the circumstances under which the endorsement was obtained.

Assume, in the alternative, that the advertiser had not posted a sign on the door of the restaurant, but had informed all interviewed customers of the "hidden camera" only after interviews were completed and the customers had no reason to know or believe that their response was being recorded for use in an advertisement. Even if patrons were also told that they would be paid for allowing the use of their opinions in advertising, these facts need not be disclosed.

Example 6: An infomercial producer wants to include consumer endorsements for an automotive additive product featured in her commercial, but because the product has not yet been sold, there are no consumer users. The producer's staff reviews the profiles of individuals interested in working as "extras" in commercials and identifies several who are interested in automobiles. The extras

are asked to use the product for several weeks and then report back to the producer. They are told that if they are selected to endorse the product in the producer's infomercial, they will receive a small payment. Viewers would not expect that these "consumer endorsers" are actors who were asked to use the product so that they could appear in the commercial or that they were compensated. Because the advertisement fails to disclose these facts, it is deceptive.

Example 7: A college student who has earned a reputation as a video game expert maintains a personal weblog or "blog" where he posts entries about his gaming experiences. Readers of his blog frequently seek his opinions about video game hardware and software. As it has done in the past, the manufacturer of a newly released video game system sends the student a free copy of the system and asks him to write about it on his blog. He tests the new gaming system and writes a favorable review. The readers of his blog are unlikely to expect that he has received the video game system free of charge in exchange for his review of the product, and given the value of the video game system, this fact would likely materially affect the credibility they attach to his endorsement. Accordingly, the blogger should clearly and conspicuously disclose that he received the gaming system free of charge.

Example 8: An online message board designated for discussions of new music download technology is frequented by MP3 player enthusiasts. They exchange information about new products, utilities, and the functionality of numerous playback devices. Unbeknownst to the message board community, an employee of a leading playback device manufacturer has been posting messages on the discussion board promoting the manufacturer's product. Knowledge of this poster's employment likely would affect the weight or credibility of her endorsement. Therefore, the poster should clearly and conspicuously disclose her relationship to the manufacturer to members and readers of the message board.

Example 9: A young man signs up to be part of a "street team" program in which points are awarded each time a team member talks to his or her friends about a particular advertiser's products. Team members can then exchange their points for prizes, such as concert tickets or electronics. These incentives would materially affect the weight or credibility of the team member's endorsements. They should be clearly and conspicuously disclosed, and the

advertiser should take steps to ensure that these disclosures are being provided.

VI. INVITATION TO COMMENT

The Commission invites interested members of the public to submit written data, views, facts, and arguments addressing the issues raised by this Notice, including the proposed changes to the Guides. Such comments must be received by January 30, 2009, and must be filed in accordance with the instructions in the **ADDRESSES** section of this document.

List of Subjects in 16 C.F.R. § 255

Advertising, Trade practices.

Authority: 15 U.S.C. 41-58.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E8-28294 Filed 11-26-08; 8:45 am]

[BILLING CODE: 6750-01-S]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM09-2-000]

Contract Reporting Requirements of Intrastate Natural Gas Companies

Issued November 20, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposed rule; Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission is considering whether to revise its contract reporting requirements for those natural gas pipelines that fall under the Commission's jurisdiction pursuant to section 311 of the Natural Gas Policy Act of 1978 or section 1(c) of the Natural Gas Act. This Notice of Inquiry will assist the Commission in determining what changes, if any, should be made to its regulations.

DATES: Comments are due January 27, 2009.

ADDRESSES: You may submit comments on the Notice of Inquiry, identified by Docket No. RM09-2-000, by one of the following methods:

- Agency Web site: <http://www.ferc.gov>. Follow instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.

- Mail: Commenters unable to file comments electronically must mail or

hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher,
Chairman; Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

1. In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comments on whether the Commission should impose additional reporting requirements on (1) intrastate pipelines providing interstate services pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA)¹ and (2) Hinshaw pipelines providing interstate services subject to the Commission's Natural Gas Act (NGA) jurisdiction pursuant to blanket certificates issued under § 284.224 of the Commission's regulations.² In particular, the Commission is interested in exploring whether it should require section 311 and Hinshaw pipelines to post the details of their transactions with individual shippers in a manner more comparable to the reporting requirements applicable to interstate pipelines under § 284.13(b) of the Commission's Regulations.³

I. Background

2. NGPA section 311 authorizes the Commission to allow intrastate pipelines to transport gas "on behalf of" interstate pipelines or local distribution companies served by interstate

pipelines "under such terms and conditions as the Commission may prescribe."⁴ NGPA section 601(a)(2) exempts transportation service authorized under NGPA section 311 from the Commission's Natural Gas Act (NGA) jurisdiction. Congress adopted these provisions in order to eliminate the regulatory barriers between the intrastate and interstate markets and to promote the entry of intrastate pipelines into the interstate market. Such entry eliminates the need for duplication of facilities between interstate and intrastate pipelines. Shortly after the adoption of the NGPA, the Commission authorized Hinshaw pipelines to apply for NGA section 7 certificates authorizing them to transport gas in interstate commerce in the same manner as intrastate pipelines may do under NGPA section 311.⁵

3. Subpart C of the Commission's Part 284 open access regulations (18 CFR 284.121-126) implements the provisions of NGPA section 311 concerning transportation by intrastate pipelines. Section 284.224 of the regulations provides for the issuance of blanket certificates to Hinshaw pipelines to provide open access transportation service "to the same extent that, and in the same manner" as intrastate pipelines are authorized to perform such service by Subpart C.

4. The Part 284, Subpart C, regulations require that intrastate pipelines performing interstate service under NGPA section 311 must do so on an open access basis.⁶ However, consistent with the NGPA's goal of encouraging intrastate pipelines to provide interstate service, the Commission has not imposed on intrastate pipelines all of the Part 284 requirements imposed on interstate pipelines. For example, when the Commission first adopted the Part 284 open access regulations in Order No. 436, the Commission exempted intrastate pipelines from the requirement that they offer open access service on a firm basis.⁷ The Commission found that requiring intrastate pipelines to offer firm service to out-of-state shippers could discourage them from providing any interstate service, because such a requirement could progressively turn the intrastate

pipeline into an interstate pipeline against its will and against the will of the responsible state authorities. Similarly, Order No. 636-B exempted intrastate pipelines from the requirements of Order No. 636.⁸ Those requirements included capacity release, electronic bulletin boards (now internet Web sites), and flexible receipt and delivery points.

5. In Order No. 637,⁹ the Commission modified the Part 284 regulations applicable to interstate pipelines in a number of ways. Among other things, the Commission revised the reporting requirements for interstate pipelines in order to provide more transparent pricing information and to permit more effective monitoring for the exercise of market power and undue discrimination. Section 284.13(b), as adopted by Order No. 637, requires interstate pipelines to post on their internet Web sites basic information on each transaction with individual shippers. Interstate pipelines must post on their Web site the following details about new transactions, including revisions to a contract, no later than the first nomination under a transaction:

- The name of the shipper.
- The contract number (for firm service).
- The rate charged.
- The maximum rate.
- The duration (for firm service).
- The receipt and delivery points and zones covered.
- The quantity of gas covered.
- Any special terms or details, such as any deviations from the tariff.
- Whether any affiliate relationship exists.

6. Section 284.13(c) of the Commission's regulations also requires interstate pipelines to file with the Commission on the first business day of each calendar quarter an index of its firm transportation and storage customers and to publish the same

⁸ *Pipeline Service Obligations, and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636-B, 61 FERC ¶ 61,272, at 61,992 n.26 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

⁹ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

¹ 15 U.S.C. 3372.

² Section 1(c) of the NGA exempts from the Commission's NGA jurisdiction pipelines which transport gas in interstate commerce if (1) They receive natural gas at or within the boundary of a state, (2) all the gas is consumed within that state and (3) the pipeline is regulated by a state Commission. This exemption is referred to as the Hinshaw exemption after the Congressman who introduced the bill amending the NGA to include section 1(c). See *ANR Pipeline Co. v. Federal Energy Regulatory Comm'n*, 71 F.3d 897, 898 (1995) (briefly summarizing the history of the Hinshaw exemption).

³ 18 CFR 284.13(b).

⁴ 15 U.S.C. 3371(c).

⁵ *Certain Transportation, Sales, and Assignments by Pipeline Companies not Subject to Commission Jurisdiction Under Section 1(c) of the Natural Gas Act*, Order No. 63, FERC Stats. & Regs. ¶ 30,118, at 30,824-25 (1980).

⁶ See 18 CFR 284.7(b), 284.9(b) and 284.122.

⁷ *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 436, FERC Stats. & Regs. ¶ 30,665, at 31,502 (1985).

information on their Web site. The information required to be included in the Index of Customers does not include the rates paid by the customers. Section 284.13(d) requires interstate pipelines to provide on their Web sites “equal and timely access to information relevant to the availability of all transportation services whenever capacity is scheduled.” Section 284.13(e) requires interstate pipelines to file semi-annual reports of their storage injection and withdrawal activities, including the identities of the customers, the volumes into and withdrawn from storage for each customer and the unit charge and total revenues received.

7. Order No. 637 did not modify the reporting requirements for NGPA section 311 intrastate pipelines and Hinshaw pipelines provided in § 284.126(c) of the Commission’s regulations. That section only requires section 311 and Hinshaw pipelines to file semi-annual reports of their storage injection and withdrawal activity. The reports must be filed within 30 days of the end of each complete injection and withdrawal period and must include: The identity of each customer injecting or withdrawing gas from storage; the docket where the storage injection or withdrawal rates were approved; the maximum storage quantity and daily withdrawal quantity applicable to each customer; the volumes each customer injected or withdrew from storage; and the unit charge and total revenues received from each customer during the injection/withdrawal period. Section 284.126(b) of the Commission’s regulations requires section 311 pipelines to make similar reports concerning their transportation services on an annual basis.¹⁰

8. Recently, an interstate storage provider with market-based rates, SG Resources Mississippi, L.L.C. (SGRM) filed a request for waiver of the §§ 284.13(b)(1)(iii) and (b)(2)(ii) requirements that interstate pipelines post the rates charged in firm and interruptible transactions no later than first nomination for service.¹¹ SGRM requested the waiver for both itself and all interstate storage providers with market-based rates. It contended that the mandatory disclosure of commercially sensitive pricing information provides prospective customers and competitors,

such as NGPA section 311 intrastate storage providers that are not subject to this disclosure, with an unfair competitive advantage. In the alternative, SGRM requested that the Commission initiate a rulemaking proceeding to determine whether the Commission’s regulations should be modified to exempt storage providers authorized to charge market-based rates from the relevant portions of the Internet posting regulations. A number of other interstate storage providers with market-based rates filed comments in support of SGRM’s requests. A number of natural gas industry trade associations and a natural gas commodities trading firm filed in opposition of SGRM’s request.

9. In a contemporaneous order, the Commission is denying the request for waiver and the alternative petition for a rulemaking proceeding.¹² In that order, the Commission finds that the fact some interstate storage companies have been authorized to charge market-based rates does not justify exempting them from the requirements in § 284.13(b) that they post the rates charged in each storage transaction. The Commission explains that Order No. 637 adopted the posting requirements for the purpose of enabling the Commission and shippers to monitor market-based rate transactions, as well as cost-based transactions, for undue discrimination and preference and to promote competition through price transparency. As the Commission stated in Order No. 637:

The reporting of detailed transactional information is necessary because the Commission is modifying its method of regulating the natural gas industry by replacing traditional regulatory controls, such as the price cap on short-term capacity releases, with competition. Thus, greater transactional information is necessary to ensure that competition flourishes, and that market power and undue discrimination remain in check in the new competitive environment. * * * The Commission finds it axiomatic that greater, more complete and detailed information about transactions will greatly improve shippers’ ability to make informed decisions, and both shippers’ and the Commission’s ability to monitor the market.¹³

10. In addition, the Commission rejects SGRM’s contention that it should not require the transactional data to be made public, because such disclosure could cause competitive harm. The Commission finds that, while disclosure of the transactional information may cause some commercial disadvantage to

individual entities, it benefits the market as a whole, by improving efficiency and competition.¹⁴ The Commission also finds that SGRM’s request that the Commission permit storage providers to report their prices only to the Commission, and not publicly disclose them, is contrary to NGA section 4(c)’s requirement that “every natural gas company * * * keep open * * * for public inspection * * * all rates.”¹⁵

II. Discussion

11. While the Commission is rejecting SGRM’s waiver request and reaffirming that all interstate pipelines must post the information required by § 284.13(b) of the Commission’s regulations, the Commission is issuing this Notice of Inquiry to consider (1) whether the disparate reporting requirements for interstate and NGPA section 311 and Hinshaw pipelines have an adverse competitive effect on the interstate pipelines and (2) if so, whether the Commission should modify the posting requirements for section 311 intrastate pipelines and Hinshaw pipelines in order to make them more comparable to the § 284.13(b) posting requirements for interstate pipelines.

12. SGRM and other interstate storage providers with market-based rates have raised a concern that our disparate reporting requirements for interstate pipelines and section 311 intrastate pipelines may provide the intrastate pipelines with a competitive advantage. Although the interstate storage providers have sought to remedy any competitive disadvantage by seeking an exemption from the § 284.13(b) price disclosure requirements, an alternative remedy would be to extend the interstate reporting requirements to NGPA section 311 and Hinshaw pipelines.

13. The Commission recognizes that “Congress intended that intrastate pipelines should be able to compete in the transportation market without bearing the burden of full regulation by FERC under the Natural Gas Act.”¹⁶ Consistent with that fact, the Commission has not extended all of the Part 284 open access requirements to NGPA section 311 intrastate pipelines or to Hinshaw pipelines. However, the U.S. Court of Appeals for the District of Columbia Circuit has also held that the Commission “must provide a reasonable justification for excluding” an intrastate

¹⁰ Some section 311 intrastate storage and transportation operators submit these reports subject to a request for privileged treatment under §§ 388.112 or 385.1112 of the Commission’s regulations. In such instances, the reports are treated as privileged at least until another party asks that they be made public.

¹¹ See Docket No. RP08–606–000, SGRM September 3, 2008 Petition.

¹² SGRM, 125 FERC ¶ 61,191 (2008).

¹³ Order No. 637–A, FERC Stats. & Regs. ¶ 31,099 at 31,612–3.

¹⁴ SGRM, 125 FERC ¶ 61,191 at P 32–33.

¹⁵ 15 U.S.C. 717(c).

¹⁶ *Mustang Energy Corp. v. Federal Energy Regulatory Comm’n*, 859 F.2d 1447, 1457 (10th Cir. 1988), cert. denied, 490 U.S. 1019 (1988); see also *EPGT Texas Pipeline*, 99 FERC ¶ 61,295 (2002).

pipeline from a requirement that binds interstate pipelines.¹⁷ Similarly, the Commission has held that it may grant intrastate facilities “additional flexibility,” but not if lighter regulation would “harm any party [or] impede the Commission’s goal of fostering a national pipeline grid.”¹⁸

14. Accordingly, comments are requested to assist in evaluating whether changes in the Commission’s posting requirements should be considered in order to remove any competitive disadvantage between interstate pipelines, on the one hand, and intrastate pipelines providing interstate transportation and storage services under section 311 of the NGPA and Hinshaw pipelines providing such service pursuant to a § 284.224 blanket certificate. Specifically, the Commission requests comments on the following questions:

1. What are the competitive impacts of the current differences in reporting requirements applicable to interstate pipelines subject to the § 284.13 reporting requirements and section 311 and Hinshaw pipelines subject to the § 284.126 reporting requirements? Are the competitive effects greater where the competing pipelines have market-based rates, than where the competing pipelines have cost-based rates? Does competition between interstate pipelines, on the one hand, and section 311 and Hinshaw pipelines, on the other, occur primarily in the context of storage services or is there also significant competition in the context of transportation services?

2. Should the reporting requirements for interstate pipelines in § 284.13 be extended to all section 311 and Hinshaw pipelines providing interstate transportation and storage services? Should the reporting requirements in § 284.13 only be required for section 311 and Hinshaw pipelines with authority to provide interstate services at market-based rates?

3. To what extent would market transparency be enhanced by requiring section 311 and Hinshaw pipelines providing interstate services to comply with the requirements of § 284.13?

4. Should the reporting requirements for interstate pipelines in § 284.13 only be extended to larger section 311 and Hinshaw pipelines and, if so, what measurement should be used to separate larger section 311 and Hinshaw pipelines from smaller storage providers?

5. Should all of the § 284.13 reporting requirements be imposed on section 311 and Hinshaw pipelines or only some of those requirements? If the latter, which of the § 284.13 reporting requirements are necessary to avoid adverse competitive effects and promote transparency?

6. Would extending the § 284.13 reporting requirements to section 311 and Hinshaw pipelines have a material effect on the amount of intrastate transportation and storage capacity made available in the interstate market?

7. Would a periodic report filed more frequently than semi-annually but short of a daily posting requirement provide the necessary level of price transparency to address the issues raised by SGRM and other storage developers in Docket No. RP08–606–000?

8. Should section 311 and Hinshaw pipelines be prohibited from submitting their § 284.126(b) and (c) annual transportation and semi-annual storage reports subject to a request for privileged treatment under §§ 385.1112 and 388.112 of the Commission’s regulations? If so, does that provide the necessary level of price transparency to address the issues raised by SGRM and other storage developers in Docket No. RP08–606–000?

III. Procedure for Comments

15. The Commission invites interested persons to submit comments, and other information on the matters, issues, and specific questions identified in this notice. Comments are due January 27, 2009. Comments must refer to Docket No. RM09–2–000, and must include the commenter’s name, the organization it represents, if applicable, and its address.

16. To facilitate the Commission’s review of the comments, commenters are requested to provide an executive summary of their position. Commenters are requested to identify each specific question posed by the Notice of Inquiry that their discussion addresses and to use appropriate headings. Additional issues the commenters wish to raise should be identified separately. The commenters should double-space their comments.

17. Comments may be filed on paper or electronically via the eFiling link on the Commission’s Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of

their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

18. All comments will be placed in the Commission’s public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters are not required to serve copies of their comments on other commenters.

IV. Document Availability

19. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission’s Home Page (<http://www.ferc.gov>) and in the Commission’s Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

20. From the Commission’s Home Page on the Internet, this information is available in the Commission’s document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

21. User assistance is available for eLibrary and the Commission’s Web site during normal business hours. For assistance, please contact the Commission’s Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at FERCOnlineSupport@ferc.gov or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at public.referenceroom@ferc.gov).

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. E8–28218 Filed 11–26–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–140029–07]

RIN 1545–BH62

Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

¹⁷ *ANR v. FERC*, 71 F.3d at 902.

¹⁸ *EPGT Texas Pipeline*, 99 FERC ¶ 61,295, at 62,252–3 (2002).

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to the substantiation and reporting requirements for cash and noncash charitable contributions under section 170 of the Internal Revenue Code. The regulations reflect the enactment of provisions of the American Jobs Creation Act of 2004 and the Pension Protection Act of 2006. The regulations provide guidance to individuals, partnerships, and corporations that make charitable contributions, and will affect any donor claiming a deduction for a charitable contribution after the date these regulations are published as final regulations in the **Federal Register**.

DATES: The public hearing is being held on Friday, January 23, 2009, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Tuesday, December 23, 2008.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

Send Submissions to CC:PA:LPD:PR (REG-140029-07), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG-140029-07), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-140029-07).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Susan J. Kassell (202) 622-5020; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Funmi Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG-140029-07) that was published in the **Federal Register** on Thursday, August 7, 2008 (73 FR 45908).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by November 5, 2008, must submit an outline of the topics to be addressed and the amount of time to be denoted to each topic (Signed original and eight copies).

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW., entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8-28212 Filed 11-26-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 51 and 58

RIN 2900-AM97

Per Diem for Nursing Home Care of Veterans in State Homes

AGENCY: Department of Veterans Affairs.
ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations which set forth a mechanism for paying per diem to State homes providing nursing home care to eligible veterans. More specifically, we are proposing to update the basic per diem rate, to implement provisions of the Veterans Benefits, Health Care, and Information Technology Act of 2006, and to make several other changes to better ensure that veterans receive quality care in State homes.

DATES: Written comments must be received on or before December 29, 2008.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-

AM97 Per Diem for Nursing Home Care of Veterans in State Homes." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Theresa Hayes at (202) 461-6771 (for issues concerning per diem payments), and Christa Hojlo, PhD at (202) 461-6779 (for all other issues raised by this document), Office of Geriatrics and Extended Care, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. (The telephone numbers set forth above are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This document proposes to amend the regulations at 38 CFR part 51 (referred to below as the regulations), which set forth a mechanism for paying per diem to State homes providing nursing home care to eligible veterans. Under the regulations, VA pays per diem to a State for providing nursing home care to eligible veterans in a facility if the Under Secretary for Health recognizes the facility as a State home based on a determination that the facility meets the standards set forth in subpart D of the regulations. The standards set forth minimum requirements that are intended to ensure that VA pays per diem for eligible veterans only if the State homes provide quality care. This document also proposes to make corresponding changes concerning VA forms set forth at 38 CFR part 58.

Office of Geriatrics and Extended Care

The current regulations refer to the Geriatrics and Extended Care Strategic Healthcare Group (114) in a number of places. This has been renamed the Office of Geriatrics and Extended Care (114). Accordingly, we propose to amend the regulations to reflect this change.

Recognition and Certification.

Current § 51.20(a) requires an application for recognition and certification of a State home for nursing home care to be submitted to the Under Secretary for Health (10), VA Headquarters, 810 Vermont Avenue, NW., Washington, DC 20420. We would

change this provision to have the submission instead be addressed to the Chief Consultant, Office of Geriatrics and Extended Care (114), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, who processes applications for the Under Secretary for Health.

Current § 51.30(a)(1) provides that the Under Secretary for Health will make the determination regarding recognition and the initial determination regarding certification after receipt of a "tentative determination" from the director of the VA medical center of jurisdiction regarding whether, based on a VA survey, the facility and facility management meet or do not meet the standards of subpart D of the regulations. The term "tentative determination" has caused confusion as to who makes the final decision that a State home meets VA standards for purposes of recognizing a State home. It was intended that the Under Secretary for Health would make this final determination. Accordingly, we propose to amend § 51.30(a)(1) to prescribe that the Under Secretary will make a final decision regarding recognition of a State home after considering the recommendation of the medical center director.

In § 51.30(a)(1), with respect to the requirement that the recommendation be "based on a VA survey," we propose that VA will not conduct the recognition survey for purposes of recognizing a home until (i) the facility under consideration for recognition has at least 21 residents or (ii) the number of residents in the facility equals 50 percent or more of the new bed capacity of the facility. Because the majority of VA standards for payment of per diem are directly related to resident care, it is important that there is a representative sample of residents in the facility to be able to determine if the facility meets the standards. We need to know whether a facility can meet the standards while providing adequate services for at least a unit of average size. The average unit size in a nursing home is 21 residents. We also believe 50 percent of the total resident capacity in the facility represents a reasonable number of residents when a facility is renovating or adding a small number of beds.

Current § 51.30(d), (e), and (f) set forth appeal provisions that apply if a director of a VA medical center of jurisdiction determines that a State home facility or facility management does not meet the standards of subpart D. To clarify that these appeal provisions apply to the Under Secretary for Health's initial decision recognition

and certification, as well as a director's subsequent determinations regarding a home's failure to meet the standards of subpart D, we propose to amend § 51.30(d), (e), and (f) accordingly.

Basic Rate

With respect to per diem for nursing home care, current § 51.40 prescribes that VA will pay the lesser of:

- One-half of the cost of the care for each day the veteran is in the facility, or
- \$50.55 for each day the veteran is in the facility.

Payment in the amount of \$50.55 was established for use in Fiscal Year 2000 and has been increased every year since in accordance with 38 U.S.C. 1741(c), which prescribes criteria for increasing basic per diem payments. We propose to change this amount to \$71.42 for Fiscal Year 2008 and to state that the amounts for subsequent fiscal years would be set in accordance with the criteria in section 1741(c).

Rate Based on Service Connection

Under the provisions of 38 U.S.C. 1745(a), which were established by section 211 of the Veterans Benefits, Health Care, and Information Technology Act of 2006, the basic per diem rate no longer applies for:

- Any veteran in need of nursing home care for a service-connected disability, or
- Any veteran who has a service-connected disability rated at 70 percent or more and is in need of nursing home care.

Instead, under the provisions of 38 U.S.C. 1745(a), the rate for such veterans is the lesser of:

- The applicable or prevailing rate payable in the geographic area in which the State home is located, as determined by the Secretary, for nursing home care furnished in a non-Department nursing home (a public or private institution not under the direct jurisdiction of VA which furnishes nursing home care); or
- A rate not to exceed the daily cost of care in the State home facility, as determined by the Secretary, following a report to the Secretary by the director of the State home.

Proposed § 51.41(a) reflects these statutory provisions.

The proposal interprets the statutory eligibility provisions for veterans who have "a service-connected disability rated at 70 percent or more" to cover veterans with "a singular or combined rating of 70 percent or more based on one or more service-connected disabilities or a rating of total disability based on individual unemployability." We believe that this reflects the

statutory intent and is consistent with our other interpretation of similar statutory provisions, e.g., for enrollment purposes we interpreted percentage ratings to include all service-connected disabilities combined, as well as a rating of total disability based on individual unemployability. (See 38 CFR 17.36(b)(1)–(2)).

We propose to establish criteria for determining the applicable or prevailing rate payable in the geographic area based on the information provided below. VA's per diem rate based on service connection will be a daily rate that will include both a direct nursing home care charge and a physician charge.

The Federal Medicare program reimburses nursing homes for skilled nursing care provided to Medicare beneficiaries. The Centers for Medicare & Medicaid Services (CMS) administers the Medicare program and thus has developed a national system for paying for this care. The current system has been used and improved since 1997. In our view, this system, which does not include physician charges, comes closest to determining what the reimbursement rate per day for nursing home care should be in a manner that is analytically based and that considers the cost differences in all parts of the United States. As such, except for physician charges, we believe that it meets the statutory mandate that VA reimburse State homes at "the applicable or prevailing rate payable in the geographic area in which the State home is located * * * for nursing home care furnished in a non-Department nursing home." We would thus compute a daily rate for each State home using the formula set forth in proposed § 51.41 and discussed below.

This formula is based on CMS' Medicare payment model in which per diem payments for each admission are case-mix adjusted using a resident classification system (Resource Utilization Groups, version III (RUG III)). The RUG III system is based on data from resident assessments (Minimum Data Set 2.0) and relative weights developed from staff time data. Each case mix is assigned a Federal rate with a labor portion and a non-labor portion. To adjust the amount to reflect the prevailing rate in the local geographic area, the labor portion is multiplied by the CMS hospital wage index for the local jurisdiction. The CMS information regarding these calculations is published in the **Federal Register** every summer and is effective beginning October 1 for the entire fiscal year. See 72 FR 43412 (August 3, 2007) for information for the 2008 Federal

fiscal year. VA is considering a modification to the proposed payment structure to be introduced after two or three years of experience with the RUG III approach. In the modification, VA would use the actual case-mix of the individual state veteran nursing home to determine the reimbursement rate, rather than assuming that every nursing home has an equal number of veterans in each of the 53 RUG III levels. This modification will allow for more accurate payments, reimbursing nursing homes at a higher rate for treating veterans with more intensive needs. VA is seeking public comment on this modification.

The proposed physician charge would be a daily charge based on information set forth in the SMS and Supplemental Survey PE/HR which was published by the American Medical Association until 1999 and is used by CMS to develop the practice expense portion of the Medicare physician fee schedule amounts. To find the daily charge we would use the average hourly rate for all physicians from the fee schedule and modify this hourly rate by the applicable geographic adjustment factor used under the Medicare physician fee schedule for the area where the State home is located. We would use the modified hourly rate as the monthly visit rate based on our finding that the total time for the multiple physician visits during the month would average approximately one hour. We would then multiply the modified hourly rate by 12 (months in year) and then divide it by the number of days in the year. This daily rate would be added to the average per diem, described above. We are using an hourly rate and geographic index that does not include business taxes or malpractice expenses. This is because most states provide physician services using salaried state employees. However, we are soliciting comments on this issue. The prevailing rates computed under this provision will be updated each year using the Medical Economic Index.

The rate paid to a State home for care of certain service-connected veterans would thus be the lesser of the applicable or prevailing rate payable in the geographic area in which the State home is located or a rate not to exceed the daily cost of care for the month in the State home. The actual daily cost of care would be submitted by the State home on VA Form 10-5588. Without the submission of such information VA cannot pay per diem based on service connection because VA cannot determine the amount to pay.

Section 211(a)(5) of Public Law 109-461 required the higher rate for certain

service-connected veterans to take effect on March 21, 2007 (90 days after enactment of the law). Accordingly, VA proposes to make retroactive payments constituting the difference between the amount of per diem actually paid and the amount calculated under the formula set forth in these regulations for care provided to these veterans on or after March 21, 2007. However, VA would not make retroactive payments if the State home received any payment for such care from any source unless the amount received was returned to the payor. It is not administratively feasible for VA to oversee and verify accuracy of partial payments.

Moreover, to reflect 38 U.S.C. 1745(a)(3), paragraph (c) states that, as a condition of receiving payments under proposed § 51.41, a State home must agree not to accept drugs or medicines from VA on behalf of veterans provided under 38 U.S.C. 1712(d) and corresponding VA regulations. The direct nursing home care payments to be made to State homes under proposed § 51.41 include payment for drugs and medicines.

Drugs and Medicines Based on Service Connection

The provisions of 38 U.S.C. 1745(b), which were established by section 211(a)(2) of the Veterans Benefits, Health Care, and Information Technology Act of 2006, require VA to furnish recognized State homes with such drugs and medicines as may be ordered by prescription of a duly licensed physician as specific therapy in the treatment of illness or injury for certain eligible veterans. Proposed § 51.42(a) reflects the statutory provisions and, for reasons explained above, we interpreted categories of veterans based on ratings to include singular or combined ratings.

Under proposed § 51.42(b), VA would furnish a drug or medicine only if the drug or medicine is included on VA's National Formulary, unless VA determines a non-Formulary drug or medicine is medically necessary. This should result in significant savings since, insofar as possible, the VA National Formulary consists of generic medications that often cost much less than brand medications. These are the same medications used for VA nursing home patients. Under proposed § 51.42(c), VA would furnish the drugs or medicines to the State home by mail or other means determined by VA. We believe it will be most feasible to provide the drugs and medicines by mail. However, it may be more practical to provide them by other means. For example, if the State home were located

next to the VA facility, it might be more practical to hand-deliver the drugs and medicines.

Section 211(a)(5) of Public Law 109-461 required that the provision of such drugs and medicines take effect on March 21, 2007 (90 days after enactment of the law). Accordingly, VA would make retroactive payments constituting the amount State homes paid for such drugs and medicines not including any administrative costs incurred by the State home. However, VA would not pay any amounts for drugs and medicines if the State home received any payment for such drugs and medicines from any source unless the amount received was returned to the payor. It is not administratively feasible for VA to oversee and verify accuracy of partial payments. To receive these retroactive payments, a State home would have to complete a VA Form 10-0460 and submit it to the VA medical center of jurisdiction.

Forms

Current § 51.40(a)(5), which we propose to move to § 51.43, provides that as a condition for receiving payment of per diem, the State home must submit to the VA medical center of jurisdiction for each veteran a completed VA Form 10-10EZ, Application for Medical Benefits and a completed VA Form 10-10SH, State Home Program Application for Care—Medical Certification. The regulations also provide that these VA Forms should be submitted at the time of admission to the home and with any request for a change in the level of care (domiciliary, hospital care or adult day health care). In many cases a completed VA Form 10-10EZ may already be on file with VA. In those cases, proposed § 51.43(a) would provide that a VA Form 10-10EZR be submitted instead. This form would not ask for any additional information. It would merely ask for an update on a portion of the information already submitted by the VA Form 10-10EZ. VA Forms 10-10EZ and 10-10SH are set forth in full at §§ 58.12 and 58.13. VA Form 10-10EZR is set forth in full at proposed § 58.12.

Bed Holds

Current § 51.40(a)(2) concerns payment of per diem for the days that a veteran is considered to be a resident at the facility and prescribes payment only for each full day that a veteran is a resident at the facility. We propose to clarify this concept by stating that per diem would be paid for each day that the veteran is receiving care and has an overnight stay.

Current § 51.40(a)(2) sets forth the VA rule regarding the payment of per diem for bed holds. Payment of per diem for bed holds assures that nursing home residents who are hospitalized or who are granted leave for other purposes are assured a nursing home bed upon return to the nursing home. The current regulations provide that VA will deem the veteran to be a resident at a facility and pay per diem during any absence from the facility that lasts for no more than 96 consecutive hours except that VA will not pay per diem when the veteran is receiving care outside the State home facility at VA expense. Also, the current regulations provide that an "absence will be considered to have ended when the veteran returns as a resident if the veteran's stay is for at least a continuous 24-hour period."

We propose to make changes to the bed hold rule. Proposed § 51.43(c) would provide that per diem will be paid for a bed hold only if the veteran has established residency by being in the facility for 30 consecutive days (including overnight stays) and the facility has an occupancy rate of 90 percent or greater. In addition, we propose that per diem for a bed hold will be paid only for the first ten (10) consecutive overnight absences at a VA or other hospital (this could occur more than once in a calendar year) and for the first twelve (12) other types of overnight absences in a calendar year.

We believe that State homes should receive per diem payments to hold beds only for permanent residents and only if the State home would likely fill the bed without such payments. Allowing payments for bed holds only after a veteran has been in a nursing home for at least 30 consecutive days (including overnight stays) appears to be sufficient to establish permanent residency. Further, there is no need to pay per diem for bed holds for those facilities with an occupancy of less than 90 percent because it is unlikely that those facilities would fill the bed of an absent resident.

The current 96-hour rule for absences coupled with the 24-hour return-period rule allow a State home to receive per diem payments for a veteran who spends four days per week away from the nursing home. This is inconsistent with the purpose for providing nursing home care, i.e., providing care for those unable to function outside a nursing home. This generous standard for bed holds was established when nursing home census was high. We do not propose a limit on the number of hospital stays because absences for hospital care do not suggest that an individual no longer needs nursing

home care. However, a limit of ten (10) consecutive overnight hospital absences and a limit of twelve (12) other overnight absences in a calendar year are consistent with many Medicaid State plans which generally provide for bed holds of around 12 days. Further, we believe the rationale for paying for bed holds would apply whether or not a veteran's hospital care outside the State home is being provided at VA expense. We thus propose to remove this distinction in the regulations.

Miscellaneous

Under the proposed rule, the provisions of paragraphs (a)(3) through (a)(5) and paragraph (b) of current § 51.40 would be moved to proposed § 51.43 with certain non-substantive changes, including changes that correspond to those discussed above in this document.

Also, we propose to revise VA Forms 10-5588 and 10-10SH and established a new VA Form 10-0460, as set forth in the text portion of this document at 38 CFR 58.11, 58.13, and 58.18. These VA Forms would include changes that correspond to the changes discussed above in this document.

Resident Rights

Current § 51.70(c)(5) provides that "[u]pon the death of a resident with a personal fund deposited with the facility, the facility management must convey within 30 days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate; or other appropriate individual or entity, if State law allows." State home representatives have requested that the 30 day time limit be changed to 90 calendar days based on the observation that it often takes a longer period to verify which individual or entity is the appropriate recipient of the funds and to provide the final accounting. Based on the rationale set forth by State home representatives, we propose to change the 30 day time limit to a more realistic 90 calendar days.

Physician Services—Role of Advanced Practice Nurses

Current § 51.150 provides that a resident must be seen by the primary physician within specified timeframes. These regulations also state that, at the option of the primary physician, required visits in the facility after the initial visit may alternate between personal visits by the primary physician and visits by a certified physician assistant, certified nurse practitioner, or a clinical nurse specialist. The regulations further allow such visits by

a clinical nurse specialist only if acting within the scope of practice as authorized by State law and only if acting under the supervision of the primary physician.

The term "clinical nurse specialist" is defined in current § 51.2 as "a licensed professional nurse with a master's degree in nursing with a major in a clinical nursing specialty from an academic program accredited by the National League for Nursing and at least 2 years of successful clinical practice in the specialized area of nursing practice following this academic preparation." We propose to change the definition to delete the requirement that such an individual have "at least 2 years of successful clinical practice in the specialized area of nursing practice following this academic preparation" and require instead that the individual must be currently certified by a nationally recognized credentialing body (such as the American Nurses Credentialing Center). To obtain the master's degree, the individual would necessarily gain substantial clinical practice experience. However, the certification appears to be necessary to ensure that a clinical nurse specialist retains skills necessary for the position. Such certifying bodies require that certified individuals complete continuing education and thereby help them stay current with advances in the profession.

The term "nurse practitioner" is also defined in current § 51.2 as "a licensed professional nurse who is currently licensed to practice in the State; who meets the State's requirements governing the qualifications of nurse practitioners; and who is currently certified as an adult, family, or gerontological nurse practitioner by the American Nurses' Association." We propose to delete the requirement of certification by the American Nurses' Association because it does not provide such certification. Instead, we propose to require certification by any nationally recognized body that provides such certification for nurse practitioners, such as the American Nurses' Credentialing Center or the American Academy of Nurse Practitioners. The certification appears to be necessary to ensure that a nurse practitioner retains skills necessary for the position. Such certifying bodies require that certified individuals complete continuing education and thereby help them stay current with advances in the profession.

Social Worker

Current § 51.100(h)(2) provides that "[a] nursing home with 100 or more beds must employ a qualified social

worker on a full-time basis.” This requirement was intended to ensure that the nursing home receives qualified social worker services and was not intended to require that the services be provided by one individual. We propose to clarify the regulations to specify that a nursing home with 100 or more beds would be required to employ one or more qualified social workers who work for a total period that equals at least the work time of one full-time employee (FTE). We also propose to clarify the regulations to specify that a State home must provide qualified social worker services in proportion to the total number of beds in the home, specifically one or more social worker FTE per 100 beds. For example, a nursing home with 50 beds would be required to employ one or more qualified social workers who work for a total period equaling at least one-half FTE and a nursing home with 150 beds would be required to employ qualified social workers who work for a total period equaling at least one and one-half FTE. This would give State homes more flexibility in hiring social workers and ensure that veterans in all State homes receive roughly the same amount of social work services.

Resident Assessment

Current § 51.110 (introductory text) requires facility management to “conduct initially, annually and as required by a change in the resident’s condition a comprehensive, accurate, standardized, reproducible assessment of each resident’s functional capability.” Current § 51.110(b)(3) also requires quarterly reassessments.

Current § 51.110(b)(1)(i) requires officials conducting such assessments, among other things, to use the Health Care Financing Administration Long Term Care Resident Assessment Instrument Version 2.0 in conducting the assessment. Current § 51.110(b)(1)(iii) also requires all nursing homes to have been in compliance with use of such assessment instrument by no later than January 1, 2000. This instrument is now called the Centers for Medicare and Medicaid Services (CMS) Resident Assessment Instrument Minimum Data Set (RAI/MDS), Version 2.0, and we propose to amend our regulations to reflect this change. Also, we propose to delete the provision requiring compliance by January 1, 2000, since this requirement has been fully met.

Also, we propose to require each State home to submit to VA at an email address provided by VA to the State home, each assessment (initial, annual, change in condition, and quarterly)

using the CMS assessment instrument described above within 30 days after completion of the instrument. This is the best method for VA to monitor whether adequate care is being provided to residents. Also, it appears that 30 days after completion provides ample time for the submissions to VA.

Physical Environment

Current § 51.200 requires State home facilities to meet certain provisions of the National Fire Protection Association’s NFPA 101, Life Safety Code (1997 edition) and the NFPA 99, Standard for Health Care Facilities (1996 edition). These documents are incorporated by reference in accordance with the provisions of 5 U.S.C. 552(a) and 1 CFR Part 51. We propose to change the regulations to update these documents to refer to the current editions of the NFPA code and standard. This change will assure that State home facilities meet current industry-wide standards regarding life safety and fire safety. We will again request approval of the incorporation by reference from the Office of the Federal Register.

These materials for which we are seeking incorporation by reference are available for inspection by appointment (call (202) 461-4902 for an appointment) at the Department of Veterans Affairs, Office of Regulation Policy and Management, Room 1063B, 810 Vermont Avenue, NW., Washington, DC 20420 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). They are also available at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. In addition, copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Box 9101, Quincy, MA 02269-9101. (For ordering information, call toll-free 1-800-344-3555.)

Unfunded Mandates

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

Paperwork Reduction Act

The Office of Management and Budget (OMB) assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA 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.

Proposed §§ 51.43, 58.11, 58.13, and 58.18 contain collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). These regulations set forth a mechanism for State homes to obtain a per diem as well as drugs and medicines.

The proposed rule at § 51.110 contains a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). VA has already obtained OMB clearance for the use of Minimum Data Sets (initial, annual, significant change in condition, and quarterly) (OMB control Number xxxxx). However, the proposed rule would require such Minimum Data Sets to be electronically transmitted to VA.

Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collection of information.

Comments on the collections of information contained in this rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1068, Washington, DC 20420; fax to (202) 273-9026; or e-mail comments through <http://www.Regulations.gov>. Comments should indicate that they are submitted in response to “RIN 2900-AM97.”

We are requesting comments on the collection of information provisions contained in §§ 51.43, 58.11, 58.13, 58.18, and 51.110. Comments must be submitted by December 29, 2008.

Title: Submission of VA Form 10-10EZR.

Summary of collection of information: Proposed § 51.43 would allow the use of VA Form 10-10EZR instead of VA Form 10-10EZ in appropriate cases.

Description of the need for information and proposed use of information: This information is needed for VA to determine veteran eligibility for per diem.

Description of likely respondents: State homes receiving per diem for

providing nursing home care to eligible veterans.

Estimated number of respondents per year: 127.

Estimated frequency of responses per year: 4,000.

Estimated total annual reporting and recordkeeping burden: 1,600 hours.

Estimated annual burden per collection: 24 minutes.

Title: Submission of VA Form 10–5588.

Summary of collection of information: Proposed § 58.11 would revise VA Form 10–5588 for State homes to obtain Federal aid.

Description of the need for information and proposed use of information: This information is needed for VA to determine how much to pay State homes.

Description of likely respondents: State homes receiving per diem for providing nursing home care to eligible veterans.

Estimated number of respondents per year: 124.

Estimated frequency of responses per year: 1,488.

Estimated total annual reporting and recordkeeping burden: 1,488 hours.

Estimated annual burden per collection: 1 hour.

Title: Submission of VA Form 10–10SH.

Summary of collection of information: Proposed § 58.13 would revise VA Form 10–10SH concerning medical certifications required for eligibility for Federal aid.

Description of the need for information and proposed use of information: This information is needed for VA to determine eligibility for paying State homes.

Description of likely respondents: State homes receiving per diem for providing nursing home care to eligible veterans.

Estimated number of respondents per year: 127.

Estimated frequency of responses per year: 5,000.

Estimated total annual reporting and recordkeeping burden: 2,500 hours.

Estimated annual burden per collection: 30 minutes.

Title: Submission of VA Form 10–0460.

Summary of collection of information: Proposed § 58.18 would establish VA Form 10–0460 concerning drugs and medicines for eligible veterans.

Description of the need for information and proposed use of information: This information is needed for VA to determine which veterans are eligible for drugs and medicines.

Description of likely respondents:

State homes requesting drugs and medicines for eligible veterans.

Estimated number of respondents per year: 420.

Estimated frequency of responses per year: 420.

Estimated total annual reporting and recordkeeping burden: 105 hours.

Estimated annual burden per collection: 15 minutes.

Title: Submission of assessments.

Summary of collection of information: Proposed § 51.110 contains provisions regarding electronic submission to VA of copies of each assessment using the Centers for Medicare and Medicaid Services (CMS) Resident Assessment Instrument Minimum Data Set, Version 2.0.

Description of the need for information and proposed use of information: This information is needed for VA to monitor whether adequate care is being provided to residents.

Description of likely respondents: State homes receiving per diem for providing nursing home care to eligible veterans.

Estimated number of respondents per year: 119.

Estimated frequency of responses per year: 72,000.

Estimated total annual reporting and recordkeeping burden: 36,000 hours.

Estimated annual burden per collection: 30 minutes.

The Department considers comments by the public on collections of information in—

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses 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.

Comment Period

VA believes, based upon its many contacts with interested members of the public including the families of veterans in State homes, State veterans' homes and State departments of veterans

affairs, and members of Congress, that there is strong interest in implementation of this rule as soon as possible. VA is aware of the many veterans and State nursing homes that will be assisted by the adoption of this rule. In order to implement the legislation and benefit these homes and veterans as quickly as possible, it is very important that VA takes action as soon as practicable. Accordingly, VA has determined that it would not be in the public interest to provide a 60-day comment period for this proposed rule and has instead specified that comments must be received within 30 days of publication in the **Federal Register**.

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 OMB, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of entitlement recipients; (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866 because it may result in a rule that raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This

rulemaking will affect veterans, State homes, and pharmacies. The State homes that are subject to this rulemaking are State government entities under the control of State governments. All State homes are owned, operated and managed by State governments except for a small number that are operated by entities under contract with State governments. These contractors are not small entities. Also, this rulemaking will have only an insignificant impact on a small number of pharmacies that could be considered small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.026, Veterans State Adult Day Health Care.

List of Subjects in 38 CFR Parts 51 and 58

Administrative practice and procedure, Claims, Day care, Dental health, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Approved: September 17, 2008.

Gordon H. Mansfield,
Deputy Secretary of Veterans Affairs.

For the reasons set forth in the preamble, we propose to amend 38 CFR parts 51 and 58 as follows:

PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES

1. The authority citation for part 51 is revised to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1741–1743, 1745.

2. Amend part 51 by removing the phrase “Geriatrics and Extended Care Strategic Healthcare Group” each place it appears and adding, in its place, “Office of Geriatrics and Extended Care”.

Subpart A—General

3. Amend § 51.2 by revising the definitions of the terms “Clinical nurse specialist” and “Nurse practitioner” to read as follows:

§ 51.2 Definitions.

* * * * *

Clinical nurse specialist means a licensed professional nurse who has a Master's degree in nursing with a major in a clinical nursing specialty from an academic program accredited by the National League for Nursing and who is certified by a nationally recognized credentialing body (such as the National League for Nursing, the American Nurses Credentialing Center, or the Commission on Collegiate Nursing Education).

* * * * *

Nurse practitioner means a licensed professional nurse who is currently licensed to practice in the State; who meets the State's requirements governing the qualifications of nurse practitioners; and who is currently certified as an adult, family, or gerontological nurse practitioner by a nationally recognized body that provides such certification for nurse practitioners, such as the American Nurses Credentialing Center or the American Academy of Nurse Practitioners.

* * * * *

Subpart B—Obtaining Per Diem for Nursing Home Care in State Homes

4. Amend § 51.20 by revising paragraph (a) to read as follows:

§ 51.20 Application for recognition based on certification.

* * * * *

(a) Send a request for recognition and certification to the Chief Consultant, Office of Geriatrics and Extended Care (114), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The request must be in the form of a letter and must be signed by the State official authorized to establish the State home;

* * * * *

5. Amend § 51.30 as follows:

a. Revise paragraph (a)(1).

b. Revise paragraphs (d), (e), and (f).

The revision and addition read as follows:

§ 51.30 Recognition and certification.

(a)(1) The Under Secretary for Health will make the determination regarding recognition and the initial determination regarding certification, after receipt of a recommendation from the director of the VA medical center of jurisdiction regarding whether, based on a VA survey, the facility and facility management meet or do not meet the standards of subpart D of this part. The recognition survey will be conducted only after the new facility has at least 21 residents or the number of residents consists of at least 50 percent of the new bed capacity of the facility.

* * * * *

(d) If, during the process for recognition and certification, the director of the VA medical center of jurisdiction recommends that the State home facility or facility management does not meet the standards of this part or if, after recognition and certification have been granted, the director of the VA medical center of jurisdiction determines that the State home facility or facility management does not meet the standards of this part, the director will notify the State home facility in writing of the standards not met. The director will send a copy of this notice to the State official authorized to oversee operations of the facility, the VA Network Director (10N 1–22), the Chief Network Officer (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114). The letter will include the reasons for the recommendation or decision and indicate that the State has the right to appeal the recommendation or decision.

(e) The State must submit the appeal to the Under Secretary for Health in writing, within 30 days of receipt of the notice of the recommendation or decision regarding the failure to meet the standards. In its appeal, the State must explain why the recommendation or determination is inaccurate or incomplete and provide any new and relevant information not previously considered. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration.

(f) After reviewing the matter, including any relevant supporting documentation, the Under Secretary for Health will issue a written determination that affirms or reverses the previous recommendation or determination. If the Under Secretary for Health decides that the facility does not meet the standards of subpart D of this part, the Under Secretary for Health will withdraw recognition and stop

paying per diem for care provided on and after the date of the decision (or not grant recognition and certification and not pay per diem if the appeal occurs during the recognition process). The decision of the Under Secretary for Health will constitute a final VA decision. The Under Secretary for Health will send a copy of this decision to the State home facility and to the State official authorized to oversee the operations of the State home.

* * * * *

Subpart C—Per Diem Payments

6. Revise § 51.40 to read as follows:

§ 51.40 Basic per diem.

Except as provided in § 51.41 of this part,

(a) During Fiscal Year 2008 VA will pay a facility recognized as a State home for nursing home care the lesser of the following for nursing home care provided to an eligible veteran in such facility:

(1) One-half of the cost of the care for each day the veteran is in the facility; or

(2) \$71.42 for each day the veteran is in the facility.

(b) During Fiscal Year 2009 and during each subsequent Fiscal Year, VA will pay a facility recognized as a State home for nursing home care the lesser of the following for nursing home care provided to an eligible veteran in such facility:

(1) One-half of the cost of the care for each day the veteran is in the facility; or

(2) The basic per diem rate for the Fiscal Year established by VA in accordance with 38 U.S.C. 1741(c).

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1744)

7. Amend part 51 by adding new §§ 51.41 through 51.43, to read as follows:

§ 51.41 Per diem for certain veterans based on service-connected disabilities.

(a) VA will pay a facility recognized as a State home for nursing home care at the per diem rate determined under paragraph (b) of this section for nursing home care provided to an eligible veteran in such facility, if the veteran:

(1) Is in need of nursing home care for a VA adjudicated service-connected disability, or

(2) Has a singular or combined rating of 70 percent or more based on one or more service-connected disabilities or a rating of total disability based on individual unemployability and is in need of nursing home care.

(b) For purposes of paragraph (a) of this section, the rate is the lesser of the

amount calculated under the paragraph (b)(1) or (b)(2) of this section.

(1) The amount determined by the following formula. Calculate the daily rate for the CMS RUG III (resource utilization groups version III) 53 case-mix levels for the applicable metropolitan statistical area if the facility is in a metropolitan statistical area, and calculate the daily rate for the CMS Skilled Nursing Prospective Payment System 53 case-mix levels for the applicable rural area if the facility is in a rural area. For each of the 53 case-mix levels, the daily rate for each State home will be determined by multiplying the labor component by the nursing home wage index and then adding to such amount the non-labor component and an amount based on the CMS payment schedule for physician services. The amount for physician services, based on information published by CMS, is the average hourly rate for all physicians, with the rate modified by the applicable urban or rural geographic index for physician work, and then with the modified rate multiplied by 12 and then divided by the number of days in the year.

Note to paragraph (b)(1): The amount calculated under this formula reflects the applicable or prevailing rate payable in the geographic area in which the State home is located for nursing home care furnished in a non-Department nursing home (a public or private institution not under the direct jurisdiction of VA which furnishes nursing home care).

(2) A rate not to exceed the daily cost of care for the month in the State home facility, as determined by the Chief Consultant, Office of Geriatrics and Extended Care, following a report to the Chief Consultant, Office of Geriatrics and Extended Care under the provisions of § 51.43(b) of this part by the director of the State home.

(c) Payment under this section to a State home for nursing home care provided to a veteran constitutes payment in full to the State home by VA for such care furnished to that veteran. Also, as a condition of receiving payments under this section, the State home must agree not to accept drugs and medicines from VA on behalf of veterans provided under 38 U.S.C. 1712 (d) and corresponding VA regulations (payment under this section includes payment for drugs and medicines).

§ 51.42 Drugs and medicines for certain veterans.

(a) In addition to per diem payments under § 51.40 of this part, the Secretary shall furnish drugs and medicines to a facility recognized as a State home as may be ordered by prescription of a

duly licensed physician as specific therapy in the treatment of illness or injury for a veteran receiving care in a State home, if:

(1) The veteran:

(i) Has a singular or combined rating of less than 50 percent based on one or more service-connected disabilities and is in need of such drugs and medicines for a service-connected disability; and

(ii) Is in need of nursing home care for reasons that do not include care for a VA adjudicated service-connected disability, or

(2) The veteran:

(i) Has a singular or combined rating of 50 or 60 percent based on one or more service-connected disabilities and is in need of such drugs and medicines; and

(ii) Is in need of nursing home care for reasons that do not include care for a VA adjudicated service-connected disability.

(b) VA may furnish a drug or medicine under paragraph (a) of this section only if the drug or medicine is included on VA's National Formulary, unless VA determines a non-Formulary drug or medicine is medically necessary.

(c) VA may furnish a drug or medicine under paragraph (a) of this section by having the drug or medicine delivered to the State home in which the veteran resides by mail or other means determined by VA.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1744)

§ 51.43 Per diem and drugs and medicines—principles.

(a) As a condition for receiving payment of per diem under this part, the State home must submit to the VA medical center of jurisdiction for each veteran a completed VA Form 10–10EZ, Application for Medical Benefits (or VA Form 10–10EZR, Health Benefits Renewal Form, if a completed Form 10–10EZ is already on file at VA), and a completed VA Form 10–10SH, State Home Program Application for Care—Medical Certification. These VA Forms must be submitted at the time of admission and with any request for a change in the level of care (domiciliary, hospital care or adult day health care). In case the level of care has changed or contact information is outdated, VA Forms 10–10EZ and 10–10EZR are set forth in full at § 58.12 and VA Form 10–10SH is set forth in full at § 58.13. If the facility is eligible to receive per diem payments for a veteran, VA will pay per diem under this part from the date of receipt of the completed forms required by this paragraph, except that VA will pay per diem from the day on which the

veteran was admitted to the facility if the completed forms are received within 10 days after admission.

(b) VA pays per diem on a monthly basis. To receive payment, the State must submit to the VA medical center of jurisdiction a completed VA Form 10–5588, State Home Report and Statement of Federal Aid Claimed. This form is set forth in full at § 58.11 of this part.

(c) Per diem will be paid under §§ 51.40 and 51.41 for each day that the veteran is receiving care and has an overnight stay. Per diem will be paid when there is no overnight stay if the veteran has resided in the facility for 30 consecutive days (including overnight stays) and the facility has an occupancy rate of 90 percent or greater. These payments will be made only for the first 10 consecutive days during which the veteran is admitted as a patient in a VA or other hospital (this could occur more than once in a calendar year) and only for the first 12 days in a calendar year during which the veteran is absent for purposes other than receiving hospital care.

(d) Initial per diem payments will not be made until the Under Secretary for Health recognizes the State home. However, per diem payments will be made retroactively for care that was provided on and after the date of the completion of the VA survey of the facility that provided the basis for determining that the facility met the standards of this part.

(e) The daily cost of care for an eligible veteran's nursing home care for purposes of §§ 51.40(a)(1) and 51.41(b)(2) consists of those direct and indirect costs attributable to nursing home care at the facility divided by the total number of residents at the nursing home. Relevant cost principles are set forth in the Office of Management and Budget (OMB) Circular number A–87, dated May 4, 1995, "Cost Principles for

State, Local, and Indian Tribal Governments."

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1744).

(f) As a condition for receiving drugs and medicines under this part, the State must submit to the VA medical center of jurisdiction a completed VA Form 10–0460 for each eligible veteran. This form is set forth in full at § 58.18 of this part. The corresponding prescriptions described in § 51.42 also should be submitted to the VA medical center of jurisdiction.

Subpart D—Standards

§ 51.70 [Amended]

8. Amend § 51.70, in paragraph (c)(5), by removing "30 days" and adding, in its place, "90 calendar days".

9. Amend § 51.100, by revising paragraph (h)(2) to read as follows:

§ 51.100 Quality of life.

* * * * *

(h) * * *

(2) For each 100 beds, a nursing home must employ one or more qualified social workers who work for a total period that equals at least the work time of one full-time employee (FTE). A State home that has more or less than 100 beds must provide qualified social worker services on a proportionate basis (for example, a nursing home with 50 beds must employ one or more qualified social workers who work for a total period equaling at least one-half FTE and a nursing home with 150 beds must employ qualified social workers who work for a total period equaling at least one and one-half FTE).

* * * * *

10. Amend § 51.110 by:

a. Revising paragraph (b)(1)(i).

b. Removing paragraph (b)(1)(iii).

c. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively.

d. Adding a new paragraph (d).

The revision and addition read as follows:

§ 51.110 Resident assessment.

* * * * *

(b) * * *

(1) * * *

(i) Using the Centers for Medicare and Medicaid Services (CMS) Resident Assessment Instrument Minimum Data Set, Version 2.0; and

* * * * *

(d) *Submission of assessments.* Each assessment (initial, annual, change in condition, and quarterly) using the Centers for Medicare and Medicaid Services (CMS) Resident Assessment Instrument Minimum Data Set, Version 2.0 must be electronically submitted to VA at the email address provided by VA to the State within 30 days after completion of the assessment document.

* * * * *

§ 51.200 [Amended]

11. Amend § 51.200, by:

a. Removing the phrase "(1997 edition)" each place it appears and adding, in its place, "(2006 edition)"; and

b. Removing the phrase "(1996 edition)" each place it appears and adding, in its place, "(2006 edition)".

PART 58—FORMS

12. The authority citation for part 58 is revised to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1741–1743, 1745.

13. Amend § 58.11 by revising VA Form 10–5588 to read as follows:

§ 58.11 VA Form 10–5588—State Home Report and Statement of Federal Aid Claimed

BILLING CODE 8320–01–P

 Department of Veterans Affairs		STATE HOME REPORT AND STATEMENT OF FEDERAL AID CLAIMED			
TO	VA FACILITY		FROM	NAME AND ADDRESS OF STATE HOME	
PAY TO			FOR MONTH ENDING		
CHANGES IN RESIDENCY FOR THE MONTH					
LINE NO.	ITEM	DOMICILIARY (A)	NURSING HOME CARE (B)	HOSPITAL (C)	ADULT DAY HEALTH CARE (D)
1	TOTAL VETERAN RESIDENTS REMAINING AT END OF PRIOR MONTH				
2	GAINS	ADMISSIONS (<i>Change of status</i>)			
3		ADMISSIONS (<i>Other</i>)			
4		RETURNS FROM LEAVE OF ABSENCE OF MORE THAN 96 HOURS			
5	LOSSES	DISCHARGES (<i>Change of status</i>)			
6		DISCHARGES (<i>Other</i>)			
7		DEATHS			
8		LEAVES OF ABSENCE OF MORE THAN 96 HOURS			
9	TOTAL VETERAN RESIDENTS AT END OF THE MONTH				
STATUS AS OF THE END OF THE MONTH					
LINE NO.	ITEM	DOMICILIARY (A)	NURSING HOME CARE (B)	HOSPITAL (C)	ADULT DAY HEALTH CARE (D)
10	TOTAL NON-VETERAN RESIDENTS AT THE END OF THE MONTH				
11	TOTAL NURSING HOME CARE VETS THAT ARE 70% OR MORE SC OR IN NEED OF NH CARE FOR A SC CONDITION				
12	FEMALE VETERAN RESIDENTS REMAINING AT THE END OF THE MONTH				
TOTAL DAYS OF CARE FOR THE MONTH					
LINE NO.	ITEM	DOMICILIARY (A)	NURSING HOME CARE (B)	HOSPITAL (C)	ADULT DAY HEALTH CARE (D)
13	TOTAL DAYS OF CARE FURNISHED TO VETERANS WHO ARE ELIGIBLE FOR PER DIEM PAYMENTS				
13a	TOTAL DAYS OF CARE FURNISHED TO VETERANS 70% OR MORE SC OR IN NEED OF CARE FOR A SC CONDITION				

VA FORM **10-5588**
JUL 2008

STATE HOME REPORT AND STATEMENT OF FEDERAL AID CLAIMED CONTINUED						
CLAIM FOR BASIC PER DIEM PAYMENTS FOR ELIGIBLE VETERANS						
LINE NO.	FEDERAL AID CLAIMED UNDER SEC.1741, TITLE 38, U.S.C., AS AMENDED	DAYS OF CARE (E)	AVERAGE DAILY CENSUS (F)	DAILY COST OF CARE FOR THE MONTH* (G)	PER DIEM CLAIMED (H)	TOTAL AMOUNT CLAIMED (I)
14	DOMICILIARY CARE					
15	NURSING HOME					
16	HOSPITAL CARE					
17	ADULT DAY HEALTH CARE					
18	TOTAL AMOUNT CLAIMED					
CLAIM FOR PER DIEM PAYMENTS FOR CERTAIN SC VETERANS IN STATE NURSING HOMES						
LINE NO.	VETERAN CATEGORY	DAYS OF CARE (J)	AVERAGE DAILY CENSUS (K)	PREVAILING RATE FROM CHART OR (G) 15 WHICHEVER IS LESS (L)	AMOUNT CLAIMED (M)	
19	HAS A SINGULAR OR COMBINED RATING OF 70% OR MORE BASED ON 1 OR MORE SERVICE-CONNECTED DISABILITIES OR A RATING OF TOTAL DISABILITY BASED ON INDIVIDUAL UNEMPLOYABILITY					
20	IS IN NEED OF NH CARE FOR A VA ADJUDICATED SC DISABILITY					
21	TOTALS:					
FOR UNITED STATES DEPARTMENT OF VETERANS AFFAIRS USE ONLY						
I certify that this report is correct based on documentation provided to VA and that the bed capacity approved by VA is correct.						
BED CAPACITY APPROVED BY VA						
DOMICILIARY CARE		NURSING HOME CARE		HOSPITAL CARE		ADULT DAY HEALTH CARE
RECEIVING REPORT - Services authorized under provisions of Sec. 1741, 1742, 1743 and 1745, Title 38, U.S.C., have been rendered in the quantity claimed and payment is recommended except as follows:		TOTAL AMOUNT APPROVED BY VA FOR PAYMENT (add block 18i and 21M)				
		SIGNATURE AND TITLE OF VA STATE HOME COORDINATOR				
		DATE				
		ACCOUNTING CERTIFICATION - AUDIT BLOCK				
		AMOUNT DUE		DATE		VOUCHER AUDITOR
SIGNATURE AND TITLE OF AUDITOR					DATE	
The daily cost of care per veteran is the direct cost plus the indirect cost for the month, divided by patients or residents days of care. Compute this cost in accordance with relevant cost principles set forth in the Office of Management and Budget (OMB) Circular number A-87, dated May 4, 1995, :Cost Principles for State, Local, and Indian Tribal Governments.						

STATE HOME REPORT AND STATEMENT OF FEDERAL AID CLAIMED CONTINUED			
TOTAL STATE OPERATING BEDS AT END OF THE MONTH			
DOMICILIARY CARE	NURSING HOME CARE	HOSPITAL CARE	ADULT DAY HEALTH CARE
I certify that this report is correct, that all residents included in the report were physically present during the period for which Federal aid is claimed, except for authorized absences of 96 hours or less, and that facility management has complied with all provisions of Title VI, Public Law 88-352, entitled Civil Rights Act of 1964.			
SIGNATURE OF STATE HOME ADMINISTRATOR			DATE
SIGNATURE OF STATE EMPLOYEE WHEN APPLICABLE			DATE
REMARKS			
The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 30 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form. Although completion of this form is voluntary, VA will be unable to provide reimbursement for services rendered without a completed form. Failure to complete the form will have no effect on any other benefits to which you may be entitled. This information is collected under the authority of Title 38 CFR Parts 51 and 52.			

14. Revise § 58.12 to read as follows:

§ 58.12 VA Forms 10–10EZ and 10–10EZR—Application for Health Benefits and Renewal Form.OMB Approved No. 2900-0091
Estimated Burden Avg. 45 min.

Department of Veterans Affairs		APPLICATION FOR HEALTH BENEFITS	
SECTION I - GENERAL INFORMATION			
Federal law provides criminal penalties, including a fine and/or imprisonment for up to 5 years, for concealing a material fact or making a materially false statement. (See 18 U.S.C. 1001)			
1. VETERAN'S NAME (Last, First, Middle Name)		2. OTHER NAMES USED	3. MOTHER'S MAIDEN NAME
			4. GENDER ☐ MALE ☐ FEMALE
5. ARE YOU SPANISH, HISPANIC, OR LATINO? ☐ YES ☐ NO		6. WHAT IS YOUR RACE? (You may check more than one.) (Information is required for statistical purposes only.) ☐ AMERICAN INDIAN OR ALASKA NATIVE ☐ BLACK OR AFRICAN AMERICAN ☐ ASIAN ☐ WHITE ☐ NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER	
7. SOCIAL SECURITY NUMBER		9. DATE OF BIRTH (mm/dd/yyyy)	
		10. RELIGION	
8. CLAIM NUMBER		9A. PLACE OF BIRTH (City and State)	
11. PERMANENT ADDRESS (Street)		11A. CITY	11B. STATE
			11C. ZIP CODE (9 digits)
11D. COUNTY	11E. HOME TELEPHONE NUMBER (Include area code)		11F. E-MAIL ADDRESS
11G. CELLULAR TELEPHONE NUMBER (Include area code)		11H. PAGER NUMBER (Include area code)	
12. TYPE OF BENEFIT(S) APPLIED FOR (You may check more than one) ☐ HEALTH SERVICES ☐ NURSING HOME ☐ DOMICILIARY ☐ DENTAL			
13. IF APPLYING FOR HEALTH SERVICES OR ENROLLMENT, WHICH VA MEDICAL CENTER OR OUTPATIENT CLINIC DO YOU PREFER?			
14. DO YOU WANT AN APPOINTMENT WITH A VA DOCTOR OR PROVIDER AS SOON AS ONE BECOMES AVAILABLE? ☐ YES ☐ NO I am only enrolling in case I need care in the future.		15. HAVE YOU BEEN SEEN AT A VA HEALTH CARE FACILITY? ☐ YES, LOCATION: ☐ NO	
16. CURRENT MARITAL STATUS (Check one) ☐ MARRIED ☐ NEVER MARRIED ☐ SEPARATED ☐ WIDOWED ☐ DIVORCED ☐ UNKNOWN			
17. NAME, ADDRESS AND RELATIONSHIP OF NEXT OF KIN		17A. NEXT OF KIN'S HOME TELEPHONE NUMBER (Include area code)	
		17B. NEXT OF KIN'S WORK TELEPHONE NUMBER (Include area code)	
18. NAME, ADDRESS AND RELATIONSHIP OF EMERGENCY CONTACT		18A. EMERGENCY CONTACT'S HOME TELEPHONE NUMBER (Include area code)	
		18B. EMERGENCY CONTACT'S WORK TELEPHONE NUMBER (Include area code)	
19. INDIVIDUAL TO RECEIVE POSSESSION OF YOUR PERSONAL PROPERTY LEFT ON PREMISES UNDER VA CONTROL AFTER YOUR DEPARTURE OR AT THE TIME OF DEATH. NOTE: THIS DOES NOT CONSTITUTE A WILL OR TRANSFER OF TITLE (Check one) ☐ EMERGENCY CONTACT ☐ NEXT OF KIN			

VA FORM 10-10EZ
JUL 2008

APPLICATION FOR HEALTH BENEFITS, Continued		VETERAN'S NAME (Last, First, Middle)		SOCIAL SECURITY NUMBER
SECTION VI - FINANCIAL DISCLOSURE				
Disclosure allows VA to accurately determine whether certain veterans will be charged copayments for care and medications, their eligibility for other services and enrollment priority. Veterans are not required to disclose their financial information; however, VA is not currently enrolling new applicants who decline to provide their financial information unless they have a special eligibility factor. Recent combat veterans (e.g., OEF/OIF) who were discharged within the past 5 years or were discharged more than 5 years ago and applying for enrollment by Jan. 27, 2011 are eligible for enrollment without disclosing their financial information but like other veterans may provide it to establish their eligibility for travel reimbursement, cost-free medication and/or medical care for services unrelated to military experience. ☐ No, I do not wish to provide financial information in Sections VII through X. I understand that VA is not enrolling new applicants who do not provide this information and who do not have a special eligibility factor (e.g., recently discharged combat veteran, compensable service connection, receipt of VA pension or Medicaid benefits.) If I am enrolled, I agree to pay applicable VA copayments. <i>Sign and date the form in Section XII.</i> ☐ Yes, I will provide my household financial information for last calendar year. Complete applicable sections VII through X. <i>Sign and date the form in Section XII.</i>				
SECTION VII - DEPENDENT INFORMATION (Use a separate sheet for additional dependents)				
1. SPOUSE'S NAME (Last, First, Middle Name)		2. CHILD'S NAME (Last, First, Middle Name)		
1A. SPOUSE'S MAIDEN NAME		2A. CHILD'S RELATIONSHIP TO YOU (Check one) ☐ Son ☐ Daughter ☐ Stepson ☐ Stepdaughter		
1B. SPOUSE'S SOCIAL SECURITY NUMBER		2B. CHILD'S SOCIAL SECURITY NUMBER	2C. DATE CHILD BECAME YOUR DEPENDENT (mm/dd/yyyy)	
1C. SPOUSE'S DATE OF BIRTH (mm/dd/yyyy)	1D. DATE OF MARRIAGE (mm/dd/yyyy)	2D. CHILD'S DATE OF BIRTH (mm/dd/yyyy)		
1E. SPOUSE'S ADDRESS AND TELEPHONE NUMBER (Street, City, State, ZIP)		2E. WAS CHILD PERMANENTLY AND TOTALLY DISABLED BEFORE THE AGE OF 18? ☐ YES ☐ NO		
		2F. IF CHILD IS BETWEEN 18 AND 23 YEARS OF AGE, DID CHILD ATTEND SCHOOL LAST CALENDAR YEAR? ☐ YES ☐ NO		
3. IF YOUR SPOUSE OR DEPENDENT CHILD DID NOT LIVE WITH YOU LAST YEAR ENTER THE AMOUNT YOU CONTRIBUTED TO THEIR SUPPORT. SPOUSE \$ CHILD \$		2G. EXPENSES PAID BY YOUR DEPENDENT CHILD FOR COLLEGE, VOCATIONAL REHABILITATION OR TRAINING (e.g., tuition, books, materials) \$		
SECTION VIII - PREVIOUS CALENDAR YEAR GROSS ANNUAL INCOME OF VETERAN, SPOUSE AND DEPENDENT CHILDREN (Use a separate sheet for additional dependents)				
	VETERAN	SPOUSE	CHILD 1	
1. GROSS ANNUAL INCOME FROM EMPLOYMENT (wages, bonuses, tips, etc.) EXCLUDING INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS	\$	\$	\$	
2. NET INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS	\$	\$	\$	
3. LIST OTHER INCOME AMOUNTS (e.g., Social Security, compensation, pension interest, dividends). EXCLUDING WELFARE.	\$	\$	\$	
SECTION IX - PREVIOUS CALENDAR YEAR DEDUCTIBLE EXPENSES				
1. TOTAL NON-REIMBURSED MEDICAL EXPENSES PAID BY YOU OR YOUR SPOUSE (e.g., payments for doctors, dentists, medications, Medicare, health insurance, hospital and nursing home) VA will calculate a deductible and the net medical expenses you may claim.			\$	
2. AMOUNT YOU PAID LAST CALENDAR YEAR FOR FUNERAL AND BURIAL EXPENSES FOR YOUR DECEASED SPOUSE OR DEPENDENT CHILD (Also enter spouse or child's information in Section VII.)			\$	
3. AMOUNT YOU PAID LAST CALENDAR YEAR FOR YOUR COLLEGE OR VOCATIONAL EDUCATIONAL EXPENSES (e.g., tuition, books, fees, materials) DO NOT LIST YOUR DEPENDENT'S EDUCATIONAL EXPENSES.			\$	
SECTION X - PREVIOUS CALENDAR YEAR NET WORTH (Use a separate sheet for additional dependents)				
	VETERAN	SPOUSE	CHILD 1	
1. CASH, AMOUNT IN BANK ACCOUNTS (e.g., checking and savings accounts, certificates of deposit, individual retirement accounts, stocks and bonds)	\$	\$	\$	
2. MARKET VALUE OF LAND AND BUILDINGS MINUS MORTGAGES AND LIENS. (e.g., second homes and non-income producing property. Do not count your primary home.)	\$	\$	\$	
3. VALUE OF OTHER PROPERTY OR ASSETS (e.g., art, rare coins, collectables) MINUS THE AMOUNT YOU OWE ON THESE ITEMS. INCLUDE VALUE OF FARM, RANCH OR BUSINESS ASSETS. Exclude household effects and family vehicles.	\$	\$	\$	
SECTION XI - CONSENT TO COPAYMENTS				
If you are a 0% SC veteran and do not receive VA monetary benefits or a NSC veteran (and you are not a Former POW, Purple Heart Recipient or VA pensioner) and your household income (or combined income and net worth) exceeds the established threshold, this application will be considered for enrollment, but only if you agree to pay VA copayments for treatment of your NSC conditions. If you are such a veteran by signing this application you are agreeing to pay the applicable VA copayments as required by law.				
SECTION XII - ASSIGNMENT OF BENEFITS				
I understand that pursuant to 38 U.S.C. Section 1729, VA is authorized to recover or collect from my health plan (HP) for the reasonable charges of nonservice-connected VA medical care or services furnished or provided to me. I hereby authorize payment directly to VA from any HP under which I am covered (including coverage provided under my spouse's HP) that is responsible for payment of the charges for my medical care, including benefits otherwise payable to me or my spouse.				
ALL APPLICANTS MUST SIGN AND DATE THIS FORM. REFER TO INSTRUCTIONS WHICH DEFINE WHO CAN SIGN ON BEHALF OF THE VETERAN.				
SIGNATURE OF APPLICANT			DATE	

 Department of Veterans Affairs		HEALTH BENEFITS RENEWAL FORM	
SECTION I - GENERAL INFORMATION			
Federal law provides criminal penalties, including a fine and/or imprisonment for up to 5 years, for concealing a material fact or making a materially false statement. (See 18 U.S.C. 1001)			
1. VETERAN'S NAME (<i>Last, First, Middle Name</i>)		2. OTHER NAMES USED	
3. GENDER ☐ MALE ☐ FEMALE	4. SOCIAL SECURITY NUMBER		5. DATE OF BIRTH (<i>mm/dd/yyyy</i>)
6. PERMANENT ADDRESS (<i>Street</i>)	6A. CITY	6B. STATE	6C. ZIP
6D. COUNTY	6E. HOME TELEPHONE NUMBER (<i>Include area code</i>)	6F. E-MAIL ADDRESS	
6G. CELLULAR TELEPHONE NUMBER (<i>Include area code</i>)		6H. PAGER NUMBER (<i>Include area code</i>)	
7. CURRENT MARITAL STATUS (<i>Check one</i>) ☐ MARRIED ☐ NEVER MARRIED ☐ SEPARATED ☐ WIDOWED ☐ DIVORCED ☐ UNKNOWN			
8. NAME, ADDRESS AND RELATIONSHIP OF NEXT OF KIN		8A. NEXT OF KIN'S HOME TELEPHONE NUMBER (<i>Include area code</i>)	
		8B. NEXT OF KIN'S WORK TELEPHONE NUMBER (<i>Include area code</i>)	
9. NAME, ADDRESS AND RELATIONSHIP OF EMERGENCY CONTACT		9A. EMERGENCY CONTACT'S HOME TELEPHONE NUMBER (<i>Include area code</i>)	
		9B. EMERGENCY CONTACT'S WORK TELEPHONE NUMBER (<i>Include area code</i>)	
10. INDIVIDUAL TO RECEIVE POSSESSION OF YOUR PERSONAL PROPERTY LEFT ON PREMISES UNDER VA CONTROL AFTER YOUR DEPARTURE OR AT THE TIME OF DEATH. Note: This does not constitute a will or transfer of title. (<i>Check one</i>) ☐ EMERGENCY CONTACT ☐ NEXT OF KIN			
SECTION II - INSURANCE INFORMATION (Use a separate sheet for additional information)			
1. ARE YOU COVERED BY HEALTH INSURANCE, INCLUDING COVERAGE THROUGH A SPOUSE OR ANOTHER PERSON? ☐ YES ☐ NO		2. HEALTH INSURANCE COMPANY NAME, ADDRESS AND TELEPHONE NUMBER	
3. NAME OF POLICY HOLDER			
4. POLICY NUMBER	5. GROUP CODE	6. ARE YOU ELIGIBLE FOR MEDICAID? ☐ YES ☐ NO	
7. ARE YOU ENROLLED IN MEDICARE HOSPITAL INSURANCE PART A? ☐ YES ☐ NO		7A. EFFECTIVE DATE (<i>mm/dd/yyyy</i>)	
8. ARE YOU ENROLLED IN MEDICARE HOSPITAL INSURANCE PART B? ☐ YES ☐ NO		8A. EFFECTIVE DATE (<i>mm/dd/yyyy</i>)	
9. NAME EXACTLY AS IT APPEARS ON YOUR MEDICARE CARD		10. MEDICARE CLAIM NUMBER	
SECTION III - EMPLOYMENT INFORMATION			
1. VETERAN'S EMPLOYMENT STATUS (<i>check one</i>) ☐ FULL TIME ☐ NOT EMPLOYED <i>If employed or retired, complete item 1A</i> ☐ PART TIME ☐ RETIRED <i>Date of retirement (mm/dd/yyyy)</i>		1A. COMPANY NAME, ADDRESS AND TELEPHONE NUMBER	
2. SPOUSE'S EMPLOYMENT STATUS (<i>check one</i>) ☐ FULL TIME ☐ NOT EMPLOYED <i>If employed or retired, complete item 2A</i> ☐ PART TIME ☐ RETIRED <i>Date of retirement (mm/dd/yyyy)</i>		2A. COMPANY NAME, ADDRESS AND TELEPHONE NUMBER	
SECTION IV - PAPERWORK REDUCTION ACT AND PRIVACY ACT INFORMATION			
The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of Section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 24 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form. Privacy Act Information: VA is asking you to provide the information on this form under 38 U.S.C. Sections 1710, 1712, and 1722 in order for VA to determine your eligibility for medical benefits. Information you supply may be verified through a computer-matching program. VA may disclose the information that you put on the form as permitted by law. VA may make a "routine use" disclosure of the information as outlined in the Privacy Act systems of records notices and in accordance with the VHA Notice of Privacy Practices. Providing the requested information is voluntary, but if any or all of the requested information is not provided, it may delay or result in denial of your request for health care benefits. Failure to furnish the information will not have any effect on any other benefits to which you may be entitled. If you provide VA your Social Security Number, VA will use it to administer your VA benefits. VA may also use this information to identify veterans and persons claiming or receiving VA benefits and their records, and for other purposes authorized or required by law.			

 Department of Veterans Affairs		VETERAN'S NAME (Last, First, Middle)		SOCIAL SECURITY NUMBER	
SECTION V - FINANCIAL DISCLOSURE					
Disclosure allows VA to accurately determine whether certain veterans will be charged copayments for care and medications, their eligibility for other services and enrollment priority. Veterans are not required to disclose their financial information. Recent combat veterans (e.g., OEF/OIF) like other veterans may answer YES in Section V and complete Sections VI-IX to have their priority for enrollment and financial eligibility for cost-free medical care, medications, long-term care and beneficiary travel for treatment of nonservice-connected conditions assessed.					
☐ No, I do not wish to provide financial information in Sections VI through IX. If I am enrolled, I agree to pay applicable VA copayments. Sign and date the form in Section XI.					
☐ Yes, I will provide my household financial information for last calendar year. Complete applicable Sections VI through IX. Sign and date the form in Section XI.					
SECTION VI - DEPENDENT INFORMATION (Use a separate sheet for additional dependents)					
1. SPOUSE'S NAME (Last, First, Middle Name)		2. CHILD'S NAME (Last, First, Middle Name)			
1A. SPOUSE'S MAIDEN NAME		2A. CHILD'S RELATIONSHIP TO YOU (Check one) ☐ Son ☐ Daughter ☐ Stepson ☐ Stepdaughter			
1B. SPOUSE'S SOCIAL SECURITY NUMBER		2B. CHILD'S SOCIAL SECURITY NUMBER		2C. DATE CHILD BECAME YOUR DEPENDENT (mm/dd/yyyy)	
1C. SPOUSE'S DATE OF BIRTH (mm/dd/yyyy)		1D. DATE OF MARRIAGE (mm/dd/yyyy)		2D. CHILD'S DATE OF BIRTH (mm/dd/yyyy)	
1E. SPOUSE'S ADDRESS AND TELEPHONE NUMBER (Street, City, State, ZIP)		2E. WAS CHILD PERMANENTLY AND TOTALLY DISABLED BEFORE THE AGE OF 18? ☐ YES ☐ NO			
		2F. IF CHILD IS BETWEEN 18 AND 23 YEARS OF AGE, DID CHILD ATTEND SCHOOL LAST CALENDAR YEAR? ☐ YES ☐ NO			
3. IF YOUR SPOUSE OR DEPENDENT CHILD DID NOT LIVE WITH YOU LAST YEAR, ENTER THE AMOUNT YOU CONTRIBUTED TO THEIR SUPPORT SPOUSE \$ CHILD \$		2G. EXPENSES PAID BY YOUR DEPENDENT CHILD FOR COLLEGE, VOCATIONAL REHABILITATION OR TRAINING (e.g., tuition, books, materials) \$			
SECTION VII - PREVIOUS CALENDAR YEAR GROSS ANNUAL INCOME OF VETERAN, SPOUSE AND DEPENDENT CHILDREN (Use a separate sheet for additional dependents)					
		VETERAN		SPOUSE	
1. GROSS ANNUAL INCOME FROM EMPLOYMENT (e.g., wages, bonuses, tips, etc.) EXCLUDING INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS.		\$		\$	
2. NET INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS.		\$		\$	
3. LIST OTHER INCOME AMOUNTS (e.g., Social Security, compensation, pension, interest, dividends). EXCLUDING WELFARE.		\$		\$	
SECTION VIII - PREVIOUS CALENDAR YEAR DEDUCTIBLE EXPENSES					
1. TOTAL NON-REIMBURSED MEDICAL EXPENSES PAID BY YOU OR YOUR SPOUSE LAST CALENDAR YEAR (e.g., payments for doctors, dentists, medications, Medicare, health insurance, hospital and nursing home) VA will calculate a deductible and the net medical expenses you may claim.				\$	
2. AMOUNT YOU PAID LAST CALENDAR YEAR FOR FUNERAL AND BURIAL EXPENSES FOR YOUR DECEASED SPOUSE OR DEPENDENT CHILD (Also enter spouse or child's information in Section VI).				\$	
3. AMOUNT YOU PAID LAST CALENDAR YEAR FOR YOUR COLLEGE OR VOCATIONAL EDUCATIONAL EXPENSES (e.g., tuition, books, fees, materials) DO NOT LIST YOUR DEPENDENTS' EDUCATIONAL EXPENSES.				\$	
SECTION IX - PREVIOUS CALENDAR YEAR NET WORTH (Use a separate sheet for additional dependents)					
		VETERAN		SPOUSE	
1. CASH, AMOUNT IN BANK ACCOUNTS (e.g., checking and savings accounts, certificates of deposit, individual retirement accounts, stocks and bonds).		\$		\$	
2. MARKET VALUE OF LAND AND BUILDINGS MINUS MORTGAGES AND LIENS. (e.g., second homes and non-income producing property.) DO NOT INCLUDE YOUR PRIMARY HOME.		\$		\$	
3. VALUE OF OTHER PROPERTY OR ASSETS (e.g., art, rare coins, collectables) MINUS THE AMOUNT YOU OWE ON THESE ITEMS. INCLUDE VALUE OF FARM, RANCH OR BUSINESS ASSETS. Exclude household effects and family vehicles.		\$		\$	
SECTION X - CONSENT TO COPAYMENTS					
If you are a 0% SC veteran and do not receive VA monetary benefits or a NSC veteran (and you are not a Former POW, Purple Heart Recipient or VA pensioner) and your household income (or combined income and net worth) exceeds the established threshold, this application will be considered for enrollment, but only if you agree to pay VA copays for treatment of your NSC conditions. If you are such a veteran by signing this application you are agreeing to pay the applicable VA copays as required by law.					
SECTION XI - ASSIGNMENT OF BENEFITS					
I understand that pursuant to 38 U.S.C. Section 1729, VA is authorized to recover or collect from my health plan (HP) for the reasonable charges of nonservice-connected VA medical care or services furnished or provided to me. I hereby authorize payment directly to VA from any HP under which I am covered (including coverage provided under my spouse's HP) that is responsible for payment of the charges for my medical care, including benefits otherwise payable to me or my spouse.					
ALL APPLICANTS MUST SIGN AND DATE THIS FORM. REFER TO INSTRUCTIONS ON WHO CAN SIGN ON BEHALF OF THE VETERAN.					
SIGNATURE OF APPLICANT				DATE (mm/dd/yyyy)	

15. Amend § 58.13 by revising VA Form 10-10SH to read as follows:

§ 58.13 VA Form 10-10SH—State Home Program Application for Veteran Care Medical Certification.

OMB Approval No. 2900-0160
Estimated Burden: Avg. 30 min.

 Department of Veterans Affairs		STATE HOME PROGRAM APPLICATION FOR VETERAN CARE MEDICAL CERTIFICATION						
PART I - ADMINISTRATIVE								
STATE HOME FACILITY					DATE ADMITTED		GENDER ☐ M ☐ F	
RESIDENT'S NAME (Last, First, Middle) (This is a mandatory field)					SOCIAL SECURITY NUMBER. (Mandatory field)			
RESIDENT'S STREET ADDRESS					AGE	DATE OF BIRTH (mm/dd/yyyy)		
CITY, STATE AND ZIP CODE					ADVANCED MEDICAL DIRECTIVE ☐ NO ☐ YES			
PART II - HISTORY AND PHYSICAL (Use separate sheet if necessary)								
HISTORY								
HEIGHT		WEIGHT		TEMP	PULSE	BP	HEAD/EYES/EAR/NOSE AND THROAT	
NECK					CARDIOPULMONARY			
ABDOMEN					GENITOURINARY			
RECTAL					EXTREMITIES			
NEUROLOGICAL					ALLERGY/DRUG SENSITIVITY			
X-RAY/ LAB	CHEST X-RAY	DATE (mm/dd/yyyy)		RESULTS		CBC	DATE (mm/dd/yyyy)	RESULTS
	SEROLOGY							
	URINALYSIS	DATE (mm/dd/yyyy)		ALBUMEN		SUGAR		ACETONE
CHECK ALL BOXES THAT APPLY OR CHECK NA ☐								
IS DEMENTIA THE PRIMARY DIAGNOSIS ☐ YES ☐ NO		IS THERE A DIAGNOSIS OF MENTAL ILLNESS ☐ YES ☐ NO		HAS RESIDENT RECEIVED MENTAL SERVICES WITHIN THE PAST 2 YEARS ☐ YES ☐ NO		IS CLIENT A DANGER TO SELF OR OTHERS ☐ YES ☐ NO		
IS THERE ANY PRESSING EVIDENCE OF MENTAL ILLNESS SUCH AS:								
☐ SCHIZOPHRENIA		☐ PARANOIA		☐ OTHER PSYCHOTIC OR MENTAL DISORDERS LEADING TO CHRONIC DISABILITY				
☐ MOOD SWINGS		☐ SOMATOFORM DISORDER		☐ PANIC OR SEVERE ANXIETY DISORDER		☐ PERSONALITY DISORDER		
OXYGEN ☐ MASK ☐ PRN ☐ NASAL CANULAR ☐ CONTINUOUS		☐ TUBE FEEDING ☐ OSTOMY ☐ TRACHOSTOMY		☐ DECUBITUS ULCERS ☐ DRAINING WOUND ☐ WOUND CULTURED		FOLEY CATHETER ☐ TEMPORARY ☐ PERMANENT		
REFERRING PHYSICIAN					PRIMARY DIAGNOSIS			
SECONDARY DIAGNOSIS					TERTIARY DIAGNOSIS			
TYPE OF CARE RECOMMENDED: ☐ SKILLED NURSING HOME CARE ☐ DOMICILIARY CARE ☐ ADULT HEALTH CARE ☐ HOSPITAL								
MEDICATION AND TREATMENT ORDERS ON ADMISSION, CONTINUE ON SEPARATE SHEET IF NECESSARY								
PRINTED OR TYPED NAME OF PRIMARY PHYSICIAN ASSIGNED						SIGNATURE OF PRIMARY PHYSICIAN ASSIGNED		

STATE HOME PROGRAM APPLICATION FOR VETERAN CARE - MEDICAL CERTIFICATION, CONTINUED					
RESIDENT'S NAME (Last, First, Middle)				SOCIAL SECURITY NUMBER	
EVALUATION (Select an appropriate number in each category)					
COMMUNICATION	☐ 1. Transmits messages/receives information ☐ 2. Limited ability ☐ 3. Nearly or totally unable	SPEECH	☐ 1. Speak clearly with others of same language ☐ 2. Limited ability ☐ 3. Unable to speak clearly or not at all		
HEARING	☐ 1. Good ☐ 2. Hearing slightly impaired ☐ 3. Nearly or totally unable ☐ 4. Virtually/completely deaf	SIGHT	☐ 1. Good ☐ 2. Vision adequate - Unable to read/see details ☐ 3. Vision limited - Gross object differentiation ☐ 4. Blind		
TRANSFER	☐ 1. No assistance ☐ 2. Equipment only ☐ 3. Supervision only ☐ 4. Requires human transfer w/wo equipment ☐ 5. Bedfast	AMBULATION	☐ 1. Independence w/wo assistive device ☐ 2. Walks with supervision ☐ 3. Walks with continuous human support ☐ 4. Bed to chair (total help) ☐ 5. Bedfast		
ENDURANCE	☐ 1. Tolerates distances (250 feet sustained activity) ☐ 2. Needs intermittent rest ☐ 3. Rarely tolerates short activities ☐ 4. No tolerance	MENTAL AND BEHAVIOR STATUS	☐ 1. Alert ☐ 2. Confused ☐ 3. Disoriented ☐ 4. Comatose ☐ 5. Agreeable ☐ 6. Disruptive ☐ 7. Apathetic ☐ 8. Well motivated		
TOILETING	☐ 1. No assistance ☐ 2. Assistance to and from and transfer ☐ 3. Total assistance including personal hygiene, help with clothes ☐ A. Bathroom ☐ B. Bedside commode ☐ C. Bedpan	BATHING	☐ 1. No assistance ☐ 2. Supervision Only ☐ 3. Assistance ☐ 4. Is bathed ☐ A. Tub ☐ B. Shower ☐ C. Sponge bath		
DRESSING	☐ 1. Dresses self ☐ 2. Minor assistance ☐ 3. Needs help to complete dressing ☐ 4. Has to be dressed	FEEDING	☐ 1. No assistance ☐ 2. Minor assistance, needs tray set up only ☐ 3. Help feeding/encouraging ☐ 4. Is fed		
BLADDER CONTROL	☐ 1. Continent ☐ 2. Rarely incontinent ☐ 3. Occasional - once/week or less ☐ 4. Frequent - up to once a day ☐ 5. Total incontinence ☐ 6. Catheter, indwelling	BOWEL CONTROL	☐ 1. Continent ☐ 2. Rarely incontinent ☐ 3. Occasional - once/week or less ☐ 4. Frequent - up to once a day ☐ 5. Total incontinence ☐ 6. Ostomy		
SKIN CONDITION	☐ 1. Intact ☐ 2. Dry/Fragile ☐ 3. Irritations (Rash) ☐ 4. Open wound ☐ 5. Decubitus Number _____ Stage _____	WHEEL CHAIR USE	☐ 1. Independence ☐ 2. Assistance in difficult maneuvering ☐ 3. Wheels a few feet ☐ 4. Unable to use ☐ NA		
SIGNATURE OF REGISTERED NURSE OR REFERRING PHYSICIAN				DATE	
PHYSICAL THERAPY (To be completed by Physical Therapist or Referring Physician) ☐ NEW REFERRAL ☐ CONTINUATION OF THERAPY					
SENSATION IMPAIRED ☐ YES ☐ NO	RESTRICT ACTIVITY ☐ YES ☐ NO	PRECAUTIONS ☐ CARDIAC ☐ OTHER (Specify)		FREQUENCY OF TREATMENT	
TREATMENT GOALS: ☐ ACTIVE ☐ COORDINATING ACTIVITIES ☐ FULL WEIGHT BEARING ☐ WHEELCHAIR INDEPENDENT ☐ STRETCHING ☐ ACTIVE ASSISTIVE ☐ NON-WEIGHT BEARING ☐ PROGRESS BED TO WHEELCHAIR ☐ COMPLETE AMBULATION ☐ PASSIVE ROM ☐ PROGRESSIVE RESISTIVE ☐ PARTIAL WEIGHT BEARING ☐ RECOVERY TO FULL FUNCTION					
ADDITIONAL THERAPIES ☐ O.T. ☐ SPEECH ☐ DIETARY		SIGNATURE OF AND TITLE OF THERAPIST		DATE	
SOCIAL WORK ASSESSMENT (To be completed by Social Worker)					
PRIOR LIVING ARRANGEMENTS			LONG RANGE PLAN		
ADJUSTMENT TO ILLNESS OR DISABILITY			SIGNATURE OF SOCIAL WORKER		DATE
VA AUTHORIZATION FOR PAYMENT					
DATE RECEIVED BY VA	ELIGIBILITY FOR PER DIEM PAYMENT ☐ APPROVED ☐ DISAPPROVED		LEVEL OF CARE RECOMMENDED ☐ NHC ☐ DOMICILIARY ☐ HOSPITAL ☐ AD+H		
REASON FOR DISAPPROVAL			☐ APPROVED ☐ DISAPPROVED		
SIGNATURE OF VA OFFICIAL		DATE	SIGNATURE OF VA PHYSICIAN		DATE

OMB Approval No. 2900-0160
Estimated Burden: Avg. 30 min.

PAPERWORK REDUCTION ACT AND PRIVACY ACT NOTICE

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 30 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form. The information requested on this form is solicited under the authority of Title 38, U.S.C., Sections 1741, 1742 and 1743. It is being collected to enable us to determine your eligibility for medical benefits in the State Home Program and will be used for that purpose. The income and eligibility you supply may be verified through a computer matching program at any time and information may be disclosed outside the VA as permitted by law; possible disclosures include those described in the "routine uses" identified in the VA system of records 24VA136, Patient Medical Record-VA, published in the Federal Register in accordance with the Privacy Act of 1974. Disclosure is voluntary; however, the information is required in order for us to determine your eligibility for the medical benefit for which you have applied. Failure to furnish the information will have no adverse affect on any other benefits to which you may be entitled. Disclosure of Social Security number(s) of those for whom benefits are claimed is requested under the authority of Title 38, U.S.C., and is voluntary. Social Security numbers will be used in the administration of veterans benefits, in the identification of veterans or persons claiming or receiving VA benefits and their records and may be used for other purposes where authorized by Title 38, U.S.C., and the Privacy Act of 1974 (5 U.S.C. 552a) or where required by other statute.

VA FORM
JUL 2006 (R) **10-10SH**

16. Add § 58.18 to read as follows:

**§ 58.18 VA Form 10-0460—Request for
Prescription Drugs from an Eligible Veteran
in a State Home**

 Department of Veterans Affairs		Request for Prescription Drugs from an Eligible Veteran in a State Home	
To:	VA Facility	From:	Name and Address of State Home
I am a veteran who was admitted to the _____ State Nursing Home. I request that I be furnished with prescription drugs by the United States Department of Veterans Affairs as provided for in Title 38 of the Code of Federal Regulations, Section(s) 17.96 and/or 51.42. I am eligible for this benefit by reason of being (check any of the following): ☐ (1) a veteran in receipt of increased VA compensation, or increased VA pension because I am permanently housebound or in need of regular aid and attendance. ☐ (2) a veteran in need of regular aid and attendance who was formerly in receipt of increased pension but whose pension has been discontinued solely by reason of excess income, and whose annual income does not exceed the maximum annual income limitation by more than \$1,000. ☐ (3) a veteran who (i) Has a singular or combined rating of 50 percent or 60 percent based on one or more service-connected disabilities or unemployability and is in need of such drugs and medicines; and (ii) Is in need of nursing home care for reasons that do not include care for a VA adjudicated service-connected disability. ☐ (4) a veteran who (i) Has a singular or combined rating of less than 50 percent, based on one or more service-connected disabilities, and is in need of such drugs and medicines for a service-connected disability, and (ii) Is in need of nursing home care for reasons that do not include care for a VA adjudicated service-connected disability.			
Signature of Veteran Applying for Benefit		Date of Application	
Applicant Information			
Veteran's Name (last, first, and middle initial):			
Veteran's Social Security Number:		Date of Admission to the State Nursing Home:	
Date that A&A or Housebound was awarded by VA:			
(a copy of this award ☐ is or ☐ is not attached with this request)			

Signature of State Home Representative

[FR Doc. E8-28171 Filed 11-26-08; 8:45 am]

BILLING CODE 8320-01-C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2008-0009; FRL-8746-6]

RIN 2060-AO78

Protection of Stratospheric Ozone: The 2009 Critical Use Exemption From the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing an exemption to the phaseout of methyl bromide to meet the needs of 2009 critical uses. Specifically, EPA is proposing uses that qualify for the 2009 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from existing pre-phaseout inventory for those uses in 2009. EPA is taking action under the authority of the Clean Air Act to reflect a recent consensus decision taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Nineteenth Meeting of the Parties. EPA is seeking comment on the list of critical uses and on EPA's determination of the amounts of methyl bromide needed to satisfy those uses.

DATES: Comments must be submitted by December 29, 2008. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on December 3, 2008. If a hearing is requested it will be held on December 15, 2008 and comments will be due to the Agency January 12, 2009. EPA will post information regarding a hearing, if one is requested, on the Ozone Protection Web site <http://www.epa.gov/ozone/strathome.html>. Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2008-0009, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* a-and-r-Docket@epa.gov.
- *Fax:* 202-566-1741.
- *Mail:* Docket EPA-HQ-OAR-2008-0009, Air and Radiation Docket and Information Center, U.S. Environmental

Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

• *Hand Delivery:* Docket EPA-HQ-OAR-2008-0009, Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2008-0009. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Jeremy Arling by telephone at (202) 343-9055, or by e-mail at arling.jeremy@epa.gov or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also visit the Ozone Depletion Web site of EPA's Stratospheric

Protection Division at <http://www.epa.gov/ozone/strathome.html> for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION: This proposed rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar year 2009. Under the Clean Air Act, methyl bromide consumption (consumption is defined under the CAA as production plus imports minus exports) and production was phased out on January 1, 2005, apart from allowable exemptions, such as the critical use exemption and the quarantine and preshipment exemption. With this action, EPA is proposing and seeking comment on the uses that will qualify for the 2009 critical use exemption as well as specific amounts of methyl bromide that may be produced, imported, or sold from pre-phaseout inventory for proposed critical uses in 2009.

Table of Contents

- I. General Information
 - Regulated Entities
 - What Should I Consider When Preparing My Comments?
- II. What Is Methyl Bromide?
- III. What Is the Background to the Phaseout Regulations for Ozone Depleting Substances?
- IV. What Is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Critical Uses Authorized by the Parties to the Montreal Protocol?
- V. What Is the Critical Use Exemption Process?
 - A. Background of the Process
 - B. How Does This Proposed Rule Relate to Previous Critical Use Exemption Rules?
 - C. Proposed Critical Uses
 - D. Proposed Critical Use Amounts
 1. Background of Proposed Critical Use Amounts
 2. Calculation of Pre-Phaseout Inventory
 - a. Supply Chain Factor
 - b. Estimated Drawdown
 3. Approach for Determining Critical Use Amounts
 4. Treatment of Carry Over Material
 5. Amounts for Research Purposes
 6. Methyl Bromide Alternatives
 7. Summary of Calculations
 - E. The Criteria in Decisions IX/6 and Ex. I/4
 - F. Emissions Minimization
 - G. Critical Use Allowance Allocations
 - H. Critical Stock Allowance Allocations
 - I. Stocks of Methyl Bromide
- VI. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act

- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

Regulated Entities

Entities potentially regulated by this proposed action are those associated with the production, import, export, sale, application, and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; users of methyl bromide, e.g., farmers of vegetable crops, fruits and nursery stock; owners of stored food commodities and structures such as grain mills and processors; and agricultural researchers.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this proposed action. To determine whether your facility, company, business, or organization could be regulated by this proposed action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

What Should I Consider When Preparing My Comments?

1. **Confidential Business Information.** Do not submit confidential business information (CBI) to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What Is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone-depleting substance (ODS). Methyl bromide is used in the U.S. and throughout the world as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Information on methyl bromide can be found at <http://www.epa.gov/ozone/mbr> and <http://www.unep.org/ozone>.

Methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to certain Federal and State requirements governing their sale, distribution, and use. Nothing in this proposed rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. All entities that would be affected by provisions of this proposal must

continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The regulations in this proposed action are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

III. What Is the Background to the Phaseout Regulations for Ozone Depleting Substances?

The current regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances can be found at 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has since amended the regulations as needed.

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Montreal Protocol (Parties) agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a Class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 baseline level of 25,528,270

kilograms, and setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a Class I substance and phase out its production and consumption. This date was consistent with section 602(d) of the CAAA of 1990, which for newly listed Class I ozone depleting substances provides that “no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.”

At the Seventh Meeting of the Parties (MOP) in 1995, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries with exemptions permitted for critical uses. At that time, the U.S. continued to have a 2001 phaseout date in accordance with Section 602(d) of the CAAA of 1990. At the Ninth MOP in 1997, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout.

IV. What Is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Critical Uses Authorized by the Parties to the Montreal Protocol?

In October 1998, the U.S. Congress amended the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide certain exemptions. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in Section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at section 604(d)(6), 42 U.S.C. 7671c(d)(6). EPA revised the phaseout schedule for methyl bromide production and consumption in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption specified under the

Protocol and extended the phaseout to 2005. EPA again amended the regulations to allow for an exemption for quarantine and preshipment (QPS) purposes on July 19, 2001 (66 FR 37751), with an interim final rule and with a final rule on January 2, 2003 (68 FR 238).

On December 23, 2004 (69 FR 76982), EPA published a final rule that established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA subsequently published rules applying the critical use exemption framework to the 2006, 2007, and 2008 control periods. Under authority of section 604(d)(6) of the CAA, this action proposes the uses that will qualify as approved critical uses in 2009 and the amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This proposed action reflects Decision XIX/9, taken at the Nineteenth Meeting of the Parties in September 2007. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of proposed critical uses. The status of Decisions is addressed in *NRDC v. EPA*, (464 F.3d 1, D.C. Cir. 2006) and in EPA’s “Supplemental Brief for the Respondent,” filed in *NRDC v. EPA* and available in the docket for this action. In this proposed rule, EPA is honoring commitments made by the United States in the Montreal Protocol context.

V. What Is the Critical Use Exemption Process?

A. Background of the Process

Starting in 2002, EPA began notifying applicants of the process for obtaining a critical use exemption from the methyl bromide phaseout. The critical use exemption is designed to permit the production and import of methyl bromide for uses that do not have technically and economically feasible alternatives. On May 8, 2003, the Agency published its first notice in the **Federal Register** (68 FR 24737) announcing the availability of the application for a critical use exemption and the deadline for submission of the requisite data. Applicants were informed that they may apply as individuals or as part of a group of users (a “consortium”) who face the same limiting critical conditions (i.e. specific conditions that establish a critical need

for methyl bromide). EPA has repeated this process annually since then.

The criteria for the exemption initially appeared in Decision IX/6. In that Decision, the Parties agreed that “a use of methyl bromide should qualify as ‘critical’ only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination.” These criteria are reflected in EPA’s definition of “critical use” at 40 CFR 82.3.

In response to the annual requests for critical use exemption applications published in the **Federal Register**, applicants provide data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also submit data on their use of methyl bromide, on research programs into the use of alternatives to methyl bromide, and on efforts to minimize use and emissions of methyl bromide.

EPA’s Office of Pesticide Programs reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide and whether there would be a significant market disruption if no exemption were available. In addition, EPA reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants’ research or transition plans. This assessment process culminates in the development of a document referred to as the critical use nomination (CUN). The U.S. Department of State submits the CUN annually to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are independent advisory bodies to Parties to the Montreal Protocol, subsequently review the CUNs of the various countries and make recommendations to the Parties on the nominations. The Parties then take a Decision to authorize a critical use exemption for a particular country. The Decision also identifies how much methyl bromide may be supplied for the exempted critical uses. As required in section 604(d)(6) of the Clean Air Act, for each exemption

period, EPA consults with the United States Department of Agriculture and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide, and provides an opportunity for public comment on the amounts of methyl bromide that the Agency has determined to be necessary for critical uses and the uses that the Agency has determined meet the criteria of the critical use exemption.

More on the domestic review process and methodology employed by the Office of Pesticide Programs is available in a detailed memorandum titled "Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America," contained in the docket for this rulemaking. While the particulars of the data continue to evolve and administrative matters are further streamlined, the technical review itself remains rigorous with careful consideration of new technical and economic conditions.

On December 22, 2006, the U.S. Government (USG) submitted the fifth *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of the UNEP. This fifth nomination contained the request for 2009 critical uses. In February 2007, MBTOC sent questions to the USG concerning technical and economic issues in the 2009 nomination. The USG transmitted preliminary responses to MBTOC on March 13, 2007. The USG received a second round of questions from MBTOC and submitted responses to those questions in May, 2007. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The determination in this proposed rule reflects the analysis contained in those documents.

B. How Does This Proposed Rule Relate to Previous Critical Use Exemption Rules?

The December 23, 2004, Framework Rule (69 FR 76982) established the operational framework for the critical use exemption program in the U.S., including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

Since publishing the Framework Rule, EPA has annually promulgated

regulations to exempt from the phaseout of methyl bromide specific quantities of production and import for each control period (each calendar year) and to indicate which uses meet the criteria for the exemption program for that year. See 71 FR 5985 (calendar year 2006), 71 FR 75386 (calendar year 2007), and 72 FR 74118 (calendar year 2008).

Today's action proposes the uses that would qualify as critical uses for 2009 and the amounts of Critical Use Allowances (CUAs) and Critical Stock Allowances (CSAs) to be allocated for those uses. The uses that EPA is proposing to qualify as 2009 critical uses are the uses which the USG included in the fifth CUN, and which were approved by the Parties in Decision XIX/9. EPA is not proposing to modify the Framework Rule or the basic elements of the refined approach to determining the level of available stocks finalized in the 2008 CUE rule published on December 28, 2007.

C. Proposed Critical Uses

In Decision XIX/9, taken in September 2007, the Parties to the Protocol agreed "to permit, for the agreed critical use categories for 2009, set forth in table C of the annex to the present decision for each Party, subject to the conditions set forth in the present decision and decision Ex.I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2009 set forth in table D of the annex to the present decision which are necessary to satisfy critical uses * * *."

The following uses are those set forth in table C of the annex to Decision XIX/9: Commodities, NPMA food processing structures (cocoa beans removed),¹ Mills and processors, Dried cured pork, Cucurbits, Eggplant—field, Forest nursery seedlings, Nursery stock—fruit, nut, flower, Orchard replant, Ornamentals, Peppers—field, Strawberry—field, Strawberry runners, Tomatoes—field, Sweet potato slips. The agreed critical use levels for 2009 total 4,261,974 kilograms (kg), which is equivalent to 16.7% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. However, the maximum amount of allowable new production and import as set forth in table D of Decision XIX/9 is 3,961,974 kg (15.5% of baseline), minus available

¹ NPMA, National Pest Management Association, includes both food processing structures and processed foods. This year's exemption does not include cocoa beans.

stocks. For the reasons described in section V.D of this preamble, EPA is proposing to allow limited amounts of new production or import of methyl bromide for critical uses for 2009 up to the amount of 1,617,921 kg (6.3% of baseline), with 2,576,987 kg (10.1% of baseline) coming from pre-phaseout inventory (i.e., stocks).

In this proposed rule, EPA is proposing to modify 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XIX/9 for the 2009 control period (calendar year). The Agency is proposing to amend the table of critical uses based, in part, on the technical analysis contained in the 2009 U.S. nomination that assesses data submitted by applicants to the critical use exemption program as well as public and proprietary data on the use of methyl bromide and its alternatives. EPA is seeking comment on the technical analysis (which is provided in the docket) and seeks information regarding changes to the registration or use of alternatives that may have transpired after the 2009 U.S. nomination was written. Such information has the potential to alter the technical or economic feasibility of an alternative and could thus cause EPA to modify the analysis that underpins EPA's determination as to which uses and what amounts of methyl bromide qualify for the critical use exemption. EPA notes that while the Agency may, in response to comments, reduce the proposed quantities of critical use methyl bromide, or decide not to approve uses authorized by the Parties, the Agency does not intend to increase the quantities or add new uses in the final rule beyond those authorized by the Parties. Therefore, if there has been a change in registration of an alternative that results in that alternative no longer being available to a particular use, EPA does not intend to add uses or amounts of methyl bromide beyond those identified here to appendix L as part of this rulemaking. Under such circumstances, the user should apply to EPA, requesting that the U.S. nominate its use for a critical use exemption in the future. Based on the information described above, EPA is proposing that the uses in Table I: Approved Critical Uses, with the limiting critical conditions specified, qualify to obtain and use critical use methyl bromide in 2009.

TABLE I—APPROVED CRITICAL USES

Column A	Column B	Column C
Approved Critical Uses	Approved Critical User and Location of Use	Limiting Critical Conditions That exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
PRE-PLANT USES		
Cucurbits	(a) Growers in Delaware, Maryland, and Michigan. (b) Growers in Georgia and South-eastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation. A need for methyl bromide for research purposes.
Eggplant	(a) Florida growers (b) Georgia growers (c) Michigan growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes. Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
Forest Nursery Seedlings ...	(a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. (b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas. (c) Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin. (d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina. (e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington. (f) Michigan growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Moderate to severe yellow or purple nutsedge infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode or worm infestation. Moderate to severe yellow nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe nematode infestation. Medium to heavy clay soils. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes.
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in Washington, and members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers. (b) California rose nurseries	Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted orchard soils to prevent orchard replant disease. Medium to heavy soils. Local township limits prohibiting 1,3-dichloropropene. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes.
Orchard Replant	(a) California stone fruit, table and raising grape, wine grape, walnut, and almond growers.	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted orchard soils to prevent orchard replant disease. Medium to heavy soils. Local township limits prohibiting 1,3-dichloropropene. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes.
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes.

TABLE I—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
	(b) Florida growers Moderate to severe weed infestation. Moderate to severe soilborne disease infestation.. Moderate to severe nematode infestation.. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.. A need for methyl bromide for research purposes.. (c) Michigan herbaceous perennial growers.	
Peppers	(a) Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers. (b) Florida growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Moderate to severe yellow nutsedge and other weed infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium root, collar, crown and root rots. A need for methyl bromide for research purposes. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes. Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
Strawberry Fruit	(a) California growers (b) Florida growers (c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers. (a) California growers	Moderate to severe black root rot or crown rot. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. Time to transition to an alternative. A need for methyl bromide for research purposes. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Carolina geranium or cut-leaf evening primrose infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe black root and crown rot. A need for methyl bromide for research purposes.
Strawberry Nurseries	(a) California growers (b) North Carolina and Tennessee growers.	Moderate to severe soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. A need for methyl bromide for research purposes. Moderate to severe black root rot. Moderate to severe root-knot nematode infestation. Moderate to severe yellow and purple nutsedge infestation. A need for methyl bromide for research purposes. Local township limits prohibiting 1,3-dichloropropene.
Sweet Potato Slips	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe fungal pathogen infestation. A need for methyl bromide for research purposes.
Tomatoes	(a) Michigan growers (b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers. (c) Maryland growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes. High water tables and proximity to environmentally sensitive estuaries which limit use of 1-3D.

TABLE I—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
		Moderate to severe fungal pathogen infestation.
POST-HARVEST USES		
Food Processing	(a) Rice millers in the U.S. who are members of the USA Rice Millers Association. (b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute. (c) Bakeries in the U.S. (d) Members of the North American Millers' Association in the U.S. (e) Members of the National Pest Management Association treating facilities, spaces, and equipment associated with processed food, cheese, herbs, and spices.	Moderate to severe beetle, weevil, or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative. Moderate to severe beetle, moth, or cockroach infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative. Moderate to severe beetle infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative. Moderate to severe beetle or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities	(a) California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation required to meet a critical market window, such as during the holiday season. Export to countries which do not allow the use of sulfuryl fluoride. A need for methyl bromide for research purposes.
Dry Cured Pork Products	(a) Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermestid beetle infestation. Ham mite infestation.

EPA is proposing to amend the table in 40 CFR part 82, subpart A, appendix L, as reflected above. Specifically, changes made to the table include: Adding cucurbits grown in Maryland and Delaware as a critical use under the limiting critical conditions listed in the table; moving herbaceous perennials grown in Michigan from forest nursery seedlings to ornamentals; adding "restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation" as a limiting critical condition for Georgia grown peppers; adding tomatoes grown in Maryland as a critical use under the limiting critical conditions listed in the table; adding "export to countries which do not allow the use of sulfuryl fluoride" as a limiting critical condition for commodities; and revising the description of NPMA to remove cocoa beans.

In addition, EPA is proposing editorial changes to Table I to remove redundancy and ensure that the limiting critical conditions are described uniformly throughout. For example, within a critical use, all critical users with the same limiting critical conditions are to be consolidated into the same row. EPA also proposes to move clarifying information from the table to the preamble to improve readability. Therefore, EPA clarifies here that the "local township limits

prohibiting 1,3-dichloropropene" are prohibitions on the use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. In addition, "pet food" under subsection B of Food Processing refers to domestic dog and cat food. Finally, "rapid fumigation" for commodities is when a buyer provides short (two working days or fewer) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives. EPA does not intend for these edits to change the effect of any of the limiting critical conditions, the approved critical user, location of use, or any other aspect of the table.

Since the critical use exemption was first established, many critical users have transitioned to alternatives and a variety of sectors that were once critical uses no longer are. These uses include ginger, golf courses and turf production, tobacco, cocoa beans, and pistachios.

The categories listed in Table I above have been designated critical uses for 2009 in Decision XIX/9 of the Parties. The amount of methyl bromide approved for research purposes is included in the amount of methyl bromide approved by the Parties for the commodities for which "research purposes" is indicated as a limiting critical condition in the table above. As

explained in Section V.D.5., EPA is proposing to issue CSAs to allow the sale of 22,171 kg of methyl bromide from existing stocks for research purposes.

In accordance with Decision XIX/9, available on the docket for this rulemaking, EPA is proposing that the following sectors be allowed to use critical use methyl bromide for research purposes: Commodities, cucurbits, eggplant (field), nursery stock (fruit, nut, flower), orchard replant, ornamentals, peppers (field), strawberry (field), strawberry runners, sweet potato slips, and tomatoes (field). As discussed below, EPA allows the use of newly produced methyl bromide for research purposes but encourages researchers to use pre-phaseout inventory. In their applications to EPA, these sectors identified research programs that require the use of methyl bromide.

D. Proposed Critical Use Amounts

Section V.C. of this preamble explains that Table C of the annex to Decision XIX/9 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol. When added together, the authorized critical use amounts for 2009 total 4,261,974 kilograms (kg), which is equivalent to 16.7% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg as defined at 40 CFR 82.3. However, the maximum amount of

authorized new production or import as set forth in Table D of the annex to Decision XIX/9 is 3,961,974 kg (15.5% of baseline).

EPA is proposing to exempt limited amounts of new production and import of methyl bromide for critical uses for 2009 in the amount of 1,617,921 kg (6.3% of baseline) as shown in Table II. EPA is also proposing to allow sale of 2,576,987 kg (10.1% of baseline) of existing inventories for critical uses in 2009. EPA is seeking comment on the proposed total levels of exempted new production and import for critical uses and the amount of material that may be sold from stocks for critical uses. The sub-sections below explain EPA's reasons for proposing the above critical use amounts for 2009.

1. Background of Proposed Critical Use Amounts

The December 23, 2004, Framework Rule and subsequent CUE rules each took note of language regarding stocks of methyl bromide in relevant decisions of the Parties. In developing this proposed action, the Agency notes that paragraph seven of Decision XIX/9 contains the following language: "That each Party which has an agreed critical use renews its commitment to ensure that the criteria in paragraph 1 of decision IX/6 are applied when licensing, permitting or authorizing critical use of methyl bromide and, in particular, the criterion laid down in paragraph 1(b)(ii) of decision IX/6."

In the Framework Rule, which established the architecture of the CUE program and set out the exempted levels of critical use for 2005, EPA interpreted paragraph 5 of Decision Ex. I/3, which is similar to Decision XIX/9(7), "as meaning that the U.S. should not authorize critical use exemptions without including provisions addressing drawdown from stocks for critical uses" (69 FR 76987). Consistent with that interpretation, the Framework Rule (69 FR 52366) established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. In addition, EPA noted that pre-phaseout inventories were further taken into account through the trading provisions that allow CUAs to be converted into CSAs. EPA is not proposing changes to these basic CSA provisions for calendar year 2009.

Paragraph 5 of Decision XIX/9 further addresses pre-phaseout inventory of methyl bromide. The Decision states "that a Party with a critical use exemption level in excess of permitted

levels of production and consumption for critical uses is to make up any such differences between those levels by using quantities of methyl bromide from stocks that the Party has recognized to be available." In the August 25, 2004, proposed Framework Rule (69 FR 52366), EPA proposed to adjust the authorized level of new production and consumption for critical uses by the amount of "available stocks." The methodology for determining the amount of available stocks considered exports, methyl bromide for feedstock uses, and the need for a buffer in case of catastrophic events. However, the final Framework Rule did not adopt the proposed methodology for determining available stocks. Instead, EPA issued CSAs in an amount equal to the difference between the total authorized CUE amount and the amount of new production or import authorized by the Parties (Total Authorized CUE Amount – Authorized New Production and Import).

In the 2006, 2007, and 2008 CUE Rules, EPA issued a number of CSAs that represented not only the difference between the total authorized CUE amount and the amount of authorized new production and import but also an additional amount. In the 2006 CUE Rule, EPA issued a total of 1,136,008 CSAs, equivalent to 4.4% of baseline. For that control period, the difference in the Parties' decision between the total CUE amount and the amount of new production and import was 3.6% of baseline. In the 2007 rule, EPA added to the minimum amount (6.3% of baseline) an additional amount (1.2% of baseline) for a total of 1,914,600 CSAs (7.5% of baseline). In the 2008 rule, EPA added to the minimum amount (3.0% of baseline) an additional amount (3.8% of baseline) for a total of 1,729,689 CSAs (6.8% of baseline). Due to allocating additional CSAs, EPA reduced the portion of CUE methyl bromide to come from new production and import in each of the 2006–2008 control periods such that the total amount of methyl bromide exempted for critical uses did not exceed the total amount authorized by the Parties for that year.

As established in these earlier rulemakings, EPA views the allocation of additional CSA amounts as an appropriate exercise of its discretion. The Agency is not required to allocate the full amount of authorized new production and consumption. The Parties agreed to "permit" a particular level of production and consumption; they did not—and could not—mandate that the U.S. authorize this level of production and consumption domestically. Nor does the CAA require

EPA to exempt the full amount permitted by the Parties. Section 604(d)(6) of the Clean Air Act (CAA) does not require EPA to exempt any amount of production and consumption for critical uses, but instead specifies that the Agency "may" exempt amounts for production, importation, and consumption, thus providing EPA with substantial discretion in creating critical use exemptions.

Prior to determining the CSA amount for a particular year, EPA considers what portion of "existing" stocks is "available" for critical uses. As discussed in the 2008 rulemaking, the Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. For example, Decision IX/6 states that "production and consumption, if any, of methyl bromide for critical uses should be permitted only if * * * methyl bromide is not available in sufficient quantity and quality from existing stocks." In addition, Decision XIX/9, as well as earlier decisions, refers to use of "quantities of methyl bromide from stocks that the Party has recognized to be available." Thus, it is clear that individual Parties have the ability to determine their level of available stocks. Decision XIX/9 further reinforces this concept by including the phrase "minus available stocks" as a footnote to the United States' authorized level of production and consumption in Table D. Section 604(d)(6) of the Clean Air Act does not require that EPA adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision. In this action, EPA is not proposing to change its practice of adjusting the level of new production and import authorized by the Parties to reflect the availability of stocks.

EPA introduced in the 2008 CUE rule a refined approach for determining the amount of existing methyl bromide stocks that is available for critical uses. (72 FR 74118). That approach involves the concept of a "Supply Chain Factor" (SCF). The SCF represents EPA's technical estimate of the amount of methyl bromide inventory that would be adequate to meet a need for critical use methyl bromide after an unforeseen domestic production failure. The SCF appears in the formula finalized in the 2008 CUE rule for calculating the available stocks. That formula was expressed as $AS = ES - D - SCF$, where AS = available stocks; ES = existing pre-phaseout stocks of methyl

bromide held in the United States by producers, importers, and distributors; and D = estimated drawdown of existing stocks. In the 2008 rulemaking, EPA stated that it would use the refined approach in 2008 and each year thereafter as appropriate and feasible (72 FR 14134). EPA is not proposing any changes to the concept of a "Supply Chain Factor" or to the formula finalized in the 2008 CUE rule for calculating the available stocks. EPA finds that this approach continues to be appropriate and feasible, as it is the most reasonable, efficient, and transparent way for the Agency to continue to facilitate responsible management of the pre-phaseout inventory. Therefore the Agency intends to use the same basic SCF approach in its calculation of how much sale of existing stocks and how much production and import to allow for critical uses in 2009. The Agency plans, however, to use more current data as inputs to some of the underlying calculations, and is proposing to adopt a new statistical model for projecting future inventory of pre-2005 methyl bromide.

2. Calculation of Available Pre-Phaseout Inventory

In this action, EPA intends to adjust the authorized level of new production and consumption for critical uses to account for the amount of existing pre-phaseout inventory that is "available" for critical uses. EPA proposes to calculate the amount of existing stocks that is available for critical uses in 2009 based on the Supply Chain Factor and formula introduced in the 2008 CUE final rule (72 FR 74118). EPA will allow sales of the amount of existing pre-phaseout inventory that the Agency has determined to be available for critical uses by issuing an equivalent number of CSAs on a one-CSA-per-one-kilogram-of-methyl-bromide basis.

As described in the 2008 CUE Rule, EPA calculates the amount of available stocks as follows: $AS_{2009} = ES_{2008} - D_{2008} - SCF_{2009}$, where AS_{2009} is the available stocks on January 1, 2009; ES_{2008} is the existing pre-phaseout stocks of methyl bromide held in the United States by producers, importers, and distributors on January 1, 2008; D_{2008} is the estimated drawdown of existing stocks during calendar year 2008; and SCF_{2009} is the supply chain factor for 2009. Using the above method, EPA calculates that 2,576,987 kg (10.1% of baseline) of existing pre-phaseout stocks of methyl bromide will be "available" for critical uses on January 1, 2009. This calculation uses EPA's preferred approach to estimating the

2008 drawdown, as discussed in more detail below. If EPA were to estimate the 2008 drawdown using the approach taken in the 2008 CUE rule, the calculated amount of available stocks would be 777 MT (3% of baseline). For the reasons described below, EPA prefers the approach it is proposing in today's action. EPA, however, seeks comment on the amount of the pre-phaseout stock that it estimates will be available for critical uses on January 1, 2009.

In the above formula, " ES_{2008} " refers to pre-phaseout inventory—i.e., existing stocks of methyl bromide that was produced before January 1, 2005, and that is still held by domestic producers, distributors, and third-party applicators. January 1, 2005, was the phaseout date for production and import of methyl bromide in the United States. ES_{2008} does not include critical use methyl bromide that was produced after January 1, 2005, and carried over into subsequent years. EPA addresses the carryover amount in section V.D.4 of this preamble. In the 2007 and 2008 CUE rules, EPA deducted the amount carried over into a new control period from the amount of allowable new production for the control periods in question. In this 2009 CUE proposed rule, EPA proposes to maintain the carry over deduction. " ES_{2008} " also does not include methyl bromide produced (1) under the quarantine and preshipment (QPS) exemption, (2) with Article 5 allowances to meet the basic domestic needs of Article 5 countries, or (3) for feedstock or transformation purposes. Methyl bromide produced for QPS uses or for export to Article 5 countries may not be sold to domestic entities for critical uses and, therefore, is separate from the CUE program. Thus, such amounts have been removed from the calculation of the amount of "available stocks" for critical uses. EPA also considers all pre-phaseout inventory to be suitable for both pre-plant and post harvest uses. Despite prior requests, EPA has received no data that show that pre-phaseout inventory is mixed with chloropicrin and is unsuitable for post-harvest uses. Unless the Agency receives evidence otherwise, it will assume all pre-2005 inventory is suitable for all uses. Similarly, EPA considers inventory methyl bromide to be available to users in California and the Southeastern United States. EPA bases this conclusion on the geographic distribution of the companies that are granted CSAs (See Table III). EPA welcomes comments on the availability of pre-phaseout inventory based on geography.

(a) Supply Chain Factor

EPA's method for determining the amount of available stocks for critical uses includes a supply chain factor which for 2009 can be expressed as " SCF_{2009} ." The supply chain factor represents EPA's technical estimate of the amount of pre-phaseout inventory that would be adequate to meet a need for critical use methyl bromide after an unforeseen domestic production failure. For 2009, EPA proposes to use a supply chain factor equal to 2,352,013 kg in the Agency's calculation of the amount of available stocks. Consistent with the 2008 CUE rule, EPA is proposing a conservative estimate of the supply chain factor that considers a supply disruption during the estimated peak 15-week period of critical use supply. As described in the 2008 CUE rule, EPA estimates that in the event of a major supply disruption, it would take 15 weeks for significant imports of methyl bromide to reach the U.S. Using updated numbers on average production during each quarter of the year, EPA estimates that critical use production in the first 15 weeks of each year (the peak supply period) accounts for 55% of annual critical use methyl bromide production. EPA, therefore, estimates that the peak 15-week shortfall in 2009 could be 2,352,013 kg ($55.186\% \times 4,261,974$ kg).

As EPA stated in the 2008 CUE Rule, the supply chain factor is not a "reserve" or "strategic inventory" of methyl bromide. Rather, it is merely an analytical tool used to provide greater transparency regarding how the Agency determines CSA amounts. For further general discussion of the supply chain factor, see the final 2008 CUE rule (72 FR 74118). Further detail about the analysis used to derive the value for the 2009 supply chain factor is provided in the Technical Support Document available on the public docket for this rulemaking.

(b) Estimated Drawdown

In the 2008 CUE rule, EPA estimated the drawdown of existing stocks, the D_{2008} term in the above equation, by using a simple linear fit estimation of inventory data from all available years. In this action, EPA proposes not to estimate drawdown using a linear fit projection as done last year but instead use an exponential projection for 2008. EPA invites comment on both methods of estimating the 2008 drawdown as well as on any alternative method of estimating drawdown.

EPA's projections are based on fitting either an exponential curve (the agency's preferred approach for this

rulemaking) or a linear curve (the agency's approach finalized last year) to reported annual data on pre-phaseout inventory. Given the small sample size (5 data observations), the reader should be cautious about drawing inferences. However, the Agency believes, combined with other information, the exponential curve approach may present a more reasonable approach to projecting the drawdown of pre-phaseout inventory.

EPA is proposing to estimate the drawdown of inventory in 2008 based on an exponential projection. Using this method, EPA projects that the pre-phaseout methyl bromide inventory, which was 6,457,806 kg on January 1, 2008, will be drawn down by 1,528,806 kg during 2008. This will result in a pre-phaseout inventory of 4,929,000 kg on January 1, 2009. EPA's proposed methodology for estimating the inventory drawdown is described in more detail in the Technical Support Document available on the public docket for this rulemaking.

When EPA looks at the market conditions that could affect the drawdown of inventory, EPA believes that the exponential estimate (1,529 MT) provides a more reasonable reflection of market conditions than the linear estimate (3,329 MT). The exponential estimate closely matches the drawdown in 2007, which was 1,213 MT whereas the linear estimate most closely matches the drawdown in 2004, which was 3,428 MT and the highest drawdown in EPA's data set. EPA believes that the market conditions in 2008 are different enough from those in 2004 that the rate of drawdown during 2008 will be more like the rate of drawdown of 2007 than 2004. First, the Critical Use Exemption process did not exist in 2004, as that was the last year of the methyl bromide phaseout. EPA believes that the economics and use patterns pre-phaseout are different than conditions after the phaseout. Second, at the beginning of 2004, the inventory was 16,422 MT, a substantially higher amount than the estimated inventory at the end of 2008, regardless of the drawdown estimate used. Third, the price of methyl bromide has increased roughly 30–50% since 2004. Therefore, today growers face stronger economic incentive to use alternatives and reduce application rates than they did in 2004. Fourth, more alternatives are available, including sulfuryl fluoride and iodomethane, reducing the total demand for methyl bromide. Fifth, sales data reported to EPA show that less of the inventory was used for non-critical uses in 2007 than 2006. In 2006, 1,519 MT of pre-phaseout inventory was for non-

critical uses, whereas in 2007, this dropped to 291 MT.

EPA also considered estimating the drawdown of inventoried methyl bromide using the simple linear fit that EPA has used in all of the previous CUE rules. Under the linear estimate, the drawdown in 2008 would be 3,329 MT. Using the equation discussed above, $AS_{2009} = ES_{2008} - D_{2008} - SCF_{2009}$, "Available Stocks 2009" under the linear method would be 777 MT. Therefore the CSA amount would be 777 MT, or 3.0% of baseline. Using the same calculation summarized in Section V.D.7, new production would be 3,418 MT, or 13.4% of baseline. This value falls below the 15.5% of baseline authorized by the Parties in Decision XIX/9. This amount of new production is greater than the level allocated in the 2008 CUE Rule, which was 3,084 MT, or 12.1% of baseline. EPA welcomes comment on the linear approach and its potential outcomes for the values of new production and CSAs.

The goal of EPA's methodology for the CSA allocation is to allocate CSAs equal to "available stocks" such that the private sector has the flexibility to retain in inventory the amount needed in case of a catastrophic supply chain failure (the Supply Chain Factor). As the Agency stated in the 2008 CUE Rule and in Section V.D.3 below, once the inventory declines below the SCF level, the Agency will not require any additional drawdown of stocks beyond what is required by the Parties to the Protocol.

EPA invites comment on both the linear and exponential methods of estimating 2008 drawdown. EPA also welcomes comment on any alternative method of estimating drawdown as well as the market conditions affecting the decline in inventory use. Most helpful to the Agency in determining the drawdown in 2008 is not an evaluation of statistical methods but data on whether inventory during 2008 is being depleted at rates similar to 2007 or whether it is being depleted faster than that.

3. Approach for Determining Critical Use Amounts

EPA estimates that, as of January 1, 2009, 2,576,987 kg of pre-phaseout inventory will meet the definition of "available stocks" as calculated using the approach described in Section V.D.2. of this preamble. Based on these calculated figures and the allocation approach described in this section, and after making reductions for carry over and research amounts as explained in sections V.D.4. and V.D.5. of this preamble, EPA proposes to allocate

critical use allowances (CUAs) permitting 1,617,921 kg of new methyl bromide production and import for critical uses in 2009, and to allow sale of 2,576,987 kg from existing stocks for critical uses by allocating an equivalent number of critical stock allowances (CSAs). EPA seeks comment on the amount of CUAs and CSAs that the Agency is proposing to distribute in 2009.

In this action, EPA is proposing to allocate CSAs in an amount equal to the estimated number of kilograms of available stocks on January 1, 2009. As in past years, EPA intends to allocate a total number of CUAs such that the total number of CUAs and CSAs is not greater than the total critical use amount authorized by the Parties for the year in question. To account for carry over amounts of methyl bromide, amounts for research purposes, or for other appropriate reasons, including updated information on alternatives, EPA may allocate a total number of CUAs and CSAs that is less than the total critical use amount authorized by the Parties for the year in question. As in previous CUE rules, because the proposed amount is less than the total amount authorized by the Parties, the Agency seeks comment on the reasons for, and amounts of, each reduction.

EPA recognizes that in a future CUE allocation rule proposal, the Agency could estimate, using the method described in Section V.D.2., that the amount of available stocks at the beginning of a future year is less than the difference between the total critical use amount authorized by the Parties and the amount of new production and imports authorized by the Parties for the year in question. This scenario can be described with the following inequality: Available Stocks < (Total CUE Amount Authorized – New Production and Imports Authorized). Under the approach introduced in the 2008 CUE rule, in such a case EPA would propose to allow the maximum amount of new production and imports authorized by the Parties, minus any reductions as described above and finalized in the 2008 CUE Rule. EPA would also allow critical users to access a limited amount of existing stocks by allocating a number of CSAs equal to the difference between the total CUE amount authorized by the Parties and the amount of new production and imports authorized for the year in question ($CSA = \text{Total CUE Amount Authorized} - \text{New Production and Imports Authorized}$), again minus any reductions as discussed here. EPA will continue to collect inventory data and make critical use allocations on an annual basis. Similarly, unless the

Parties approve multi-year critical use exemptions, EPA intends to continue to calculate the amount of available stocks on an annual basis and to explain those calculations in the annual CUE allocation rulemaking process.

4. Treatment of Carry Over Material

As described in the December 23, 2004, Framework Rule (69 FR 76997), EPA is not permitting entities to build stocks of methyl bromide produced or imported after January 1, 2005, under the critical use exemption. Under the current regulations, quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a calendar year must be reported to EPA the following year. These reporting requirements appear at 40 CFR 82.13(f)(3), 82.13(g)(4), 82.13(h)(1), 82.13(bb)(2), and 82.13(cc)(2). EPA uses the reported information to calculate the amount of methyl bromide produced or imported under the critical use exemption, but not exported or sold to end-users in that year. An amount equivalent to this "carry over," whether pre-plant or post-harvest, is then deducted from the total level of allowable new production and import in the year following the year of the data report. For example, the amount of carry over from 2005, which was reported in 2006, was deducted from the allowable amount of production or import for critical uses in 2007. As discussed in section V.D.2., carry over material is not included in EPA's definition of existing stocks (ES) as it applies to the proposed formula for determining the amount of available stocks (AS). EPA is not including carry over amounts as part of ES, because doing so could lead to a double-counting of carry over amounts, and thus a double reduction of critical use allowances (CUAs).

In 2008, 57 entities reported information to EPA under the reporting requirements at 40 CFR 82.13 about critical use methyl bromide production, imports, exports, sales and/or inventory holdings in 2007. 4,314,150 kg of critical use methyl bromide was acquired through production or import in 2007. The information reported to EPA indicates that 4,269,255 kg of critical use methyl bromide was exported or sold to end-users in 2007. EPA calculates that the carry over amount at the end of 2007 was 44,895 kg, which is the difference between the reported amount of critical use methyl bromide acquired in 2007 and the reported amount of exports or sales of that material to end users in 2007 (4,314,150 kg – 4,269,255 kg = 44,895 kg). EPA's calculation of the amount of

carry over at the end of 2007 is consistent with the method used in the final 2008 CUE Rule, and with the method agreed to by the Parties in Decision XVI/6, which established the Accounting Framework for critical use methyl bromide, for calculating column L of the U.S. Accounting Framework. The 2007 U.S. Accounting Framework is available in the public docket for this rulemaking.

As a result of stakeholder concerns regarding the completeness of reporting and in response to public comment, EPA stated in the 2008 CUE Rule (72 FR 74137) that:

It would be beneficial to acquire the names of all distributors and third-party applicators with critical use exemption reporting requirements under 40 CFR 82.13. Collecting the names of these entities will facilitate Agency follow-up with non-reporters, allowing collection of necessary information in a more targeted manner than collecting detailed information from all entities. In early 2008 EPA will use its information gathering authority under section 114 of the Clean Air Act to ask all entities that sell critical use methyl bromide to report the names of all non-end user entities (i.e. producers, importers, distributors and third-party applicators) to which they sold critical use methyl bromide during the 2007 control period.

On January 31, 2008, EPA sent letters to all producers, distributors, and third-party applicators of critical use methyl bromide that it was aware of asking for "the name and address of each non-end user entity (i.e. distributors of methyl bromide and third-party applicators of methyl bromide) to which your company sold critical use methyl bromide during calendar year 2007." As a result, EPA received contact information for distributors and third-party applicators that had never reported sales data to EPA as well as actual sales reports from some of those new entities. On March 11, 2008, the Agency sent a follow-up letter to the previously unknown entities that had not reported sales data for 2007 and reminded them of their reporting obligations under 40 CFR 82.13. The Agency has received 18 responses from previously unknown entities satisfying the required annual reporting requirements. The Agency is considering options to pursue the remaining unreported data. EPA may take into account additional reports received within a reasonable time in calculating the carry over amount for the final 2009 rule.

In previous CUE rules, EPA has used the approach described in the Framework Rule for implementing carry over reductions. Consistent with that approach, EPA is proposing to reduce

the total level of new production and import for critical uses by 44,895 kg to reflect the total level of carry over material in existence at the end of 2007. After applying this reduction to the total volumes of allowable new production or import, EPA pro-rated CUAs to each company based on their 1991 baseline market share.

EPA continues to seek comment on ways to improve the completeness of data reporting by affected companies. It is important for stakeholders to recognize that the process for calculating the amount of carry over CUE material each year relies on sales to end-user data reported to EPA by distributors and applicators.

5. Amounts for Research Purposes

As in the 2008 CUE rule, EPA is proposing to encourage research needs to be met through the sale of inventory by deducting the amount needed for research from the overall critical use production level and issuing additional CSAs in that amount.

The use of methyl bromide under the critical use exemption for research is distinct from the use of methyl bromide under the laboratory and analytical use exemption. Decision XVIII/15(1) authorizes "the production and consumption of [methyl bromide] necessary to satisfy laboratory and analytical critical uses." Paragraph 2 of that Decision states that methyl bromide produced under the exemption for laboratory and analytical uses may be used as a reference or standard; in laboratory toxicology studies; to compare the efficacy of methyl bromide and its alternatives inside a laboratory; and as a laboratory agent which is destroyed in a chemical reaction in the manner of feedstock. On December 27, 2007, EPA promulgated regulations implementing the exemption authorized in Decision XVIII/15 (72 FR 73264).

There continues to be a need for methyl bromide for research purposes that do not meet the criteria for laboratory and analytical uses, as defined in Decision XVIII/15. A common example is an outdoor field experiment that requires methyl bromide as a standard control treatment with which to compare the trial alternatives' results. The critical use sectors that were approved by the Parties to use methyl bromide for research purposes in 2009 are listed in Section V.C. and have "research purposes" listed in their limiting critical conditions in Table I of this preamble.

In this action, EPA is proposing to allow sale of 22,171 kg of existing stocks for research purposes in 2009 to account for the amount authorized for those

purposes. EPA proposes to allow methyl bromide sale from stocks for exempted research purposes by expending CSAs. An explanation of what amounts of methyl bromide and of what sectors qualify for research purposes can be found in Section V.C. of this preamble. If EPA adopts this proposal, the Agency will continue to encourage methyl bromide suppliers to sell inventory to researchers and to encourage researchers to purchase inventory for research purposes. EPA seeks comment on its proposal to issue CSAs for sale of methyl bromide stocks for exempted research purposes.

6. Methyl Bromide Alternatives

In the 2006 CUE Rule (71 FR 5985), EPA allocated less methyl bromide for critical uses than was authorized by the Parties in order to account for the recent registration of sulfuryl fluoride. The allocation reductions in that rule reflected transition rates that were included for the first time in the 2007 U.S. Critical Use Nomination (CUN). In the 2008 CUE Rule (72 FR 74139), EPA explained that the transition rates had already been applied as part of the international review process for that year, and therefore it was not necessary to apply them as part of the Agency's domestic rulemaking. EPA did, however, reduce the total volume of critical use methyl bromide in the final CUE rule for 2008 by 27,769 kg to account for new data indicating the uptake of two alternatives, sulfuryl fluoride and iodomethane.

For 2009, EPA is not proposing to make any further reductions in post-harvest or pre-plant critical use

allowances to account for the uptake of sulfuryl fluoride or any other pre-plant or post-harvest alternative with the exception of iodomethane, which is discussed below. In the 2009 CUN the Agency applied transition rates for all critical use sectors. The TEAP report of August 2007 included reductions in its recommendations for critical use categories based on the transition rates in the 2009 CUN. The TEAP's recommendations were then considered in the Parties' 2009 authorization amounts, as listed in Decision XIX/9. Therefore, transition rates, which account for the uptake of alternatives, have already been applied for authorized 2009 critical use amounts.

Furthermore, the 2010 CUN, which represents the most recent analysis and the best available data for methyl bromide alternatives, does not conclude that transition rates should be increased for 2009. As the 2010 CUN reflects, the United States Government has not found new information that supports changing the 2009 transition rates included in the 2009 CUN and applied by MBTOC. EPA continues to gather information about methyl bromide alternatives through the CUE application process, and by other means.

Finally, although the Agency intends for the final rule to account for use of iodomethane in the 2009 control period, this proposed rule does not include a specific reduction to account for that use. Because EPA initially registered iodomethane on a time-limited basis, which was to expire in October 2008, EPA did not nominate its use as an

alternative to the TEAP. Thus EPA did not make any reductions in the 2009 or 2010 CUNs to account for iodomethane uptake. On October 2, 2008, EPA renewed the registration of iodomethane. The Agency will account for any potential market uptake of iodomethane in the final rule given that the alternative's registration status has changed. The amount of market uptake will also depend on how many and which States have registered iodomethane for use. Iodomethane is currently registered for use in 47 states, including Florida. EPA requests comment on the amount of estimated market uptake of iodomethane to include in the final rule. For reference, the estimated market uptake for iodomethane in the 2008 rule was 14,472 kg. At that time, 14 states, which did not include Florida, had registered iodomethane for use.

EPA seeks comment on its proposal not to make further reductions in 2009 to account for the uptake of methyl bromide alternatives other than iodomethane, because the Agency has already accounted for these other alternatives' transition rates. EPA continues to support research and adoption of methyl bromide alternatives, and to request information about the economic and technical feasibility of all existing and potential alternatives.

7. Summary of Calculations

The calculations described above for determining the level of new production and critical stock allowances are summarized in the table below:

	Kilograms
Step 1: Calculate supply chain factor:	
U.S. authorization for 2009	4,261,974
– Further reduction for uptake of alternatives	0
= One year's CUE need	4,261,974
x Percentage of year's production to recover from production failure	55.186%
= Supply Chain Factor	2,352,013
Step 2: Calculate available stocks:	
Existing pre-phaseout inventory on January 1, 2008 ("ES2008")	6,457,806
– Estimated drawdown of inventory during 2008 ("D2008")	1,528,806
– Supply Chain Factor	2,352,013
= Available stocks ("AS2009") = Critical Stock Allowance	2,576,987
Step 3: Calculate carry over:	
Reported as produced/imported in 2007	4,314,150
– Reported as sold in 2007	4,269,255
= Carry over	44,895
Step 4: Calculate new production:	
U.S. authorization for 2009	4,261,974
– Critical Stock Allowance (Step 2)	2,576,987
– Carryover (Step 3)	44,895
– Amounts Used for Research	22,171
– Uptake of alternatives	0
= New production = Critical Use Allowance	1,617,921

E. The Criteria in Decisions IX/6 and Ex. I/4

Paragraphs 2 and 7 of Decision XIX/9 request Parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2009 control period. A discussion of the Agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A., V.C., V.D., and V.H. of this preamble. In section V.C. the Agency is soliciting comments on the technical and economic basis for determining that the uses listed in this proposed rule meet the criteria of the critical use exemption (CUE). The critical use nominations (CUNs) detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in sections V.D., V.G., and V.H. of this preamble. The Agency has previously provided its interpretation of the criterion in Decision IX/6(1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption, and EPA refers readers to the 2006 CUE final rule (71 FR 5989) as well as to the memo on the docket titled "Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America" for further elaboration.

The remaining considerations, including the lack of available technically and economically feasible alternatives under the circumstance of the nomination; efforts to minimize use

and emissions of methyl bromide where technically and economically feasible; the development of research and transition plans; and the requests in Decision Ex. I/4(5) and (6) that Parties consider and implement MBTOC recommendations, where feasible, on reductions in the critical use of methyl bromide and include information on the methodology they use to determine economic feasibility, are all addressed in the nomination documents.

Some of these criteria are evaluated in other documents as well. For example, the U.S. has further considered matters regarding the adoption of alternatives and research into methyl bromide alternatives, criterion (1)(b)(iii) in Decision IX/6, in the development of the National Management Strategy submitted to the Ozone Secretariat in December 2005 and in ongoing consultations with industry. The National Management Strategy addresses all of the aims specified in Decision Ex. I/4(3) to the extent feasible and is available in the docket for this rulemaking.

F. Emissions Minimization

Decision XIX/9, paragraph 11 states that Parties shall request critical users to employ "emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible." In the judgment of USG scientists, use of virtually impermeable film (VIF) tarps allows pest control with lower application rates in addition to minimizing emissions. The quantity of methyl bromide nominated by the U.S.

Government reflects the lower application rates necessary when using tarps. Users of methyl bromide should make every effort to minimize overall emissions of methyl bromide by implementing measures such as the ones listed above, to the extent consistent with State and local laws and regulations. The Agency encourages researchers and users who are successfully utilizing such techniques to inform EPA of their experiences as part of their comments on this proposed rule and to provide such information with their critical use applications. In addition, the Agency welcomes comments on the implementation of emission minimization techniques and whether and how further emissions could be reduced further.

G. Critical Use Allowance Allocations

EPA is proposing to allocate 2009 critical use allowances for new production or import of methyl bromide up to the amount of 1,617.921 kg (6.3% of baseline) as shown in Table II below. EPA is seeking comment on the total levels of exempted new production or import for pre-plant and post-harvest critical uses in 2009. Each critical use allowance (CUA) is equivalent to 1 kg of critical use methyl bromide. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. This proposal for allocating the following number of pre-plant and post-harvest CUAs to the entities listed below is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

TABLE II—PROPOSED ALLOCATION OF CRITICAL USE ALLOWANCES

Company	2009 Critical use allowances for pre-plant uses* (kilograms)	2009 Critical use allowances for post-harvest uses* (kilograms)
Great Lakes Chemical Corp. A Chemtura Company	888,477	94,733
Albemarle Corp	365,362	38,956
Ameribrom, Inc	201,907	21,528
TriCal, Inc	6,287	670
Total ²	1,462,032	155,888

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to 40 CFR part 82.

Paragraph six of Decision XIX/9 states "that Parties shall endeavor to license, permit, authorize or allocate quantities of critical-use methyl bromide as listed

in tables A and C of the annex to the present decision." This is similar to language in Decisions Ex. I/3(4), Ex. II/1(4), XVII/9(4), and XVIII/13(5)

regarding 2005, 2006, 2007, and 2008 critical uses, respectively. The language from these Decisions calls on Parties to

² Due to rounding, numbers do not add exactly.

endeavor to allocate critical use methyl bromide on a sector basis.

EPA's August 2004 proposed Framework Rule (69 FR 52366) proposed several options for allocating critical use allowances, expressing a preference for a sector-by-sector approach. The Agency evaluated the various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined in the final Framework Rule (69 FR 76989) that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-specific approach would pose significant administrative and practical difficulties. Although the approach adopted in the Framework Rule does not directly allocate allowances to each category of use, the Agency anticipates that reliance on market mechanisms will achieve similar results indirectly. The TEAP recommendations are based on data submitted by the U.S. which in turn are based on recent use data in the

current methyl bromide market. In other words, the TEAP recommendations agreed to by the Parties are based on current use and the current use patterns take place in a market where all pre-plant and post-harvest methyl bromide uses compete for a lump sum supply of critical use material. Therefore, the Agency believes that under a system of universal allocations, divided into pre-plant and post-harvest sectors, the actual critical use will closely follow the sector breakout listed by the TEAP. These issues were addressed in previous rules and EPA is not aware of any factors that would alter the analysis performed during the development of the Framework Rule.

EPA is not proposing to change the approach adopted in the Framework Rule for the allocation of CUAs but, in an endeavor to address Decision XIX/9(6), EPA will consider additional comment on the Agency's allocation of CUAs in the two groupings (pre-plant and post-harvest) that the Agency has employed in the past.

H. Critical Stock Allowance Allocations

For the reasons described in Section V.D., EPA is proposing to allocate critical stock allowances (CSAs) to the entities listed below in Table III for the 2009 control period in the amount of 2,576,987 kg (10.1% of baseline). This proposed amount of CSA allowances is consistent with the approach to determining available stocks introduced in the 2008 CUE rule and described in section V.D.4.

In 2006, the United States District Court for the District of Columbia upheld EPA's treatment of company-specific methyl bromide inventory information as confidential. *NRDC v. Leavitt*, 2006 WL 667327 (D.D.C. March 14, 2006). EPA's allocation of CSAs is based on each company's proportionate share of the aggregate inventory. Therefore, the documentation regarding company-specific allocation of CSAs is in the confidential portion of the rulemaking docket and the individual CSA allocations are not listed in the table below. EPA will inform the listed companies of their CSA allocations in a letter following publication of the final rule.

TABLE III—PROPOSED ALLOCATION OF CRITICAL STOCK ALLOWANCES

Company		
Albemarle Ameribrom, Inc. Bill Clark Pest Control, Inc. Burnside Services, Inc. Cardinal Professional Products Chemtura Corp. Degesch America, Inc. Helena Chemical Co. Total—2,576,987 kilograms	Hendrix & Dail Hy Yield Bromine Industrial Fumigation Company Pacific Ag Pest Fog Sales Corp. Prosource One Reddick Fumigants	Royster-Clark, Inc. Trical Inc. Trident Agricultural Products UAP Southeast (NC) UAP Southeast (SC) Univar Western Fumigation

Several companies that receive very small amounts of CSAs from EPA have contacted the Agency and requested that they be permitted to permanently retire their allowances. Some companies receive as few as 6 allowances which allow the holder to sell up to 6 kilograms of methyl bromide to critical uses. Due to the small allocation and because they typically do not sell critical use methyl bromide, some companies find the allocation of CSAs, and associated record-keeping and reporting requirements, to be unduly burdensome.

In response to this concern, for the last two rounds of CUE allocation rulemakings EPA has allowed CSA holders, on a voluntary basis, to permanently relinquish their allowances through written notification to the Agency. Such companies would not receive CSA allocations and would be

excluded from future allocations. During the comment period for the 2008 CUE Rule, seven companies voluntarily agreed to permanently relinquish their allowances. In the final 2008 CUE Rule, the Agency reallocated all allowances forfeited by these companies to the remaining companies on a pro-rata basis. EPA continues to strongly encourage CSA holders to take advantage of this voluntary opportunity to retire their CSA allocations by providing written notification to the Agency during the comment period for this rulemaking.

I. Stocks of Methyl Bromide

As discussed above and in the December 23, 2004, Framework Rule, an approved critical user may purchase methyl bromide produced or imported with CUAs as well as limited inventories of pre-phaseout methyl

bromide, the combination of which constitute the supply of "critical use methyl bromide" intended to meet the needs of agreed critical uses. The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. It also established trading provisions that allow critical use allowances (CUAs) to be converted into CSAs. Under this proposed action, no changes would be made to those provisions.

EPA believes that the refined approach for calculating available stocks that was finalized in the 2008 CUE Rule reduces the risks of methyl bromide shortages for critical uses. However, as in prior years, the Agency will continue to closely monitor CUA and CSA data.

Further, as stated in the final 2006 CUE rule, safety valves continue to exist. If an inventory shortage occurs, EPA may consider various options including authorizing the conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses. In sections V.D. and V.G. of this preamble, EPA seeks comment on the amount of critical use methyl bromide to come from stocks compared to new production and import.

The aggregate amount of pre-phaseout methyl bromide reported as being in inventory at the beginning of 2008 is 6,458 MT. EPA estimates that the aggregate inventory on January 1, 2009, will be approximately 4,929 MT. As explained in detail in the 2008 CUE final rule, the Agency intends to continue releasing the aggregate of methyl bromide stockpile information reported to the Agency under the reporting requirements at 40 CFR 82.13 for the end of each control period. EPA notes that if the number of competitors in the industry were to decline appreciably, EPA would revisit the question of whether the aggregate is entitled to treatment as confidential information and whether to release the aggregate without notice. EPA is not proposing to change the treatment of submitted information but welcomes information concerning the composition

of the industry in this regard. The aggregate information for 2003 through 2007 is available in the docket for this rulemaking.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action proposes a “significant regulatory action.” This action is likely to result in a rule that may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The application, recordkeeping, and reporting requirements have already been established under previous Critical Use Exemption rulemakings and this action does not propose to change any of those existing requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at

40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060–0482 and 2060–0564. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (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.

Category	NAICS code	SIC code	NAICS Small business size standard (in number of employees or millions of dollars)
Agricultural production	1112—Vegetable and Melon farming 1113—Fruit and Nut Tree Farming 1114—Greenhouse, Nursery, and Floriculture Production.	0171—Berry Crops 0172—Grapes. 0173—Tree Nuts 0175—Deciduous Tree Fruits (except apple orchards and farms). 0179—Fruit and Tree Nuts, NEC. 0181—Ornamental Floriculture and Nursery Products. 0831—Forest Nurseries and Gathering of Forest Products.	\$0.75 million.
Storage Uses	115114—Postharvest Crop activities (except Cotton Ginning). 311211—Flour Milling 311212—Rice Milling 493110—General Warehousing and Storage 493130—Farm Product Warehousing and Storage.	2041—Flour and Other Grain Mill Products. 2044—Rice Milling. 4225—General Warehousing and Storage 4221—Farm Product Warehousing and Storage.	\$6.5 million.
Distributors and Applicators. Producers and Importers.	115112—Soil Preparation, Planting and Cultivating. 325320—Pesticide and Other Agricultural Chemical Manufacturing.	0721—Crop Planting, Cultivation, and Protection. 2879—Pesticides and Agricultural Chemicals, NEC.	\$23.5 million. 500 employees. \$6.5 million. 500 employees.

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This proposed rule will only affect entities

that applied to EPA for a de-regulatory exemption. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to

describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period.

EPA now estimates there to be 2,000 end users of critical use methyl bromide. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the proposed rule on small entities.” (5 U.S.C. 603–604). Thus, an Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule exempts methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this is a de-regulatory action which will confer a benefit to users of methyl bromide. EPA believes the estimated de-regulatory value for users of methyl bromide is between \$20 million and \$30 million annually. We have therefore concluded that this proposed rule will relieve regulatory burden for all 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 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 proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This action is deregulatory and does not impose any new requirements on any entities. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. Further, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

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.” The phrase “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. This proposed rule is expected to primarily affect producers, suppliers, importers and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this proposed rule.

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

Executive Order 13175, titled “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 proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order No. 13045: Protection of Children From Environmental Health and Safety Risks

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

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

This proposed rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this proposed rule is not likely to have any adverse energy effects.

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent

practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally 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. Any ozone depletion that results from this proposed rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions.

List of Subjects in 40 CFR Part 82

Environmental protection, Ozone depletion, Chemicals, Exports, Imports.

Dated: November 21, 2008.

Stephen L. Johnson,
Administrator.

For the reasons stated in the preamble, 40 CFR Part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.8 is amended by revising the table in paragraph (c)(1) and paragraph (c)(2) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) * * *

(1) * * *

Company	2009 Critical use allowances for pre-plant uses* (kilograms)	2009 Critical use allowances for post-harvest uses* (kilograms)
Great Lakes Chemical Corp. A Chemtura Company	888,477	94,733
Albemarle Corp.	365,362	38,956
Ameribrom, Inc.	201,907	21,528
TriCal, Inc.	6,287	670
Total ³	1,462,032	155,888

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart.

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2009 on a pro-rata basis in relation to the inventory held by each.

Company		
Albemarle Ameribrom, Inc. Bill Clark Pest Control, Inc.	Hendrix & Dail Hy Yield Bromine Industrial Fumigation Company	Royster-Clark, Inc. Trical Inc. Trident. Agricultural. Products.
Burnside Services, Inc Cardinal Professional Products Chemtura Corp Degesch America, Inc Helena Chemical Co. Total—2,576,987 kilograms	Pacific Ag Pest Fog Sales Corp. Prosource One Reddick Fumigants	UAP Southeast (NC). UAP Southeast (SC). Univar. Western Fumigation.

3. Appendix L to Subpart A is revised to read as follows:

**Appendix L to Part 82 Subpart A—
Approved Critical Uses and Limiting
Critical Conditions for Those Uses for
the 2009 Control Period**

³ Due to rounding, numbers do not add exactly.

Column A	Column B	Column C
Approved Critical Uses	Approved Critical User and Location of Use	Limiting Critical Conditions That exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:

PRE-PLANT USES

Cucurbits	(a) Growers in Delaware, Maryland, and Michigan. (b) Growers in Georgia and South-eastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes. Moderate to severe yellow or purple nutsedge infestation Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation. A need for methyl bromide for research purposes.
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes. Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes. Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
	(c) Michigan growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation.
Forest Nursery Seedlings ...	(a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. (b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas. (c) Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin. (d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina. (e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington. (f) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation Moderate to severe yellow or purple nutsedge infestation.. Moderate to severe soilborne disease infestation. Moderate to severe nematode or worm infestation.
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in Washington, and members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers. (b) California rose nurseries	Moderate to severe yellow nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation Moderate to severe nutsedge infestation Moderate to severe nematode infestation Moderate to severe nematode infestation. Medium to heavy clay soils. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes.
Orchard Replant	(a) California stone fruit, table and raising grape, wine grape, walnut, and almond growers.	Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes. Moderate to severe nematode infestation Moderate to severe soilborne disease infestation . Replanted orchard soils to prevent orchard replant disease. Medium to heavy soils. Local township limits prohibiting 1,3-dichloropropene.
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes
	(b) Florida growers	Moderate to severe weed infestation.

Column A	Column B	Column C
Peppers	(c) Michigan herbaceous perennial growers.	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes. Moderate to severe nematode infestation.
	(a) Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe soilborne disease infestation. Moderate to severe yellow nutsedge and other weed infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium root, collar, crown and root rots.
	(b) Florida growers	A need for methyl bromide for research purposes. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(d) Michigan growers	Moderate to severe soilborne disease infestation. A need for methyl bromide for research purposes.
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. Time to transition to an alternative. A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Carolina geranium or cut-leaf evening primrose infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. A need for methyl bromide for research purposes.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe black root and crown rot A need for methyl bromide for research purposes.
Strawberry Nurseries	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. A need for methyl bromide for research purposes.
	(b) North Carolina and Tennessee growers.	Moderate to severe black root rot. Moderate to severe root-knot nematode infestation. Moderate to severe yellow and purple nutsedge infestation. A need for methyl bromide for research purposes.
Sweet Potato Slips	(a) California growers	Local township limits prohibiting 1,3-dichloropropene.
Tomatoes	(a) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe fungal pathogen infestation. A need for methyl bromide for research purposes.
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. A need for methyl bromide for research purposes.
	(c) Maryland growers	High water tables and proximity to environmentally sensitive estuaries which limit use of 1–3D; Moderate to severe fungal pathogen infestation.

POST-HARVEST USES

Food Processing	(a) Rice millers in the U.S. who are members of the USA Rice Millers Association.	Moderate to severe beetle, weevil, or moth infestation. Presence of sensitive electronic equipment subject to corrosion.

Column A	Column B	Column C
	(b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute. (c) Bakeries in the U.S. (d) Members of the North American Millers' Association in the U.S. (e) Members of the National Pest Management Association treating facilities, spaces, and equipment associated with processed food, cheese, herbs, spices.	Time to transition to an alternative. Moderate to severe beetle, moth, or cockroach infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative. Moderate to severe beetle infestation Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative. Moderate to severe beetle or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities	(a) California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation required to meet a critical market window, such as during the holiday season. Export to countries which do not allow the use of sulfuryl fluoride. A need for methyl bromide for research purposes.
Dry Cured Pork Products	(a) Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc..	Red legged ham beetle infestation Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

[FR Doc. E8-28328 Filed 11-26-08; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Part 225**

[Docket No. FRA-2006-26173, Notice No. 2]

RIN 2130-AB82

Miscellaneous Amendments to the Federal Railroad Administration's Accident/Incident Reporting Requirements**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).**ACTION:** Notice of public hearing and extension of comment period.

SUMMARY: By notice of proposed rulemaking (NPRM) published on September 9, 2008 (73 FR 52496), FRA proposed revisions to its regulations governing railroad accident/incident recording and reporting. This document announces a public hearing to provide interested parties the opportunity to comment on the NPRM and announces a thirty (30) day extension of the comment period, which closed November 10, 2008, to commence on the date of the public hearing. This extension provides interested parties the opportunity to comment on the NPRM and to respond to matters that arise at the public hearing related to the NPRM.

DATES: (1) *Public Hearing:* A public hearing will be held on the date and at

the location listed below to provide interested parties the opportunity to comment on the proposed revisions contained in the NPRM. A thirty (30) day extension of the comment period will commence on the date of the hearing. The date of the public hearing is as follows:

Thursday, December 18, 2008, at 8:30 a.m. in Washington, DC.

(2) *Extension of Comment Period:* The comment period will reopen Thursday, December 18, 2008 and written comments must be received by Friday, January 16, 2009. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

ADDRESSES: (1) *Public Hearing:* The public hearing will be held at the following location:

Washington, DC: Four Points by Sheraton, 1201 K Street, NW., Washington, DC 20005.

(2) *Extension of Comment Period:* Comments related to Docket No. FRA-2006-26173, may be submitted by any of the following methods:

1. *Web site:* Comments should be filed at the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the Web site's online instructions for submitting comments.

2. *Fax:* 202-493-2251.

3. *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.

4. *Hand Delivery:* Room W12-140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5

p.m. Monday through Friday, except Federal holidays.

(3) Public Hearing Participants:

Written notification of intent to participate in the public hearing and copies of oral statements must be submitted to the FRA Docket Clerk at FRA Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590 or faxed to (202) 493-2251.

FOR FURTHER INFORMATION CONTACT:

Arnel B. Rivera, Staff Director, U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS-22, Mail Stop 25, Federal Railroad Administration, 1200 New Jersey, SE., Washington, DC 20590 (telephone 202-493-1331); or Gahan Christenson, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey, SE., Washington, DC 20590 (telephone 202-493-1381).

SUPPLEMENTARY INFORMATION: FRA has received written comments submitted by interested parties related to various parts of the NPRM and a written request for a hearing on the NPRM. The purpose of the public hearing is to permit the exchange of information and concerns regarding FRA's proposed amendments. The public hearing is meant to allow interested parties to fully develop and articulate the issues and concerns they have with the NPRM so that these concerns can be fully addressed in any final rule that is developed. Interested parties are invited to present oral statements and proffer evidence at the hearing. The hearing will be informal and will be conducted by a

representative designated by FRA in accordance with FRA's Rules of Practice (49 CFR 211.25). The hearing will be non-adversarial proceeding; therefore, there will be no cross examination of persons presenting statements or proffering evidence. An FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make a brief rebuttal will be given the opportunity to do so in the same order in which the initial statements were made. Additional procedures, as necessary for the conduct of the hearing, will be announced at the hearing.

On December 18, 2008, the comment period for the NPRM will reopen for thirty (30) days so that the FRA can make the public hearing transcript available for review and comment by the general public, interested parties can provide additional comments and

documents related to the NPRM, and interested parties can provide responses to matters that arise at the public hearing.

Public Participation Procedures

Any person wishing to participate in the public hearing should notify the FRA Docket Clerk by mail at the address or by fax at the number provided in the **ADDRESSES** section at least five (5) working days prior to the date of the hearing and submit three copies of the oral statement that he or she intends to make at the proceeding. The notification should identify the party the person represents, and the particular subject(s) the person plans to address. The notification should also provide the FRA Docket Clerk with the participant's mailing address and other contact information. FRA reserves the right to limit participation in the hearings of

persons who fail to provide such notification.

Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

Issued in Washington, DC, on November 24, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–28443 Filed 11–26–08; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register

Vol. 73, No. 230

Friday, November 28, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request; Correction

November 24, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number. The following notice that published in the **Federal Register** on Thursday, November 20, 2008 (Volume 73, Number 225) pg. 70309, contained an error in the total burden hours. The burden hours should be 13,756, not the 11,876 that was originally published in the notice.

Animal and Plant Health Inspection Service

Title: User Fee Regulation, 7 CFR part 354 and 9 CFR part 130.

OMB Control Number: 0579-0094.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E8-28336 Filed 11-26-08; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Grazing Permit Administration Forms

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with no revision of a currently approved information collection, Grazing Permit Administration Forms.

DATES: Comments must be received in writing on or before January 27, 2009, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to the USDA Forest Service, Attn: Director, Rangeland Management, Mail Stop 1103, 1400 Independence Ave., SW., Washington, DC 20250-1153. To ensure timely delivery, review and consideration, it may be preferable to submit comments by electronic mail to wperry@fs.fed.us; or by facsimile to 202-205-1096. If comments are sent by electronic means or by facsimile, the public is requested not to send duplicate comments via regular mail.

All comments, including names and addresses when provided, are placed in the record and available for public

inspection and copying. The agency cannot confirm receipt of comments.

The public may inspect comments received on these grazing permit administration forms in the Rangeland Management staff, 3rd Floor, South Wing, Yates Building, 14th and Independence Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead to 202-205-1460 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT:

William Perry, Rangeland Management, USDA Forest Service, 202-205-1454. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Grazing Permit Administration Forms.

OMB Number: 0596-0003.

Expiration Date of Approval: May 31, 2009.

Type of Request: Extension with no revision.

Abstract: This information collection is necessary to allow proper administration of livestock grazing programs on National Forest System (NFS) lands. Domestic livestock grazing occurs on approximately 90 million acres of NFS lands. Grazing on NFS lands is subject to authorization and administrative oversight by the Forest Service. The information collected by the Forest Service is the minimum required for issuance and administration of grazing permits, including fee collections, as authorized by the Federal Land Policy and Management Act (FLPMA) of 1976, as amended (43 U.S.C. 1700 *et seq.*) and United States Department of Agriculture regulations at 36 CFR part 222, subparts A and C. Similar information is not available from any other source.

Forest Service officials use the following forms to collect the information necessary to administer this program.

FS-2200-1; Refund, Credit or Transfer Application collects the following information:

- Name and mailing address.
- Permit number.
- National Forest or Grassland and Ranger District.

- *Purpose of application:* Credit on next year's fees, refund of fees, or transfer of credit to another account.
- Information on the allotment; number of cattle, horses, or sheep;
- Period range not used.
- Reason for less use than permitted.
- Signature of Permittee.

Information collected on this form enables the Forest Service to evaluate a grazing permittee's request for refund, credit, or transfer of the unused portion of the preceding season's grazing fees paid to the Forest Service for the occupancy of the National Forest System lands by permitted livestock.

FS-2200-2; Application for Temporary Grazing or Livestock Use Permit collects the following information:

- Name and address of applicant.
- Type, amount, and location of requested grazing.
- Period of use.
- Grazing allotment.

Information collected on this form enables the Forest Service to determine whether individuals qualify for a temporary grazing or livestock use permit, which authorizes grazing on certain NFS lands for a period not to exceed one year. The Forest Service uses the information on this form to determine whether the applicant is likely to comply with grazing permit terms and conditions.

FS-2200-12; Waiver of Term Grazing Permit enables the Forest Service to terminate an individual's grazing privileges on certain NFS lands based upon that individual's sale or transfer of base property, permitted livestock, or both to another individual who desires to acquire a new grazing permit. The waiver enables the Forest Service to cancel the grazing permit held by the individual who sold or transferred the base property, permitted livestock, or both; and to identify the individual who acquired the base property, permitted livestock, or both as the preferred applicant for a new grazing permit.

FS-2200-13; Escrow Waiver of Term Grazing Permit Privileges collects information on loans made to permittees. The Forest Service uses the information to record the name and address of a permittee's lender, the amount of the loan, and the due date for repayment. The information assists Agency officials in determining whether to hold in escrow, on behalf of the lender, all of the privileges associated with the grazing permit except the privilege to graze. The Forest Service uses the collected information to (1) notify the lender of important issues associated with the administration of the grazing permit and (2) facilitate the

transfer of a grazing permit to a lender if the permittee defaults on a loan.

FS-2200-16; Application for Term Grazing Permit collects the following information:

- Name and address of applicant.
- Type, amount, and location of requested grazing.
- Period of use.
- Grazing allotment.

The information collected on this form enables the Forest Service to evaluate an applicant's eligibility and qualification to hold a term grazing permit authorizing the use of National Forest System lands for livestock grazing purposes, to determine the applicant's ability to comply with grazing permit terms and conditions, and to notify the applicant in writing of matters associated with the administration of permitted grazing including, but not limited to, bills for the fees associated with the permitted grazing.

FS-2200-17; Application for Term Private Land Grazing Permit collects the following:

- Name and address of applicant.
- Type, amount, and location of requested grazing.
- Period of use.
- Grazing allotment.

The information collected on this form enables the Forest Service to evaluate an applicant's eligibility and qualification to hold a term private land-grazing permit, which authorizes the use of National Forest System lands and private lands controlled by the applicant for livestock grazing purposes. The information also enables the Forest Service to determine the applicant's ability to comply with grazing permit terms and conditions, and to notify the applicant in writing of matters associated with the administration of permitted grazing.

FS-2200-25; Ownership Statement by Corporation or Partnership collects the following:

- Name of corporation or partnership.
- The title, signing authority, mailing address, shares owned or ownership of each stockholder or partner.

The information on this form enables the Forest Service to evaluate whether a corporation or partnership is eligible and qualified to hold a term grazing permit authorizing grazing on certain National Forest System lands, whether the corporation is authorized to conduct business in the state in which the National Forest System lands to be grazed are located, and which shareholders or partners are authorized to sign official documents on behalf of the corporation or partnership.

Estimate of Annual Burden: 25 minutes.

Type of Respondents: Individuals, businesses, and farms.

Estimated Annual Number of Respondents: 3900.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1950 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: November 19, 2008.

Charles L. Myers,

Associate Deputy Chief, National Forest System.

[FR Doc. E8-28346 Filed 11-26-08; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Health Screening Questionnaire

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension (with revision) of a currently approved information collection, Health Screening Questionnaire.

DATES: Comments must be received in writing on or before January 27, 2009 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to WO–FAM, National Interagency Fire Center, 3833 S. Development Ave., Boise, ID 83705, Attention: Larry Sutton.

Comments also may be submitted via facsimile to 208–387–5735 or by e-mail to: lsutton@fs.fed.us.

The public may inspect comments received at the National Safety Office, National Interagency Fire Center, Forest Service, USDA, 3833 Development Avenue, Boise, ID, from 8 a.m. to 4:30 p.m. Monday through Friday (Mountain Standard Time). Visitors are encouraged to call ahead to 208–387–5607 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT:

Larry Sutton, Forest Service Fire Operations Risk Management Specialist, 208–387–5970. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Health Screening Questionnaire.
OMB Number: 0596–0164.

Expiration Date of Approval: August 31, 2009.

Type of Request: Extension with revision.

Abstract: The Protection Act of 1922 (16 U.S.C. 594) authorizes the Forest Service to fight fires on National Forest System lands. This information collection is an approved Forest Service collection. The collection covers the USDA Forest Service (FS) and the Department of the Interior (DOI), and contains the information collection activities and burden hours for both agencies.

Wildland firefighters perform long hours of arduous labor in adverse conditions requiring. It is imperative that these firefighters be in sufficient physical condition to avoid injury to themselves or their coworkers. Federal employees and private individuals seeking employment as a firefighter with the FS or DOI must complete the Health Screening Questionnaire (HSQ). This information collection covers the forms and burden hours associated with the private individuals who apply for firefighter positions with the aforementioned agencies.

Prospective firefighters must complete form FS–5100–31, Health Screening Questionnaire, when seeking employment as a new firefighter with the Forest Service or Department of the Interior. This form collects the following information:

- Name
- Medical history

- Current medical symptoms
- Other health issues
- Cardiovascular risk factors

The information collected pertains to an individual's health status and health history in an effort to determine if any physical conditions exist that might result in injury or death during fitness testing or when fighting a wildfire. If Federal agency officials determine, based on the collected information, that an individual may not be physically able to train for or take a Work Capacity Test, the agency will require the individual to undergo a physical examination by a physician.

Form *FS–5100–30, Work Capacity Test: Informed Consent*, is signed by those deemed to be in sufficient health to undergo a Work Capacity Test. The Work Capacity Test determines the level of an individual's aerobic fitness, level of muscular strength, and muscle endurance. The consent form is necessary to ensure the individual taking the test is aware of the various testing levels (arduous, moderate, and light) and the risks involved. The individual indicates the following:

- They have read the information on the form, the brochure "Work Capacity Test" and understand the purpose, instructions, and risks of the test.
- They have read the information, understood, and truthfully answered the HSQ.
- Test to be taken—pack test (arduous), field test (moderate), or walk test (light).

Failure to collect this data could result in injuries or deaths during the "Work Capacity Test" and while working on wildland fires. The information provided by an applicant for Federal employment is stored in secured official files, maintained according to Agency regulations. The information gathered is not available from other sources.

Estimate of Annual Burden: 5 Minutes.

Type of Respondents: Individuals seeking employment as firefighters.

Estimated Annual Number of Respondents: 10,552.

Estimated Annual Number of Responses per Respondents: 1.

Estimated Total Annual Burden on Respondents: 876.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the

collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: November 21, 2008.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. E8–28343 Filed 11–26–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

USDA Section 538 Guaranteed Rural Rental Housing Program 2009 Industry Forums—Open Teleconference and/or Web Conference Meetings

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces a series of teleconference and/or Web conference meetings regarding the USDA Section 538 Guaranteed Rural Rental Housing Program, which will take place during the months of January, April, July and October in 2009. This notice also outlines suggested discussion topics for the meetings and is intended to notify the general public of their opportunity to participate in the teleconference and/or Web conference meetings.

DATES: The dates and times for the teleconference and/or Web conference meetings will be announced via e-mail to parties registered as described below in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to register for the calls and obtain the call-in number, access code, Web link and other information for any of the public teleconferences and or Web conferences may contact James F. Carey, Financial and Loan Analyst, Multifamily Housing Guaranteed Loan Division, Rural Development, United States Department of Agriculture, telephone: (202) 401–

2307, fax: (202) 205-5066, or e-mail: james.carey@wdc.USDA.gov.

SUPPLEMENTARY INFORMATION: The objectives of this series of teleconferences are as follows:

- Enhance the effectiveness of the Section 538 Guaranteed Rural Rental Housing Program.
- Establish a two-way communications forum to update industry participants and Rural Housing staff.

- Enhance RHS' awareness of the market and other forces that impact the Section 538 Multifamily Guaranteed Loan program.

Topics to be discussed could include but will not be limited to the following:

- Update on the USDA Section 538 Guaranteed Rural Rental Housing Program FY 2008 activities.
- Perspectives on the current state of equity financing and its impact on the Section 538 program.
- Use of the Section 538 program for financing "Workforce Housing".
- Perspectives on the current state of debt financing and its impact on the Section 538 program.
- Enhancing the use of Section 538 financing with the transfer and/or preservation of Section 515 developments.

Dated: November 12, 2008.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E8-28244 Filed 11-26-08; 8:45 am]

BILLING CODE 3410-XV-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 12/28/2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202-3259.

FOR FURTHER INFORMATION CONTACT: Emily A. Covey, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Additions:

On 10/03/2008 and 10/10/2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR193, pages 57589 and 57590 and 73 FR198, pages 60236-60237) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Laminated Wiper, Biodegradable.

NSN: 7920-00-NIB-0439.

NPA: East Texas Lighthouse for the Blind, Tyler, TX.

Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FAS SOUTHWEST SUPPLY CENTER (QSDAC).

Coverage: B-list for the broad government requirement as aggregated by the General Services Administration.

Bag, Sand, Polypropylene, 26" x 14", Green

NSN: 8105-00-142-9345—Bag, Sand, Polypropylene, 26" x 14", Green.

NPA: Southeast Vocational Alliance, Inc., Houston, TX.

Contracting Activity: DEFENSE LOGISTICS

AGENCY, DEFENSE SUPPLY CENTER PHILADELPHIA.

Coverage: C-list for the remaining 50% of the Defense Supply Center Philadelphia requirement.

Services

Service Type/Location: Base Supply Center, BSC, NAWS China Lake, 1

Administration Circle, China Lake, CA.

NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.

Contracting Activity: DEPT OF THE NAVY, FISC SAN DIEGO.

Service Type/Location: Administrative Services, Delaware Valley Office, GSA Region 3, Trenton NJ, 402 E State Street, Trenton, NJ.

NPA: Occupational Training Center of Burlington County, Mt. Holly, NJ.

Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA/PBS/R03 PHILATLANTIC.

Service Type/Location: Laundry Services, FEMA—NETC, 16825 South Seton

Avenue, Emmitsburg, MD,

NPA: Jeanne Bussard Center, Inc., Frederick, MD,

Contracting Activity: FEDERAL EMERGENCY MANAGEMENT AGENCY, NETC ACQUISITION SECTION.

Emily A. Covey,

Acting Director, Program Operations.

[FR Doc. E8-28251 Filed 11-26-08; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Clarification of Scope of Procurement List Additions; 2008 Commodities Procurement List; Quarterly Update of the A-List and Movement of Products Between the A-List, B-List and C-List

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Publication of the quarterly update of the A-list and movement of products between the A-list, B-list and C-list as of January 1, 2009.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled, in accordance with the procedures published on December 1, 2006 (71 FR 69535-69538), has updated the scope of the Program's procurement preference requirements for the products listed below between and among the Committee's A-list, B-list and C-list. A-list products are suitable for the Total Government Requirement as aggregated by the General Services Administration, the B-list are those products suitable for the Broad Government Requirement as aggregated by the General Services Administration,

and C-list products are suitable for the requirements of one or more specified agency(ies). The lists below track changes to A-, B-, C-designations that occurred between August 30, 2008 and November 19, 2008.

DATES: The effective date for the quarterly update of the A-list and movement of products between and among the A-list, B-list and C-list is January 1, 2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION CONTACT: Emily A. Covey, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail cmtefedreg@jwod.gov

Products Moved From B-List to A-List

Marker, Tube Type, Black
7510-00-043-3408
Stapler, Stand-Up
7520-01-515-3549

Products Moved From C-List to A-List

None

Products Moved From A-List to B-List

Ergo Gel Keyboard and Monitor Platform
7045-01-483-7837
Disk, Flexible
7045-01-283-4362
Mouse Pad, Computer
7045-01-368-4810
Greendisk
7045-01-392-6514
Tape, Packaging, Beige
7510-00-297-6655
Binder, Three Ring
7510-01-510-4873
7510-01-510-4858
Binder, Three Ring, Red
7510-01-511-4322
Binder, Loose-leaf, Three Ring
7510-01-484-1755
Binder, Poly
7510-01-484-1757
7510-01-484-1763
Correct-It Roller Refill Cartridge
7510-01-350-1810
Illuminator/Corrector Stx and Refills
7510-01-390-0704
Dispenser, Tape
7520-00-240-2417
Pen, Ballpoint
7520-00-543-7149
Marker, Tube Type, Fine Tip, Red
7520-00-904-1266
Marker, Tube Type, Fine Tip, Blue
7520-00-904-1268
Markers, Lumocolor, Permanent
7520-01-392-5296
7520-01-507-6972
7520-01-507-6969
Markers, Lumocolor, Non-Permanent
7520-01-507-6963
7520-01-507-6958
Highlighter, Free-Ink, Flat
7520-01-553-8140
Refill, Tape
7520-00-NIB-1579

Toner Cartridge, HPC4092A Compatible
7510-01-558-6166
Spot Remover, SAVVY, 32 oz.
7930-01-517-6194
Markers, Permanent Impression, Fine Tip Set
7520-01-519-4380
Markers, Permanent Impression, Red, Ultra Fine Tip
7520-01-520-3889
Markers, Liquid Impression, Black, Medium Tip Set
7520-01-519-4365
Markers, Liquid Impression, Red, Medium Tip Set
7520-01-519-4375
Markers, Liquid Impression, Black, Extra Fine Tip
7520-01-519-4364
Paper, Tabulating
7530-00-144-9602
Pen, Cushion Grip, Black, Fine Tip
7520-01-542-5953
Inkjet Cartridge, Canon Replacement
7510-01-544-0832
7510-01-544-0836
7510-01-544-0833
7510-01-544-0835
Inkjet Cartridge, Epson Replacement
7510-01-544-0830
7510-01-544-0826
7510-01-544-0831
7510-01-544-0838

Products Moved From A-List to C-List

None

Products Moved From B-List to C-List

None

Products Moved From C-List to B-List

None

The complete A-list is available at http://www.jwod.gov/jwod/p_and_s/A-List_08.html.

Emily A. Covey,

Acting Director, Program Operations.

[FR Doc. E8-28252 Filed 11-26-08; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Quarterly Survey of State and Local Tax Revenues

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before January 27, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Pece, Chief, Public Finance Analysis Branch-B, Governments Division, U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233 (301-763-7330).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request an extension of the Quarterly Survey of State and Local Tax Revenue. The Census Bureau needs state and local tax data to publish benchmark statistics on public sector taxes, to provide data to the Bureau of Economic Analysis for GDP calculations and other economic indicators, and to provide data for economic research and comparative studies of governmental finances. Data are collected on a quarterly basis from state and local government tax collecting agencies.

Tax collection data are used to measure economic activity for the Nation as a whole, as well as for comparison among the various states. These data also are useful in comparing the mix of taxes employed by individual states, and in determining the revenue raising capacity of different types of taxes.

The survey collects data using three forms:

The Quarterly Survey of Property Tax Collections (Form F-71) is sent to 5,379 local government tax collecting agencies in 592 county areas. While some counties are served by a single county-level tax collection agency, others have county, city, township, and even school district collectors. Each agency is asked to report the total property tax collections during the past quarter. In addition to the current sample, Census is implementing a new sample which will increase the overall collection size to 6,946 local government tax collecting agencies in 609 county areas (with 4,002 local governments overlapping on both samples). This sample revision will ensure that this portion of the survey meets OMB's statistical standards. We will continue to collect the concurrent samples for four quarters at which time

a bridge study will be conducted and the old sample will be discontinued.

The Quarterly Survey of State Tax Collections (Form F-72) is sent to a state-level revenue, finance, or budget agency in each state to report tax collection data for the preceding 3-month period.

The Quarterly Survey of Selected Local Taxes (Form F-73) is sent to 111 local tax collection agencies known to have substantial collections of local general sales and/or local individual income taxes.

II. Method of Collection

The F-71 survey is conducted by mail canvass from the Census Bureau's National Processing Center (NPC). Responses are either screened manually and then entered in the system at the NPC or entered directly by respondents via the Internet.

The F-72 and F-73 forms are sent to respondents by email or facsimile (as requested by respondent). Respondents submit the forms by mail, email, facsimile or Internet. (Email and facsimile are accepted but not encouraged.)

In those instances when we are not able to obtain a response a follow-up is conducted.

III. Data

OMB Control Number: 0607-0112.

Form Number: F-71, F-72, and F-73.

Type of Review: Regular submission.

Affected Public: State and local governments.

Estimated Number of Respondents: 7,108.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 7,159.

Estimated Total Annual Cost: \$162,151.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 21, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8-28216 Filed 11-26-08; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Internet Web Site Forms

AGENCY: International Trade Administration.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 27, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Susan Crawford—phone: (202) 482-2050, Susan.Crawford@mail.doc.gov, fax: (202) 482-2599.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's U.S. Commercial Service (CS) is mandated by Congress to help U.S. businesses, particularly small and medium-sized companies, export their products and services to global markets. The Commercial Service provides this valuable assistance through a variety of channels including U.S. Export Assistance Center (USEAC) Web sites and the International Trade Administration's Export.gov Web site.

The CS operates 117 Export Assistance Centers throughout the U.S.

where U.S. companies can meet with International Trade Specialists to receive export counseling and other export-related services such as market research, due diligence and foreign partner identification. Prior to meeting with a Trade Specialist a U.S. company may visit a USEAC Web site and complete a USEAC Internet Form to request that a Trade Specialist contact them. This USEAC Interest Form asks clients to provide company contact information and some company details including products or services to be exported and potential export markets of interest. This information allows the Trade Specialist to contact the client and make appropriate preparations for the initial client discussion. Although each USEAC will require similar information about a client, there may be some very minor modifications to the USEAC Internet Form depending upon unique circumstances at a particular USEAC.

The CS would also like to renew approval for a revised Export.gov Web site registration form. ITA's Export.gov Web site provides U.S. businesses with valuable export-related resources including an export manual and information regarding export topics such as financing, international logistics, export documentation, trade leads and trade events. Clients are required to register on the site to gain access to certain information such as trade leads and market research which are only available to American companies. The registration information also allows CS to tailor the Web site to improve usability and better meet clients' needs. For example a firm that registers as being "new to exporting" would be directed to basic exporting information that is most appropriate for firms that have not yet exported. Whereas a firm that registers as an experienced exporter, who has already mastered exporting basics, would be directed to resources that are targeted to companies that are ready to expand current export efforts and seek new markets.

II. Method of Collection

In the majority of cases the information will be collected electronically via the Internet, although some clients may submit the information via telephone, fax, or e-mail.

III. Data

OMB Control Number: 0625-0237.

Form Number(s): ITA-4148P.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 19,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 1,583.

Estimated Total Annual Cost to Public: None.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 21, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8-28215 Filed 11-26-08; 8:45 am]

BILLING CODE 3510-FP-P

DEPARTMENT OF COMMERCE

International Trade Administration

(A-570-896)

Magnesium Metal from the People's Republic of China: Notice of Rescission of the 2007-2008 Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 28, 2008.

FOR FURTHER INFORMATION CONTACT: Demitrios Kalogeropoulos, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4295.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2008, the Department of Commerce ("the Department")

published a notice of opportunity to request an administrative review of the antidumping duty order on magnesium metal from the People's Republic of China ("PRC"). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 17317 (April 1, 2008). On April 30, 2008, Tianjin Magnesium International Co., Ltd. ("TMI") requested that the Department conduct an administrative review of TMI's exports to the United States for the period of review ("POR") April 1, 2007, through March 31, 2008. Pursuant to this request, the Department published a notice of the initiation of the administrative review of the antidumping duty order on magnesium metal from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 31813 (June 4, 2008).

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation. On September 2, 2008, TMI timely withdrew its request for a review, and no other interested party requested a review of this company. Therefore, the Department is rescinding this administrative review of the antidumping duty order on magnesium metal from the PRC covering the period April 1, 2007, through March 31, 2008, in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the publication of this notice in the **Federal Register**.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply

with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305 and as explained in the APO itself. 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 the terms of an APO is a sanctionable violation.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: November 20, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E8-28318 Filed 11-26-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(A-570-851)

Certain Preserved Mushrooms from the People's Republic of China: Amended Final Results Pursuant to Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 16, 2008, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) results of redetermination pursuant to the CIT's remand, whereby the Department, in accordance with the CIT's instructions: (1) recalculated the assessment rate for Gerber Food (Yunnan) Co., Ltd. (Gerber) using a rate other than the PRC-wide rate as partial adverse facts available (AFA) with respect to certain period of review (POR) sales of subject merchandise produced by Gerber for which the customs entry documentation identified Green Fresh (Zhangzhou) Co., Ltd. (Green Fresh) as the exporter; and (2) recalculated the assessment rate for Green Fresh based on the data it reported, exclusive of the aforementioned transactions, without resorting to facts available or adverse inferences. As there is now a final and conclusive court decision in this case,

the Department is amending the final results of the 2001–2002 administrative review of certain preserved mushrooms from the People's Republic of China (PRC).

EFFECTIVE DATE: November 28, 2008.

FOR FURTHER INFORMATION CONTACT:

Brian Smith, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–1766.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2003, the Department published its final results of administrative review, covering the period of review from February 1, 2001, through January 31, 2002. *See Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003) (*Final Results*), and accompanying Issues and Decision Memorandum. In the *Final Results*, the Department applied total AFA in calculating the cash deposit and assessment rates for respondents Gerber and Green Fresh, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act). *See Final Results*, 68 FR at 41306, and accompanying Issues and Decision Memorandum at Comment 1. The Department found that Gerber and Green Fresh were involved in a business arrangement during the POR that resulted in the circumvention of the proper payment of cash deposits on certain POR entries of subject merchandise made by Gerber. *Id.* As total AFA, the Department applied the PRC-wide rate of 198.63 percent to both companies. Gerber and Green Fresh challenged the Department's resorting to total AFA to determine their cash deposit and assessment rates for the POR in the *Final Results* before the CIT.

On July 18, 2005, the CIT concluded that the Department exceeded its statutory authority by rejecting all data relevant to antidumping assessment rates submitted by the two companies. *See Gerber Food (Yunnan) Co., Ltd. and Green Fresh (Zhangzhou) Co., Ltd. v. United States*, Slip Op. 05–84 (July 18, 2005). Therefore, the CIT remanded this case to the Department.

On November 30, 2005, the Department issued its Results of Redetermination Pursuant to Court Remand (First Remand Redetermination). In the First Remand

Redetermination, the Department modified its original final results margin calculations for both companies by applying partial, instead of total, AFA.

On May 24, 2007, the CIT issued the Department a second remand. *See Gerber Food (Yunnan) Co., Ltd. and Green Fresh (Zhangzhou) Co., Ltd. v. United States*, Slip Op. 07–85 (May 24, 2007) (*Gerber v. United States II*). In its decision, the CIT agreed with the Department that both Gerber and Green Fresh had failed to cooperate to the best of their abilities in the above-referenced review. With regard to Gerber, the CIT affirmed that the Department was justified in resorting to AFA for the 24 sales for which Gerber used Green Fresh invoices. However, the CIT instructed the Department to use a different AFA rate for those 24 sales for purposes of calculating cash deposit and assessment rates for Gerber. With regard to Green Fresh, the CIT instructed the Department to revisit its basis for resorting to partial AFA because the sales at issue were made by Gerber.

In accordance with the CIT's instructions, the Department issued its Results of Redetermination Pursuant to Court Remand on September 18, 2007. *See Results of Redetermination Pursuant to Remand*, dated September 18, 2007 (available at <http://ia.ita.doc.gov/remands>) (Second Remand Redetermination). In the Second Remand Redetermination, the Department recalculated the assessment rate for Gerber by applying partial AFA to the 24 sales made by Gerber during the POR which were exported to the United States using Green Fresh's invoices. The Department also recalculated the assessment rate for Green Fresh exclusive of the same 24 transactions in accordance with the CIT's instructions.

On September 16, 2008, the CIT issued its decision, affirming the Department's Second Remand Redetermination. *See Gerber Food (Yunnan) Co., Ltd. and Green Fresh (Zhangzhou) Co., Ltd. v. United States*, Slip Op. 08–97 (September 16, 2008) (*Gerber v. United States III*); and *Certain Preserved Mushrooms From the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Administrative Review*, 73 FR 57322 (October 2, 2008).

The time period for appealing the CIT's decision has expired and no party has appealed the CIT's decision. Because there is now a final and conclusive court decision in this case, the Department is amending the final results of the 2001–2002 administrative review.

Amended Final Results of Review

We are therefore amending the final results of the 2001–2002 administrative review of the antidumping duty order on certain preserved mushrooms from the PRC to abide by the CIT's decision with respect to the cash deposit and assessment rates applicable to Gerber and Green Fresh. Specifically, the Department's redetermination resulted in changes to the *Final Results* weighted-average margins for Gerber from 198.63 percent to 92.11 percent, and for Green Fresh from 84.26 percent to 31.55 percent.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries for this review. In accordance with 19 CFR 351.106(c), we will instruct CBP to assess antidumping duties on all appropriate entries for both companies if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., is not less than 0.50 percent *ad valorem*). We intend to issue the assessment instructions to CBP 15 days after the date of publication of these amended final results of review.

This notice is issued and published in accordance with sections 516A(e), 751(a)(1) and 777(i)(1) of the Act.

Dated: November 20, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–28321 Filed 11–26–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–851]

Dynamic Random Access Memory Semiconductors From the Republic of Korea: Extension of Time Limit for Final Results of the Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 28, 2008.

FOR FURTHER INFORMATION CONTACT: Shane Subler at (202) 482–0189 or David Neubacher at (202) 482–5823; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 2008, the Department of Commerce ("Department") published the notice of preliminary results of the administrative review of the countervailing duty order on dynamic random access memory semiconductors from the Republic of Korea, covering the period January 1, 2006 through December 31, 2006. *See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 73 FR 47131 (August 13, 2008). On September 23, 2008, the petitioner, Micron Technology, Inc. ("Micron"), filed a case brief. On September 29, 2008, the respondent, Hynix Semiconductor Inc., filed a rebuttal brief.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to a maximum of 180 days.

Extension of Time Limit for Final Results

In its case brief, Micron requested that the Department take further steps to address the alleged circumvention of the countervailing duty order. The Department needs additional time to consider Micron's request and to act on this request if warranted. As a result, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by December 11, 2008). Therefore, the Department is extending the time limit for completion of the final results by 60 days to not later than February 9, 2009, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 20, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E8-28317 Filed 11-26-08; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advisory Committee on Earthquake Hazards Reduction Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee), will meet Wednesday, December 17, 2008, from 8:30 a.m. to 5 p.m. and Thursday, December 18, 2008, from 8:30 a.m. to 4:30 p.m. The primary purpose of this meeting is to have an overview of the Pacific Earthquake Engineering Research (PEER) Center and have roundtable discussions on social sciences and lifelines. The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP Web site at <http://nehrp.gov/>.

DATES: The ACEHR will meet on Wednesday, December 17, 2008, from 8:30 a.m. until 5 p.m. The meeting will continue on Thursday, December 18, 2008, from 8:30 a.m. until 4:30 p.m. The meeting will be open to the public.

ADDRESSES: The meeting will be held in the John A Martin Conference Room 542, Davis Hall, University of California, Berkeley, Berkeley, California. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Jack Hayes, National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8630, Gaithersburg, Maryland 20899-8630. Dr. Hayes' e-mail address is jack.hayes@nist.gov and his phone number is (301) 975-5640.

SUPPLEMENTARY INFORMATION:

The Committee was established in accordance with the requirements of Section 103 of the NEHRP Reauthorization Act of 2004 (Pub. L. 108-360). The Committee is composed of 15 members appointed by the Director of NIST, who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting the National Earthquake Hazards Reduction Program. In addition, the Chairperson of the U.S. Geological Survey (USGS) Scientific Earthquake Studies Advisory Committee (SESAC) serves in an ex officio capacity on the Committee. The Committee assesses:

- Trends and developments in the science and engineering of earthquake hazards reduction;
- The effectiveness of NEHRP in performing its statutory activities (improved design and construction methods and practices; land use controls and redevelopment; prediction techniques and early-warning systems; coordinated emergency preparedness plans; and public education and involvement programs);
- Any need to revise NEHRP; and
- The management, coordination, implementation, and activities of NEHRP.

Background information on NEHRP and the Advisory Committee is available at <http://nehrp.gov/>.

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advisory Committee on Earthquake Hazards Reduction (ACEHR) will meet Wednesday, December 17, 2008, from 8:30 a.m. until 5 p.m. The meeting will continue on Thursday, December 18, 2008, from 8:30 a.m. until 4:30 p.m. The meeting will be held in the John A Martin Conference Room 542, Davis Hall, University of California, Berkeley, Berkeley, California. The primary purpose of this meeting is to have an overview of the Pacific Earthquake Engineering Research (PEER) Center and have roundtable discussions on social sciences and lifelines. The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP Web site at <http://nehrp.gov/>.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On December 18, 2008, approximately one-half hour will be reserved near the conclusion of the meeting for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the ACEHR, National Institute of Standards and Technology, 100 Bureau Drive, MS 8630, Gaithersburg, Maryland 20899-8630, via fax at (301) 975-5433, or electronically by e-mail to info@nehrp.gov.

All visitors to the Berkeley University campus are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by close of business Wednesday, December 10, 2008, in order to attend. Please submit your name, time of arrival, e-mail address and phone number to Tina Faecke. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Ms. Faecke's e-mail address is tina.faecke@nist.gov and her phone number is (301) 975-5911.

Dated: November 20, 2008.

Patrick Gallagher,
Deputy Director.

[FR Doc. E8-28311 Filed 11-26-08; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology; Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on December 11, 2008. The Board of Overseers is composed of eleven members prominent in the fields of quality, innovation, and performance management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology and from the Chair of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Report from the Judges' Panel, Baldrige Program (BNQP) Update, BNQP Strategic Plan, Potential STEM (Science, Technology, Engineering, and Math) Education Program, Use of the Consumer Price Index as an Inflation for the Baldrige Award Application fees, and Recommendations for the NIST Director.

DATES: The meeting will convene December 11, 2008, at 8:30 a.m. and adjourn at 3 p.m. on December 11, 2008.

ADDRESSES: The meeting will be held at the National Institute of Standards and

Technology, Administration Building, Lecture Room B, Gaithersburg, Maryland 20899. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Diane Harrison no later than Monday, December 8, 2008, and she will provide you with instructions for admittance. Ms. Harrison's e-mail address is diane.harrison@nist.gov and her phone number is (301) 975-2361.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, Baldrige National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2361.

Dated: November 20, 2008.

Patrick Gallagher,
Deputy Director.

[FR Doc. E8-28312 Filed 11-26-08; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 080122071-81377-02]

Announcement of the Establishment of a Laboratory Accreditation Program (LAP) for Laboratories Performing Interoperability, Performance, and Conformance Biometrics Testing Under the National Voluntary Laboratory Accreditation Program and Technical Requirements for Such a LAP

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP) the National Institute of Standards and Technology (NIST) announces the establishment of a laboratory accreditation program and the availability of applications for accreditation of laboratories that perform biometric testing including interoperability, performance, and conformance testing using internationally recognized standards developed by the American National Standards Institute (ANSI), NIST, and by the International Committee for Information Technology Standards (INCITS). Additional standards may be identified throughout the development of the accreditation program technical requirements.

ADDRESSES: Laboratories may obtain NIST Handbook 150, *NVLAP Procedures and General Requirements*, NIST Handbook 150-25, *Biometrics*, and an application for this program by calling (301) 975-4016, by writing to NVLAP Biometrics Testing Manager, National Voluntary Laboratory Accreditation Program, 100 Bureau Drive/MS 2140, Gaithersburg, MD 20899-2140, or by sending e-mail to nvlap@nist.gov. All applications for accreditation must be submitted to: NVLAP/Accounts, National Institute of Standards and Technology, Building 101, Room A800, 100 Bureau Drive/MS 1624, Gaithersburg, MD 20899-1624.

FOR FURTHER INFORMATION CONTACT: Brad Moore, Program Manager, NIST/NVLAP, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899-2140, Phone: (301) 975-5740 or e-mail: brad.moore@nist.gov.

Information regarding National Voluntary Laboratory Accreditation Program (NVLAP) and the accreditation process can be obtained from <http://www.nist.gov/nvlap>.

SUPPLEMENTARY INFORMATION:

Background: In 2007, the United States Department of Homeland Security (DHS) requested that NIST establish a laboratory accreditation program for laboratories performing interoperability, performance, and conformance biometrics testing on Personal Identification Verification equipment used in Homeland Security Applications. According to guidance developed by DHS, laboratory accreditation by NVLAP is a recommended step in assuring reliability and quality practices as part of a conformance test program for biometric access control devices.¹

Biometric technologies such as facial, fingerprint, iris, and voice recognitions are used to verify the identity of individuals attempting to gain access to secure areas. The purpose of the proposed Biometrics Laboratory Accreditation Program is to evaluate testing laboratories' technical competencies against known standards and testing criteria that will ultimately be used to provide confidence in the performance of biometric sub-systems.

In accordance with NVLAP procedures (15 CFR Part 285), on February 29, 2008, NIST published a notice in the **Federal Register** requesting comments on the proposed establishment of a laboratory accreditation program for laboratories

¹ Guidance Package on Biometrics for Airport Access Control released in October 2005, Volume 1: Requirements Document, Chapter 2 Operational System Requirements.

performing testing, interoperability, performance, and conformance biometrics testing under the National Voluntary Laboratory Accreditation Program (73 FR 11093). The comment period closed on March 31, 2008. Five responses to this request for comments were received and are summarized below. NVLAP held a public workshop on July 1, 2008 to solicit further comments on the establishment of a Biometrics Testing LAP and on the technical requirements to be associated with the LAP. A transcript of the workshop question and answer session is available on request from NVLAP, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 2140, Gaithersburg, Maryland 20899-2140; phone 301-975-4016; fax 301-926-2884; e-mail: nvlap@nist.gov.

Summary of Comments

Four of five comments received supported NIST's establishment of an accreditation program to recognize the competence of biometrics testing laboratories in support of DHS. Two responses were from testing laboratories (one non-profit and one for-profit) that provide standards-based performance testing of biometrics technologies. One response was from a state department of justice. One response was from a provider (vendor) of biometric identity management systems, applications and services. The fifth response, from a non-profit accreditation body, stated that there was no need for a government program since there were four nationally and internationally recognized U.S. private sector laboratory accreditation bodies capable of offering this type of accreditation.

Determination

DHS requirements are intended to set a level field for vendors seeking to demonstrate that their equipment meets federal, state and local procurement and grant guidance requirements. These requirements stipulate that vendor equipment must undergo type testing by a third party laboratory that has been accredited by a recognized laboratory accreditation body to specific requirements for laboratories conducting biometric performance testing. These specific requirements include the required minimum performance standard for the enrollment, matching and transaction time metrics for biometric subsystems. Requirements for airport access control systems are further documented in the 2005 TSA Guidance Package. DHS requirements also stipulate the need to ensure consistency across laboratories that perform biometrics subsystem

testing. The current estimate of the number of laboratories that are likely to seek accreditation under this program is between three and five.

There are no recognized laboratory accreditation bodies in the private sector that currently meet DHS requirements. Of the five nationally and internationally recognized private sector bodies currently in operation, only one offers accreditation in the general Information Technology field of testing, and none offer accreditation to the DHS-stipulated specific program requirements for biometrics testing.

In addition, the expertise to competently run specific biometrics tests called out by DHS has not been widely demonstrated in the private sector and tests have not been conducted extensively on commercial equipment to date. Test method execution and test result consistency and comparability are critical issues in biometrics testing based on the new applications of biometrics for identity management in homeland security. NIST technical staff are leading and participating in the development of many of these test methods. A laboratory accreditation organization with published accreditation requirements for biometrics testing laboratories, an active proficiency testing program for all participating laboratories, and access to technical experts in the testing methodology associated with new applications of biometrics for identity management in homeland security is needed to support this DHS program. There is no existing private sector program that meets these requirements.

Based on careful analysis of comments received both during the public comment period and in the public workshop, and a detailed review of DHS requirements, the Chief of NVLAP has determined that the establishment of a LAP for laboratories performing interoperability, performance, and conformance biometrics testing on Personal Identification Verification equipment used in Homeland Security Applications best meets government needs.

This notice is issued in accordance with NVLAP procedures and general requirements, found in Title 15 Part 25 of the Code of Federal Regulations.

NVLAP provides an unbiased, third-party evaluation and recognition of competence. NVLAP accreditation signifies that a laboratory has demonstrated that it operates in accordance with NVLAP management and technical requirements pertaining to quality systems, personnel, accommodation and environment, test and calibration methods, equipment,

measurement traceability, sampling, handling of test and calibration items, and test and calibration reports.

NVLAP accreditation does not imply any guarantee (certification) of laboratory performance or test/calibration data. NVLAP accreditation is a finding of laboratory competence.

Technical Requirements for the Accreditation Process: NVLAP assessments are conducted in accordance with the National Voluntary Laboratory Accreditation Program regulations, which are found at 15 CFR part 285. NVLAP accreditation is in full conformance with relevant standards of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), including ISO/IEC 17025.

Accreditation is granted to a laboratory following successful completion of a process, which includes submission of an application and payment of fees by the laboratory, a review of the laboratory management system documentation, an on-site assessment by technical experts, participation in proficiency testing, and resolution of any management system or technical nonconformities identified during any phase of the application process. The accreditation is formalized through issuance of a Certification of Accreditation and Scope of Accreditation.

General requirements for accreditation are given in NIST Handbook 150, *NVLAP Procedures and General Requirements*. The specific technical and administrative requirements for the program for accreditation of laboratories that test biometrics are given the draft NIST Handbook 150-25, *Biometrics*. Laboratories must meet all NVLAP criteria and requirements in order to become accredited. To be considered for accreditation, the applicant laboratory must provide a completed application to NVLAP, pay all required fees, agree to conditions for accreditation, and must be competent to perform the tests prescribed in the standard.

Application Requirements: (1) Legal name and full address of the laboratory; (2) Ownership of the laboratory; (3) Authorization Representative's name and contact information; (4) Names, titles, and contact information for laboratory staff nominated to serve as Approved Signatories of test and calibration reports that reference NVLAP accreditation; (5) Organization chart defining relationships that are relevant to performing testing and calibrations covered in the accreditation request; (6) General description of

laboratory, including its facilities and scope of operations; and (7) Requested scope and accreditation.

For this program, the laboratory shall provide a copy of its management system documents, including quality manual and related documentation, where appropriate, prior to the on-site assessment. NVLAP will review the management system documentation and discuss any nonconformities with the Authorized Representative before the on-site visit. Laboratories that apply for accreditation will be required to pay NVLAP fees and undergo on-site assessment and shall meet proficiency testing requirements before initial accreditation can be granted.

Paperwork Reduction Act: This action contains a collection of information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995. Collection activities for NVLAP are currently approved by OMB under control number 0693-0003.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB Control Number.

Dated: November 20, 2008.

Patrick Gallagher,

Deputy Director.

[FR Doc. E8-28376 Filed 11-26-08; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-C-2008-0056]

National Medal of Technology and Innovation Nomination Evaluation Committee Meeting

AGENCY: United States Patent and Trademark Office.

ACTION: Notice of closed meeting.

SUMMARY: The National Medal of Technology and Innovation (NMTI) Nomination Evaluation Committee will meet in closed session on Monday, December 15, 2008. The primary purpose of the meeting is the discussion of relative merits of persons and companies nominated for the NMTI award.

DATES: The meeting will convene Monday, December 15, 2008, at 9 a.m., and adjourn at 1 p.m.

ADDRESSES: The meeting will be held at the United States Patent and Trademark

Office, 600 Dulany Street, Alexandria, VA, 22314.

FOR FURTHER INFORMATION CONTACT:

Jennifer Lo, Program Manager, National Medal of Technology and Innovation Program, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, telephone (571) 272-7640, or by electronic mail: nmti@uspto.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the NMTI Nomination Evaluation Committee, United States Patent and Trademark Office, will meet at the United States Patent and Trademark Office campus in Alexandria, Virginia.

The NMTI Nomination Evaluation Committee was established in accordance with the provisions of the NMTI Nomination Evaluation Committee's charter and the Federal Advisory Committee Act. The NMTI Nomination Evaluation Committee meeting will be closed to the public in accordance with section 552b(c)(4), (6) and (9)(B) of Title 5, United States Code, because it will involve discussion of relative merits of persons and companies nominated for the NMTI. Public disclosure of this information would likely frustrate implementation of the NMTI program because premature publicity about candidates under consideration for the NMTI award, who may or may not ultimately receive the award, would be likely to discourage nominations for the award. The Secretary of Commerce is responsible for recommending to the President prospective NMTI recipients. The NMTI Nomination Evaluation Committee makes its recommendations for the NMTI candidates to the Secretary of Commerce, who in turn makes recommendations to the President for final selection. NMTI Nomination Evaluation Committee members are drawn from both the public and private sectors and are appointed by the Secretary for three-year terms, with eligibility for one reappointment. The NMTI Nomination Evaluation Committee members are composed of distinguished experts in the fields of science, technology, business and patent law. The General Counsel formally determined on November 21, 2008, pursuant to section 10(d) of the Federal Advisory Committee Act, that the meeting may be closed because Committee members are concerned with matters that are within the purview of 5 U.S.C. 552b(c)(4), (6) and (9)(B). Due to closure of the meeting, copies of the minutes of the meeting will not be available. A copy of the determination

is available for public inspection at the United States Patent and Trademark Office.

Dated: November 21, 2008.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E8-28254 Filed 11-26-08; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD-2008-OS-0147]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 29, 2008.

Title, Form and OMB Number: Department of Defense Education Activity (DoDEA) Research Study Request; DoDEA Form 2071.3-F1: OMB Control Number 0704-TBD.

Type of Request: New.

Number of Respondents: 75.

Responses per Respondent: 1.

Annual Responses: 75.

Average Burden per Response: 1 hour.

Annual Burden Hours: 75.

Needs and Uses: The Department of Defense Education Activity (DoDEA) is a DoD field activity operating under the direction, authority, and control of the Deputy Under Secretary of Defense, Military Community and Family Policy. The DoDEA operates 223 schools in 16 districts located in 13 foreign countries, seven states, Guam, and Puerto Rico. The DoDEA receives requests from researchers to conduct non-DoDEA sponsored research studies in DoDEA schools, districts, and/or areas. To review the proposed research requests, DoDEA developed DoDEA Form 2071.3-F1, "Research Study Request," in Administrative Instruction 2071.3 (DoDEA AI 2071.3), to collect information about the researcher, the research project, audience, timeline, and the statistical analyses that will be conducted during the proposed research study. This information is needed to ensure that the proposed non-DoDEA sponsored research does not unduly interfere with the classroom

instructional process or the regular operations of the school, district, and/or areas.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; and state, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209-2133.

Dated: November 19, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8-28332 Filed 11-26-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2008-HA-0046]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 29, 2008.

Title and OMB Number: Researcher Responsibilities Form; OMB Number 0720-TBD.

Type of Request: New.

Number of Respondents: 585.

Responses per Respondent: 1.

Annual Responses: 585.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 293.

Needs and Uses: This collection instrument serves to document researcher's understanding and acceptance of the regulatory and ethical responsibilities for including humans as subjects in research. Principal and co-principal investigators must have the proposed, signed form on file before they may engage in research conducted, sponsored, or supported by entities under the purview of the Under Secretary of Defense for Personnel and Readiness.

Affected Public: Federal government; business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209-2133.

Dated: November 19, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8-28334 Filed 11-26-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Apparatus and Method To Test Abrasion Resistance of Material Using Airborne Particulate

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. U.S. 7,448,941 entitled "Apparatus and Method to Test Abrasion Resistance of Material Using Airborne Particulate" issued November 11, 2008. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey DiTullio at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone: (508) 233-4184 or E-mail: Jeffrey.Ditullio@natick.army.mil.

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8-28272 Filed 11-26-08; 8:45 am]

BILLING CODE 3710-08-P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Apparatus for Providing Velocity Differential Between Parachute and Payload To Reduce Shock Load

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. U.S. 7,344,751 entitled "Apparatus for Providing Velocity Differential Between Parachute and Payload to Reduce Shock Load" issued November 11, 2008. This patent has been assigned

to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey DiTullio at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone; (508) 233-4184 or E-mail: Jeffrey.Ditullio@natick.army.mil.

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8-28276 Filed 11-26-08; 8:45 am]

BILLING CODE 3710-08-P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability for the Final Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report for the Pacific L.A. Marine Terminal LLC Crude Oil Terminal Project, Los Angeles County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Regulatory Division), in coordination with the Port of Long Angeles, has completed a Final Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report (SEIS/SEIR) for the Pacific L.A. Marine Terminal LLC Crude Oil Terminal Project. The Port of Los Angeles requires authorization pursuant to Section 404 of the Clean Water Act and Section 10 of the River and Harbor Act to build a new crude oil marine terminal at Berth 408 on Pier 400 including: construction of a new marine terminal to receive crude oil from marine vessels and transfer the oil to tank farms facilities via a new 42-inch-diameter, high-volume pipeline; construction of two tank farms, Tank Farm Site 1 located on Pier 400 and Tank Farm Site 2 located on Pier 300 at Seaside Avenue/Terminal Way; construction of new pipelines to connect the new tank farm facilities to existing pipeline facilities, with the new tank farm facilities connected to the existing ExxonMobil Southwest Terminal on Terminal Island, the existing Ultramar/Valero Refinery on Anaheim Street near the Terminal Island Freeway, and to Plains All American pipeline systems near Henry

Ford Avenue and Alameda Street via new and existing 36-inch, 24-inch, and 16-inch pipelines, and with all new pipelines installed belowground, with the exception of the water crossings at the Pier 400 causeway bridge and at the Valero utility/pipe bridge that crosses the Dominguez Channel west of the Ultramar/Valero Refinery. The new tank farm facilities would provide a total of 4.0 million barrels (bbl) of capacity, primarily receiving crude oil, partially refined crude oil, and occasional deliveries of Marine Gas Oil (MGO).

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the Final SEIS/SEIR should be directed to Dr. Spencer D. MacNeil, Senior Project Manager, North Coast Branch, Regulatory Division, U.S. Army Corps of Engineers, 2151 Alessandro Drive, Suite 110, Ventura, CA 93001, (805) 585-2152. Comments on the Final SEIS/SEIR will be received by Corps Regulatory Division until December 29, 2008.

SUPPLEMENTARY INFORMATION: None.

David J. Castanon,

Chief, Regulatory Division, Los Angeles District.

[FR Doc. E8-28379 Filed 11-26-08; 8:45 am]

BILLING CODE 3710-KF-P

DEPARTMENT OF DEFENSE

Corps of Engineers

Intent To Prepare a Joint Feasibility Study/Environmental Impact Statement/Environmental Impact Report for the Los Angeles River Ecosystem Restoration Feasibility Study, Los Angeles County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Amendment to notice of intent/notice of preparation.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Corps), and the City of Los Angeles amend the notice published in the **Federal Register** on February 6, 2006 (71 FR 6058), which announced the Corps' intent to prepare a Programmatic Draft Environmental Impact Statement/Environmental Impact Report for the Los Angeles River Ecosystem Restoration Study, Los Angeles County, CA. This amendment to the notice revises the February 6, 2006 notice to announce the Corps' intent to prepare a joint Feasibility Study/Environmental Impact Statement/Environmental Impact Report (FS/EIS/EIR) for the Los Angeles River Ecosystem Restoration Feasibility Study that will identify and evaluate site specific opportunities for

ecosystem restoration. The study proposes to consider a range of activities to restore riparian and aquatic habitat, and related habitat functions, in and adjacent to the Los Angeles River, which will benefit wildlife and sensitive species.

DATES: Submit comments on or before December 29, 2008.

ADDRESSES: Ms. Tiffany Bostwick, Environmental Coordinator, U.S. Army Corps of Engineers, Los Angeles District, Planning Division, CESPL-PD-RN, 915 Wilshire Boulevard, Los Angeles, CA 90017.

FOR FURTHER INFORMATION CONTACT: Tiffany Bostwick, Environmental Coordinator, (213) 452-3845, or e-mail at Tiffany.R.Kayama@usace.army.mil.

SUPPLEMENTARY INFORMATION:

1. Authorization. The proposed feasibility study was authorized under Congressional Resolution, which reads as follows:

Senate Resolution, approved 25 June 1969, reading in part: "Resolved by the Committee on Public Works of the United States Senate, that the Board of Engineers for Rivers and Harbors, created under Section 3 of the River and Harbor Act, approved June 13, 1902, be, and is hereby requested to review the report of the Chief of Engineers on the Los Angeles and San Gabriel Rivers and Ballona Creek, California, published as House Document Numbered 838, Seventy-sixth Congress, and other pertinent reports, with a view to determining whether any modifications contained herein are advisable at the present time, in the resources in the Los Angeles County Drainage Area."

2. Background. Historically, the Los Angeles River is subject to flooding and two of the largest floods in recorded history occurred in the 1930s, causing both a substantial loss of life and property damage. During the latter 1930s and 1940s the Federal Government (U.S. Army Corps of Engineers) constructed the concrete flood control channel in the Los Angeles River to expedite movement of stormwater flows to the ocean for flood prevention, causing a complete loss of the natural hydrologic and hydraulic regime and the natural riparian environment. Development along most of the River is a mix of housing, industrial and commercial land uses that contribute to the overall degradation of the ecosystem. The City of Los Angeles, city residents, and other local agencies have expressed interest and support for a feasibility study that would evaluate the potential for restoration of the Los Angeles River's aquatic ecosystem.

The entire Los Angeles River travels through a highly urbanized area

covering a distance of 51 miles beginning at the confluence of Bell Creek and Arroyo Calabasas Creek in the San Fernando Valley community of Canoga Park, located approximately 32 miles northwest of downtown Los Angeles. The River flows through San Fernando Valley and the Los Angeles Basin, in a southeasterly direction until it empties into the Pacific Ocean in San Pedro.

The general project area includes approximately one-half mile on each side of the 32-mile river corridor that begins at the confluence near Owensmouth Avenue in Canoga Park, and continues downstream to Washington Boulevard, near the northern boundary of the city of Vernon.

The Corps and the City of Los Angeles have prepared and published a Programmatic Environmental Impact Report/Programmatic Environmental Impact Statement (PEIR/PEIS, April 2007) for the Los Angeles River Revitalization Master Plan (LARRMP). The LARRMP is intended to serve as a blueprint for restoring some of the River's ecological functions and toward improving the overall health of the watershed by implementing a variety of projects, including channel modifications, improvements to the River corridor, revitalized riverfront communities in key opportunity areas, recreational amenities such as parks and open space, pedestrian and bicycle trails, bridges, enhanced connector streets, and green space networks in River adjacent neighborhoods. Implementing LARRMP

recommendations over the near-term planning period (5 to 20 years) and the long-term period (20 to 50 years) constitutes the proposed action evaluated in the Programmatic EIR/EIS. However, since the PEIR/PEIS did not evaluate site specific ecosystem restoration opportunities, it will not serve as a decision document for the Corps (i.e., result in a project action).

Although components of the LARRMP include opportunities for restoring a more natural riverine environment along the Los Angeles River, the FS/EIS/EIR to be prepared for the Corps' Los Angeles River Ecosystem Restoration Feasibility Study will provide the necessary site specific evaluations and detailed analysis for ecosystem restoration, including various alternatives for restoration of riparian and aquatic habitats and functions, and increased habitat values. The FS/EIS/EIR will also consider the goals and objectives identified in the LARRMP and where they might meet the requirements of the Corps of Engineers Federal planning guidance for

ecosystem restoration. The Corps is the Lead Agency for compliance with the National Environmental Policy Act (NEPA) for the project, and the City of Los Angeles is the Lead Agency for compliance with the California Environmental Quality Act (CEQA).

The purpose of the Los Angeles River Ecosystem Restoration Feasibility Study is to consider opportunities for ecosystem restoration along 32 miles of the river within the City of Los Angeles, from the Canoga Park area of the northwest San Fernando Valley, to the southwestern quadrant of Los Angeles, near the border with the City of Vernon. The Project will identify opportunities to: (1) Evaluate and assess the problems and needs associated with loss of riparian habitat; (2) formulate alternative measures for environmental restoration, develop viable alternatives, and identify the National Ecosystem Restoration (NER) Plan, which will provide maximum ecosystem benefits; and (3) identify opportunities for Corps involvement in restoring the functions and values of the River's ecosystem. Secondary benefits would include associated recreational, water quality, and community revitalization opportunities.

3. Proposed Objectives. The following planning objectives were identified to direct formulation and evaluation of alternative plans that implemented within and/or adjacent to the Los Angeles River:

a. Restore riparian and aquatic habitat within the 32-mile reach of the Los Angeles River within the City of Los Angeles, where feasible.

b. Support the restoration of more natural hydrologic processes within significant reaches of the study area.

c. Support the restoration of habitat in reaches contiguous to existing habitat corridors where connectivity can be reestablished. (**Note:** These existing habitat corridors will be specifically identified in later iterations of planning objectives.)

d. Support the modification of hydrology and stream hydraulics to maximize infiltration and inflow, decrease peak discharges, and identify storage where available.

e. Provide recreation where appropriate along the 32-mile river corridor.

The Los Angeles River Ecosystem Restoration Study is being conducted in a watershed context. While not a watershed study, this Feasibility Study is attempting to identify opportunities to engage in collaborative efforts with others who are addressing ecosystem restoration and other related water resources needs within the watershed.

Planning objectives that could be affected by collaborative efforts within the watershed include:

a. Identify opportunities to store or redirect flood waters within the watershed to reduce water surface elevations and support the reestablishment of baseflow within the mainstem;

b. Identify opportunities to reestablish riparian corridors on tributary streams and to link sites to mainstem restoration sites;

c. Identify areas for open space and recreation;

d. Identify opportunities for groundwater recharge;

e. Identify opportunities for water quality treatment/enhancement of mainstem inflows.

4. Planning Constraints. Consistent with these planning objectives, the Los Angeles River Ecosystem Restoration Study will be formulated in recognition of a variety of planning constraints, which include:

a. Restoration alternatives cannot degrade the existing Corps flood risk management project.

b. Velocity reductions in the main river channel must be offset with measures that will provide additional flood storage capacity or the means to reduce flood flows to a level that will allow for riparian and/or aquatic restoration.

c. The highly urbanized nature of the floodplain, competing land uses, and Corps policies limiting land acquisition costs (as a percentage of total project costs) will constrain the opportunities for acquisition of additional lands for floodplain restoration. Potential restoration locations will need to be identified opportunistically, based in large part on the availability of lands and the ability to acquire significantly sized parcels of floodplain lands.

d. Existing infrastructure (roads, highways, utilities) adjacent to the waterway limits the physical extent of restoration activities.

e. Potential restoration sites with unresolved hazardous, toxic and radioactive waste (HTRW) problems would be avoided.

f. Public safety is primary concern for persons living adjacent to the Los Angeles River.

g. Avoid conflicts with other legitimate uses of re-developable floodplain lands (e.g., active recreation).

Based on the objectives and constraints, the FS/EIS/EIR would evaluate potential alternatives, including the proposed action and the no action alternative, and associated impacts for environmental resources (beneficial and adverse) on the

environment along the 32-mile river corridor.

5. Alternatives. The FS/EIS/EIR will consider a range of viable alternatives and their impacts, including the No Action Alternative. The range of viable alternatives may include a locally preferred alternative or features that are improvements or measures desired by the project non-Federal sponsor (City of Los Angeles) that is not part of the Federal project. The Scoping will be an early and open process designed to determine the issues and alternatives to be addressed in the Report. Four initial sites within the general study area have been identified by the City and Corps:

- Portions of the Los Angeles State Historic Park.
- Glendale Narrows/Taylor Yard Reach.
- Sepulveda Basin.
- Reseda Park.

These initial sites appear to have the greatest likelihood at this time to be readily-implementable, where alternative plans could be developed and implemented to meet the study's purposes. Additional sites may be identified during the scoping process and development of the draft FS/EIS/EIR. A range of alternatives will be developed for the sites identified and may include (but not be limited to) the following features or measures as applicable for each site:

- Water Storage.
- Widen Channel.
- Offline Channel.
- Create Pervious Surfaces in Watersheds.
- Tributary Reconfiguration/Restoration.
- Remove Concrete.
- Reconfigure Concrete.
- Connect Riparian Corridors to Existing Corridors.

• Create Riparian Corridors to Woodlands.

- Daylight Outfalls.
- In-channel Vegetation.
- Habitat Wetlands.
- Water Treatment Wetlands.
- Bio-engineering Channel Walls.
- Real Estate Acquisition (non-structural measure).

- Local Water Conservation Program.
- Community Education Programs.
- Establish Community Programs.
- Habitat Management Plan.

6. Content of the Report. The FS/EIS/EIR will identify the anticipated effects of the project alternatives (negative and beneficial) and describe and analyze direct, indirect, and cumulative potential environmental impacts of the project alternatives, including the No Action Alternative, in accordance with NEPA (40CFR1500–1508) and CEQA.

For each issue listed below, the FS/EIS/EIR will include a discussion of the parameters used in evaluating the impacts as well as recommended mitigation, indicating the effectiveness of mitigation measures proposed to be implemented and what, if any, additional measures would be required to reduce the impacts to a less-than-significant level. The list of issues presented below is preliminary both in scope and number. These issues are presented to facilitate public comment on the scope of the FS/EIS/EIR, and are not intended to be all-inclusive or to be a predetermination of impact topics to be considered.

Biological Resources. The Report will address the following issues and potential detrimental and beneficial effects related to biological resources:

- Increased habitat for all organisms that use multiple wetland and/or aquatic habitats, including birds, mammals, and fish;
- Improved habitat connectivity within the riparian habitat and adjacent upland habitats;
- Effects on habitat potentially supporting populations of endangered species and other species of concern;
- Shifts in geographic distribution of populations and effects on population sizes of migratory waterfowl and shorebirds;
- Effects of flood control structures on existing ecosystem attributes and functions including aquatic and terrestrial species; and
- Effects of public access and recreation on aquatic and terrestrial species.

Hydrology and Flood Protection. The FS/EIS/EIR will address the following issues and potential detrimental and beneficial effects related to hydrology and flood protection:

- Existing and future without-project flood hazards;
- Changes in channel geometry and characteristics as a result of ecosystem restoration alternative measures; and
- Effects on flood flow conveyance as a result of ecosystem restoration alternative measures.

Water Quality. The Report will address the following issues and potential detrimental and beneficial effects related to water quality:

- Engineering design and techniques to improve water quality in segments and throughout the project area;
- Effects of proposed ecosystem restoration alternative measures on base flow water quality.

Recreation and Public Access. The Report will address the effects of ecosystem restoration alternative measures on existing recreation

facilities and their use as well as the potential effects of ecosystem restoration measures on planned or new facilities. The benefits and impacts of increased or decreased public access on biological resources and achievement of other project objectives will also be addressed.

Economics. The Report will evaluate the economic effects of the alternatives, including a cost effectiveness and incremental cost analysis of proposed restoration features, and a benefit-cost analysis of any flood control or recreation features.

Cumulative Impacts. The Report will examine the cumulative impacts of past, ongoing, and reasonably foreseeable future projects affecting the Los Angeles River riparian corridor, as well as effects on adjacent urban and rural lands and communities.

7. Environmental Analysis Process. The FS/EIS/EIR will be prepared in compliance with NEPA and Council on Environmental Quality Regulations, contained in 40 CFR parts 1500–1508; and with CEQA, Public Resources Code Sec 21000 *et seq.*, and the State and City CEQA Guidelines as amended. The Corps will be the Lead Agency for the NEPA process and the City of Los Angeles will be the Lead Agency for the CEQA process. In accordance with both CEQA and NEPA, these Lead Agencies are responsible for the scope, content, and legal adequacy of the document.

The scoping process will include the opportunity for public input through written comments submitted during the 30-day scoping period. A public scoping meeting will also be held to solicit comments on the environmental effects of the range of potential actions and the appropriate scope of the FS/EIS/EIR.

The draft FS/EIS/EIR will incorporate public concerns associated with the project alternatives identified in the scoping process and will be distributed for at least a 45-day public review and comment period. During this time, both written and verbal comments will be solicited on the adequacy of the document. The final FS/EIS/EIR will address the comments received on the draft during public review and will be made available to all commenters on the draft Report. Copies of the draft and final reports will be posted on the Internet as part of the public review process.

The final step in the Federal EIS process is the preparation of a Record of Decision (ROD), a concise summary of the decisions made by the Corps. The ROD will identify the alternative selected and other alternatives that were considered. It also will discuss the mitigation measures that were adopted.

The ROD may be published no earlier than 30 days after publication of the Notice of Availability of the final EIS. The final step in the State EIR process is certification of the EIR, which includes preparation of a Mitigation Monitoring and Reporting Plan and adoption of its findings, should the project be approved.

8. Scoping Process. Participation of affected Federal, State and local resource agencies, Native American groups and concerned interest groups/ individuals is encouraged in the scoping process. Public participation is important in defining the scope of analysis in the FS/EIS/EIR, identifying significant environmental issues and impact analysis in the FS/EIS/EIR and providing useful information such as published and unpublished data and personal knowledge of relevant issues.

The Corps and City of Los Angeles conducted a public scoping meeting on April 18, 2007 for both the Feasibility Study and the LARRMP PEIR/PEIS (2007). Public input and comments received during the scoping meeting as well as other comments received during public outreach efforts associated with the LARRMP will be considered during preparation of the FS/EIS/EIR.

A second public scoping meeting will be held on December 4, 2008, from 7—8:30 p.m. at the Metropolitan Water District, 700 North Alameda Street, Los Angeles, CA 90012, to solicit additional comments on the environmental effects of the range of potential actions and the appropriate scope of the FS/EIS/EIR. The public is invited to comment on environmental issues to be addressed in the FS/EIS/EIR during this meeting. Public input and comments received during the scoping meeting will be considered during preparation of the FS/EIS/EIR.

Those interested in providing written comments, information, or data relevant to the environmental or social impacts that should be included or considered in the environmental analysis can furnish this information by writing to the point of contact (see **ADDRESSES**). Requests to be placed on the mailing list for announcements and the Draft FS/EIS/EIR also should be sent to Ms. Bostwick (see **ADDRESSES**).

Dated: November 13, 2008.

Anthony G. Reed,

Lieutenant Colonel, U.S. Army, Acting District Commander.

[FR Doc. E8-28275 Filed 11-26-08; 8:45 am]

BILLING CODE 3720-58-P

DEPARTMENT OF DEFENSE

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Preserve at Sunridge, in Rancho Cordova, Sacramento County, CA, Permit Application Number SPK-2004-00707

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Sacramento District, (Corps) will prepare an Environmental Impact Statement (EIS) for The Preserve at Sunridge project, a mixed-use residential and commercial development in Rancho Cordova, Sacramento County, CA. K. Hovnanian Homes has applied for a Department of the Army permit to fill approximately 14.5 acres of waters of the United States, including wetlands, to construct the project.

ADDRESSES: Please send written comments to Michael Jewell, U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Room 1480, Sacramento, CA, 95814-2922.

FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action and EIS can be answered by Michael Jewell, (916) 557-6605, e-mail: michael.s.jewell@usace.army.mil, address: 1325 J Street, Room 1480, Sacramento, CA 95814-2922.

SUPPLEMENTARY INFORMATION: K. Hovnanian Homes has applied for a Department of the Army permit under Section 404 of the Clean Water Act to construct a mixed-use development on a 530-acre parcel within the Sunrise Douglas Community Plan (SDCP) area in the southeastern portion of the City of Rancho Cordova in eastern Sacramento County, CA. The proposed action includes 2,415 single-family residential units of varying densities on 292 acres, 288 high-density multi-family residential units on 11 acres, between 147,000 and 165,000 square feet of commercial space spread over 15 building pads, an elementary school, stormwater management facilities, and a neighborhood park. The proposed action also includes realigning Morrison Creek through an existing transmission corridor that traverses the site and establishing a 92-acre open space and wetland preserve.

Approximately 20.8 acres of water of the United States have been identified on the proposed project site, including 15.2 acres of vernal pools, 2.8 acres of depressional seasonal wetlands, 1.7

acres of riverine seasonal wetlands and 1.1 acres of intermittent drainage. The applicant has applied for a permit to fill 14.5 acres of these waters. The 92-acre open space and wetland preserve would contain approximately 6.3 acres of wetlands not directly impacted by the project.

The EIS will include an evaluation of a reasonable range of alternatives. Currently, the following alternatives are expected to be analyzed in detail: (1) The no action alternative (no permit issued), (2) the applicant's preferred project (proposed action), (3) a "Conceptual-Level Strategy" alternative, (4) a reduced development footprint alternative, and (5) a different location (off-site) alternative. The no action alternative assumes limited development would occur on the site with all waters of the United States avoided. The Conceptual-Level Strategy alternative assumes development consistent with the June 2004 "Conceptual-Level Strategy for Avoiding, Minimizing, and Preserving Aquatic Resource Habitat in the Sunrise-Douglas Community Plan Area", a guidance document prepared by the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service and U.S. Army Corps of Engineers. A reduced development footprint alternative will have a smaller development footprint than the applicant's preferred project but with more direct impacts to waters of the United States than the Conceptual-Level Strategy alternative. The off-site alternative assumes the proposed project would be developed at a different but suitably-sized site in the region.

The Corps' scoping process for the EIS includes a public involvement program with several opportunities to provide oral and written comments. In addition to public meetings and notifications in the **Federal Register**, the Corps will issue public notices when the draft and final EISs are available. Affected federal, state, and local agencies, Native American tribes, and other interested private organizations and parties are invited to participate.

Potentially significant issues to be analyzed in the EIS include, but are not limited to: Hydrology, water supply, water quality, cultural resources, biological resources, traffic and transportation, and air quality. The Corps is the lead agency for preparation of the EIS under the requirements of the National Environmental Policy Act (NEPA). The U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service and California Regional Water Quality Control Board have

agreed to be cooperating agencies. The Corps will also coordinate with other agencies, such as the City of Rancho Cordova.

Other environmental review and consultation requirements for the proposed action include the need for the applicant to obtain water quality certification under Section 401 of the Clean Water Act from the California Regional Water Quality Control Board. In addition, because the proposed project may affect federally-listed endangered species, the Corps will formally consult with the U.S. Fish and Wildlife Service in accordance with Section 7 of the Federal Endangered Species Act. The Corps will also be consulting with the State Historic Preservation Officer under Section 106 of the National Historic Preservation Act concerning properties listed, or potentially eligible for listing, on the National Register of Historic Places.

Two public scoping meetings for the EIS will be held on December 11, 2008, with the first from 4 p.m. to 6 p.m. and the second from 7 p.m. to 9 p.m. The meetings will be held at the Rancho Cordova City Hall, 2729 Prospect Park Drive, American River Room—South, Rancho Cordova, CA 95670. Interested parties can provide oral and written comments at the meetings. Interested parties may also submit written comments on this notice. Scoping comments should be submitted before February 1, 2008 but may be submitted at any time prior to publication of the Draft EIS.

Interested parties may register for the Corps' public notice e-mail notification lists at: <http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/pnlist.html>.

Dated: November 17, 2008.

James A. Porter,

Lt. Colonel, Corps of Engineers, Acting District Engineer.

[FR Doc. E8-28273 Filed 11-26-08; 8:45 am]

BILLING CODE 3720-58-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearing for the Draft Environmental Impact Statement for the Laurelwood Housing Area Access, Naval Weapons Station Earle, Colts Neck, NJ

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section (102)(2)(c) of the National Environmental Policy Act (NEPA) of 1969, and regulations

implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), the Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency (EPA) a Draft Environmental Impact Statement (EIS) which evaluates the potential environmental consequences of providing access between the Laurelwood housing area at Naval Weapons Station (NWS) Earle and an adjacent state primary or secondary road. The requirement for this access is a stipulation within the lease agreement between the Navy and the developer of Laurelwood that requires the Navy to provide unimpeded access to the property in 2010. This developer may construct necessary road improvements to obtain access and rent any housing units to the general public through the year 2040. A Notice of Intent for this EIS was published in the **Federal Register** on November 9, 2007 (72 FR 63562).

The Navy will conduct a public hearing to receive oral and written comments on the Draft EIS. Federal agencies, state agencies, local agencies, and interested individuals are invited to be present or represented at the public hearings. This notice announces the date and location of the public hearing for this Draft EIS.

DATES AND ADDRESSES: One public hearing will be held. The hearing will be preceded by an open house session to allow interested individuals to review information presented in the Draft EIS. Navy representatives will be available during the open house session to clarify information related to the Draft EIS. The open house session will occur from 4 p.m. to 5:30 p.m. followed by the formal public hearing from 6 p.m. to 10 p.m. The public hearing is scheduled for the following date and location: Tuesday, December 16, 2008 at the Monmouth Regional High School Performing Arts Center, One Norman J. Field Way, Tinton Falls, NJ 07724.

FOR FURTHER INFORMATION CONTACT:

Naval Facilities Engineering Command (NAVFAC) Atlantic, Attn: Laurelwood Housing Area EIS Project Manager, Code EV21 Laurelwood PM, 6506 Hampton Boulevard, LRA Building A, Norfolk, VA 23508; <http://www.laurelwoodeis.com>.

SUPPLEMENTARY INFORMATION: The purpose of the proposed action is to provide unimpeded access in the year 2010 to the developer of the Laurelwood housing area across a portion of NWS Earle connecting the Laurelwood housing area with a state primary or secondary road. The requirement for this access in 2010 is part of an existing

lease agreement between the Navy and the developer of Laurelwood.

In 1988 the Navy contracted with a developer to construct, own, and operate 300 military family housing units at NWS Earle, now known as the Laurelwood housing area. A 52-year lease agreement for the underlying land was executed between the Navy and the developer which included an in-lease and out-lease period. During the in-lease period, which runs from 1988 until 2010, the Navy guarantees rent payments to the developer for the occupancy of all 300 Laurelwood units. Only military and their dependents are allowed to occupy these housing units during the in-lease period. During the out-lease period, which runs from 2010 until 2040 the developer may rent the units to the general public.

However, the lease requires that the Navy provide “reasonable access” between the Laurelwood housing area and an adjacent state, primary, or secondary road. The lease agreement defines reasonable access as being on a paved road, constructed, operated, and maintained by the developer at its own cost. The Navy may satisfy this obligation by either (a) providing unimpeded access along existing roads of the installation or (b) providing an easement for alternate access adequate to allow the developer to construct a road from an adjacent primary or secondary road to Laurelwood that will provide unimpeded access.

Road construction would be subject to federal, state and local laws and regulations. While the developer must pay for construction of a new road and necessary improvements, the Navy is required to finance the construction of any road enhancements necessary to meet their security or operational requirements (e.g., security fencing, gates). In addition, the Navy is required to obtain all necessary permits for road construction. In 2040, the lease agreement expires and the developer is obligated to demolish the 300 housing units.

This Draft EIS reviews and assesses four action alternatives and the No Action alternative. The Draft EIS addresses potential environmental impacts on multiple resources, including but not limited to: Socioeconomic resources; community facilities and services; traffic; cultural resources; biological resources; environmental health and safety; and security. A preferred alternative has not been selected or identified in the Draft EIS. The Navy seeks comments from the public or interested parties regarding the sufficiency of the Draft EIS and the choice of alternatives.

The Draft EIS has been distributed to various Federal, state, and local agencies, as well as other interested individuals and organizations. The public comment period will end on January 12, 2009. Copies of the Draft EIS are available for public review at the following libraries: Monmouth County Library (Eastern Branch), 1001 Route 35, Shrewsbury, NJ; Monmouth County Library (Colts Neck), 1 Winthrop Drive, Colts Neck, NJ; and Tinton Falls Public Library, 664 Tinton Avenue, Tinton Falls, NJ. An electronic copy of the Draft EIS is also available for public viewing at: <http://www.laurelwoodeis.com>.

Federal, state, and local agencies, as well as interested parties are invited and encouraged to be present or represented at the public hearing. Oral statements will be heard and transcribed by a stenographer; however, to ensure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the Draft EIS and will be responded to in the Final EIS. Equal weight will be given to both oral and written statements. You do not need to attend the public hearing in order for your comments to be considered in the Final EIS.

In the interest of available time, and to ensure all who wish to give an oral statement have the opportunity to do so, each speaker's comments will be limited to three (3) minutes. If a longer statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing either at the hearing, or mailed to Naval Facilities Engineering Command (NAVFAC) Atlantic, Attn: Laurelwood Housing Area EIS Project Manager, Code EV21 Laurelwood PM, 6506 Hampton Boulevard, LRA Building A, Norfolk, VA 23508. Comments can also be submitted via the project Web site: <http://www.laurelwoodeis.com>.

All written comments postmarked or submitted to the project website by January 12, 2009, will become a part of the official public record and will be responded to in the Final EIS.

Dated: November 14, 2008.

T. M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8-28327 Filed 11-26-08; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 29, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to oir_submission@omb.eop.gov or via fax to (202) 395-6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]". Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 3, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Student Aid Report (SAR).

Frequency: Weekly; Monthly; Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 17,123,392.

Burden Hours: 5,678,454.

Abstract: The Free Application for Federal Student Aid (FAFSA) collects the data necessary to determine a student's eligibility for participation in the following federal student assistance programs identified in the Higher Education Act (HEA): the Federal Pell Grant Program; the Campus-Based Programs; the William D. Ford Federal Direct Loan Program; the Federal Family Education Loan Program; the Academic Competitiveness Grant; and the National Science and Mathematics Access to Retain Talent (SMART) Grant. The Student Aid Report (SAR) is the output document for the FAFSA. FAFSA applicants use the SAR to review and confirm the information provided on their FAFSA, as required by law.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3847. 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. E8-26549 Filed 11-26-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Field Initiated (FI) Projects; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.133G–1 (Research) and 84.133G–2 (Development).

DATES: *Applications Available:* November 28, 2008.

Deadline for Transmittal of Applications: January 27, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the FI Projects program is to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. Another purpose of the FI Projects program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

NIDRR makes two types of awards under the FI Projects program: Research grants (CFDA 84.133G–1) and development grants (CFDA 84.133G–2).

In carrying out a research activity under an FI research grant, a grantee must identify one or more hypotheses or research questions and, based on the hypotheses or research questions identified, perform an intensive, systematic study directed toward producing (1) new scientific knowledge, or (2) better understanding of the subject, problem studied, or body of knowledge.

In carrying out a development activity under an FI development grant, a grantee must use knowledge and understanding gained from research to create materials, devices, systems, or methods, including designing and developing prototypes and processes, that are beneficial to the target population. Target population means the group of individuals, organizations, or other entities expected to be affected by the project. There may be more than one target population because a project may affect those who receive services, provide services, or administer services.

Note: Different selection criteria are used for research projects (84.133G–1) and development projects (84.133G–2).

Applicants must clearly indicate in the application whether they are applying for a research grant (84.133G–1) or a development grant (84.133G–2) and must address the selection criteria relevant for their project type. Without exception, NIDRR will review each application based on the designation (*i.e.*, research (84.133G–1) or development (84.133G–2)) made by the applicant. Applications will be determined ineligible and will not be reviewed if they do not include a clear designation of research or development.

Note: This program is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). Background information on the NFI can be accessed on the Internet at the following site: www.whitehouse.gov/infocus/newfreedom.

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: <http://www.ed.gov/about/offices/list/osers/nidrr/policy.html>.

Through the implementation of the NFI and the Plan, NIDRR seeks to (1) improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of individuals with disabilities from traditionally underserved populations; (3) determine the best strategies and programs to improve rehabilitation outcomes for individuals with disabilities from underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priority: Under this competition we are particularly interested in applications that address the following priority:

Invitational Priority: For FY 2009, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

The priority is:

Projects that are designed to contribute to improved employment outcomes among individuals with disabilities.

Note: The invitational priority is based on NIDRR's Long-Range Plan.

Program Authority: 29 U.S.C. 764.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested \$105,700,000 for NIDRR for FY 2009, of which we intend to use an estimated \$4,000,000 for the FI Projects competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: \$195,000–\$200,000.

Estimated Average Size of Awards: \$200,000.

Maximum Award: We will reject any application that proposes a budget exceeding \$200,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. **Eligible Applicants:** States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. **Cost Sharing or Matching:** Cost sharing is required by 34 CFR 350.62 and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. **Address To Request Application Package:** You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: <http://www.ed.gov/fund/grant/apply/grantapps/index.html>.

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: <http://www.ed.gov/pubs/edpubs.html> or at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133G–1 or 84.133G–2.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. Content and Form of Application Submission: Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. Submission Dates and Times: *Applications Available:* November 28, 2008.

Deadline for Transmittal of Applications: January 27, 2009.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. Funding Restrictions: We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. Other Submission Requirements: Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications.

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The FI Projects, CFDA Numbers 84.133G–1 (Research) and 84.133G–2 (Development), both are included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at <http://www.Grants.gov>. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the FI Projects competition (CFDA numbers 84.133G–1 and 84.133G–2) at <http://www.Grants.gov>. You must search for the downloadable application package for this program by the CFDA number.

Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133G).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>.

- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see http://www.grants.gov/applicants/get_registered.jsp). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see <http://>

www.grants.gov/section910/Grants.govRegistrationBrochure.pdf).

You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the

Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. Submission of Paper Applications by Mail.

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

U.S. Department of Education,
Application Control Center, Stop 4260,
Attention: (Applicants must identify either CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development) depending on the designation of their proposed project.) LBJ Basement Level 1, 400 Maryland Avenue, SW.,
Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.

- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

- (3) A dated shipping label, invoice, or receipt from a commercial carrier.

- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.

- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (Applicants must identify either CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development) depending on the designation of their proposed project.) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

- (1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

- (2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34

CFR 350.54 and 34 CFR 350.55 and are listed in the application package.

Note: There are two different sets of selection criteria for FI projects: One set to evaluate applications proposing to carry out research activities (CFDA 84.133G-1), and a second set to evaluate applications proposing to carry out development activities (CFDA 84.133G-2). Each applicant will be evaluated using the selection criteria for the type of project the applicant designates in its application.

2. Review and Selection Process:

Additional factors we consider in selecting an application for an award are as follows:

The Secretary is interested in outcomes-oriented research or development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their applications a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies. Submission of the information identified in this section is voluntary, except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved

application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) in support of these performance measures.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: <http://www.neweditions.net/pr/commonfiles/pmconcepts.htm>.

Grantees should consult these sites on a regular basis to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Lynn Medley or Marlene Spencer, U.S.

Department of Education, 400 Maryland Avenue, SW., room 6027 (Lynn Medley) or room 6026 (Marlene Spencer), PCP, Washington, DC 20202-2700. Telephone: (202) 245-7338 or by e-mail: Lynn.Medley@ed.gov (Lynn Medley). Telephone: (202) 245-7532 or by e-mail: Marlene.Spencer@ed.gov (Marlene Spencer).

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202-2550. Telephone: (202) 245-7363. If you use a TDD, call the FRS, toll free, at 1-800-877-8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: November 24, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8-28263 Filed 11-26-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Research Fellowships Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133F-1.

DATES: *Applications Available:* November 28, 2008.

Deadline for Transmittal of Applications: January 27, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Research Fellowships Program is to build research capacity by providing support to enable highly qualified individuals, including those who are individuals with disabilities, to conduct research on the rehabilitation of individuals with disabilities.

Note: This program is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: <http://www.whitehouse.gov/focus/newfreedom>.

The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: <http://www.ed.gov/about/offices/list/oser/nidrr/policy.html>.

Through the implementation of the Plan, NIDRR seeks to—(1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine the best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priorities: This competition contains one absolute priority and one invitational priority.

Absolute Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 356.10). For FY 2009, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Research Fellowships Program:

Fellows must conduct original research in an area authorized by section 204 of the Rehabilitation Act of 1973, as amended (the Act). Section 204 authorizes research designed to maximize the full inclusion and integration of individuals with disabilities, especially individuals with the most severe disabilities, into society, by fostering improvements in the areas

of employment, independent living, family, support, and economic and social self-sufficiency, and to improve the effectiveness of services authorized under the Act.

Within this absolute priority, we are particularly interested in applications that address the following invitational priority.

Invitational Priority: Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

For FY 2009, the Secretary is particularly interested in applications from qualified individuals with disabilities.

Program Authority: 29 U.S.C. 762(e).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75.60 and 75.61, 77, 82, 84, 85, and 97. (b) The regulations for this program in 34 CFR part 356. (c) The regulations in 34 CFR 350.51 and 350.52.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested \$105,741,000 for the NIDRR program for FY 2009, of which we intend to use an estimated \$505,000 for the Research Fellowships Program. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Awards: We will reject any application that proposes a budget exceeding \$65,000 for Merit Fellowships, and \$75,000 for Distinguished Fellowships for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: Seven total, including both Merit Fellowships and Distinguished Fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

III. Eligibility Information

1. Eligible Applicants: Eligible individuals must have training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of individuals with disabilities. The

program provides two categories of Research Fellowships: Merit Fellowships and Distinguished Fellowships.

(a) To be eligible for a Merit Fellowship, an individual must have either advanced professional training or independent study experience in an area that is directly pertinent to disability and rehabilitation. In the most recent competitions for this program, Merit Fellowship recipients had research experience at the doctoral level.

(b) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

Note: Institutions are not eligible to be recipients of research Fellowships.

2. Cost Sharing or Matching: This program does not require cost sharing or matching.

IV. Application and Submission Information

1. Address to Request Application Package: You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: <http://www.ed.gov/fund/grant/apply/grantapps/index.html>

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: <http://www.ed.gov/pubs/edpubs.html> or at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA Number 84.133F–1.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. Content and Form of Application Submission: Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. The application package will provide instructions for completing all components to be included in either

the paper application or electronically using Grants.gov. Each application must include the required forms, an abstract, Human Subjects narrative, if applicable, Part III narrative, resume, and other related materials, if applicable.

Note: Part II, the budget section, is not required for this program and should not be included.

Note: Applicants submitting a paper application or electronically using Grants.gov must place their Social Security Number in Block #8b SF 424 form in place of the Employer Identification Number.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 24 double-spaced pages. The following standards are recommended:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, Application for Federal Assistance; Part IV, the assurances and certifications; or the one-page abstract, the eligibility statement, the curriculum vitae, the bibliography, the letters of recommendation, or the information on the protection of human subjects. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. Submission Dates and Times:

Applications Available: November 28, 2008.

Deadline for Transmittal of Applications: January 27, 2009.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times)

about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6.

Other Submission Requirements in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. **Intergovernmental Review:** This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. **Funding Restrictions:** Applicants are not required to submit a budget with their proposal. The Merit Fellowships and Distinguished Fellowships awards are one Full Time Equivalent (FTE) award. The Fellow must work principally on the fellowship during the term of the fellowship award. We define one FTE as equal to 40 hours per week. The Fellow cannot receive support through any other Federal Government grants during the term of the fellowship award.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. **Other Submission Requirements:** Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications.

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The NIDRR Research Fellowships Program, CFDA Number 84.133F-1, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at <http://www.Grants.gov>. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Research Fellowship Program at <http://www.Grants.gov>. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133F).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process for an individual. You do not need to register in the Central Contractor Registry. The steps to register as an individual include—

(1) Accessing the Grants.gov Credential Provider Web page, <http://>

apply.grants.gov/IndCPRegister and entering the funding opportunity number, which can be located when you search for this grant opportunity on http://www.grants.gov/applicants/search_opportunities.jsp;

(2) Completing the credential information to obtain a credential username and password; and

(3) Using the credential username and password, complete the registration at <http://apply.grants.gov/IndGGRegister>

Registration for individuals is complete, once the Grants.gov registration step is finished. Please note that the registration process may take one or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. Submission of Paper Applications by Mail.

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.133F-1), LBJ Basement Level 1, 400
Maryland Avenue, SW., Washington,
DC 20202-4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133F-1), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30:00 p.m., Washington, DC, time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

1. **Selection Criteria:** The selection criteria for this program are from 34 CFR 356.30 through 356.32 and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in determining the merits of an application are as follows:

The Secretary is interested in outcomes-oriented research projects that use rigorous scientific methodologies. To address this interest applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge or improvements in policy and practice. Applicants should propose projects that are optimally designed to be consistent with these goals. Submission of the information identified under this paragraph is not required by law or regulation, but is desired.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period you must submit a final performance report, in accordance with 34 CFR 356.51, that must contain at a minimum an analysis of the significance of the project and an assessment of the degree to which the objectives of the project have been achieved.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine the extent to which grantees are conducting high-quality research and related activities that lead to high quality products. Performance measures for the Research Fellowships program include—

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of

NIDRR-sponsored research in refereed journals;

- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field; and

- The number of publications per award based on NIDRR-funded research and development activities in refereed journals.

NIDRR evaluates the overall success of individual research and development grants through review of grantee performance and products. NIDRR uses information submitted by grantees as part of their final performance report for these reviews. Approved final performance report guidelines require grantees to submit information regarding research methods, results, outputs, and outcomes.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT:

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 6026, Potomac Center Plaza (PCP), Washington, DC 20202. Telephone: (202) 245-7532 or by e-mail: marlene.spencer@ed.gov.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., braille, large print, audiotope, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202-2550. Telephone: (202) 245-7363. If you use a TDD, call the FRS, toll free, at 1-800-877-8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO

Access at: <http://www.gpoaccess.gov/nara/index.html>

Dated: November 24, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8-28265 Filed 11-26-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[CP09-22-000]

Atmos Pipeline and Storage, LLC; Notice of Application

November 21, 2008.

Take notice that on November 12, 2008, Atmos Pipeline and Storage, LLC (Atmos), 13430 Northwest Freeway, Suite 700, Houston, Texas 77040-6316, filed an application with the Commission in Docket No. CP09-22-000, pursuant to section 7(c) of the Natural Gas Act, Subpart F of Part 157, and Subpart G of Part 284 of the Commission's Regulations for: (1) A certificate of public convenience and necessity authorizing Atmos to construct and operate a natural gas storage facility and interconnecting pipeline facilities near Fort Necessity, Franklin Parish, Louisiana; (2) a blanket certificate to construct, acquire, operate and abandon facilities; and (3) a blanket certificate to provide open-access firm and interruptible interstate natural gas storage and storage related services and the associated pre-granted abandonment authorization, as more fully set forth in the application which is open to public inspection. This filing may be also viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FEROnline Support at FEROnlineSupport@ferc.gov or toll free at (866) 208-3676, or TTY, contact (202) 502-8659.

Atmos proposes to construct, own, operate, and maintain a natural gas storage facility on the Fort Necessity salt dome in Franklin Parish, Louisiana. Atmos states that it would construct and operate approximately 7.4 miles of 36-inch diameter pipeline that would connect with the mainline pipeline facilities of Tennessee Gas Pipeline, Columbia Gulf Transmission, ANR Pipeline Company, and Regency Energy Partners LP in Franklin Parish. Atmos would construct and operate four meter

stations and a compressor station with a total of 42,300 HP. Atmos further states that the underground salt cavern storage facility would have a total working gas capacity of 15 Billion cubic feet (Bcf) in three salt caverns with a total of approximately 500 MMcf of maximum daily injection capability and approximately 1,500 MMcf of maximum daily withdrawal capability. Atmos also seeks authorization to charge market-based rates for its proposed services.

Any questions regarding this application should be directed to James H. Jeffries IV, Moore & Van Allen PLLC, Bank of America Corporate Center, 100 North Tryon Street, Suite 4700, Charlotte, North Carolina 28202-4003, telephone 704-331-1000, facsimile 704-339-5879, or via e-mail: jimjeffries@mvalaw.com.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the

Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link. *Comment Date:* December 12, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-28282 Filed 11-26-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09-23-000]

CenterPoint Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

November 21, 2008.

Take notice that on November 14, 2008, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP09-23-000, a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to abandon in place certain segments of Line K, a low-pressure delivery lateral, located in Ouachita and Union Counties, Arkansas and Union Parish, Louisiana, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call

toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Specifically, CEGT proposes to abandon in place three segments of its existing Line K pipeline comprising approximately 19 miles of pipe and appurtenant facilities including valves and rectifiers. CEGT first proposes to abandon approximately 11.0 miles of 16-inch diameter pipeline (Segment One); the next segment is approximately 1.3 miles of 12-inch diameter pipeline (Segment Two), located in Ouachita County, Arkansas; and the final segment of Line K is approximately 6.7 miles of 12-inch diameter pipeline, located in Ouachita and Union Counties, Arkansas. CEGT states that it has determined that it is not economical to continue to own and operate certain Line K segments identified herein, and abandonment of these pipeline segments will allow CEGT to reduce operating costs. CEGT asserts that no customer service will be terminated by the proposed abandonment of these segments of Line K.

Any questions regarding the application should be directed to Lawrence O. Thomas, Director, Rate & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21743, Shreveport, Louisiana 71151, at (318) 429-2804 or (318) 429-3133 (facsimile).

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-28283 Filed 11-26-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. CP08-409-000]****Orbit Gas Storage, Inc.; Notice of Availability of the Environmental Assessment for the Proposed Kentucky Energy Hub Project**

November 21, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas storage facilities proposed by Orbit Gas Storage, Inc. (OGS), in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of OGS' proposed Kentucky Energy Hub Project which includes all of the facilities described below in Hopkins County, Kentucky. The Kentucky Energy Hub Project would consist of developing a 5 billion-cubic-foot storage facility from a depleted natural gas production reservoir; 10 new gas storage wells on 3 new well pads; a new 5,400-horsepower compressor station; an 8.4-mile-long, 16-inch-diameter gathering pipeline; a 13.3-mile-long, 24-inch-diameter pipeline; and a new meter station. The proposed project would interconnect with the ANR Pipeline Company system near Rabbit Ridge, Kentucky.

The Kentucky Energy Hub Project would have a total working gas capacity of about 5 billion cubic feet (Bcf) of natural gas. The purpose of the project is to provide 100 million standard cubic feet per day (MMscf/d) of natural gas storage deliverability for service in the Midwestern and mid-Atlantic regions of the United States. The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502-8371.

Copies of the EA have been mailed to federal, state, and local agencies; public interest groups; interested individuals; newspapers and libraries in the project area; Native American groups; and parties to this proceeding. Any person

wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See Title 18 of the Code of Federal Regulations, Part 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at <http://www.ferc.gov> under the link to "Documents and Filings" and "eFiling." eFiling is a file attachment process and requires that you prepare your submission in the same manner as you would if filing on paper, and save it to a file on your computer's hard drive. New eFiling users must first create an account by clicking on "Sign up" or "eRegister." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing." In addition, there is a "Quick Comment" option available, which is an easy method for interested persons to submit text-only comments on a project. The Quick Comment User Guide can be viewed at <http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf>. Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid e-mail address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket.

If you are filing written comments, please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP08-409-000;
- Label one copy of the comments for the attention of the Gas Branch 1, PJ-11.1; and
- Mail your comments so that they will be received in Washington, DC on or before December 22, 2008.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR

385.214).¹ Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP08-408). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Internet Web site (<http://www.ferc.gov/esubscribenow.htm>).

Kimberly D. Bose,*Secretary.*

[FR Doc. E8-28281 Filed 11-26-08; 8:45 am]

BILLING CODE 6717-01-P

¹ Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket Nos. CP04–47–001; CP05–396–001]

Sabine Pass LNG, L.P.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Sabine Pass LNG Export Project and Request for Comments on Environmental Issues

November 21, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will address the environmental impacts of the Sabine Pass LNG Export Project (Sabine Export Project or Project) proposed by Sabine Pass LNG, L.P. (Sabine Pass). The Commission will use the EA in its decision-making process to determine whether or not to authorize the project. This notice explains the scoping process we¹ will use to gather environmental input from the public and interested agencies on the projects. Your input will help the Commission determine the issues that need to be evaluated in the EA. Please note that the scoping period will close on December 19, 2008.

Details on how to submit written comments are provided in the Public Participation section of this notice.

If you are a landowner receiving this notice, you may be contacted by a Sabine Pass representative about the proposed project facilities.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Projects

The purpose of the project is to add Liquefied Natural Gas (LNG) export capabilities/functionality to the previously authorized Sabine Pass LNG Terminal Facilities located in Cameron Parish, Louisiana. Sabine Pass is seeking authorization to operate its facility for the purpose of exporting LNG. Sabine proposes to operate its existing Sabine Pass LNG Terminal facility to export LNG on a short term basis by holding cargos of imported LNG in its LNG tanks

for re-export. To accomplish this, Sabine Pass would modify up to four 24-inch check valves on unloading arms A & D on the West and East Jetty Platforms in the marine portion of the Sabine Pass LNG Terminal. The general location of the proposed project is shown in the figure included as Appendix 1.²

The proposed modification of the check valves would allow the LNG to be transferred from the LNG storage tanks to a receiving ship. The existing in-situ in-tank pumps would be used to pump/push LNG from the tanks through the LNG transfer lines to the unloading/loading arms and then into the ship for export and transportation. Since the Sabine Pass LNG Terminal already includes all required plant components to facilitate the proposed activity other than the valve modifications, no land disturbance would be required. The valves are located on the accessible portion of the Jetty Platforms.

Total Land Requirements

Based on the preliminary information, construction of Sabine Pass Export Project facilities would not involve new land disturbance; therefore, there would be no land requirements.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action. The FERC will use the EA to consider the environmental impact that could result if the project is authorized under section 3 of the Natural Gas Act. NEPA also requires us to discover and address concerns the public may have about proposals to be considered by the Commission. This process is referred to as “scoping.” The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. With this Notice of Intent, the Commission staff is requesting public comments on the scope of the issues to be addressed in the EA. All comments received will be considered during preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the

construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, ballast water, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Threatened and endangered species;
- Air quality and noise;
- Hazardous waste; and
- Public safety.

In the EA, we will also evaluate possible alternatives to the proposed project, and make recommendations on how to lessen or avoid impacts on affected resources.

The FERC staff has initiated its NEPA review and FERC encourages the early involvement of interested stakeholders and to identify issues/concerns.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposed project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. Your comments should focus on the potential environmental effects, reasonable alternatives and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please carefully follow these instructions:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of OEP/DG2E, Gas Branch 2, PJ11.2.
- Reference Docket Nos. CP04–47–001 and CP05–396–001 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before December 22, 2008.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at <http://www.ferc.gov> under the link to “Documents and Filings” and “eFiling.” eFiling is a file attachment process and requires that you prepare your submission in the same manner as you would if filing on paper, and save it to a file on your hard drive. New eFiling

¹ We, ‘us,’ and ‘our’ refer to the environmental staff of the FERC's Office of Energy Projects.

² The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the “eLibrary” link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the Public Participation section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Sabine Pass.

users must first create an account by clicking on “Sign up” or “eRegister.” You will be asked to select the type of filing you are making. This filing is considered a “Comment on Filing.” In addition, there is a “Quick Comment” option available, which is an easy method for interested persons to submit text only comments on a project. The *Quick-Comment User Guide* can be viewed at <http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf>. Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid email address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket or project number(s).

We might mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Additional Information

Additional information about the project is available from the Commission’s Office of External Affairs, at 1-866-208-FERC (3372) or on the FERC Internet Web site (<http://www.ferc.gov>) using the “eLibrary link.” Click on the eLibrary link, select “General Search” and enter the project docket number excluding the last three digits (*i.e.*, CP04-47) in the “Docket Number” field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or TTY, contact (202) 502-8659. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called “eSubscription” that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to <http://www.ferc.gov/esubscribenow.htm>.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-28292 Filed 11-26-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09-44-000]

Dynegy South Bay LLC; Notice of Filing

November 21, 2008.

Take notice that on October 3, 2008, Dynegy South Bay LLC filed a report regarding sales of electricity in markets operated by the California Independent System Operator Corporation, pursuant to the Commission’s April 26, 2001 Order in Dockets EL00-95-012, 95 FERC ¶ 61,115(2001) and further Orders issued, *California Independent System Operator Corp.*, 100 FERC ¶ 61,060 (July 2002 Order), and *order on reh’g*, 101 FERC ¶ 61,060 (2002).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, DC. There is an “eSubscription” link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on November 28, 2008.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-28289 Filed 11-26-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08-89-000]

Kansas City Power & Light Company Aquila, Inc.; Notice of Filing

November 21, 2008.

Take notice that on November 19, 2008, Kansas City Power & Light Company and Aquila, Inc. filed additional information, revised Attachments A-1 and B-1, in support of its Petition for Declaratory Order, filed with the Commission on September 28, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, DC. There is an “eSubscription” link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on December 1, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-28286 Filed 11-26-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05-644-009]

PSEG Energy Resources & Trade LLC; Notice of Filing

November 21, 2008.

Take notice that on October 20, 2008, PSEG Energy Resources & Trade LLC filed an informational filing of a memorandum of accounts of annual increases to FERC Account No. 108, Accumulated Provision for Depreciation of Electric Utility Plant using imputed depreciation rates as set forth in Appendix B of the September 23, 2005, Stipulation and Agreement, Article II, and accepted by the Commission's Order issued November 28, 2005, *PSEG Energy Resources & Trade LLC et al.*, 113 FERC 61,213 (2005).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on December 5, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-28287 Filed 11-26-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05-644-010]

PSEG Energy Resources & Trade LLC; Notice of Filing

November 21, 2008.

Take notice that on October 1, 2007, PSEG Energy Resources & Trade LLC filed an informational filing of a memorandum of accounts of annual increases to FERC Account No. 108, Accumulated Provision for Depreciation of Electric Utility Plant using imputed depreciation rates as set forth in Appendix B of the September 23, 2005, Stipulation and Agreement, Article II, and accepted by the Commission's Order issued November 28, 2005, *PSEG Energy Resources & Trade LLC et al.*, 113 FERC 61,213 (2005).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the

"eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on December 5, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-28288 Filed 11-26-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL07-56-005; EL07-58-005]

Public Service Commission of Maryland; Notice of Filing

November 21, 2008.

Take notice that on October 6, 2008, the Public Service Commission of Maryland filed its Confidentiality Certification, pursuant to section 18.17.4 of the Operating Agreement of the PJM Interconnection, L.L.C.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on December 5, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-28285 Filed 11-26-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2305-020]

Sabine River Authority of Texas; Sabine River Authority, State of Louisiana; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

November 21, 2008.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.

b. *Project No.:* 2305-020.

c. *Dated Filed:* September 22, 2008.

d. *Submitted by:* Sabine River Authority of Texas and Sabine River Authority, State of Louisiana (Sabine River Authorities).

e. *Name of Project:* Toledo Bend Hydroelectric.

f. *Location:* On the Sabine River, affecting lands and waters in Panola, Shelby, Sabine, and Newton Counties, Texas, and De Soto, Sabine, and Vernon Parishes, Louisiana. The project occupies about 3,600 acres of United States lands under the jurisdiction of the Forest Service.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicants Contact:*

Mr. Melvin T. Swoboda, Licensing Manager, Toledo Bend Project Joint Operation, P.O. Box 579, Orange, Texas 77631-0579, 409-746-2192; mswoboda@sratx.org.

Mr. Jerry L. Clark, General Manager, Sabine River Authority of Texas, P.O. Box 579, Orange, Texas 77631-0579, 409-746-2192; jclark@sratx.org.

Mr. James Pratt, Executive Director, Sabine River Authority, State of Louisiana, 15091 Texas Highway, Many, Louisiana 71449-5718, 318-256-4112; jimpratt@dotd.louisiana.gov.

i. FERC Contacts: Alan Mitchnick at (202) 502-6074 or e-mail at alan.mitchnick@ferc.gov; or Lesley Kordella at (202) 502-6406 or e-mail at lesley.kordella@ferc.gov.

j. We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the Sabine River Authorities as the Commission's non-federal representative for carrying out informal consultation, pursuant to Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

m. The Sabine River Authorities filed a Pre-Application Document (PAD), including a proposed process plan and schedule, with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at <http://ferc.gov/esubscribenow.htm> to be notified via e-

mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Scoping Document 1 (SD1), as well as study requests. The Commission issued SD1 on November 14, 2008. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Toledo Bend Hydroelectric Project) and number (P-2305-020), and bear the heading "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document 1," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by January 20, 2009.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-filing" link.

In addition, there is a "Quick Comment" option available, which is an easy method for interested persons to submit text only comments on a project. The Quick-Comment User Guide can be viewed at <http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf>. Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid email address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket.

p. *Scoping Meetings:* Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the

evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Tuesday, December 16, 2008.

Time: 1 p.m.

Location: Cypress Bend Conference Center, 2000 Cypress Bend Parkway, Many, Louisiana 71449.

Phone: (877) 519-1500.

Evening Scoping Meeting

Date: Tuesday, December 16, 2008.

Time: 7 p.m.

Location: Same as daytime meeting. Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at <http://www.ferc.gov>, using the "eLibrary" link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

q. Site Visit: The potential applicants and Commission staff will conduct a site visit (bus tour) of key facilities of the project on Wednesday, December 17, 2008, starting at 8 a.m. Those wishing to participate should meet at the Cypress Bend Conference Center (see section "p" above). To appropriately accommodate persons interested in attending the site tour, participants should contact Bambi Granger by December 5, 2008 [e-mail, bgranger@sratx.org or phone, (409) 746-2192].

Kimberly D. Bose,

Secretary.

[FR Doc. E8-28290 Filed 11-26-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EF08-2011-000 and RM08-20-000]

Sales of Electric Power to the Bonneville Power Administration; Revisions to the 2008 Average System Cost Methodology; Notice of Opportunity To File Reply Comments

November 21, 2008.

On November 10, 2008, Bonneville and other interested parties filed comments in the above-referenced dockets on an Interim Rule that implements Bonneville's revised Average System Cost Methodology. In its comments, Bonneville included revisions to the regulations promulgated by the Interim Rule in Part 301 of the Commission's regulations. Bonneville requests the Commission to provide an opportunity for reply comments on its proposed revised regulations.

In response to Bonneville's request, interested parties may file reply comments in the above-referenced dockets on or before December 15, 2008. Parties must use the filing procedures provided for the initial comments in these proceedings.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-28284 Filed 11-26-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09-6-000]

J-W Pipeline Company; Notice of Petition for Rate Approval

November 21, 2008.

Take notice that on November 18, 2008, J-W Pipeline Company (J-W Pipeline) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. J-W Pipeline proposes the following rates for its NGPA section 311(a)(2) transportation services on its Gravel Point South and Highway 5 South Lines: a demand charge of \$.8700 per MMBtu for firm transportation, with no commodity charge for firm service, and a \$.0286 per MMBtu for interruptible transportation. J-W Pipeline also requests authority to retain from its shippers actual compressor fuel and lost-and-unaccounted-for volumes on the system, not to exceed 2% of volumes received by J-W Pipeline.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the

Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time Monday, December 1, 2008.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-28280 Filed 11-26-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09-5-000]

Lee 8 Storage Partnership; Notice of Petition for Rate Approval

November 21, 2008.

Take notice that on November 14, 2008, Lee 8 Storage Partnership (Lee 8) filed pursuant to section 284.123(b)(2) of the Commission's regulations, filed a petition requesting that the Commission approve its rates pursuant to section 31(a)(2) of the Natural Gas Policy Act of 1978. Lee 8 proposes system-wide maximum rates of \$3.2988 per Dt of deliverability and \$0.0330 per Dt of capacity. In addition, Lee 8 states that it will charge 0.57% of the injected volumes and 0.57% of the withdrawal volumes as an allowance for compressor fuel and lost-and-unaccounted-for gas on Lee 8's system.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time December 1, 2008.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-28291 Filed 11-26-08; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8588-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2008 (73 FR 19833).

Draft EISs

EIS No. 20080340, ERP No. D-FHW-J40184-UT, SR-262; Montezuma Creek to Aneth Project, Improvements to the Intersection of SR-162, SR-262, and County Road (CR) 450 in Montezuma Creek, Funding, Navajo Nation, San Juan County, UT.

Summary: EPA expressed environmental concerns about increased sedimentation and erosion impacts, additional impacts to drainage channels and habitat connectivity, and cumulative impacts to water quality and wildlife. Rating EC2.

EIS No. 20080370, ERP No. D-AFS-K65347-CA, Gemmill Thin Project, Proposal to Reduce the Intensity and Size of Future Wildfires, and to Maintain/Improve Ecosystem Function and Wildlife Habitat, Chanchellula Late-Successional Reserve, Shasta-Trinity National Forest, Trinity County, CA.

Summary: EPA expressed environmental concerns about impacts to air quality, and requested additional mitigation measures. EPA also expressed environmental concerns about impacts to communities. Rating EC2.

EIS No. 20080397, ERP No. D-AFS-J65525-00, Hermosa Landscape Grazing Analysis Project, Proposes to Continue to Authorize Livestock Grazing Cascade Reservoir, Dutch Creek, Elbert Creek, Hope Creek South Fork, and Upper Hermosa Allotments, Columbine Ranger District, San Juan National Forest, LaPlata and San Juan Counties, CO.

Summary: EPA expressed environmental concerns about impacts to water quality, and requested a commitment to monitoring and protection of at-risk riparian areas. Rating EC2.

EIS No. 20080302, ERP No. DB-UAF-E11056-FL, Eglin Air Force Base (AFB) and Hurlburt Field, Proposes to Implement the Military Housing Privatization Initiative (MHPI), FL.

Summary: EPA expressed environmental concerns about impacts to air quality from construction activities. Rating EC2.

EIS No. 20080352, ERP No. DS-COE-G39047-00, White River Minimum Flood Study, To Provide an Improved Minimum Flow for the Benefit of the Tail Water Fishery, White River Basin Lakes: Beaver, Table Rock, and Bull Shoal Lakes on the White River; Norfork Lake on the North Fork White River; and Greens Ferry Lake on the Little Red River, AR and MO.

Summary: No formal comment letter was sent to the preparing agency. Rating LO.

Final EISs

EIS No. 20080321, ERP No. F-FHW-K40267-CA, Phase I-CA 11 Corridor Location and Route Adoption and Location Identification of the Otay Mesa East Port of Entry (POE) on Otay Mesa, Presidential Permit for the POE and Acquisition of Right-Of-Way Permit, San Diego County, CA.

Summary: EPA continues to have environmental concerns about impacts from induced growth and the lack of information on mobile source air toxics.

EIS No. 20080338, ERP No. F-FHW-J40180-UT, UT-108 Transportation Improvement Project, To Improve Local and Regional Mobility from UT-108 between UT-127 (Antelope Drive) to UT-126 (1900 West) Located in Syracuse, West Point and Clinton in Dave County, and Roy and West Haven in Weber County, UT.

Summary: EPA continues to have environmental concerns about mobile source air toxics. However, EPA is pleased that FHWA has addressed previous concerns raised about other construction emission BMPs and mitigation measures for impacts to sensitive receptors.

EIS No. 20080367, ERP No. F-FHW-J40178-UT, Mountain View Corridor (MVC) Project, Proposed Transportation Improvement 2030 Travel Demand in Western Salt Lake County south of I-80 and west of Bangerter Highway and in northwestern Utah County of I-15, south of the Salt Lake County Line, and north of Utah Lake, Salt Lake and Utah County, UT.

Summary: EPA continues to have environmental concerns about the analysis of mobile source air toxics.

EIS No. 20080412, ERP No. F-FRA-C50016-UT, Portal Bridge Capacity Enhancement Project, To Replace the nearly 100-Year-Old Portal Bridge and Eliminate Capacity Constraints on the Northeast Corridor between Swift Interlocking and Secaucus Transfer Station, Funding, U.S. Army Corp Section 10 and 404 Permits, Hackensack River, Hudson County, NJ.

Summary: EPA has environmental concerns about the general air conformity and mitigation for wetlands impacts.

EIS No. 20080417, ERP No. F-UAF-E15001-FL, Eglin Air Force Base Program, Base Realignment and Closure (BRAC) 2005 Decisions and Related Action, Implementation, FL.

Summary: EPA has environmental concerns about impacts to air quality from the BRAC relocation activities and noise exposure from the introduction of the F-35 aircraft.

EIS No. 20080425, ERP No. F-NOA-C91006-00, Amendment 4 to the Spiny Lobster Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands and Amendment 8 to the Spiny Lobster Fishery Management Plan of the Gulf of Mexico and South Atlantic, To Address the Harvest and Exportation of Undersized Lobster Tails to the United States.

Summary: EPA does not object to the proposed project.

EIS No. 20080427, ERP No. F-AFS-F65071-WI, Medford Aspen Project, Preferred Alternative is Alternative 3, To Implement a Number of Vegetation and Transportation Management Activities, Medford-Park Falls Ranger District, Chequamegon-Nicolet National Forest, Taylor County, WI.

Summary: EPA does not object to the proposed action.

Dated: November 24, 2008.

Robert W. Hargrove,
Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8-28320 Filed 11-26-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8587-9]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-1399 or <http://www.epa.gov/compliance/nepa/>.

Weekly Receipt of Environmental Impact Statements
Filed 11/17/2008 Through 11/21/2008
Pursuant to 40 CFR 1506.9.

EIS No. 20080474, Draft EIS, NPS, VA, Cedar Creek and Bella Grove National Historical Park, General Management Plan, Implementation, Frederick, Shenandoah, Warren Counties, VA, **Comment Period Ends:** 02/26/2009, **Contact:** Christopher J. Stubbs 540-868-9176.

EIS No. 20080475, Draft Supplement, FHW, CA, Schuyler Heim Bridge Replacement and SR-47 Expressway Improvement Project, New Information related to Health Risk Associated with Air Toxics, Funding, U.S. Coast Guard Bridge Permit, U.S. Army COE Section 10 and 404 Permits, Ports of Long Beach and Los Angeles, Los Angeles County, CA, **Comment Period Ends:** 01/12/2009, **Contact:** Karl Price 213-897-1839.

EIS No. 20080476, Final EIS, COE, 00, White River Minimum Flood Study, To Provide an Improved Minimum Flow for the Benefit of the Tail Water Fishery, White River Basin Lakes: Beaver, Table Rock, and Bull Shoal Lakes on the White River; Norfolk Lake on the North Fork White River; and Greens Ferry Lake on the Little Red River, AR and MO, **Wait Period Ends:** 12/29/2008, **Contact:** Mike Biggs 501-324-7342.

EIS No. 20080477, Draft EIS, FTA, MA, Urban Ring Corridor—Phase 2 Project, Circumferential Transportation Improvements, Proposed Major New Bus Rapid Transit, Funding and Right-of-Way Permit, Located in the Municipalities of Boston, Brookline, Cambridge, Chelsea, Everett, Medford and Somerville, MA, **Comment Period Ends:** 02/09/2009, **Contact:** Mary Beth Mello 617-494-2055.

EIS No. 20080478, Final Supplement, COE, CA, Pacific Los Angeles Marine Terminal, Pier 400 Berth 408 Project, Construction and Operation of a new Marine Terminal, U.S. Army COE Section 10 and 404 Permits, Port of Los Angeles, Los Angeles County, CA, **Wait Period Ends:** 12/29/2008, **Contact:** Dr. Spencer D. MacNeil 805-585-2152.

EIS No. 20080479, Draft EIS, FHW, UT, Geneva Road, Center Street/1600 West (Provo) to Geneva Road/SR-89 (Pleasant Grove), Improvements, U.S. Army COE 404 Permit, Utah County, UT, **Comment Period Ends:** 01/22/2009, **Contact:** Bryan Dillon 801-963-0182.

EIS No. 20080480, Draft EIS, USN, NJ, Laurelwood Housing Area, Access at Naval Weapons Station Earle, Lease Agreement, Monmouth County, NJ, **Comment Period Ends:** 01/12/2009, **Contact:** Kim Joyner-Barty 757-322-8473.

EIS No. 20080481, Draft EIS, NOA, CA, Southwest Fisheries Science Center Replacement, Construction and Operation, located on University of California, San Diego Scripps Institute of Oceanography Campus, LaJolla, CA, **Comment Period Ends:** 01/12/2009, **Contact:** Mark Eberling 206-526-6477.

EIS No. 20080482, Final EIS, DOE, 00, PROGRAMMATIC—Designation of Energy Corridors in 11 Western States, Preferred Location of Future Oil, Gas, and Hydrogen Pipelines and Electricity Transmission and Distribution Facilities on Federal Land, AZ, CA, CO, ID, MT, NV, NM, UT, WA and WY, **Wait Period Ends:** 12/29/2008, **Contact:** LaVerne Kyriss 202-586-1056. Department of Energy and the Department of the Interior/Bureau of Land Management are Joint Lead Agencies on this project.

EIS No. 20080483, Final EIS, FHW, MO, MO-34 Improvement, from U.S. Routes 60/21 Intersection in Carter County to Routes 34/72 Intersection in Cape Girardeau County, Funding, U.S. Army COE Section 404 Permit, Carter, Bollinger, Reynolds, Wayne, and Cape Girardeau Counties, MO, **Wait Period Ends:** 12/30/2008, **Contact:** Peggy Casey 573-636-7104.

Amended Notices

ELS No. 20080405, Draft Supplement, COE, LA, Inner Harbor Navigation Canal (IHNC) Lock Replacement Project, Proposal for Relieving Navigation Traffic Congestion Associated with IHNC Lock, Located between the St. Claude Avenue and North Claiborne Avenue Bridge, Orleans, LA, Comment Period Ends: 01/24/2009, Contact: Richard E. Boe 504-862-1505. Revision of FR Notice Published on 10/10/2008; Extending Comment Period from 11/25/2008 to 01/24/2009.

Dated: November 24, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8-28313 Filed 11-26-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8746-8]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92463, EPA gives notice of a public teleconference of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. NACEPT represents diverse interests from academia, industry, non-governmental organizations, and local, state, and tribal governments. The purpose of this teleconference is to discuss and approve draft NACEPT recommendations on EPA's Draft Biofuels Strategy and the 2009-2014 EPA Strategic Plan Change Document. A copy of the agenda for the meeting will be posted at <http://www.epa.gov/ocem/nacept/cal-nacept.htm>.

DATES: NACEPT will hold a public teleconference on Monday, December 15, 2008, from 2 p.m.-4 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held in the U.S. EPA East Building, 1201 Constitution Ave., NW., Room 1132, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer, altieri.sonia@epa.gov, (202) 564-0243, U.S. EPA, Office of

Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to NACEPT should be sent to Sonia Altieri, Designated Federal Officer, at the contact information above by Wednesday, December 10, 2008. The public is welcome to attend all portions of the meeting, but seating is limited and is allocated on a first-come, first-served basis. Members of the public wishing to gain access to the conference room on the day of the meeting must contact Sonia Altieri at (202) 564-0243 or altieri.sonia@epa.gov by December 10, 2008.

Meeting Access: For information on access or services for individuals with disabilities, please contact Sonia Altieri at (202) 564-0243 or altieri.sonia@epa.gov. To request accommodation of a disability, please contact Sonia Altieri, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 18, 2008.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. E8-28342 Filed 11-26-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8746-7]

Extension of Public Comment Period for the Proposed Reissuance of General NPDES Permit (GP) for Offshore Seafood Processors in Alaska (AKG524000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of Public Comment Period on the draft general NPDES permit for Offshore Seafood Processors in Alaska (AKG524000).

SUMMARY: On September 26, 2008, EPA Region 10 proposed to issue a general permits to cover Offshore Seafood Processors in Alaska 73 FR 55840. In response to requests from the regulated community, EPA is extending the public comment period from November 10 to December 10, 2008.

DATES: The end of the public comment period is now extended to December 10, 2008. Comments must be received or postmarked by that date.

Public Comment: Interested persons may submit written comments on the draft permit to the attention of Lindsay

Guzzo at the address below. All comments should include the name, address, and telephone number of the commenter and a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated. After the expiration date of the Public Notice on December 10, 2008; the Director, Office of Water and Watersheds, EPA Region 10, will make a final determination with respect to issuance of the general permit. The proposed requirements contained in the draft general permit will become final upon issuance if no significant comments are received during the public comment period.

ADDRESSES: Comments on the proposed General Permit should be sent to Lindsay Guzzo, Office of Water and Watersheds; USEPA Region 10; 1200 Sixth Avenue, Suite 900, OWW-130; Seattle, Washington 98101 or by e-mail to Guzzo.Lindsay@epa.gov.

FOR FURTHER INFORMATION CONTACT:

Lindsay Guzzo, 206-553-0268, Guzzo.Lindsay@epa.gov. Copies of the draft general permit and fact sheet may be downloaded from the EPA Region 10 Web site at <http://yosemite.epa.gov/r10/WATER.NSF/NPDES+Permits/DraftPermitsAK>. They are also available upon request from Audrey Washington at (206) 553-0523, or e-mailed to washington.audrey@epa.gov. For information on physical locations in Alaska and Seattle where the documents may be viewed, see the September 26, 2008, notice at 73 FR 55840.

Dated: November 20, 2008.

Michael F. Gearheard,

Director, Office of Water & Watersheds, Region 10.

[FR Doc. E8-28322 Filed 11-26-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0837; FRL-8391-1]

Pesticide Experimental Use Permit; Receipt of Application; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of an application 68467-EUP-O from Mycogen Seeds c/o Dow Agrosciences LLC requesting an experimental use permit (EUP) for the plant-incorporated protectants *Bacillus thuringiensis* Cry1A.105 protein and the

genetic material necessary for its production (vector PV-ZMIR245) in MON 89034 corn, *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production (vector PV-ZMIR245) in MON 89034 corn, *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production (vector PV-ZMIR39) in MON 88107 corn, *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production (vector PHP 17662) in Event DAS-59122-7 corn, and *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production (vector PHP8999) in Event TC1507 corn. The Agency has determined that the permit may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before December 29, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2008-0837, by one of the following methods:

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

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2008-0837. 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 www.regulations.gov or e-mail. The www.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 www.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: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8715; e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons interested in agricultural biotechnology or those who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not

attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.

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 pesticide(s) discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

Under section 5 of FIFRA, 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or one acre or more of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

Submitter: Mycogen Seeds c/o Dow Agrosiences LLC, (68467–EUP–O).

Pesticide Chemical: *Bacillus thuringiensis* Cry1A.105 protein and the genetic material necessary for its production (vector PV–ZMIR245) in MON 89034 corn, *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production (vector PV–ZMIR245) in MON 89034 corn, *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production (vector PV–ZMIR39) in MON 88107 corn, *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production (vector PHP 17662) in Event DAS–59122–7 corn, and *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production (vector PHP8999) in Event TC1507 corn.

Summary of Request: The 68467–EUP–O application is for 279 acres of MON 89034 x TC1507 x MON 88017 x DAS–59122–7, 2,239 acres of intermediate combinations, 1,014 of registered plant-incorporated protectants, and 1,205 acres of non-plant-incorporated protectant acres and border rows for a total of 4,736 acres. Proposed shipment/use dates are February 15, 2009 to June 30, 2010. Five trial protocols will be conducted, including:

- Corn breeding and observation nursery.
- Corn agronomic trials.
- Herbicide tolerance trials.
- Corn efficacy trials.
- Insect resistance management trials.

States and Commonwealth involved include: Arkansas, California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Puerto Rico, South Dakota, Texas, and Wisconsin.

A copy of the application and any information submitted is available for public review in the docket established for this EUP application as described under **ADDRESSES**.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

List of Subjects

Environmental protection,
Experimental use permits.

Dated: November 19, 2008.

Sheryl K. Reilly,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–28296 Filed 11–26–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[DA 08–2523]

Notice of Debarment; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the “Bureau”) debars Mr. Joseph E. Mello from the schools and libraries universal service support mechanism (or “E-Rate Program”) for a period of three years. The Bureau takes this action to protect the E-Rate Program from waste, fraud and abuse.

DATES: Debarment commences on the date Mr. Joseph E. Mello receives the debarment letter or November 28, 2008, whichever date come first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202)

418–7931 or e-mail at Rebekah.Bina@fcc.gov. If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at vickie.robinson@fcc.gov.

SUPPLEMENTARY INFORMATION: The Bureau debarred Mr. Joseph E. Mello from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 54.8 and 47 CFR 0.111. Attached is the debarment letter, DA 08–2523, which was mailed to Mr. Joseph E. Mello and released on November 18, 2008. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC’s Web site at <http://www.fcc.gov>. The text may also be purchased from the Commission’s duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail <http://www.bcpweb.com>.

Federal Communications Commission.

Trent Harkrader,

Deputy Chief, Investigations and Hearings Division, Enforcement Bureau.

The debarment letter, which attached the suspension letter, follows:

November 18, 2008.

VIA CERTIFIED MAIL—RETURN RECEIPT REQUESTED AND VIA FACSIMILE (203) 787–9031

Mr. Joseph E. Mello, c/o Michael O. Sheehan, Esq., Sheehan & Reeve, 139 Orange St., Suite 301, New Haven, CT 06510.

Re: Notice of Debarment; File No. EB–08–IH–1615

Dear Mr. Mello: Pursuant to section 54.8 of the rules of the Federal Communications Commission (the “Commission”), by this Notice of Debarment you are debarred from the schools and libraries universal service support mechanism (or “E-Rate program”) for a period of three years.¹

On September 4, 2008, the Enforcement Bureau (the “Bureau”) sent you a Notice of Suspension and Initiation of Debarment Proceedings (the “Notice of Suspension”).² That Notice of Suspension was published in

¹ See 47 CFR 0.111(a), 54.8.

² Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Joseph Mello, Notice of Suspension and Initiation of Debarment Proceedings, DA 08–2041 (Inv. & Hearings Div., Enf. Bur., rel. Sept. 4, 2008) (Attachment 1).

the **Federal Register** on September 17, 2008.³ The Notice of Suspension suspended you from the schools and libraries universal service support mechanism and described the basis for initiation of debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.⁴

Pursuant to the Commission's rules, any opposition to your suspension or its scope or to your proposed debarment or its scope had to be filed with the Commission no later than thirty (30) calendar days from the earlier date of your receipt of the Notice of Suspension or publication of the Notice of Suspension in the **Federal Register**.⁵ The Commission did not receive any such opposition.

As discussed in the Notice of Suspension, you pled guilty to mail fraud and income tax fraud, in violation of 18 U.S.C. 1341, in connection with your participation in the E-Rate program involving telecommunications upgrade projects in four Connecticut school districts.⁶ You admitted to participating in a scheme to defraud the E-Rate program whereby you agreed, in your capacity as Vice President of Operations for Innovative Network Solutions ("INS"), to accept invoices submitted by fictitious companies for work allegedly performed in the Connecticut school districts.⁷ As a result of your actions, INS made payments totaling \$608,505 on those fictitious invoices that were ultimately submitted to the Universal Service Administrative Company as legitimately reimbursable services under the E-Rate program.⁸ Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under section 54.8(c) of the Commission's rules.⁹ For the foregoing reasons, you are hereby debarred for a period of three years from the debarment date, i.e., the earlier date of your receipt of this Notice of Debarment or its publication date in the **Federal Register**.¹⁰ Debarment excludes you, for the debarment period, from activities "associated with or related to the schools and libraries support mechanism," including "the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism."¹¹

Sincerely,

Hillary S. DeNigro,
Chief, Investigations and Hearings Division,
Enforcement Bureau.

cc: Calvin B. Kurimai, Esq., Assistant United States Attorney, Department of Justice (via e-mail)

Kristy Carroll, Esq., Universal Service
Administrative Company (via e-mail)

September 4, 2008.

DA 08-2041

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED AND E-MAIL

Mr. Joseph E. Mello, c/o Michael O. Sheehan,
Esq., Sheehan & Reeve, 139 Orange St.,
Suite 301, New Haven, CT 06510.

Re: Notice of Suspension and Initiation of
Debarment Proceedings, File No. EB-08-
IH-1615

Dear Mr. Mello: The Federal Communications Commission ("FCC" or "Commission") has received notice of your conviction of mail fraud, in violation of 18 U.S.C. 1341, and subscribing a false tax return, in violation of 26 U.S.C. 7206(1), in connection with your participation in the schools and libraries universal service support mechanism ("E-Rate program").¹² Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau ("Bureau") hereby notifies you that we are commencing debarment proceedings against you.¹³

I. Notice of Suspension

The Commission has established procedures to prevent persons who have "defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism" from receiving the benefits associated with that program.¹⁴ You pled

¹² Any further reference in this letter to "your conviction" refers to your guilty plea and subsequent conviction of one count of mail fraud and one count of subscribing a false tax return. *United States v. Joseph E. Mello*, Criminal Docket No. 3:07-CR-00224 (RNC-1), Plea Agreement (D. Conn. filed and entered Oct. 9, 2007) ("Mello Plea Agreement"); *United States v. Joseph E. Mello*, 3:07-CR-00224 (RNC-1), Judgment (D.Conn. filed June 26, 2008 and entered June 30, 2008) ("Mello Judgment"). See also *United States v. Joseph E. Mello*, Criminal Docket No. 3:07-CR-00224 (RNC-1), Information (D. Conn. filed and entered Oct. 9, 2007) ("Mello Information").

¹³ 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. See *Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) ("Second Report and Order") (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Report and Order, 22 FCC Rcd 16372, 16410-12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

¹⁴ *Second Report and Order*, 18 FCC Rcd at 9225, para. 66. The Commission's debarment rules define

guilty to mail fraud and income tax fraud in connection with your participation in the E-Rate program involving telecommunications upgrade projects in four Connecticut school districts.¹⁵ While employed as Vice President of Operations for Innovative Network Solutions ("INS"), a first-tier subcontractor of Southwestern Bell Communications ("SBC") for performing E-Rate funded telecommunications upgrades, you and former SBC employees Richard E. Brown and Keith J. Madeiros participated in a scheme to defraud the E-Rate program.¹⁶ In your position at INS, you agreed to accept invoices submitted by fictitious companies created by Mr. Madeiros and Mr. Brown for work allegedly performed in the Connecticut school districts.¹⁷ INS made payments totaling \$608,505 on those fictitious invoices and then passed the costs on to SBC as legitimately reimbursable services under the E-Rate program.¹⁸

Pursuant to section 54.8(a)(4) of the Commission's rules,¹⁹ your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.²⁰ Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.²¹

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the

a "person" as "[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized." 47 CFR 54.8(a)(6).

¹⁵ See Mello Information at 2; Mello Plea Agreement at 1-2, 5; Mello Judgment at 1.

¹⁶ Mello Information at 3. The Bureau has debarred Richard E. Brown and Keith Madeiros from the E-Rate Program. See Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, to Richard E. Brown, Notice of Debarment, 22 FCC Rcd 20569 (Inv. & Hearings Div., Enf. Bur. 2007); Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, to Keith J. Madeiros, Notice of Debarment, 23 FCC Rcd 7959 (Inv. & Hearings Div., Enf. Bur. 2008).

¹⁷ Mello Information at 2-4. See also Department of Justice, Press Release (Oct. 9, 2007) (available at <http://www.usdoj.gov/usao/ct/Press2007/20071009.html>) (last accessed Feb. 5, 2008) ("DOJ October 9 Press Release").

¹⁸ Mello Information at 4.

¹⁹ 47 CFR 54.8(a)(4). See *Second Report and Order*, 18 FCC Rcd at 9225-27, paras. 67-74.

²⁰ *Second Report and Order*, 18 FCC Rcd at 9225, para. 67; 47 U.S.C. 254; 47 CFR 54.502-54.503; 47 CFR 54.521(a)(4).

²¹ *Second Report and Order*, 18 FCC Rcd at 9226, para. 69; 47 CFR 54.8(e)(1).

³ 73 FR 53868 (Sept. 17, 2008).

⁴ See Notice of Suspension, 73 FR at 53869-70.

⁵ See 47 CFR 54.8(e)(3) and (4). That date occurred no later than October 17, 2008. See *supra* note 3.

⁶ 73 FR at 53869.

⁷ *Id.*

⁸ *Id.*

⁹ 47 CFR 54.8(c).

¹⁰ See 47 CFR 54.8(g). See also Notice of Suspension, 73 FR at 53870.

¹¹ See 47 CFR 54.8(a)(1), 54.8(a)(5), 54.8(d); Notice of Suspension, 73 FR at 53869.

Federal Register, whichever comes first.²² Such requests, however, will not ordinarily be granted.²³ The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.²⁴ Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.²⁵

II. Initiation of Debarment Proceedings

Your guilty plea to criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.²⁶ Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.²⁷ Absent extraordinary circumstances, the Bureau will debar you.²⁸ Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.²⁹ If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.³⁰

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support Mechanism for three years from the date of

debarment.³¹ The Bureau may, if necessary to protect the public interest, extend the debarment period.³²

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4-C330, Washington, DC, 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4-C330, Washington, DC, 20554. You shall also transmit a copy of the response via e-mail to Rebekah.Bina@fcc.gov and to Vickie.Robinson@fcc.gov.

If you have any questions, please contact Ms. Bina via mail, by telephone at (202) 418-7931 or by e-mail at Rebekah.Bina@fcc.gov. If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418-1420 and by e-mail at Vickie.Robinson@fcc.gov.

Sincerely yours,

Hillary S. DeNigro,
Chief, Investigations and Hearings Division,
Enforcement Bureau.

cc: Calvin B. Kurimai, Esq., Assistant United States Attorney
Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)

[FR Doc. E8-28373 Filed 11-26-08; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:04 p.m. on Sunday, November 23, 2008, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to an open bank assistance transaction.

³¹ *Second Report and Order*, 18 FCC Rcd at 9225, para. 67; 47 CFR 54.8(d), 54.8(g).

³² *Id.*

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Chairman Sheila C. Bair, concurred in by Director John M. Reich (Director, Office of Thrift Supervision), Director Thomas J. Curry (Appointive), and Director John C. Dugan (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: November 24, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8-28264 Filed 11-26-08; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of the Conference Calls Held on September 29, 2008, and October 7, 2008, and its Meeting Held on October 28 and 29, 2008

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee of the conference calls held on September 29, 2008, and October 7, 2008, and its meeting held on October 28 and 29, 2008.¹

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets

¹ Copies of the Minutes of the Federal Open Market Committee conference calls held on September 29, 2008, and October 7, 2008, and its meeting held on October 28 and 29, 2008, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

²² 47 CFR 54.8(e)(4).

²³ *Id.*

²⁴ 47 CFR 54.8(e)(5).

²⁵ See *Second Report and Order*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5), 54.8(f).

²⁶ "Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism." 47 CFR 54.8(c). Such activities "include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanism." 47 CFR 54.8(a)(1).

²⁷ See *Second Report and Order*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(3).

²⁸ *Second Report and Order*, 18 FCC Rcd at 9227, para. 74.

²⁹ See *id.*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

³⁰ *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

consistent with reducing the federal funds rate at an average of around 1 percent.

By order of the Federal Open Market Committee, November 20, 2008.

Brian F. Madigan,

Secretary, Federal Open Market Committee.

[FR Doc. E8–28326 Filed 11–26–08; 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 22, 2008.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. *Independent Bancshares, Inc. Employee Stock Ownership Plan*, Red Bay, Alabama, to acquire 26.46 percent of the voting shares of Independent Bancshares, Inc., and thereby indirectly acquire voting shares of Community Spirit Bank, both of Red Bay, Alabama,

and Spirit Bancshares, Inc., and Spirit Bank, both of Belmont, Mississippi.

B. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Grant County State Bancshares, Inc. Employee Stock Ownership Plan*, Swayzee, Indiana, to increase its ownership to 41.6 percent of the voting shares of Grant County State Bancshares, Inc., and thereby indirectly increase its ownership of Grant County State Bank, both of Swayzee, Indiana.

Board of Governors of the Federal Reserve System, November 24, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–28250 Filed 11–26–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Seventh and Eighth Meetings of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Disease Prevention and Health Promotion.

ACTION: Notice of meeting.

Authority: 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Committee is governed by the provision of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The U.S. Department of Health and Human Services (HHS) announces the seventh and eighth meetings of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020 (Committee). These meetings will be open to the public. The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020 will address issues regarding the development and implementation of the nation's health promotion and disease prevention objectives for 2020 and activities to improve the health status of and reduce health risks for Americans by the year 2020. The Committee will provide to the Secretary of Health and Human Services advice and consultation for developing and implementing the next iteration of national health promotion and disease prevention goals and objectives and

provide recommendations for initiatives to occur during the initial implementation phase of the goals and objectives. HHS will use the recommendations to inform the development of the national health promotion and disease prevention objectives for 2020 and the process for implementing the objectives. The intent is to develop and launch objectives designed to improve the health status and reduce health risks for Americans by the year 2020.

DATES: The Committee will meet online on December 17, 2008 from 1 p.m. to 3 p.m. Eastern Standard Time (E.S.T.). The Committee will meet in person for two days: January 7, 2009, from 9 a.m. Eastern Standard Time (EST) to 5:30 p.m. EST, and January 8, 2009, from 9 a.m. EST until 1:30 p.m. EST.

ADDRESSES: The Committee's December 17, 2008 meeting will be held online via WebEx software. For detailed instructions about how to make sure that your windows computer and browser is set up for WebEx, please visit the "Secretary's Advisory Committee" page of the Healthy People Web site at: <http://www.healthypeople.gov/hp2020/advisory/default.asp>. The Committee's January 7 and 8, 2009 meeting will be held in-person at the U.S. Department of Health and Human Services, Hubert H. Humphrey Building, located at 200 Independence Avenue, SW., Room 800, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Emmeline Ochiai, Designated Federal Officer, Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020, U.S. Department of Health and Human Services, Office of Public Health and Science, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Room LL–100, Rockville, MD 20852, (240) 453–8259 (telephone), (240) 453–8281 (fax). Additional information is available on the Internet at <http://www.healthypeople.gov>.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: Every 10 years, through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade, along with the new knowledge of current data, trends, and innovations to develop the next iteration of national health promotion and disease prevention objectives. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Since 1979, Healthy People has set and monitored national health objectives to meet a broad range of health needs, encourage collaborations across sectors, guide

individuals toward making informed health decisions, and measure the impact of our prevention and health promotion activities. Healthy People 2020 will reflect assessments of major risks to health and wellness, changing public health priorities, and emerging issues related to our nation's health preparedness and prevention.

Public Participation at Meeting:

Members of the public are invited to listen to the online December 17, 2008 Committee meeting and the in-person January 7 and 8, 2009 Committee meeting. There will be no opportunity for oral public comments during the Committee's meeting. Written comments, however, are welcome throughout the development process of the national health promotion and disease prevention objectives for 2020. They can be submitted through the Healthy People Web site at: <http://www.healthypeople.gov/hp2020/comments/> or they can be e-mailed to HP2020@hhs.gov. Please note that the public comment Web site will be updated throughout the Healthy People development process, so people should return to the Web site frequently and provide their input.

To attend the Committee's meetings, individuals must pre-register for each meeting at the Healthy People Web site located at <http://www.healthypeople.gov>. Participation in the meetings is limited to space available. Registrations for the December 17, 2008 meeting will be accepted until maximum WebEx capacity is reached and must be completed by 9 a.m. EST on December 17, 2008. A waiting list will be maintained should registrations exceed WebEx capacity. Individuals on the waiting list will be contacted as additional space for the meeting becomes available. Registrations for the January 7 and 8, 2009 meeting must be completed by 5 p.m. EST on January 2, 2009. Space for the meeting is limited. Registrations will be accepted until maximum room capacity is reached. A waiting list will be maintained should registrations exceed room capacity. Individuals on the waiting list will be contacted as additional space for the meeting becomes available. On January 7 and 8, 2009, confirmed registrants for the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020 meeting must present valid photo identification (i.e., driver's license) and should arrive 45 minutes prior to the start of the meeting to pass through security.

Registration questions may be directed to Hilary Scherer at

HP2020@norc.org (e-mail), (301) 634-9374 (phone), or (301) 634-9301 (fax).

Dated: November 21, 2008.

Penelope Slade-Sawyer,

RADM, USPHS, Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

[FR Doc. E8-28203 Filed 11-26-08; 8:45 am]

BILLING CODE 4150-32-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 11¾% for the quarter ended September 30, 2008. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: November 17, 2008.

Molly P. Dawson,

Director, Office of Financial Policy and Reporting.

[FR Doc. E8-28012 Filed 11-26-08; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees for the Standard Oil Development Company, Linden, NJ, 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 for the Standard Oil Development Company, Linden, New Jersey, 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: Standard Oil Development Company.

Location: Linden, New Jersey.

Job Titles and/or Job Duties: All employees.

Period of Employment: August 1, 1942 through December 31, 1963.

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: November 21, 2008.

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. E8-28202 Filed 11-26-08; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-250]

Availability of an Update to the ATSDR Policy Guideline for Dioxins and Dioxin-Like Compounds in Residential Soil; Correction

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (DHHS).

ACTION: Notice Correction.

SUMMARY: Correction: This notice was published in the **Federal Register** on October 15, 2008, Volume 73, Number 200, page 61133. The original version of the ATSDR Dioxin Soil Policy that was posted on the ATSDR Web site at: <http://www.atsdr.cdc.gov/substances/dioxin/policy> prior to November 3, 2008, has been updated to include some minor edits to the policy. These updates

are now available at the ATSDR Web site for your review.

Dated: November 21, 2008.

Ken Rose,

Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E8-28261 Filed 11-26-08; 8:45 am]

BILLING CODE 4163-70-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), and pursuant to the requirements of 42 CFR 83.15(a), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Board Meeting Times and Dates

9 a.m.–5 p.m., December 16, 2008.

9 a.m.–5 p.m., December 17, 2008.

9 a.m.–12:30 p.m., December 18, 2008.

Public Comment Times and Dates

5 p.m.–6 p.m., December 16, 2008.

7 p.m.–8 p.m., December 17, 2008.

Place: Augusta Marriott Hotel and Suites, Two 10th Street, Augusta, GA 30901, Telephone (706) 724-8523, Fax (706) 823-6545.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 75 to 100 people.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program (EEOICP) Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being

performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2009.

Purpose: This Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the Advisory Board meeting includes: NIOSH Program Status Update; Special Exposure Cohort (SEC) Petitions for: Savannah River Site (Construction Workers), Linde Ceramics (residual period), Metallurgical Laboratory (University of Chicago), Mallinckrodt (1958), Blockson Chemical and Vitro Manufacturing (Canonsburg); Special Exposure Cohort (SEC) Petition Status Update(s); Department of Labor (DOL) Update; Department of Energy (DOE) Update; Science Issues Update; Work Group reports; Subcommittee on Dose Reconstruction Reviews Report; and Board Future Plans and Schedules.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted according to the policy provided below. Any written comments received will be provided to the Board at the meeting and should be submitted to the contact person below well in advance of the meeting.

Policy on Redaction of Board Meeting Transcripts (Public Comment). (1) If a person making a comment gives his or her name, no attempt will be made to redact that name. (2) NIOSH will take reasonable steps to ensure that individuals making public comment are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting

posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of each public comment period stating that transcripts will be posted and names of speakers will not be redacted; (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comment; (c) A statement such as outlined in (a) above will also appear with the agenda for a Board Meeting when it is posted on the NIOSH Web site; (d) A statement such as in (a) above will appear in the **Federal Register** Notice that announces Board and Subcommittee meetings. (3) If an individual in making a statement, reveals personal information (e.g., medical information) about themselves that information will not usually be redacted. The NIOSH Freedom of Information Act (FOIA) coordinator will, however, review such revelations in accordance with the Freedom of Information Act and the Federal Advisory Committee Act and if deemed appropriate, will redact such information. (4) All disclosures of information concerning third parties will be redacted. (5) If it comes to the attention of the Designated Federal Official (DFO) that an individual wishes to share information with the Board but objects to doing so in a public forum, the DFO will work with that individual, in accordance with the Federal Advisory Committee Act, to find a way that the Board can hear such comments.

Contact Person for More Information: Theodore Katz, M.P.A., Executive Secretary, NIOSH, CDC, 1600 Clifton Road, MS E-20, Atlanta GA 30333, Telephone (513) 533-6800, Toll Free 1 (800) CDC-INFO, E-mail ocas@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: November 21, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8-28335 Filed 11-26-08; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10156 and CMS–9042]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Revision of a currently approved collection; **Title of Information Collection:** Retiree Drug Subsidy (RDS) Applications and Instructions; **Use:** Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and implementing regulations at 42 CFR Part 423 Subpart R, Plan Sponsors (e.g., employers or unions) who offer prescription drug coverage to their qualified covered retirees are eligible to receive a 28% tax-free subsidy for allowable drug costs. Plan Sponsors must submit a complete application to CMS in order to be considered for the RDS Program. **Form Number:** CMS–10156 (OMB# 0938–0957); **Frequency:** Yearly; **Affected Public:** Business or other for-profits and not-for-profit institutions, and State, Local, or Tribal Governments; **Number of Respondents:** 4,500; **Total Annual Responses:** 4,500; **Total Annual Hours:** 288,000.

2. Type of Information Collection Request: Extension of a currently approved collection; **Title of Information Collection:** Accelerated Payments and supporting regulations 42 CFR, § 412.116(f), 412.632(e), 413.64(g),

413.350(d), and 484.245; **Use:** Section 1815(a) of the Social Security Act describes payment to providers of services. When a delay in Medicare payment by a fiscal intermediary for covered services causes financial difficulties for a provider, the provider may request an accelerated payment. An accelerated payment also may be made in highly exceptional situations where a provider has incurred a temporary delay in its bill processing beyond the provider's normal billing cycle.

Accelerated payments are limited to providers that are not receiving periodic interim payments. Form CMS–9042 is used by fiscal intermediaries to assess a provider's eligibility for accelerated payments. **Form Number:** CMS–9042 (OMB# 0938–0269); **Frequency:** Yearly; **Affected Public:** Business or other for-profits and not-for-profit institutions; **Number of Respondents:** 880; **Total Annual Responses:** 880; **Total Annual Hours:** 440.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on December 29, 2008.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: November 21, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–28371 Filed 11–26–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10170, CMS–838 and CMS–10267]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other “”forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Revision of a currently approved collection; **Title of Information Collection:** Retiree Drug Subsidy (RDS) Payment Request and Instructions; **Use:** Under section 1860D–22 of the Social Security Act, plan sponsors (e.g., employers, unions) who offer prescription drug coverage meeting specified criteria to their qualified covered retirees are eligible to receive a 28% tax-free subsidy for allowable drug costs. Plan sponsors must submit required prescription drug cost data and other information in order to receive the subsidy. **Form Number:** CMS–10170 (OMB# 0938–0977); **Frequency:** Yearly; **Affected Public:** Business or other for-profits, not-for-profit institutions, not-for-profit institutions and State, Local or Tribal Governments; **Number of Respondents:** 4,500; **Total Annual Responses:** 4,500; **Total Annual Hours:** 679,500.

2. Type of Information Collection Request: Extension of a currently approved collection; **Title of Information Collection:** Medicare Credit Balance Reporting Requirements and Supporting Regulations in 42 CFR 405.371, 405.378 and 413.20; **Use:** Section 1815(a) of the Act authorizes the

Secretary to request information from providers which is necessary to properly administer the Medicare program. Quarterly credit balance reporting is needed to monitor and control the identification and timely collection of improper payments. The information obtained from Medicare credit balance reports will be used by the contractors to identify and recover outstanding Medicare credit balances and by Federal enforcement agencies to protect Federal funds. The information will also be used to identify the causes of credit balances and to take corrective action. *Form Number:* CMS-838 (OMB# 0938-0600); *Frequency:* Yearly; *Affected Public:* Private sector—business or other for-profits; *Number of Respondents:* 52,380; *Total Annual Responses:* 209,520; *Total Annual Hours:* 628,560.

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* CROWNWeb Authentication Service (CAS) Account Form; *Form Number:* CMS-10267 (OMB#: 0938-1050); *Use:* The CROWNWeb Authentication Service (CAS) application must be completed by any person needing access to the CROWNWeb system which include includes CMS employees, ESRD Network Organization staff and dialysis facilities staff. The CROWNWeb system is the system used as the collection point of data necessary for entitlement of ESRD patients to Medicare benefits and Federal Government monitoring and assessing of quality and type of care provided to renal patients. The data collected in CAS will provide the necessary security measures for creating and maintaining active CROWNWeb user accounts and collection of audit trail information required by the CMS Information Security Officers (ISSO). *Frequency:* Reporting—one-time; *Affected Public:* Business or other for-profit, not-for-profit; *Number of Respondents:* 15,600; *Total Annual Responses:* 15,600; *Total Annual Hours:* 7,800.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must

be submitted in one of the following ways by January 27, 2009.

1. *Electronically.* You may submit your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: November 21, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8-28380 Filed 11-26-08; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS-2294-PN]

Medicare and Medicaid Programs; Application by the Joint Commission for Continued Deeming Authority for Hospices

AGENCY: Centers for Medicare & Medicaid Services, (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice with comment period acknowledges the receipt of a deeming application from the Joint Commission for continued recognition as a national accrediting organization for hospices that wish to participate in the Medicare or Medicaid programs. Section 1865(b)(3)(A) of the Act, recodified under the Medicare Improvement for Patients and Providers Act of 2008 (Pub. L. 110-275, July 15, 2008) (MIPPA) as section 1865(a)(3)(A) requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 29, 2008.

ADDRESSES: In commenting, please refer to file code CMS-2294-PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.regulation.gov>. Follow the instructions for "Comment or Submission" and enter the filecode to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2294-PN, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2294-PN, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses.

a. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or (Because access to the interior of the HHS Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:
Alexis Prete, (410) 786-0375. Patricia Chmielewski, (410) 786-6899.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a hospice provided certain requirements are met. Sections 1861(dd)(1) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as a hospice. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 418, specify the conditions that a hospice must meet in order to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for Hospice care.

Generally, in order to enter into a provider agreement with the Medicare program, a hospice must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 418 of our CMS regulations. Thereafter, the hospice is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(b)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the

requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for deeming authority under part 488, subpart A must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the reapproval of accrediting organizations are set forth at § 488.4 and 488.8(d)(3). The regulations at § 488.8(d)(3) require accrediting organizations to reapply for continued deeming authority every six years or sooner as determined by CMS.

The Joint Commission's term of approval as a recognized accreditation program for hospice's expires March 31, 2009.

II. Approval of Deeming Organizations

Section 1865(b)(2) of the Act (now section 1865(a)(2)) and our regulations at § 488.8(a) require that our findings concerning review and reapproval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's: Requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(b)(3)(A) of the Act (now 1865(a)(3)(A)) further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of the Joint Commission's request for continued deeming authority for hospices. This notice also solicits public comment on whether the Joint Commission's requirements meet or exceed the

Medicare conditions for participation for hospices.

III. Evaluation of Deeming Authority Request

The Joint Commission submitted all the necessary materials to enable us to make a determination concerning its request for reapproval as a deeming organization for hospices. This application was determined to be complete on October 24, 2008. Under section 1865(b)(2) of the Act (now 1865(a)(2)) and our regulations at § 488.8 (Federal review of accrediting organizations), our review and evaluation of the Joint Commission will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of the Joint Commission's standards for hospices as compared with CMS' hospice conditions of participation.
- The Joint Commission's survey process to determine the following:
 - The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
 - The comparability of the Joint Commission's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
 - The Joint Commission's processes and procedures for monitoring hospices found out of compliance with the Joint Commission's program requirements. These monitoring procedures are used only when the Joint Commission identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).
 - The Joint Commission's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
 - The Joint Commission's capacity to provide us with electronic data, and reports necessary for effective validation and assessment of the organization's survey process.
 - The adequacy of the Joint Commission's staff and other resources, and its financial viability.
 - The Joint Commission's capacity to adequately fund required surveys.
 - The Joint Commission's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.
 - The Joint Commission's agreement to provide us with a copy of the most current accreditation survey together

with any other information related to the survey as we may require (including corrective action plans).

IV. Response to Public Comments and Notice Upon Completion of Evaluation

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it 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. 35).

VI. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this proposed notice.

In accordance with Executive Order 13132, we have determined that this proposed notice would not have a significant effect on the rights of States, local or tribal governments.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 7, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8-28178 Filed 11-26-08; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1397-N]

Medicare Program; Rechartering of the Advisory Panel on Ambulatory Payment Classification Groups

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces the Rechartering of the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel) by the Secretary, DHHS (the Secretary) for a 2-year period with the new charter effective through November 21, 2010.

FOR FURTHER INFORMATION CONTACT:

Shirl Ackerman-Ross, Designated Federal Official (DFO), Advisory Panel on APC Groups; Center for Medicare Management, Hospital & Ambulatory Policy Group, Division of Outpatient Care; 7500 Security Boulevard, Mail Stop C4-05-17; Baltimore, MD 21244-1850. You may also contact the DFO by phone at 410-786-4474 or by e-mail at CMS_APCPanel@cms.hhs.gov.

For additional information on the APC Panel and updates to the Panel's activities, please search our Web site at: http://www.cms.hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage. You may also refer to the CMS Federal Advisory Committee Hotline at 1-877-449-5659 (toll-free) or call 410-786-9379 (local) for additional information. News media representatives should contact the CMS Press Office at 202-690-6145.

SUPPLEMENTARY INFORMATION:

I. Background

Purpose

The Secretary of the Department of Health and Human Services (DHHS) (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act (the Act), as amended by section 201(h) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Public Law [Pub. L.] 106-113), and re-designated by section 202(a)(2) of the BBRA to establish and consult with an expert, outside advisory panel on the ambulatory payment classification (APC) groups established under the Medicare hospital Outpatient Prospective Payment System (OPPS).

Authority

Section 1833(t)(9)(A) of the Act (42 U.S.C. 1395l(t)), as amended by section 201(h) of the BBRA of 1999 (Pub. L. 106-113). The Advisory Panel on APC Groups (the Panel) is governed by the provisions of Pub. L. 92-463, the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory panels.

The Panel was established by statute and has functions that are of a continuing nature. Therefore, its duration is not governed by section 14(a) of FACA, but rather it is otherwise provided by law. The Panel is rechartered in accordance with section 14(b)(2) of FACA.

Function

The Panel shall advise the Secretary and the Administrator, Centers for Medicare & Medicaid Services (CMS), about the clinical integrity of the APC groups and their associated weights, which are major elements of the Medicare hospital OPPS. The Panel is technical in nature, and it shall deal with the following issues:

- Addressing whether procedures within an APC group are similar both clinically and in terms of resource use.
- Evaluating APC group weights.
- Reviewing the packaging of OPPS services and costs, including the methodology and the impact on APC groups and payment.
- Removing procedures from the inpatient list for payment under the OPPS.
- Using single and multiple procedure claims data for determination of APC group payments.
- Addressing other technical issues concerning APC group structure.

The subject matter before the Panel shall be limited to these and related topics. Unrelated topics are not subjects for discussion. Unrelated topics include, but are not limited to, the conversion factor, charge compression, pass-through payments for medical devices and drugs, correct code usage, and wage adjustments.

The Panel may use data collected or developed by entities and organizations other than the DHHS and CMS in conducting its review. The Secretary and the Administrator shall be advised of all matters pertaining to the Panel (i.e., membership, recommendations, subcommittees, meetings, etc.).

Structure

The Panel must be fairly balanced in its membership in terms of the points of

view represented and the functions to be performed. The Panel shall consist of up to 15 members who are representatives of providers.

Each Panel member must be employed full-time by a hospital, hospital system, or other Medicare provider subject to payment under the OPFS. The Secretary or Administrator selects the Panel membership based upon either self-nominations or nominations submitted by Medicare providers and other interested organizations.

All members must have technical expertise to enable them to participate fully in the Panel's work. Such expertise encompasses hospital payment systems; hospital medical care delivery systems; provider billing systems; APC groups; Current Procedural Terminology codes; and alpha-numeric Health Care Common Procedure Coding System codes; and the use of, and payment for, drugs, medical devices, and other services in the outpatient setting, as well as other forms of relevant expertise.

All members shall have a minimum of 5 years experience in their area(s) of expertise, but it is not necessary that any member be an expert in all of the areas listed above. For purposes of this Panel, consultants or independent contractors are not considered to be representatives of providers. Panel members may serve for up to 4-year terms. A member may serve after the expiration of his/her term until a successor has been sworn in. All terms are contingent upon the renewal of the Panel by appropriate action prior to its termination.

A Federal official shall serve as the Chair and shall facilitate the Panel meetings. The Secretary or designee shall select a Chair for the Panel. The Chair's term shall usually be for a period of 4 years, but it may be extended at the discretion of the Administrator or his/her duly appointed designee.

In order to conduct the business of the Panel, a quorum is required. A quorum exists when a majority of currently appointed members is present at full Panel or subcommittee meetings or is participating in conference calls.

As necessary, standing and ad hoc subcommittees, composed of members from the parent Panel, may be established to perform functions within the Panel's jurisdiction with the approval of the Secretary or his/her designee.

The FACA provides that each agency sponsoring a Federal advisory committee must appoint a Department Committee Management Officer (DCMO). The FACA also provides that

a Designated Federal Official (DFO) be appointed to the Panel. The DFO maintains required records on costs and membership; ensures efficient operations; maintains records for availability to the public; provides copies of all reports to the DCMO who shall, in turn, forward them to the Library of Congress; notifies the DCMO when standing subcommittees are established, including the subcommittee's name, membership, function, and estimated frequency of meetings; and provides management support services for the Panel and its standing and ad hoc subcommittees.

Meetings

Meetings shall be held up to three times a year at the call of the DFO. The agenda, which sets the boundaries for discussion, is developed by CMS and approved by the DFO. The agenda, which sets the boundaries for discussion, is developed by CMS and approved by the DFO. Meetings shall be open to the public, except as determined otherwise by the Secretary or other official to whom the authority has been delegated in accordance with the Government in the Sunshine Act (5 U.S.C. 552b(c)). Adequate advance notice of all meetings shall be published in the **Federal Register**, as required by applicable laws and Departmental regulations, stating reasonably accessible and convenient locations and times.

Compensation

All members shall serve on a voluntary basis, without compensation, pursuant to advance written agreement. Members of the Panel shall be entitled to receive reimbursement for travel expenses and per diem in lieu of subsistence, in accordance with Standard Government Travel Regulations.

Annual Cost Estimate

Estimated FY 2009 annual cost for operating the Panel, including travel expenses for members but excluding staff support, is \$69,110. The estimated annual person-years of staff support required for the APC Panel is 1.0 FTE at an estimated annual cost of \$94,025.

Reports

In the event that a portion of a meeting is closed to the public, as determined by the Secretary, in accordance with the Government in the Sunshine Act (5 U.S.C. 552b(c)) and FACA, a report shall be prepared that shall contain, at a minimum, the following: a list of members and their business addresses, the Panel's or

subcommittee's function, dates and places of meeting(s), and a summary of the Panel's/subcommittee's activities and recommendations made during that meeting. Reports shall also be prepared after all open-to-the-public Panel meetings and any subcommittee meetings and submitted to the DCMO.

Termination Date

Unless renewed by appropriate action prior to its expiration, the APC Panel shall terminate on November 21, 2010.

II. Provisions of This Notice

This notice announces that the Secretary signed the APC Panel charter renewal on October 30, 2008.

III. Copies of the Charter

You may obtain a copy of the APC Panel's charter by submitting a request to the DFO at the street or e-mail addresses listed above or by calling her at 410-786-4474.

IV. Collection of Information

This document does not impose information collection and recordkeeping requirements. Consequently, it 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. 35).

Authority: Section 1833(t)(9)(A) of the Act (42 U.S.C. 1395l(t)(9)(A)). The Advisory Panel on APC Groups (the Panel) is governed by the provisions of Pub. L. 92-463, the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory panels.

Dated: November 13, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8-28179 Filed 11-26-08; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1537-N]

Medicare Program; Town Hall Meeting on the Fiscal Year 2010 Applications for New Medical Services and Technologies Add-on Payments Under the Hospital Inpatient Prospective Payment Systems, February 17, 2009

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a Town Hall meeting in accordance with section 1886(d)(5)(K)(viii) of the Social Security Act (the Act) to discuss fiscal year (FY) 2010 applications for add-on payments for new medical services and technologies under the hospital inpatient prospective payment systems. Interested parties are invited to this meeting to present their comments, recommendations, and data regarding whether the FY 2010 new medical services and technologies applications meet the substantial clinical improvement criterion.

DATES: *Meeting Date:* The Town Hall meeting will be held on Tuesday, February 17, 2009 at 1:30 p.m., e.s.t. and check-in will begin at 1 p.m. e.s.t.

Deadline for Registration of Presenters of the Town Hall Meeting: All presenters for the Town Hall meeting, whether attending in person or by phone, must register and submit their agenda item(s) by February 3, 2009.

Deadline for Submission of Comments on the Town Hall Meeting: Written comments for discussion at the Town Hall meeting must be received by February 3, 2009. All other written comments on whether the service or technology represents a substantial clinical improvement must be received by March 9, 2009 for consideration before publication of the FY 2010 inpatient prospective payment systems proposed rule.

Deadline for Registration of All Other Participants and Submitting Requests for Special Accommodations: All other participants must register by February 10, 2009. Requests for special accommodations must be received no later than 5 p.m., e.s.t. on February 10, 2009.

ADDRESSES: *Meeting Location:* The Town Hall meeting will be held in the main Auditorium in the central building of the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Registration and Special Accommodations: Individuals wishing to participate in the meeting must register by following the on-line registration instructions located in section III. of this notice or by contacting staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individuals who need special accommodations should contact staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Registration information and special accommodation requests may also be mailed to the address listed for submission of agenda item(s) or written

comments in the **ADDRESSES** section of this notice.

Submission of Agenda Item(s) or Written Comments: Each presenter must submit an agenda item(s) regarding whether a FY 2010 application meets the substantial clinical improvement criterion. Agenda items or written comments, questions, or other statements must not exceed three single-spaced typed pages and must be sent via e-mail to newtech@cms.hhs.gov or sent via regular mail to the following address: Division of Acute Care, New Technology Team, Mailstop C4–07–08, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Attention: Tiffany Swygert or Michael Treitel.

FOR FURTHER INFORMATION CONTACT: Tiffany Swygert, (410) 786–4642, tiffany.swygert@cms.hhs.gov, Michael Treitel, (410) 786–4552, michael.treitel@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1886(d)(5)(K) and (L) of the Social Security Act (the Act) requires the Secretary to establish a process of identifying and ensuring adequate payments to acute inpatient hospitals for new medical services and technologies under Medicare. Effective for discharges beginning on or after October 1, 2001, section 1886(d)(5)(K)(i) of the Act requires the Secretary to establish (after notice and opportunity for public comment) a mechanism to recognize the costs of new services and technologies under the inpatient hospital prospective payment systems (IPPS). In addition, section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered “new” if it meets criteria established by the Secretary (after notice and opportunity for public comment). (See the FY 2002 proposed rule (66 FR 22693, May 4, 2001) and the final rule (66 FR 46912, September 7, 2001) for a more detailed discussion.)

In the September 7, 2001 final rule (66 FR 46914), we noted that we evaluate a request for special payment for a new medical service or technology against the following criteria in order to determine if the new technology meets the substantial clinical improvement requirement:

- The device offers a treatment option for a patient population unresponsive to, or ineligible for, currently available treatments.
- The device offers the ability to diagnose a medical condition in a patient population where that medical

condition is currently undetectable or offers the ability to diagnose a medical condition earlier in a patient population than allowed by currently available methods. There must also be evidence that use of the device to make a diagnosis affects the management of the patient.

- Use of the device significantly improves clinical outcomes for a patient population as compared to currently available treatments. Some examples of outcomes that are frequently evaluated in studies of medical devices are the following:

- ++ Reduced mortality rate with use of the device.
- ++ Reduced rate of device-related complications.
- ++ Decreased rate of subsequent diagnostic or therapeutic interventions (for example, due to reduced rate of recurrence of the disease process).
- ++ Decreased number of future hospitalizations or physician visits.
- ++ More rapid beneficial resolution of the disease process treatment because of the use of the device.
- ++ Decreased pain, bleeding, or other quantifiable symptoms.
- ++ Reduced recovery time.

In addition, we indicated that the requester is required to submit evidence that the technology meets one or more of these criteria.

Section 503 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1886(d)(5)(K)(viii) of the Act to revise the process for evaluating new medical services and technology applications by requiring the Secretary to do the following:

- Provide for public input regarding whether a new service or technology represents an advance in medical technology that substantially improves the diagnosis or treatment of Medicare beneficiaries before publication of a proposed rule.
- Make public and periodically update a list of all the services and technologies for which an application is pending.
- Accept comments, recommendations, and data from the public regarding whether the service or technology represents a substantial improvement.
- Provide for a meeting at which organizations representing hospitals, physicians, manufacturers and any other interested party may present comments, recommendations, and data to the clinical staff of CMS whether the service or technology represents a substantial improvement before publication of a proposed rule.

The opinions and alternatives provided during this meeting will assist us as we evaluate the new medical services and technology applications for FY 2010. In addition, they will help us to evaluate our policy on the IPPS new technology add-on payment process before the publication of the FY 2010 IPPS proposed rule.

II. Meeting Format

As noted in section I. of this notice, we are required to provide for a meeting at which organizations representing hospitals, physicians, manufacturers and any other interested party may present comments, recommendations, and data to the clinical staff of CMS concerning whether the service or technology represents a substantial improvement. This meeting will allow for a discussion of the substantial clinical improvement criteria on each of the FY 2010 new medical services and technology add-on payment applications. Information regarding the applications can be found on our Web site at http://www.cms.hhs.gov/AcuteInpatientPPS/08_newtech.asp#TopOfPage.

The majority of the meeting will be reserved for presentations of comments, recommendations, and data from registered presenters. The time for each presenter's comments will be approximately 10 to 15 minutes and will be based on the number of registered presenters. Presenters will be scheduled to speak in the order in which they register and grouped by new technology applicant. Therefore, individuals who would like to present must register and submit their agenda item(s) to the address specified in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice. Comments from participants will be heard after scheduled statements if time permits. Once the agenda is completed, it will be posted on the CMS IPPS Web site at http://www.cms.hhs.gov/AcuteInpatientPPS/08_newtech.asp#TopOfPage.

For presenters or participants unable to come to CMS for the meeting, an open toll-free phone line, (800) 619-2459, is available. Persons who call in will be asked for the conference code by the conference operator. The conference code is "New Tech."

In addition, written comments will be accepted and presented at the meeting if they are received at the address specified in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice. Written comments may also be submitted after the meeting for CMS consideration. If the comments are to be considered

before the publication of the proposed rule, the comments must be received at the address specified in the **ADDRESSES** section of this notice by the date specified in the **DATES** section of this notice.

III. Registration Instructions

The Division of Acute Care in CMS is coordinating the meeting registration for the Town Hall meeting. While there is no registration fee, individuals must register to attend the Town Hall meeting.

Registration may be completed on-line at the following Web address: http://www.cms.hhs.gov/AcuteInpatientPPS/08_newtech.asp#TopOfPage. Select the link at the bottom of the page "New Technology Town Hall Meeting" to complete the on-line registration. After completing the registration, on-line registrants should print the confirmation page and bring it with them to the meeting.

If you are unable to register on-line, you may register by sending an e-mail to the contacts listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Please include your name, address, telephone number, e-mail address and fax number. If seating capacity has been reached, you will be notified that the meeting has reached capacity.

IV. Security, Building, and Parking Guidelines

Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must register by close of business by the date listed in the **DATES** section of this notice. Please allow sufficient time to go through the security checkpoints. It is suggested that you arrive at 7500 Security Boulevard no later than 1 p.m., e.s.t. so that you will be able to arrive promptly at the meeting by 1:30 p.m., e.s.t.

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Passing through a metal detector and inspection of items brought into the building. We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to

inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building. Seating capacity is limited to the first 250 registrants.

Authority: Section 503 of Public Law 108-173.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 13, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare and Medicaid Services.

[FR Doc. E8-28180 Filed 11-26-08; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-7012-N]

Medicare Program; Announcement of Meeting of the Advisory Panel on Medicare Education, January 13, 2009

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces a meeting of Advisory Panel on Medicare Education (the Panel). The Panel advises and makes recommendations to the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

DATES: *Meeting Date:* January 13, 2009 from 8:30 a.m. to 3 p.m., e.s.t.

Deadline for Meeting Registration, Presentations and Comments: January 5, 2009, 12 noon, e.s.t.

Deadline for Requesting Special Accommodations: January 5, 2009, 12 noon, e.s.t.

ADDRESSES: Meeting Location:

Washington Marriott at Metro Center, 775 12th Street, NW., Washington, DC 20005.

Meeting Registration, Presentations, and Written Comments: Lynne Johnson, Designated Federal Official, Division of Forum and Conference Development, Office of External Affairs, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1-05-06, Baltimore, MD 21244-1850 or contact Ms. Johnson via e-mail at Lynne.Johnson@cms.hhs.gov.

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting Lynne Johnson at the address listed in the **ADDRESSES** section of this notice or by telephone at (410) 786-0090, by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT:

Lynne Johnson, (410) 786-0090. Please refer to the CMS Advisory Committees' Information Line (1-877-449-5659 toll free)/(410-786-9379 local) or the Internet (http://www.cms.hhs.gov/FACA/04_APME.asp) for additional information and updates on committee activities. Press inquiries are handled through the CMS Press Office at (202) 690-6145.

SUPPLEMENTARY INFORMATION: Section 9(a)(2) of the Federal Advisory Committee Act authorizes the Secretary of Health and Human Services (the Secretary) to establish an advisory panel if the Secretary determines that the panel is "in the public interest in connection with the performance of duties imposed * * * by law." Such duties are imposed by section 1804 of the Social Security Act (the Act), requiring the Secretary to provide informational materials to Medicare beneficiaries about the Medicare program, and section 1851(d) of the Act, requiring the Secretary to provide for "activities * * * to broadly disseminate information to [M]edicare beneficiaries * * * on the coverage options provided under [Medicare Advantage] in order to promote an active, informed selection among such options."

The Panel is also authorized by section 1114(f) of the Act (42 U.S.C. 1311(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a). The Secretary signed the charter establishing this Panel on January 21, 1999 and approved the renewal of the charter on November 14, 2006. The establishment of the charter and the renewal of the

charter were announced in the February 17, 1999 **Federal Register** (64 FR 7899), and the March 23, 2007 **Federal Register** (72 FR 13796), respectively. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. The Secretary delegates authority to the Administrator.

The goals of the Panel are as follows:

- To provide recommendations on the development and implementation of a national Medicare education program that describes the options for selecting a health plan and prescription drug plan under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- To provide recommendations on how to expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are:

Gwendolyn T. Bronson, SHINE/SHIP Counselor, Massachusetts SHINE Program; Dr. Yanira Cruz, President and Chief Executive Officer, National Hispanic Council on Aging; Stephen L. Fera, Vice President, Social Mission Programs, Independence Blue Cross; Clayton Fong, President and Chief Executive Officer, National Asian Pacific Center on Aging; Nan Kirsten-Fort, Executive Vice President, Consumer Services, WebMD; Dr. Jessie C. Gruman, President and Chief Executive Officer, Center for the Advancement of Health; Kathy Hughes, Vice Chairwoman, Oneida Nation; Gail Hunt, President and Chief Executive Officer, National Alliance for Caregiving; Dr. Frank B. McArdle, Manager, Hewitt Research Office, Hewitt Associates; Sandy Markwood, Chief Executive Officer, National Area Agencies on Aging; Molly Mettler, Senior Vice President, Healthwise; Robert L. Mollica, Senior Program Director, National Academy for State Health Policy; Julie Bodon Schmidt, Associate Vice President, Training and Technical Assistance Department, National Association of Community Health Centers; Rebecca Snead, Executive Vice President and Chief

Executive Officer, National Alliance of State Pharmacy Associations.

The agenda for the January 13, 2009 meeting will include the following:

- Recap of the previous (October 22, 2008) meeting.
- Medicare Outreach and Education Strategies.
- Public Comment.
- Listening Session with CMS Leadership.
- Next Steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to Lynne Johnson at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Johnson at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Individuals requiring sign language interpretation or other special accommodations should contact Ms. Johnson at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92-463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102-3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 20, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8-28368 Filed 11-26-08; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-N-0578]

Pediatric Ethics Subcommittee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Pediatric Ethics Subcommittee of the Pediatric Advisory Committee. This meeting was

announced in the **Federal Register** of November 14, 2008 (73 FR 67525). The amendment is being made to reflect a change in the *Procedure* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT:

Carlos Peña, Office of Science and Health Coordination, Office of the Commissioner (HF-33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-3340, e-mail: carlos.peña@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 14, 2008, FDA announced that a meeting of the Pediatric Ethics Subcommittee of the Pediatric Advisory Committee would be held on December 9, 2008. On page 67525, in the third column, the third sentence of the *Procedure* portion of the document is changed to read as follows:

Oral presentations from the public will be scheduled between approximately 11 a.m. to 12 noon on December 9, 2008.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: November 21, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8-28382 Filed 11-26-08; 8:45 am]

BILLING CODE 4160-01-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 for the United Nuclear Corp., Hematite, MO, 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 for the United Nuclear Corp., Hematite, Missouri, 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: United Nuclear Corp.

Location: Hematite, Missouri.

Job Titles and/or Job Duties: All site employees.

Period of Employment: January 1, 1958 through December 31, 1969, and from January 1, 1970 through July 31, 2006 (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: November 21, 2008.

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. E8-28201 Filed 11-26-08; 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 & 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; Rehabilitation Research Training.

Date: December 8, 2008.

Time: 2 p.m. to 4 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: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435-6889, bhatnagg@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: November 20, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-28205 Filed 11-26-08; 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 & 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; Conduct Disorder in Girls.

Date: December 9, 2008.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100

Building, Room 5b01, Bethesda, MD 20892, (301) 435-6911, hopmannm@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: November 20, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-28206 Filed 11-26-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, February 11, 2009, 8 a.m. to February 13, 2009, 5 p.m., Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852 which was published in the **Federal Register** on October 15, 2008, 73 FR 61143.

This notice is amended to change the date & time from February 11, 2009, 8 a.m. to February 13, 2009, 5 p.m. to February 11, 7 a.m. to February 12, 2009, 5 p.m. The meeting is closed to the public.

Dated: November 20, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-28208 Filed 11-26-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2); notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, P01 Mullins, Immunological and Virological Events in Early HIV.

Date: December 17, 2008.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Olivia Preble Bartlett, PhD., Chief, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 8th Floor, Room 8121, 6116 Executive Boulevard, Rockville, MD 20892-7405, 301/594-2501, op2t@nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cellular & Tissue Biology P01.

Date: February 5-6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, Rockville, MD 20852.

Contact Person: Shakeel Ahmad, PhD., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8139, Bethesda, MD 20892-8328, (301) 594-0114, ahmads@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, Molecular Oncology P01.

Date: February 5-6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Michael B. Small, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8127, Bethesda, MD 20892-8328, 301-402-0996, smallm@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel SPORE in Leukemia, Lymphoma, Sarcoma, HN, GI, and Lung Cancers.

Date: February 11-12, 2009.

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: Shamala K. Srinivas, PhD., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8123, Bethesda, MD 20892, 301-594-1224, ss537t@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 20, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-28209 Filed 11-26-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NIH Support for Conference and Scientific Meetings.

Date: December 9, 2008.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David A. Wilson, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7204, Bethesda, MD 20892-7924, 301-435-0299, wilsonda2@nhlbi.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Research Demonstration and Dissemination Projects.

Date: December 11, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Holly K. Krull, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892-7924, 301-435-0280, krullh@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 20, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-28210 Filed 11-26-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review R13.

Date: December 5, 2008.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH 6701 Democracy Blvd, Room 672, MSC 4878, Bethesda, MD 20892-4878, 301-594-4809, mary_kelly@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. 93.121, Oral Diseases and

Disorders Research, National Institutes of Health, HHS)

Dated: November 20, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-28207 Filed 11-26-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2008-1059]

Random Drug Testing Rate for Covered Crewmembers

AGENCY: Coast Guard, DHS.

ACTION: Notice of minimum random drug testing rate.

SUMMARY: The Coast Guard has set the calendar year 2009 minimum random drug testing rate at 50 percent of covered crewmembers.

DATES: The minimum random drug testing rate is effective January 1, 2009, through December 31, 2009. Marine employers must submit their 2008 Management Information System (MIS) reports no later than March 15, 2009.

ADDRESSES: Annual MIS reports may be submitted to Commandant (CG-545), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 2404, Washington, DC 20593-0001 or by electronic submission to the following Internet address: <http://homeport.uscg.mil/Drugtestreports>.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Robert C. Schoening, Drug and Alcohol Program Manager, Office of Investigations and Casualty Analysis (CG-545), U.S. Coast Guard Headquarters, telephone 202-372-1033. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION: Under 46 CFR 16.230, the Coast Guard requires marine employers to establish random drug testing programs for covered crewmembers on inspected and uninspected vessels.

Every marine employer is required by 46 CFR 16.500 to collect and maintain a record of drug testing program data for each calendar year, and submit this data by 15 March of the following year to the Coast Guard in an annual MIS report. Marine employers may either submit their own MIS reports or have a consortium or other employer

representative submit the data in a consolidated MIS report.

The purpose of setting a minimum random drug testing rate is to assist the Coast Guard in analyzing its current approach for deterring and detecting illegal drug abuse in the maritime industry. The testing rate for calendar year 2009 is 50 percent.

The Coast Guard may lower this rate if, for two consecutive years, the drug test positive rate is less than 1.0 percent, in accordance with 46 CFR 16.230(f)(2).

Since 2007 MIS data indicates that the positive rate is greater than one percent industry-wide (1.33 percent), the Coast Guard announces that the minimum random drug testing rate will continue at 50 percent of covered employees for the period of January 1, 2009, through December 31, 2009, in accordance with 46 CFR 16.230(e).

Each year, the Coast Guard will publish a notice reporting the results of random drug testing for the previous calendar year's MIS data and the minimum annual percentage rate for random drug testing for the next calendar year.

Dated: November 14, 2008.

Francis J. Sturm,

Captain, U.S. Coast Guard, Deputy Director of Prevention Policy.

[FR Doc. E8-28133 Filed 11-26-08; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; Revision of a currently approved collection, OMB Number 1660-0068, FEMA Form, 516-1.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the collection of information regarding the existence of smoke detectors and sprinkler systems within hotels and motels.

SUPPLEMENTARY INFORMATION: The information within Public Law 101–391 requires FEMA to establish and maintain a national master list of fire safety in hotels, motels and other places of public accommodation (property). The purpose of this public law is to assure the traveling public of fire safe accommodations and resulted from a number of high-loss fires that occurred in the past.

Collection of Information

Title: Federal Hotel and Motel Fire Safety Declaration Form.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0068.

Form Numbers: FEMA Form 516–1.

Abstract: FEMA will be collecting information from hotels and motels regarding the existence of smoke detectors and sprinkler systems in their buildings. FEMA is required to maintain a list of establishments that provide

transient lodging with certification in place that they meet the requirements of the Hotel and Motel Fire Safety Act of 1990. This information is used to provide interested parties with a list of compliant hotels and motels, and it certifies that the business can be utilized by Federal Government employees for work-related lodging.

Affected Public: Business or other For-Profit, State, local or Tribal Government.

Estimated Total Annual Burden Hours: 718 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Business or other For-Profit. State, local or Tribal Government.	Federal Hotel and Motel Fire Safety Declaration Form/FEMA Form 516–1.	2,000	1	15 Minutes (.25 Hour).	500	\$23.47	\$11,735.00
	Review of FEMA Form 516–1	20	33	20 Minutes (.33 Hour).	218	26.84	5,851.12
Total .....	.....	2,020	.....	35 Minutes (.58 Hour).	718	.....	17,586.12

Estimated Cost: The estimated annualized cost to respondents based on wage rate categories is \$17,586.12. The estimated annual cost to the Federal Government is \$57,000.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments must be submitted on or before January 27, 2009.

ADDRESSES: Interested persons should submit written comments to Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301.

FOR FURTHER INFORMATION CONTACT: Contact Tim Ganley, USFA Fire Program Specialist, United States Fire Administration, FEMA, (301) 447–1358 for additional information. You may contact the Records Management

Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: FEMA-Information-Collections@dhs.gov.

Alisa Turner,

Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–28338 Filed 11–26–08; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; Revision of a currently approved collection, OMB Number: 1600–0034, FEMA Form 95–41.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this

notice seeks comments concerning the Emergency Management Institute Residential Course Evaluation Form, which is used to evaluate the quality of course deliveries, facilities, and instructors at the Emergency Management Institute (EMI).

SUPPLEMENTARY INFORMATION: The EMI develops courses and administers resident and nonresident training programs in areas such as natural hazards, technical hazards, instructional methodology, professional development, leadership, exercise design and evaluation, information technology, public information, integrated emergency management, and train-the-trainer. In order to meet current information needs of EMI staff and management, EMI uses course evaluation forms to identify problems with course materials, delivery, facilities, and instructors. The course evaluations will enable them to recommend changes in course materials, student selection criteria, training experience and classroom environment. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, Section 611, 42 U.S.C. 5196) as amended, authorizes training programs for emergency preparedness for State, local and tribal government personnel.

Collection of Information

Title: Emergency Management Institute Residential Course Evaluation Form.

Type of Information Collection:
Revision of a currently approved collection.

OMB Number: 1660-0034.

Form Numbers: FEMA Form 95-41, Emergency Management Institute Residential Course Evaluation Form.

Abstract: Students attending the Emergency Management Institute

resident program courses at the Federal Emergency Management Agency's National Emergency Training Center will be asked to complete a course evaluation form upon completion of each course they attend. The information will be used by EMI staff and management to identify problems

with course materials, and will evaluate the quality of the course delivery, facilities, and instructors.

Affected Public: State, Local, or Tribal Government, Individuals or households.

Estimated Total Annual Burden Hours: 11,817 burden hours.

Annual Hour Burden

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, Local or Tribal Government. Individuals in Households.	FEMA Form 95-41	10,778	1	10 minutes (.167 hours).	1,800	\$23.99	\$43,182.00
	FEMA Form 95-41	100	1	10 minutes (.167 hours).	17	19.56	332.52
Total .....	.....	11,778	.....	.....	1,817 hours	.....	43,514.52

Estimated Cost: The estimated total annual respondent cost based on wage rate categories is \$43,514.52. The estimated annual cost to the Federal Government is \$1,202,663.52.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments must be submitted on or before January 27, 2009.

ADDRESSES: Interested persons should submit written comments to Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Jacqueline Martin, Training Support Specialist at Emergency Management Institute, (301) 447-1216 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646-3347 or e-mail

address: FEMA-Information-Collections@dhs.gov.

Alisa Turner,
Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8-28339 Filed 11-26-08; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1808-DR]

Kansas; 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 Kansas (FEMA-1808-DR), dated October 31, 2008, and related determinations.

DATES: *Effective Date:* November 18, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas A. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Michael L. Karl as Federal Coordinating Officer for this disaster.

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. E8-28295 Filed 11-26-08; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1809-DR]

Missouri; 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 Missouri (FEMA-1809-DR),

dated November 13, 2008, and related determinations.

DATES: *Effective Date:* November 18, 2008.

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas A. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Michael L. Karl as Federal Coordinating Officer for this disaster.

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. E8-28324 Filed 11-26-08; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA-2005-20118]

Extension of Agency Information Collection Activity Under OMB Review: Maryland-Three Airports: Enhanced Security Procedures at Certain Airports in the Washington, DC, Area

AGENCY: Transportation Security Administration, DHS.

ACTION: 30 day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), OMB control number 1652-0029,

abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on September 2, 2008, 73 FR 51313. This collection requires individuals to successfully complete a security threat assessment in order to operate an aircraft to or from one of the three Maryland airports that are located within the Washington, DC, Metropolitan Area Flight Restricted Zone (Maryland-Three airports), or to serve as an airport security coordinator at one of these three airports.

DATES: Send your comments by December 29, 2008. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, Office of Information Technology, TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220; telephone (571) 227-3651; facsimile (703) 313-4427.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (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 unless it displays a valid OMB control number. The ICR documentation is available at <http://www.reginfo.gov>. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

- (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Maryland-Three Airports: Enhanced Security Procedures at Certain Airports in the Washington, DC, Area.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652-0029.

Forms(s): Personal Identification Number Issuance Form.

Affected Public: Maryland-Three airports and individuals who seek to operate an aircraft to or from one of the three Maryland airports, or to serve as an airport security coordinator at one of these three airports.

Abstract: Part 1562 of title 49, Code of Federal Regulations, requires the establishment of security measures that permit normal flight operations to resume at the Maryland-Three airports (College Park, Potomac Field, and Hyde Field). To that end, TSA requires applicants seeking to fly to or from one of the Maryland-Three airports, or to serve as security coordinators in one of these airports, to submit personal information and fingerprints. TSA will use the applicant's information and fingerprints to conduct a security threat assessment. An applicant will not receive TSA's approval to fly to or from one of the Maryland-Three airports, or to serve as a security coordinator in one of these airports, if TSA determines or suspects the individual of being a threat to national or transportation security.

Number of Respondents: 400.

Estimated Annual Burden Hours: 1,165.7. Although TSA reported in its September 2, 2008, notice that the total annual hour burden was approximately 8,299 hours, after further consideration, TSA has revised its hour burden estimate in this notice.

Issued in Arlington, Virginia, on November 24, 2008.

Kurt Guyer,

Program Manager, Business Improvements and Communications, Office of Information Technology.

[FR Doc. E8-28394 Filed 11-26-08; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY**U.S. Customs and Border Protection****Agency Information Collection Activities; Application for Withdrawal of Bonded Stores for Fishing Vessels and Certification of Use**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0092

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Withdrawal of Bonded Stores For Fishing Vessels and Certification of Use. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before January 27, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certification of Use.

OMB Number: 1651-0092.

Form Number: CBP Form 5125.

Abstract: The CBP Form 5125 is used for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels. The form also certifies the use: total consumption or partial consumption with secure storage for use on the next voyage.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 42.

Dated: November 19, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8-28255 Filed 11-26-08; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY**U.S. Customs and Border Protection****Agency Information Collection Activities; Andean Trade Preferences**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0091.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Andean Trade Preferences. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before January 27, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Andean Trade Preferences.

OMB Number: 1651-0091.

Form Number: None.

Abstract: The information is to be used by CBP officers to document preferential tariff treatment under the provisions of the Andean Trade Preferences Act 19 U.S.C. 3201 through 3206.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 48,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 7,968.

Dated: November 19, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8-28258 Filed 11-26-08; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY**U.S. Customs and Border Protection****Agency Information Collection Activities; JADE Act**

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing information collection: 1651-0133.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the JADE Act. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before January 27, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a

matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: JADE Act.

OMB Number: 1651-0133.

Form Numbers: None.

Abstract: The JADE Act amends previous Burmese sanctions by providing for import restrictions on certain categories of goods. In order to enforce these sanctions, CBP will require a certification from the exporter as part of the entry package certifying that the goods were not mined in, or extracted from Burma. This certification is provided for by the Act.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension without change.

Affected Public: Businesses.

Estimated Number of Respondents: 22,197.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 74,005.

Dated: November 19, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8-28259 Filed 11-26-08; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY**U.S. Customs and Border Protection****Agency Information Collection Activities; Declaration of a Person Abroad Who Receives and Is Returning Merchandise to the United States**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0094.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of a Person Abroad Who Receives and Is Returning Merchandise to the U.S. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before January 27, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Declaration of a Person Abroad Who Receives and Is Returning Merchandise to the U.S.

OMB Number: 1651-0094.

Form Number: None.

Abstract: This declaration is used under conditions where articles are imported, and then exported and reimported free of duty. The declaration is to insure CBP control over duty-free merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 1500.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 250.

Dated: November 19, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8-28257 Filed 11-26-08; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5191-N-44]

Notice of Proposed Information Collection: Comment Request; Housing Finance Agency Risk-Sharing Program**AGENCY:** Office of the Assistant Secretary for Housing, HUD.**ACTION:** Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 27, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail Lillian_L_Deitzer@HUD.gov or telephone (202) 402-8048.

FOR FURTHER INFORMATION CONTACT: Joyce Allen, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of

information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Housing Finance Agency Risk-Sharing Program.

OMB Control Number, if applicable: 2502-0500.

Description of the need for the information and proposed use: Section 542 of the Housing and Community Development Act of 1992 directs the Secretary to implement risk sharing with State and local housing finance agencies (HFAs). Under this program, HUD provides full mortgage insurance on multifamily housing projects whose loans are underwritten, processed, and serviced by HFAs. The HFAs will reimburse HUD a certain percentage of any loss under an insured loan depending upon the level of risk the HFA contracts to assume.

The Department requires information collection of loan origination, loan closing, loan management, and servicing in accordance with 25 CFR part 266 and HUD Handbook 4590.01. This information must be available to the Department to assess participating HFAs compliance with program regulations and guidelines.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 915, the frequency of responses is annually, semi-annually, and on occasion, for a total of 14,808 total annual responses. The estimated time to prepare the information collection varies from 30 minutes to 35 hours, for a total annual burden hour of 28,919.

Status of the proposed information collection: This is a reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 21, 2008.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E8-28377 Filed 11-26-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5186-N-48]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B-17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force*: Mr. Robert Moore, Director, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226; (210) 925-3047; *Army*: Ms. Veronica Rines, Headquarters, Office of the Assistant

Chief of Staff for Installation Management, Attn: DAIM-ZS, 2511 Jefferson Davis Hwy., Arlington, VA 22202; (703) 601-2545; *COE*: Mr. Walter Hylton, Army Corps of Engineers, Office of Counsel, 441 G Street, NW., Washington, DC 20314-1000; (202) 761-7701; *Energy*: Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA-50, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586-5422; *GSA*: Mr. John Smith, Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501-0084; *Navy*: Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374-5065; (202) 685-9305; (These are not toll-free numbers).

Dated: November 20, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report for 11/28/2008

Suitable/Available Properties

Building

California

4 Bldgs.

OTH-B Radar Site

Tulelake CA 91634

Landholding Agency: COE

Property Number: 31200840001

Status: Unutilized

Comments: most recent use—communications/vehicle maint., off-site use only

Georgia

Bldg. 00926

Hunter Army Airfield

Savannah GA 31409

Landholding Agency: Army

Property Number: 21200840061

Status: Excess

Comments: 1752 sq. ft., most recent use—BN,

HQ bldg., off-site use only

Bldg. 01021

Hunter Army Airfield

Savannah GA 31409

Landholding Agency: Army

Property Number: 21200840062

Status: Excess

Comments: 6855 sq. ft., most recent use—admin., presence of asbestos, off-site use only

Suitable/Available Properties

Building

Georgia

Bldg. 07335

Fort Stewart

Hinesville GA 31314

Landholding Agency: Army

Property Number: 21200840063

Status: Excess

Comments: 4400 sq. ft., most recent use—chapel, off-site use only

Bldg. 07778

Fort Stewart

Hinesville GA 31314

Landholding Agency: Army

Property Number: 21200840064

Status: Excess

Comments: 1189 sq. ft., most recent use—admin., off-site use only 7 Bldgs.

Fort Stewart

Hinesville GA 31314

Landholding Agency: Army

Property Number: 21200840065

Status: Excess

Directions: 12601, 12602, 12603, 12605, 12606, 12607, 12609

Comments: 2953 sq. ft. each, presence of asbestos, most recent use—barracks, off-site use only

Suitable/Available Properties

Building

Georgia

9 Bldgs.

Fort Stewart

Hinesville GA 31314

Landholding Agency: Army

Property Number: 21200840066

Status: Excess

Directions: 12610, 12611, 12612, 12613, 12614, 12615, 12616, 12617, 12618

Comments: 2953 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 12619

Fort Stewart

Hinesville GA 31314

Landholding Agency: Army

Property Number: 21200840067

Status: Excess

Comments: 3099 sq. ft. presence of asbestos, most recent use—barracks, off-site use only

Bldg. 12682

Fort Stewart

Hinesville GA 31314

Landholding Agency: Army

Property Number: 21200840068

Status: Excess

Comments: 120 sq. ft., presence of asbestos, most recent use—fuel/POL bldg., off-site use only

Suitable/Available Properties

Building

Maine

Bldgs 1, 2, 3, 4

OTH-B Radar Site

Columbia Falls ME

Landholding Agency: Air Force

Property Number: 18200840009

Status: Unutilized

Comments: various sq. ft., most recent use—storage/office

Ohio

2 Bldgs.

Delaware Lake

Delaware OH 43143

Landholding Agency: COE

Property Number: 31200840002

Status: Unutilized

Comments: 936/288 sq. ft., off-site use only

PFC Joe R. Hastings

Army Reserve Center

3120 Parkway Dr.
Canton OH 44708
Landholding Agency: GSA
Property Number: 54200840008
Status: Excess
GSA Number: 1-D-OH-835
Comments: 27,603 sq.ft./admin bldg. &
vehicle maint. bldg., presence of asbestos/
lead paint/radon/PCBs

Suitable/Available Properties

Building

Oklahoma

Bldgs. 02903, 02941
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200840069
Status: Unutilized
Comments: 1236 sq. ft. each, most recent
use—admin., off-site use only

Texas

6 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200840070
Status: Excess
Directions: 56412, 57023, 57024, 57025,
57009, 57010
Comments: presence of asbestos, most recent
use—storage, off-site use only

9 Bldgs.
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200840071
Status: Excess
Directions: 56529, 56618, 56702, 56710,
56752, 56753, 56754, 56755, 56759
Comments: presence of asbestos, most recent
use—dining facility, off-site use only

Suitable/Available Properties

Building

Texas

Bldgs. 56703
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200840072
Status: Excess
Comments: 1306 sq. ft., presence of asbestos,
most recent use—shower, off-site use only

Bldg. 57005
Fort Hood
Bell TX 76544
Landholding Agency: Army
Property Number: 21200840073
Status: Excess
Comments: 500 sq. ft., presence of asbestos,
most recent use—water supply/treatment,
off-site use only

Microwave Antenna Tower Site
353 PR 207
Ivanhoe TX 75447
Landholding Agency: GSA
Property Number: 54200840009
Status: Surplus
GSA Number: 7-D-TX-1104
Comments: 128 sq. ft. on 6.592 acres, most
recent use—storage

Suitable/Available Properties

Building

West Virginia
Bldgs. 1, 2
Bluestone Lake & Dam
Hinton WV 25951
Landholding Agency: COE
Property Number: 31200840003
Status: Unutilized
Comments: 1564/1625 sq. ft., presence of
asbestos/lead paint, most recent use—
residence, off-site use only

Unsuitable Properties

Building

Alabama

Bldgs. 00044, 00164, 00605
Anniston Army Depot
Calhoun AL 36201
Landholding Agency: Army
Property Number: 21200840001
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 00671, 00678, 00679
Anniston Army Depot
Calhoun AL 36201
Landholding Agency: Army
Property Number: 21200840002
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

Alabama

Bldgs. 03332, 03768, 4807
Redstone Arsenal
Madison AL 35898
Landholding Agency: Army
Property Number: 21200840003
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 05452, 05458, 05459
Redstone Arsenal
Madison AL 35898
Landholding Agency: Army
Property Number: 21200840004
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 06102, 07175, 07380
Redstone Arsenal
Madison AL 35898
Landholding Agency: Army
Property Number: 21200840005
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 07585, 07727
Redstone Arsenal
Madison AL 35898
Landholding Agency: Army
Property Number: 21200840006
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

Alabama

Bldgs. 08410, 08600
Redstone Arsenal
Madison AL 35898
Landholding Agency: Army
Property Number: 21200840007
Status: Unutilized

Reasons: Extensive deterioration

California

Bldgs. 1412, 2422, 3514
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200840001
Status: Unutilized
Reasons: Secured Area, Extensive
deterioration

Bldgs. 00131, 00273
Fort Hunter Liggett
Monterey CA 93928
Landholding Agency: Army
Property Number: 21200840008
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

California

Bldg. 00117
Riverbank AAP
Stanislaus CA 95367
Landholding Agency: Army
Property Number: 21200840009
Status: Excess
Reasons: Secured Area, Extensive
deterioration

Bldgs. 00500, 01187, 01188
Camp Parks
Dublin CA 94568
Landholding Agency: Army
Property Number: 21200840010
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 01196, 01197
Camp Parks
Dublin CA 94568
Landholding Agency: Army
Property Number: 21200840011
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 01207, 01208
Camp Parks
Dublin CA 94568
Landholding Agency: Army
Property Number: 21200840012
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

California

Bldgs. 328, 367, 376 Lawrence Livermore
Nat'l Lab Livermore CA Landholding
Agency: Energy
Property Number: 41200840008,
Status: Excess Reasons: Within 2000 ft. of
flammable or explosive material, Secured
Area

Colorado

7 Bldgs.

Pueblo Chemical Depot

Pueblo CO 81006
Landholding Agency: Army
Property Number: 21200840013
Status: Underutilized
Directions: 00013, 00014, 00015, 00016,
00017, 00018, 00019
Reasons: Secured Area
7 Bldgs.

Pueblo Chemical Depot
Pueblo CO 81006
Landholding Agency: Army
Property Number: 21200840014
Status: Underutilized
Directions: 00020, 00021, 00022, 00023,
00024, 00028, 00029
Reasons: Secured Area

Unsuitable Properties

Building

Florida
Bldg. 82
Air Force Range
Avon Park FL 33825
Landholding Agency: Air Force
Property Number: 18200840002
Status: Unutilized
Reasons: Secured Area, Contamination

Georgia

Bldg. 970
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200840003
Status: Unutilized
Reasons: Secured Area
5 Bldgs.
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200840015
Status: Unutilized
Directions: 2580, 2962, 8041, 8042, 8043
Reasons: Secured Area

Unsuitable Properties

Building

Georgia
4 Comfort Stations
Chandlers Ferry Campground
Hartwell GA 30643
Landholding Agency: COE
Property Number: 31200840004
Status: Unutilized
Directions: 16099, 16100, 16101, 16102
Reasons: Extensive deterioration
Comfort Station
Glenns Ferry Campground 16555
Hartwell GA 30643
Landholding Agency: COE
Property Number: 31200840005
Status: Unutilized
Reasons: Extensive deterioration
4 Comfort Stations
Island Point Campground 16920, 16838,
18482, 18483
Hartwell GA
Landholding Agency: COE
Property Number: 31200840006
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

Hawaii
Bldgs. 01680, 02108, 02109
Schofield Barracks
Wahiawa HI 96786
Landholding Agency: Army
Property Number: 21200840016
Status: Unutilized
Reasons: Secured Area

Indiana
Bldg. 0127A
Fort Ben Harrison
Indianapolis IN 46216
Landholding Agency: Army
Property Number: 21200840017
Status: Excess
Reasons: Secured Area

Kansas

Bldgs. 00321, 00323
Fort Leavenworth
Leavenworth KS 66027
Landholding Agency: Army
Property Number: 21200840018
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

Kansas
Bldgs. 40013, 51004
Milford Lake
Junction City KS 66441
Landholding Agency: COE
Property Number: 31200840007
Status: Excess
Reasons: Extensive deterioration
Kentucky
5 Bldgs.
Fort Knox
Ft. Knox KY 40121
Landholding Agency: Army
Property Number: 21200840019
Status: Unutilized
Directions: 00058, 00059, 00060, 00072,
00167
Reasons: Extensive deterioration

Bldgs. 01171, 04770
Fort Knox
Ft. Knox KY 40121
Landholding Agency: Army
Property Number: 21200840020
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

Kentucky
Bldgs. 9277, 9642, 9645, 9659
Fort Knox
Ft. Knox KY 40121
Landholding Agency: Army
Property Number: 21200840021
Status: Unutilized
Reasons: Extensive deterioration
Fr1-01-S-01, Fr1-01-S-06
Fishtrap Lake
Shelbana KY 41562
Landholding Agency: COE
Property Number: 31200840008
Status: Unutilized
Reasons: Extensive deterioration

Maryland

Bldgs. P338, P436, P566
Fort Detrick
Frederick MD 21702
Landholding Agency: Army
Property Number: 21200840023
Status: Unutilized
Reasons: Secured Area
Bldgs. 01423, 01432
Fort Detrick

Frederick MD 21702
Landholding Agency: Army
Property Number: 21200840024
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

Maryland

10 Bldgs.
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200840025
Status: Unutilized
Directions: E1100, R1101, E1102, E1103,
E1104, E1105, E1106, E1107, E1108, E1109
Reasons: Secured Area

10 Bldgs.
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200840026
Status: Unutilized
Directions: E1110, E1111, E1112, E1113,
E1114, E1115, E1116, E1117, E1118, E1119
Reasons: Secured Area

10 Bldgs.
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200840027
Status: Unutilized
Directions: E1120, E1121, E1122, E1123,
E1124, E1125, E1126, E1127, E1128, E1129
Reasons: Secured Area

Unsuitable Properties

Building

Maryland

10 Bldgs.
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200840028
Status: Unutilized
Directions: E1130, E1131, E1132, E1133,
E1134, E1135, E1136, E1137, E1138, E1139
Reasons: Secured Area

10 Bldgs.
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200840029
Status: Unutilized
Directions: E1140, E1141, E1142, E1143,
E1144, E1145, E1146, E1147, E1148, E1149
Reasons: Secured Area

6 Bldgs.
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200840030
Status: Unutilized
Directions: E1150, E1151, E1152, E1153,
E1154, E1155
Reasons: Secured Area

Unsuitable Properties

Building

Maryland

Bldgs. 03062, 3070B
Aberdeen Proving Ground

Harford MD 21005
Landholding Agency: Army
Property Number: 21200840031
Status: Unutilized
Reasons: Secured Area
7 Bldgs.
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200840032
Status: Unutilized
Directions: 05015, 5015A, 05040, 05041,
05049, 05050, 05051
Reasons: Secured Area
5 Bldgs.
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200840033
Status: Unutilized
Directions: 05220, 05221, 05222, 05224,
05613
Reasons: Secured Area

Unsuitable Properties*Building*

Massachusetts
Bldg. 3713
USAG Devens
Devens MA 01434
Landholding Agency: Army
Property Number: 21200840022
Status: Excess
Reasons: Secured Area

Missouri

Bldg. 528
Weldon Springs LTA
Saint Charles MO 63304
Landholding Agency: Army
Property Number: 21200840034
Status: Unutilized
Reasons: Extensive deterioration

5 Bldgs.
Fort Leonard Wood
Pulaski MO 65473
Landholding Agency: Army
Property Number: 21200840035
Status: Unutilized
Directions: 05360, 05361, 05367, 05368,
05369
Reasons: Secured Area

Unsuitable Properties*Building*

Missouri
6 Bldgs.
Fort Leonard Wood
Pulaski MO 65473
Landholding Agency: Army
Property Number: 21200840036
Status: Unutilized
Directions: 05370, 05371, 05372, 05373,
05374, 05376
Reasons: Secured Area

9 Bldgs.
Fort Leonard Wood
Pulaski MO 65473
Landholding Agency: Army
Property Number: 21200840037
Status: Unutilized
Directions: 06120, 06124, 06125, 06128,
06129, 06130, 06131, 06133, 06135
Reasons: Secured Area

Bldgs. 23002, 23006
Masters Park
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200840009
Status: Excess
Reasons: Extensive deterioration

Unsuitable Properties*Building*

Missouri
Bldgs. 50014, 50015
Ruark Bluff West
Stockton MO 65785
Landholding Agency: COE
Property Number: 31200840010
Status: Excess
Reasons: Extensive deterioration

New Jersey

Bldgs. 00647, 1222B
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21200840038
Status: Unutilized
Reasons: Secured Area, Extensive
deterioration

Bldgs. 3349, 3350, 3352, 3353
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21200840039
Status: Unutilized
Reasons: Secured Area, Extensive
deterioration

Unsuitable Properties*Building*

New Mexico
5 Bldgs.
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200840004
Status: Unutilized
Directions: 1201, 1202, 1203, 1205, 1207
Reasons: Secured Area

New York

6 Bldgs.
Fort Drum
Jefferson NY 13602
Landholding Agency: Army
Property Number: 21200840040
Status: Unutilized
Directions: 20V01, 20V02, M209A, M209B,
M210A, M210B
Reasons: Secured Area
Bldgs. 296, 297, 298
Fort Drum
Jefferson NY 13602
Landholding Agency: Army
Property Number: 21200840041
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties*Building*

New York
Bldgs. 0592, 2507, 2509, 21639
Fort Drum
Jefferson NY 13602
Landholding Agency: Army

Property Number: 21200840042
Status: Unutilized
Reasons: Extensive deterioration, Secured
Area

Bldgs. 0134, 0136, 0139, 0142
U.S. Garrison
West Point NY 10996
Landholding Agency: Army
Property Number: 21200840043
Status: Underutilized
Reasons: Secured Area
North Carolina

7 Bldgs.
Fort Bragg
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200840044
Status: Unutilized
Directions: 21559, 21653, 21755, 21757,
21859, 21862, 21957
Reasons: Secured Area, Extensive
deterioration

Unsuitable Properties*Building*

North Carolina
4 Bldgs.
Fort Bragg
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200840045
Status: Unutilized
Directions: 22053, 22055, 22059, 82714
Reasons: Secured Area, Extensive
deterioration

Ohio

Bldgs. 19, 30, 41, 42
Defense Supply Center
Columbus OH 43218
Landholding Agency: Army
Property Number: 21200840046
Status: Unutilized
Reasons: Secured Area, Extensive
deterioration

Unsuitable Properties*Building*

Oklahoma
4 Bldgs.
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200840047
Status: Unutilized
Directions: M5680, M5681, M5682, M5683
Reasons: Extensive deterioration

Bldg. FTGIBS-57431
Fort Gibson
Fort Gibson OK
Landholding Agency: COE
Property Number: 31200840011
Status: Unutilized
Reasons: Extensive deterioration
Pennsylvania

Bldg. 00017
Scranton Army Ammo Plant
Scranton PA 18505
Landholding Agency: Army
Property Number: 21200840048
Status: Unutilized
Reasons: Secured Area, Extensive
deterioration

Unsuitable Properties*Building*

Puerto Rico

Bldgs. 148, 380, 381, 386

Fort Buchanan

Guaynabo PR 00934

Landholding Agency: Army

Property Number: 21200840049

Status: Excess

Reasons: Extensive deterioration

Tennessee

Bldgs. 7201, 7297

Fort Campbell

Montgomery TN 42223

Landholding Agency: Army

Property Number: 21200840050

Status: Unutilized

Reasons: Secured Area, Within airport runway clear zone, Extensive deterioration

Bldg. W005A

Milan AAP

Gibson TN 38358

Landholding Agency: Army

Property Number: 21200840051

Status: Excess

Reasons: Secured Area, Within 2000 ft. of flammable or explosive material, Extensive deterioration

Unsuitable Properties*Building*

Texas

5 Bldgs.

Dyess AFB

Abilene TX 79607

Landholding Agency: Air Force

Property Number: 18200840005

Status: Unutilized

Directions: B-4003, 4120, B-4124, 4127, 4130

Reasons: Secured Area

4 Bldgs.

Dyess AFB

Abilene TX 79607

Landholding Agency: Air Force

Property Number: 18200840006

Status: Unutilized

Directions: 7225, 7226, 7227, 7313

Reasons: Secured Area

4 Bldgs.

Dyess AFB

Abilene TX 79607

Landholding Agency: Air Force

Property Number: 18200840007

Status: Unutilized

Directions: 8050, 8054, 8129, 8133

Reasons: Secured Area

Unsuitable Properties*Building*

Texas

5 Bldgs.

Dyess AFB

Abilene TX 79607

Landholding Agency: Air Force

Property Number: 18200840008

Status: Unutilized

Directions: B-9032, 9107, 9114, B-9140, 11900

Reasons: Secured Area

Bldg. 11007

Fort Bliss

El Paso TX 79916

Landholding AGENCY: Army

Property Number: 21200840052

Status: Unutilized

Reasons:

Extensive deterioration

4 Bldgs. Burns Run Area

Texoma Lake 57667, 42562, 42486, 42568

Denison TX

Landholding Agency:

COE

Property Number: 31200840012

Status: Unutilized

Reasons: Extensive deterioration

Unsuitable Properties*Building*

Utah

8 Bldgs.

Tooele Army Depot

Tooele UT 84074

Landholding Agency: Army

Property Number: 21200840053

Status: Unutilized

Directions: 0108, 0109, 0110, 0112, 0114, 0116, 0139, 0143

Reasons: Secured Area

Virginia

Bldg. C0903

Fort A.P. Hill

Bowling Green VA 22427

Landholding Agency: Army

Property Number: 21200840054

Status: Unutilized

Reasons: Extensive deterioration

Bldg. 10502

Fort Lee

Prince George VA 23801

Landholding Agency: Army

Property Number: 21200840055

Status: Unutilized

Reasons: Secured Area, Extensive deterioration

Unsuitable Properties*Building*

Virginia

Bldgs. 00187, 00189, 00707

Fort Belvoir

Fairfax VA 22060

Landholding Agency: Army

Property Number: 21200840056

Status: Underutilized

Reasons: Secured Area

Bldgs. 00025, S0044

Defense Supply Center

Richmond VA 23297

Landholding Agency: Army

Property Number: 21200840057

Status: Unutilized

Reasons: Secured Area

Bldg. JHK-16754

Henderson Point

Mecklenburg VA 23917

Landholding Agency: COE

Property Number: 31200840013

Status: Unutilized

Reasons: Extensive deterioration

Bldg. NAB757

Naval Amphibious Little Creek

Norfolk VA

Landholding Agency: Navy

Property Number: 77200840008

Status: Unutilized

Reasons: Secured Area

Unsuitable Properties*Building*

Virginia

19 Ammunition Bunkers

Naval Weapon Station

Ammo Plant 1 & 2

Yorktown VA 23691

Landholding Agency: Navy

Property Number: 77200840009

Status: Excess

Reasons: Secured Area, Extensive deterioration

Washington

Bldg. P406

Vancouver Barracks

Vancouver WA 98661

Landholding Agency: Army

Property Number: 21200840058

Status: Unutilized

Reasons: Secured Area, Extensive deterioration

Bldg. 03102

Fort Lewis

Pierce WA 98433

Landholding Agency: Army

Property Number: 21200840059

Status: Underutilized

Reasons: Secured Area

Unsuitable Properties*Building*

Wisconsin

10 Bldgs.

Fort McCoy

Monroe WI 54654

Landholding Agency: Army

Property Number: 21200840060

Status: Unutilized

Directions: 2745, 2752, 2753, 2758, 2759, 2846, 2851, 2856, 2861, 8039

Reasons: Extensive deterioration

[FR Doc. E8-28066 Filed 11-26-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**[Docket No. FR-5229-N-01]****Notice of Funding Availability (NOFA) for Rental Assistance for Non-Elderly Persons With Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3), and 236 Developments (Certain Developments)****AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.**ACTION:** Notice of Funding Availability for Fiscal Year (FY) 2008 Rental Assistance for Non-Elderly Persons With Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3) and 236 Developments (Certain Developments).

SUMMARY: This NOFA announces the availability of approximately \$15 million in one-year budget authority for Housing Choice Vouchers (HCVs) for non-elderly disabled families in support of Certain Developments that provide preferences for, or restrict occupancy to, certain units for occupancy for elderly families only. This NOFA is governed by the information and instructions found in the Notice of HUD's FY2008 Notice of Funding Availability; Policy Requirements and General Section (General Section) to HUD's FY2008 NOFAs for Discretionary Programs that HUD published in the **Federal Register** on March 19, 2008 (73 FR 14882), the SuperNOFA Introduction published on May 12, 2008 (73 FR 27032), and the correction published on June 12, 2008 (73 FR 33446).

FOR FURTHER INFORMATION CONTACT:

Questions regarding specific program requirements should be directed to the agency contact identified in this program NOFA.

Questions regarding the March 10, 2008 (73 FR 12751) Notice of FY2008 Opportunity to Register Early and Other Important Information for Electronic Application Submission Via Grants.gov, the General Section of March 19, 2008, the SuperNOFA Introduction of May 12, 2008, or the correction of June 12, 2008, should be directed to the Office of Departmental Grants Management and Oversight at (202) 708-0667 (this is not a toll-free number) or the NOFA Information Center at (800) HUD-8929 (toll-free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877-8339. The NOFA Information Center is open between the hours of 10 a.m. and 6:30 p.m. eastern time, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

HUD is making available approximately \$15 million in one-year budget authority for Housing Choice Vouchers (HCVs) for non-elderly disabled families in support of Certain Developments noted above that provide preferences for, or restrict occupancy to, certain units for occupancy by elderly families only. This funding is expected to provide assistance for approximately 2,000 non-elderly disabled families.

As is HUD's practice in publishing the SuperNOFA, the NOFA published today provides the statutory and regulatory requirements, threshold requirements, and other factors applicable to funding being made available. Applicants for assistance under this NOFA must also refer to the 2008 General Section published on March 19, 2008, and

subsequent supplementary information and technical corrections noted in the Summary section above for important application information and requirements (including submission requirements) which have changed this year. Applicants must submit their applications electronically through <http://www.grants.gov>. This requirement for all applicants was not in place at the time of the last NOFA published for Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Developments in 2002. Accordingly, if applicants have questions concerning the registration process, registration renewal, assigning a new Authorized Organization Representative, or have a question about a NOFA requirement, please contact HUD staff identified in this program NOFA HUD staff cannot help you write your application, but can clarify requirements that are contained in the General Section to the SuperNOFA, this NOFA, and in HUD's registration materials.

New applicants should note that they are required to complete a five-step registration process in order to submit their applications electronically. The General Section to the SuperNOFA included in the instructions download materials on Grants.gov provides a step-by-step explanation of the registration process, as well as where to find, on HUD's Web site, materials prepared by HUD to help guide applicants through the registration and application submission process.

Applications and Instructions are posted to Grants.gov as soon as HUD finalizes them. HUD encourages applicants to subscribe to the Grants.gov free notification service. By doing so, applicants will receive an e-mail notification as soon as items are posted to the Web site. The address to subscribe to this service is <http://www.grants.gov/search/email.do>. By joining the notification service, if a modification is made to the NOFA, applicants will receive an e-mail notification that a change has been made.

HUD encourages applicants to carefully read the General Section and this NOFA. Carefully following the directions provided can make the difference in a successful application submission.

Overview Information

A. Federal Agency Name: Department of Housing and Urban Development, Office of Public and Indian Housing.

B. Funding Opportunity Title: Rental Assistance for Non-Elderly Persons With Disabilities Related to Certain

Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3) and 236 Developments (Certain Developments).

C. Announcement Type: Initial announcement.

D. Funding Opportunity Number: OMB Approval Numbers applicable to this NOFA are 2577-0169 and 2577-0083.

E. Catalog of Federal Domestic Assistance (CFDA) Number(s): 14.871, Section 8 Housing Choice Vouchers.

F. Dates:

1. Application Submission Date: The application deadline date is January 30, 2009. Applications must be received and validated by Grants.gov by 11:59 p.m. eastern time on the deadline date. The validation check can take 24 to 48 hours after an application is received by Grants.gov. As a result, HUD strongly encourages applicants to submit their applications 48 to 72 hours prior to the application deadline date. See the 2008 General Section for application submission, faxing instructions, and timely receipt requirements. HUD will not accept an entire application submitted by fax.

2. Estimated Grant Award Date. The estimated award date will be June or July 2009.

G. Additional Important Overview Information:

1. This NOFA announces the availability of approximately \$15 million in one-year budget authority for HCVs for non-elderly disabled families in support of Certain Developments that provide preferences for, or restrict occupancy to, certain units for occupancy by elderly families only. Funding made available under the HCV program through this NOFA will enable public housing agencies (PHA) to provide vouchers to approximately 2,000 non-elderly disabled families who are not currently receiving housing assistance in certain Section 8 project-based developments due to the owner's establishment of preferences for the admission of elderly families, or in certain types of Section 202, Section 221(d)(3), or Section 236 developments where the owner is restricting occupancy in the developments (or portions thereof) to elderly families. The vouchers will enable non-elderly disabled families affected by these actions to access affordable housing.

2. Electronic Application Submission. Applications for this NOFA must be submitted electronically through http://www.grants.gov/applicants/apply_for_grants.jsp. Registration or required annual re-registration to submit an application electronically may take more than a week because of the

following: (1) The applicant's requirement to register with the Central Contractor Registration (CCR), (2) the cross-checking of applicant identification numbers between CCR and the Internal Revenue Service (IRS), (3) applicant registration with the Grants.gov Web site, and (4) the applicant's requirement to register the official who will be submitting the application. HUD's Early Registration Notice can be obtained through HUD's Web site at

<http://www.hud.gov/grants/>.

3. Match. None required.

4. Application materials. Application materials may be obtained from http://www.grants.gov/applicants/apply_for_grants.jsp. Any technical corrections will be published in the **Federal Register** and posted to Grants.gov. Frequently asked questions will be posted on HUD's Web site at <http://www.hud.gov/offices/adm/grants/otherhud.cfm> and <http://www.hud.gov/offices/pih/programs/ph/hope6/grants/fy08/>.

5. 2008 General Section Reference. Section I, "Funding Opportunity Description" of the 2008 General Section and subsequent supplementary information and technical corrections published in the **Federal Register** are hereby incorporated by reference.

6. Other 2008 General Section References. See "Other Submission Requirements" in Section IV.F. of this NOFA and the 2008 General Section for detailed information about application submission.

Full Text of Announcement

I. Funding Opportunity Description

A. Available Funds. This NOFA announces the availability of approximately \$15 million in FY 2008 funds.

B. Purpose of this program. Vouchers under this NOFA will assist non-elderly disabled families that are not currently receiving housing assistance in certain Section 8 project-based developments due to the owner's establishment of preferences for the admission of elderly families, or in certain types of Section 202, Section 221(d)(3), or Section 236 developments where the owner is restricting occupancy in the developments (or portions thereof) to elderly families, access affordable housing.

C. Legal Authority. Title II of Division K of the Consolidated Appropriations Act, 2008 (Pub. L. 110-161) provides appropriations for incremental vouchers to assist non-elderly disabled families affected by the establishment of preferences in accordance with section

651 of the Housing and Community Development Act of 1992 (42 U.S.C. 13611) or the restriction of occupancy to elderly families in accordance with section 658 of such Act (42 U.S.C. 13618).

D. Definitions of Terms. The following definitions apply to funding available under this NOFA.

1. Section 651 of the Housing and Community Development Act (HCDA) of 1992 (42 U.S.C. 13611). This section refers to section 659 of the HCDA of 1992 which states that "covered section 8 housing" means housing described in section 683(2)(G) that was originally designed for occupancy by elderly families. Section 683(2)(G) of the HCDA of 1992 describes such housing as that constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the USHA of 1937, as in effect before October 1, 1983, that is assisted under a contract for assistance under such section. Section 651 of the HCDA of 1992 allowed owners of the following covered Section 8 project-based developments to provide preferences to elderly families in selecting tenants for available assisted units in those projects:

- a. Section 8 New Construction Program, 24 CFR part 880;
- b. Section 8 Substantial Rehabilitation Program, 24 CFR part 881;
- c. State Housing Agencies Program (insofar as involving new construction and substantial rehabilitation), 24 CFR part 883;
- d. New Construction Set-Aside for Section 515 Rural Rental Housing Projects Program, 24 CFR part 884; and
- e. Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (insofar as involving substantial rehabilitation), 24 CFR part 886, subpart C.

2. Section 658 of the Housing and Community Development Act of 1992 (42 U.S.C. 13618). This section provides that an owner of a Federally assisted project (or portion thereof) that was designed for occupancy for elderly families may continue to restrict occupancy in such project (or portion) to elderly families in accordance with the rules, standards, and agreements governing occupancy in such housing in effect at the time of the development of the housing. The three types of assisted housing developments covered by Section 658 are as follows:

- a. Housing assisted under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as such section existed before the enactment of the National Affordable Housing Act (Pub. L. 101-

625, 104 Stat. 4079, approved November 28, 1990) (NAHA);

- b. Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1701 *et seq.*) that bears an interest rate determined under section 221(d)(5) of the National Housing Act; and

- c. Housing insured, assisted or held by the Secretary or a State or State Agency under section 236 of the National Housing Act.

3. Elderly Family. A family whose head, spouse, or sole member is 62 years or older. It may include two or more elderly persons living together, or one or more elderly persons living with one or more persons determined under the public housing agency plan to be essential to their care or well being.

4. Non-Elderly Disabled Family. A family that does not meet the definition of an elderly family whose head, spouse, or sole member is a person with disabilities.

5. Person with disabilities.

- a. Has a disability as defined in Section 223 of the Social Security Act (42 U.S.C. 423);

- b. Is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which: (i) Is expected to be of long-continued and indefinite duration; (ii) substantially impedes his or her ability to live independently; and (iii) is of such a nature that such ability could be improved by more suitable housing conditions; or

- c. Has a developmental disability as defined in Section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 6001); and

- d. Such term shall not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. Notwithstanding any other provision of law, no individual shall be considered a person with disabilities for purposes of eligibility for low-income housing solely on the basis of any drug or alcohol dependence.

II. Award Information

A. Available Funds. This NOFA announces the availability of \$15 million in one-year budget authority for HCVs for non-elderly disabled families in support of Certain Developments that provide preferences for, or restrict occupancy to, certain units for occupancy by elderly families only. This funding is expected to provide

assistance to approximately 2,000 non-elderly disabled families.

Any funds remaining unobligated under this NOFA will first be used to fund any approvable applications under HUD's NOFA entitled *Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans (Designated Housing)* for which there are insufficient funds. Conversely, any funds remaining unobligated after funding approvable applications under the Designated Housing NOFA will be made available to fund approvable applications under this NOFA. Further, pursuant to the Consolidated Appropriations Act, 2008, any funds still remaining unobligated under this announcement or the Designated Housing NOFA will be available for other non-elderly disabled families through a subsequent NOFA.

B. HCV Funding Process. HUD will only fund one application per PHA under this announcement. This one-application-per-PHA limit applies regardless of whether or not the PHA is a state or regional PHA.

1. Maximum Voucher Request. A PHA may apply for only the number of vouchers needed to house those non-elderly disabled families that otherwise would have been housed if not for the preferences for, or restricted occupancy to, a project/building (or portion thereof) for elderly families only. PHAs are limited to applying for no more than the number of these restricted units for one or more Certain Development projects or 100 vouchers, whichever is less.

2. Determination of Funding Amount for the Applicant's Requested Number of Vouchers. HUD's Housing Voucher Financial Management Division will determine the amount of one-year budget authority that an applicant will be awarded under this NOFA based on the PHA's per unit cost for 2008 renewal funding or 2009 renewal funding if those costs are available. Administrative fees are not included in this funding and will be determined in accordance with section 10 of Public and Indian Housing (PIH) Notice 2008-15 (HA) or a subsequent administrative fee notice (a copy of all PIH notices referenced in this NOFA may be downloaded at <http://www.hudclips.org>). PIH Moving to Work (MTW) agencies will be funded under this NOFA in accordance with their MTW agreements.

3. Unfunded Approvable Applications. PHAs with approvable applications that are not funded in whole or in part due to insufficient funds available under this NOFA will not be funded.

III. Eligibility Information

A. Eligible Applicants. PHAs that currently administer a HCV program are eligible to apply for funding under this NOFA.

B. Cost Sharing or Matching. None required.

C. Other Requirements.

1. Eligible Activities.

HCVs awarded under this NOFA will be subject to all of the requirements of 24 CFR part 982 with exceptions noted for waiting list selection in section III.C.3. MTW agencies may administer these vouchers in accordance with their MTW agreements unless they are inconsistent with Appropriations Act requirements or the requirements of this NOFA. All PHAs (including MTW agencies) must comply with the requirements of PIH Letter 2007-1 (*New Freedom Initiative*, Executive Order 13217: "Community-Based Alternatives for Individuals with Disabilities," and the Housing Choice Voucher Program) which extended Notice PIH 2006-21 (HA) which reinstated Notice PIH 2005-5 (HA). These requirements include, but are not limited to, re-issuance upon turnover of these vouchers to non-elderly disabled families on the PHA's waiting list and entering appropriate data into the Public and Indian Housing Information Center (PIC). In addition, Section 213 of the FY 2008 Appropriations Act states that amounts available under this Act or previous appropriations acts for tenant-based rental assistance and used for non-elderly disabled families or for the Family Unification Program shall, to the extent practicable, remain available for each respective purpose upon turnover.

2. Threshold Requirements.

a. All applicants must meet all threshold requirements in Section III.C. of the General Section with the following exceptions:

(1) Section III.C.2.d. (Conducting Business in Accordance with Core Values and Ethical Standards). To reflect core values, all applicant PHAs shall develop and maintain a written code of conduct in the PHA's administrative plan that:

(a) Requires compliance with the conflict of interest requirements of the HCV program cited in 24 CFR 982.161; and

(b) Prohibits the solicitation or acceptance of gifts or gratuities in excess of a nominal value by an officer or employee of the HA or any contractor, subcontractor, or agent of the PHA.

The PHA's administrative plan shall state the PHA policies concerning PHA administrative and disciplinary remedies for violation of the PHA code

of conduct. The PHA shall inform all officers, employees and agents of its organization of the PHA's code of conduct.

(2) Section III.C.4.b.(1) through (3) (Specific Steps to Affirmatively Furthering Fair Housing). The PHA must comply with Section III.C.4.b. of the General Section; the exceptions only apply to providing specific steps in the application. In addition, prior to the application due date under this NOFA, each applicant must submit to the public housing director in the applicant's local HUD field office an addendum to the applicant's HCV administrative plan that outlines reasonable steps the applicant will take to affirmatively further fair housing in regard to the vouchers awarded under this NOFA. Reasonable steps must include:

(a) Identifying and contacting all non-elderly disabled families that were affected by the preferences, or restricted occupancy, to certain units in Certain Developments for occupancy by elderly families only; and

(b) Informing individuals on how to file a fair housing complaint including the provision of the toll free number for the Housing Discrimination Hotline: 1-800-669-9777.

Further, an applicant must comply with the affirmatively furthering fair housing requirements of 24 CFR Section 903.7(o) by: (1) Examining its programs or proposed programs; (2) identifying any impediments to fair housing choice within those programs; (3) addressing those impediments in a reasonable fashion in view of the resources available; (4) working with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; and (5) maintaining records reflecting these analyses and actions. Further, applicant PHAs are encouraged to take the following proactive steps in addressing accessibility problems for persons with disabilities: (1) Where requested by an individual, assist program applicants and participants gain access to supportive services available within the community, but not require eligible applicants or participants to accept supportive services as a condition of continued participation in the program; (2) Identify public and private funding sources to assist participants with disabilities in covering the costs of structural alterations and other accessibility features that are needed as accommodations for their disabilities; (3) Not deny persons who qualify for a HCV under this program other housing opportunities, or otherwise restrict

access to PHA programs to eligible applicants who choose not to participate; (4) Provide housing search assistance; (5) In accordance with rent reasonableness requirements, approve higher rents to owners that provide accessible units with structural modifications for persons with disabilities; and (6) Provide technical assistance, through referrals to local fair housing and equal opportunity offices, to owners interested in making reasonable accommodations or units accessible to persons with disabilities.

b. Applications under this NOFA must also meet the following threshold requirements to be eligible for funding under this NOFA.

(1) Each applicant must meet the PIC reporting requirements under PIH Notice 2007-29(HA) that will be assessed for the month immediately preceding the month in which the applications under this NOFA are due. This threshold requirement will not apply to MTW agencies.

(2) Each applicant must have achieved points (15 or 20) under the Section 8 Management Assessment Program (SEMAP) leasing indicator (24 CFR 985.3(n)) and not be designated as troubled for its most recent assessed fiscal year. MTW agencies that are not required to report under SEMAP shall be held to the 95 percent lease-up and budget authority utilization requirements referenced above. These MTW agencies are required to submit a certification with their application certifying that they are not required to report under SEMAP, and that they meet the 95 percent lease-up or budget authority utilization requirements.

(3) The PHA applicant must not have any major unresolved program management findings from an Inspector General audit, HUD management review or Independent Public Accountant (IPA) audit for the PHA's HCV program or other significant program compliance problems (such as fair housing and/or civil rights violations or findings) that were not resolved prior to this NOFA's application deadline. Major program management findings, or significant program compliance problems, are those that would cast doubt on the capacity of the applicant to effectively administer any new HCV funding in accordance with applicable HUD regulatory and statutory requirements.

(4) The PHA must not be involved in litigation where HUD determines that the litigation may seriously impede the ability of the applicant to administer the vouchers.

3. Eligible Participants. Non-elderly disabled families that are income eligible under 24 CFR 982.201(b)(1) and

were on the waiting list for a unit when the Certain Development provided preferences for or restricted occupancy to certain units may receive a HCV awarded under this NOFA. Such families need not be listed on the PHA's HCV waiting list in order to be offered a voucher. These families may be admitted to the HCV program as special admissions under 24 CFR Section 982.203.

4. Environmental Review. In accordance with 24 CFR 50.19(b)(11) and 58.35(b)(1) of the HUD regulations, tenant-based rental activities under this program are categorically excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA) and are not subject to environmental review under the related laws and authorities. Activities under the homeownership option for existing units and for units under construction at the time the family enters into the contract for sale are categorically excluded from NEPA requirements and excluded from other environmental requirements under 24 CFR 58.5 in accordance with 24 CFR 58.35(b)(5), but PHAs are responsible for the environmental requirements in 24 CFR 982.626(c). With regard to activities under the homeownership option for units not yet under construction at the time the family enters into the contract for sale, the additional environmental review requirements referenced in 24 CFR 982.628(e), 982.631(c)(3) and 982.637(b) also apply in addition to § 982.626(c), and the PHA shall submit all relevant environmental information to the responsible entity or to HUD to assist in the completion of those requirements.

IV. Application and Submission Information

A. Addresses to Request Application Package. Please read the General Section under Section IV.A. for full details on Web sites, electronic forms, and electronic applicant submission requirements.

1. Web site. A copy of this funding announcement for Certain Developments under the HCV program may be downloaded from the following Web site: http://www.Grants.gov/applicants/apply_for_grants.jsp.

2. Further Information. When requesting information, please refer to the name of the program you are interested in. The NOFA Information Center opens for business simultaneously with the publication of the SuperNOFA. You can also obtain information on this NOFA when you download the instructions from the

<http://www.Grants.gov> Web site identified above.

B. Content and Form of Application Submission. Please carefully read Section IV. of the General Section.

1. Content of Application under this NOFA.

a. Each PHA must complete the following forms:

(1) Form HUD-52515, *Funding Application, Section 8 Tenant-Based Assistance, Rental Certificate Program, Rental Voucher Program*.

(A) When completing this form, only complete the box for total dwelling units under vouchers in section B. Do not complete section C.

(B) In section D of the form, the PHA applicant must provide the following information for each Certain Development that provided preferences for, or restricted occupancy to, certain units for occupancy by elderly families only. The PHA may apply for units affected in more than one Certain Development:

(i) The name and identifier of the Certain Development;

(ii) The month and year the owner of the Certain Development provided preferences for, or restricted occupancy to, certain units for occupancy by elderly;

(iii) The number of units affected by the provision of preferences or the restricted occupancy;

(iv) The owner-certified number of non-elderly disabled families on the waiting list for the Certain Development at the time of the action that restricted occupancy that must correspond to the family data and contact information provided to the PHA.

(v) Any vouchers previously awarded to the PHA related to a prior Certain Development NOFA.

(vi) The minimum number of vouchers that the PHA will accept if selected under a lottery system (See Section V.B.3. below).

In order to obtain the information required above, the PHA must contact the Multifamily Housing Division (MHD) in the local HUD field office. A MHD representative will provide the names of the Certain Developments noted in section I.B.1. and 2. of this NOFA and the number of units for which a preference was provided for, or occupancy restricted to, elderly families only in each project that are recorded in HUD's Real Estate Management System (REMS). Contact information for these Certain Developments may be obtained at the following Web site: <http://www.hud.gov/apps/section8/index.cfm>. If the development is not listed on this Web site, the MHD representative can provide this information. Each

development owner must be contacted by the PHA for the information required above.

(2) Form SF-424, *Application for Federal Assistance*. When completing this form, the Federal Identifier requested in section 5a is the PHA's five digit number (e.g., MD035 or AK002). PHA applicants should estimate the proposed start date and end date in section 17. In Section 18 (Estimated Funding), complete only 18.a and 18.g. The amount entered in both fields should be the total number of vouchers requested in Section B of the form HUD-52515 multiplied by the per housing assistance payments unit cost for 2008 HCV renewal funding or the per unit cost for 2009 renewal funding, if those costs are available.

(3) Form HUD-2880, *Applicant/Recipient Disclosure/Update Report*;

(4) Form HUD-2993, *Acknowledgment of Application Receipt*;

(5) Form HUD-96011, *Third Party Documentation Facsimile Transmittal*; if applicable for cover letter;

(6) Form HUD-2991, *Certification of Consistency with the Consolidated Plan*, or a copy of the signed PHA Certification of Compliance for its current Annual PHA Plan; and

(7) SF-LLL, *Disclosure of Lobbying Activities*, if applicable.

C. Submission Date and Time. Your completed application must be received and validated by Grants.gov no later than 11:59:59 p.m. eastern time on the application deadline date.

D. Intergovernmental Review. This NOFA is not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

E. Funding Restrictions. Funds under this NOFA may only be used for housing assistance for eligible participants and may not be used for performance of routine HCV program functions that are reimbursed through HCV administrative fees.

F. Other Submission Requirements. See section IV.F.3. of the General Section. Electronic application submission is mandatory unless an applicant requests, and is granted, a waiver to the requirement. Applicants should submit their waiver requests in writing using e-mail. Waiver requests must be submitted no later than 15 days prior to the application deadline date and should be submitted to Danielle.L.Bastarache@hud.gov and Phyllis.A.Smelkinson@hud.gov. The subject line of the e-mail message should be FY2008 Certain Developments NOFA Waiver Request. If an applicant is granted a waiver, then the approval will provide instructions

for submitting paper copies to the appropriate HUD office(s). All paper applications must be received by the application deadline date to meet the requirements for timely submission.

V. Application Review Information

A. Criteria.

1. Factors Used to Evaluate and Rate Applications. None.

B. Review and Selection Process.

1. Technically Acceptable Applications. All technically acceptable applications that meet the threshold criteria of section III.C.2. above will be funded to the extent funds are available.

a. Funding Priority Categories. None.

b. Order of Funding. If funding under this NOFA is not available to fund all applications received by the NOFA deadline, a lottery will be used until all funding is exhausted.

c. Insufficient Funds. Not applicable.

2. Corrections to Deficient Applications. The General Section provides the procedures for corrections to deficient applications. Please note that clarifications or corrections of technical deficiencies in accordance with the information provided by HUD to the applicant must be submitted within 14 calendar days of the date of receipt of the HUD notification.

3. Unacceptable Applications. After the technical deficiency correction period (as provided in the General Section), the HUD Grants Management Center (GMC) will disapprove PHA applications that it determines are not acceptable for processing. Applications from PHAs that fall into any of the following categories are ineligible for funding under this NOFA and will not be processed:

a. Any PHA that does not meet the threshold requirements of the General Section;

b. Any PHA that does not meet the threshold requirements of Section III.C;

c. A PHA whose application does not comply with the requirements of this NOFA after the expiration of the 14-calendar day technical deficiency correction period;

d. A PHA whose application was submitted after the application due date; or

e. A PHA whose application was not submitted to the official place of receipt.

C. Anticipated Announcement and Award Dates. It is anticipated that award announcements will take place during the month of June or July, 2009.

VI. Award Administration Information

A. Award Notices. Successful applicants will receive an award letter from HUD. Funding will be provided to successful applicants as an amendment

to the Annual Contributions Contract (ACC) of the applicant PHA.

Unsuccessful applicants will receive a notification of rejection letter from the GMC that will state the basis for the decision. The applicant may request an applicant debriefing. Beginning not less than 30 days after the awards for assistance are announced publicly, upon receiving a written request, HUD will provide a debriefing to the requesting applicant. (See the General Section for additional information regarding a debriefing.) Applicants requesting to be debriefed must send a written request to: Keia Neal, Acting Director, Grants Management Center, U.S. Department of Housing and Urban Development, 501 School Street, SW., Suite 800, Washington, DC 20024.

B. Administrative and National Policy Requirements.

1. HUD's Strategic Goals. HUD is committed to ensuring that programs result in the achievement of HUD's strategic mission. HCVs awarded under this NOFA support the Department's strategic goals of: (1) Increasing homeownership opportunities, and (2) promoting decent, affordable housing by expanding access to these opportunities for non-elderly persons with disabilities. For more information about HUD's Strategic Plan and Annual Performance Plan, you may visit HUD's Web site at <http://www.hud.gov/offices/cfo/reports/cforept.cfm>.

2. HUD Policy Priorities. HCVs awarded under this NOFA supports HUD's policy providing increased homeownership and rental opportunities for low- and moderate-income persons with disabilities.

C. Reporting. Successful applicants (including MTW agencies) must report the usage of voucher funds under this NOFA through required submissions of the form HUD-50058, *Family Report*. PHAs must enter the program code "MFHDES" on line 2n of the Family Report for families who are assisted with vouchers under this NOFA. PHAs must maintain this code on the form HUD-50058 for the duration of the family's participation in the HCV program. HUD's assessment of PHA compliance under this NOFA will be based on PIC system data.

VII. Agency Contacts

A. For Technical Assistance. For answers to your questions, you may contact the Public and Indian Housing Resource Center at 1-800-955-2232. Persons with hearing or speech impairments may access this number via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339. (These are toll-free

numbers). Prior to the application deadline, staff at the numbers given above, will be available to provide general guidance, but not guidance in actually preparing the application. Following selection, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award by HUD. Agency contacts are those listed in Section IV. F. above in the Housing Voucher Management and Operations Division, (202) 708-0744.

B. Technical Corrections to the NOFA.

1. Technical corrections to this NOFA will be posted on the Grants.gov Web site.
2. Any technical corrections will also be published in the **Federal Register**.
3. You are responsible for monitoring these sites during the application preparation period.

VIII. Other Information

A. General Section References

The following sub-sections of section VIII. of the General Section are hereby incorporated by reference:

1. Executive Order 13132, Federalism;
2. Public Access, Documentation, and Disclosure;
3. Section 103 of the HUD Reform Act.

B. Paperwork Reduction Act

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2577-0169 and 2577-0083. In accordance with the PRA, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

C. Environmental Impact

This NOFA provides funding under, and does not alter the environmental requirements of 24 CFR part 982. Accordingly, under 24 CFR 50.19(c)(5), the NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). For environmental review of activities funded under this NOFA, see requirements described in section III.C.4 above.

Dated: November 18, 2008.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E8-28237 Filed 11-26-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5228-N-01]

Notice of Funding Availability (NOFA) for Rental Assistance for Non-Elderly Persons With Disabilities in Support of Designated Housing Plans

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Fiscal Year (FY) 2008 for Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans.

SUMMARY: This NOFA announces the availability of approximately \$15 million in one-year budget authority for Housing Choice Vouchers (HCVs) for non-elderly disabled families. This NOFA is governed by the information and instructions found in the Notice of HUD's FY2008 Notice of Funding Availability; Policy Requirements and General Section (General Section) to HUD's FY2008 NOFAs for Discretionary Programs that HUD published in the **Federal Register** on March 19, 2008 (73 FR 14882), the SuperNOFA Introduction published on May 12, 2008 (73 FR 27032), and the correction published on June 12, 2008, (73 FR 33446).

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in this program NOFA. Questions regarding the March 10, 2008 (73 FR 12751) Notice of FY2008 Opportunity to Register Early and Other Important Information for Electronic Application Submission Via Grants.gov, the General Section of March 19, 2008, the SuperNOFA Introduction of May 12, 2008, or the correction of June 12, 2008, should be directed to the Office of Departmental Grants Management and Oversight at (202) 708-0667 (this is not a toll-free number) or the NOFA Information Center at (800) HUD-8929 (toll-free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877-8339. The NOFA Information Center is open between the hours of 10 a.m. and 6:30 p.m. eastern time, Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION:

Through today's publication, HUD is making available approximately \$15 million in one-year budget authority for Housing Choice Vouchers (HCVs) for non-elderly disabled families. This funding is expected to provide assistance to approximately 2,000 non-elderly disabled families and will enable public housing agencies (PHAs) to provide sufficient alternative resources to meet the housing needs of those non-elderly disabled families who would have been housed by the PHA if occupancy in a designated public housing project or building (or portion thereof) were not restricted to elderly households through the approval of a Designated Housing Plan.

As is HUD's practice in publishing the SuperNOFA, the NOFA published today provides the statutory and regulatory requirements, threshold requirements, and other factors applicable to funding being made available. Applicants for assistance under this NOFA must also refer to the 2008 General Section published on March 19, 2008, and subsequent supplementary information and technical corrections noted in the Summary section above for important application information and requirements (including submission requirements) which have changed this year.

Applicants must submit their applications electronically through <http://www.grants.gov>. If applicants have questions concerning the registration process, registration renewal, assigning a new Authorized Organization Representative, or have a question about a NOFA requirement, please contact HUD staff identified in this program NOFA. HUD staff cannot help the applicant write the application, but can clarify requirements that are contained in the 2008 General Section of this Notice, and in HUD's registration materials.

New applicants should note that they are required to complete a five-step registration process in order to submit their applications electronically. The 2008 General Section, included in the instructions download materials on <http://www.grants.gov> (Grants.gov), provides a step-by-step explanation of the registration process, as well as where to find, on HUD's Web site, materials prepared by HUD to help guide applicants through the registration and application submission process.

Applications and Instructions have been posted to Grants.gov. HUD encourages applicants to subscribe to the Grants.gov free notification service. By doing so, applicants will receive an

e-mail notification as soon as items are posted to the Web site. The address to subscribe to this service is <http://www.grants.gov/search/email.do>. By joining the notification service, if a modification is made to the NOFA, applicants will receive an e-mail notification that a change has been made.

HUD encourages applicants to carefully read the 2008 General Section and this NOFA. Carefully following the directions provided can make the difference in a successful application submission.

Overview Information

A. Federal Agency Name. Department of Housing and Urban Development, Office of Public and Indian Housing.

B. Funding Opportunity Title. Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans.

C. Announcement Type: Initial announcement.

D. Funding Opportunity Number: OMB Approval Numbers applicable to this NOFA are 2577-0169 and 2577-0083.

E. Catalog of Federal Domestic Assistance (CFDA) Number(s): 14.871, Section 8 Housing Choice Vouchers.

F. Dates:

1. Application Submission Date: The application deadline date is January 30, 2009. Applications must be received and validated by Grants.gov by 11:59 p.m. on the application deadline date. The validation check can take 24 to 48 hours after an application is received by Grants.gov. As a result, HUD strongly encourages applicants to submit their applications 48 to 72 hours prior to the application deadline date. See the 2008 General Section for application submission, faxing instructions, and timely receipt requirements. HUD will not accept an entire application submitted by fax.

2. Estimated Funding Award Date. The estimated award date will be June or July 2009.

G. Additional Important Overview Information:

1. This NOFA announces the availability of \$15 million in one-year budget authority for HCVs for non-elderly disabled families in support of Designated Housing Plans that designate public housing units for occupancy by elderly families only. This funding is expected to provide assistance to approximately 2,000 non-elderly disabled families.

Funding made available through this NOFA will enable non-elderly disabled families to access affordable private housing. The HCV funding will enable

PHAs to provide sufficient alternative resources to meet the housing needs of those non-elderly disabled families who would have been housed by the PHA if occupancy in a designated public housing project or building (or portion thereof) were not restricted to elderly households through the approval of a Designated Housing Plan.

2. Electronic Application Submission. Applications for this NOFA must be submitted electronically through http://www.grants.gov/applicants/apply_for_grants.jsp. Registration or required annual re-registration to submit an application electronically may take more than a week because of the following: (1) The applicant's requirement to register with the Central Contractor Registration (CCR), (2) the cross-checking of applicant identification numbers between CCR and the Internal Revenue Service (IRS), (3) applicant registration with the Grants.gov Web site, and (4) the applicant's requirement to register the official who will be submitting the application. HUD's Early Registration Notice can be obtained through HUD's Web site at <http://www.hud.gov/grants/>.

3. Match. None required.

4. Application materials. Application materials may be obtained from http://www.grants.gov/applicants/apply_for_grants.jsp. Any technical corrections will be published in the **Federal Register** and posted to Grants.gov. Frequently asked questions will be posted on HUD's Web site at <http://www.hud.gov/offices/adm/grants/otherhud.cfm> and <http://www.hud.gov/offices/pih/programs/ph/hope6/grants/fy08/>.

5. 2008 General Section Reference. Section I, "Funding Opportunity Description" of the 2008 General Section and subsequent supplementary information and technical corrections published in the **Federal Register**, are hereby incorporated by reference.

6. Other 2008 General Section References. See "Other Submission Requirements" in Section IV.F. of this NOFA and the 2008 General Section for detailed information about application submission.

Full Text of Announcement

I. Funding Opportunity Description

A. Available Funds. This NOFA announces the availability of approximately \$15 million in FY 2008 funds.

B. Purpose of this program. Vouchers under this NOFA will assist non-elderly disabled families that would have been housed by a PHA if occupancy in the

designated public housing project/building (or portion thereof) were not restricted to elderly households.

C. Legal Authority. Title II of Division K of the Consolidated Appropriations Act, 2008 (Pub. L. 110-161) provides appropriations for incremental vouchers to assist non-elderly disabled families affected by the designation of a public housing development under section 7 of the United States Housing Act of 1937, as amended.

D. Definitions of Terms. The following definitions apply to funding available under this NOFA.

1. Designated Housing Plan. A HUD-approved Designated Housing Plan is required of PHAs that have designated a project/building (or portion thereof) for occupancy by elderly families only. Public and Indian Housing (PIH) Notice 2005-2 (HA), *Requirements for Designation of Public Housing Projects*, explains the process for such designation. This Notice was most recently extended by Notice PIH 2008-10 (HA). Copies of PIH Notices referenced in this NOFA may be downloaded at <http://www.hudclips.org>.

2. Elderly Family. A family whose head, spouse, or sole member is 62 years or older. It may include two or more elderly persons living together, or one or more elderly persons living with one or more persons determined under the public housing agency plan to be essential to their care or well being.

3. Non-elderly Disabled Family. A family that does not meet the definition of an elderly family whose head, spouse, or sole member is a person with disabilities.

4. Person with disabilities.

a. Has a disability as defined in Section 223 of the Social Security Act (42 U.S.C. 423);

b. Is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which: (i) Is expected to be of long-continued and indefinite duration; (ii) substantially impedes his or her ability to live independently; and (iii) is of such a nature that such ability could be improved by more suitable housing conditions; or

c. Has a developmental disability as defined in Section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 6001); and

d. Such term shall not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. Notwithstanding any other provision of law, no individual shall be considered

a person with disabilities for purposes of eligibility for low-income housing solely on the basis of any drug or alcohol dependence.

II. Award Information

A. Available Funds. This NOFA announces the availability of \$15 million in one-year budget authority for HCVs for non-elderly disabled families in support of Designated Housing Plans that designate public housing units for occupancy by elderly families only. This funding is expected to provide assistance to approximately 2,000 non-elderly disabled families.

Any funds remaining unobligated under this NOFA will first be used to fund any approvable applications under HUD's NOFA entitled *Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Section 202, Section 221(d)(3) and Section 236 Developments* (Certain Developments), for which there are insufficient funds. Conversely, any funds remaining unobligated after funding approvable applications under the Certain Developments NOFA will be made available to fund approvable applications under this NOFA. Further, pursuant to the Consolidated Appropriations Act, 2008, any funds still remaining unobligated under this announcement or the Certain Developments NOFA will be made available for other non-elderly disabled families through a subsequent NOFA.

B. HCV Funding Process. HUD will only fund one application per PHA under this announcement. This one-application-per-PHA limit applies regardless of whether or not the PHA is a state or regional PHA.

1. Maximum Voucher Request. A PHA may apply for only the number of vouchers needed to house those non-elderly disabled families that otherwise would have been housed if not for the designation of a project/building (or portion thereof) for occupancy by elderly only. PHAs are limited to applying for no more than the number of public housing units that were designated under an approved Designated Housing Plan, the number of non-elderly disabled families on the public housing waiting list for those units at the time of designation, or 100 vouchers, whichever is less.

2. Determination of Funding Amount for the Applicant's Requested Number of Vouchers. HUD's Housing Voucher Financial Management Division will determine the amount of one-year budget authority that an applicant will be awarded under this NOFA based on the PHA's per unit cost for 2008 renewal

funding or 2009 renewal funding if those costs are available. Administrative fees are not included in this funding and will be determined in accordance with section 10 of Public and Indian Housing (PIH) Notice 2008-15 (HA) or a subsequent administrative fee notice (a copy of all PIH notices referenced in this NOFA may be downloaded at <http://www.hudclips.org>). PIH Moving to Work (MTW) agencies will be funded under this NOFA in accordance with their MTW agreements.

3. Unfunded Approvable Applications. PHAs with approvable applications that are not funded in whole or in part due to insufficient funds available under this NOFA will not be funded.

III. Eligibility Information

A. Eligible Applicants. PHAs that currently administer a HCV program are eligible to apply for funding under this NOFA.

B. Cost Sharing or Matching. None required.

C. Other Requirements.

1. Eligible Activities. HCVs awarded under this NOFA will be subject to all of the requirements of 24 CFR part 982 with exceptions noted in regard to waiting list selection in section III.C.3. MTW agencies may administer these vouchers in accordance with their MTW agreements unless they are inconsistent with Appropriations Act requirements or the requirements of this NOFA. All PHAs (including MTW agencies) must comply with the requirements of PIH Letter 2007-1 (New Freedom Initiative, Executive Order 13217: "Community-Based Alternatives for Individuals with Disabilities," and the Housing Choice Voucher Program) which extended Notice PIH 2006-21 (HA) which reinstated Notice PIH Notice 2005-5 (HA). These requirements include, but are not limited to, re-issuance upon turnover of these vouchers to non-elderly disabled families on the PHA's waiting list and entering appropriate data into the Public and Indian Housing Information Center (PIC). In addition, Section 213 of the FY 2008 Appropriations Act states that amounts available under this Act or previous appropriations acts for tenant-based rental assistance and used for non-elderly disabled families or for the Family Unification Program shall, to the extent practicable, remain available for each respective purpose upon turnover.

2. Threshold Requirements.

a. All applicants must meet all threshold requirements in Section III.C of the 2008 General Section with the following exceptions:

(1) Section III.C.2.d. (Conducting Business in Accordance with Core Values and Ethical Standards). To reflect core values, all applicant PHAs shall develop and maintain a written code of conduct in the PHA's administrative plan that:

(a) Requires compliance with the conflict of interest requirements of the HCV program cited in 24 CFR 982.161; and

(b) Prohibits the solicitation or acceptance of gifts or gratuities in excess of a nominal value by an officer or employee of the HA or any contractor, subcontractor, or agent of the PHA. The PHA's administrative plan shall state the PHA policies concerning PHA administrative and disciplinary remedies for violation of the PHA code of conduct. The PHA shall inform all officers, employees and agents of its organization of the PHA's code of conduct.

(2) Section III.C.4.b.(1) through (3) (Specific Steps to Affirmatively Furthering Fair Housing). The PHA must comply with Section III.C.4.b. of the General Section; the exceptions only apply to providing specific steps in the application. In addition, prior to the application due date under this NOFA, each applicant must submit to the public housing director in the applicant's local HUD field office an addendum to the applicant's HCV administrative plan that outlines reasonable steps the applicant will take to affirmatively further fair housing in regard to the vouchers awarded under this NOFA. Reasonable steps must include: (a) Identifying non-elderly disabled families on its public housing waiting list that will not be housed due to an approved or submitted Designated Housing Plan; and (b) Inform individuals on how to file a fair housing complaint including the provision of the toll free number for the Housing Discrimination Hotline: 1-800-669-9777. Further, an applicant must comply with the affirmatively furthering fair housing requirements of 24 CFR Section 903.7(o) by: (1) Examining its programs or proposed programs; (2) identifying any impediments to fair housing choice within those programs; (3) addressing those impediments in a reasonable fashion in view of the resources available; (4) working with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; and (5) maintaining records reflecting these analyses and actions. Further, applicant PHAs are encouraged to take the following proactive steps in addressing accessibility problems for persons with

disabilities: (1) Where requested by an individual, assist program applicants and participants to gain access to supportive services available within the community, but not require eligible applicants or participants to accept supportive services as a condition of continued participation in the program; (2) Identify public and private funding sources to assist participants with disabilities in covering the costs of structural alterations and other accessibility features that are needed as accommodations for their disabilities; (3) Not deny persons who qualify for a HCV under this program other housing opportunities, or otherwise restrict access to PHA programs to eligible applicants who choose not to participate; (4) Provide housing search assistance; (5) In accordance with rent reasonableness requirements, approve higher rents to owners that provide accessible units with structural modifications for persons with disabilities, and (6) Provide technical assistance, through referrals to local fair housing and equal opportunity offices, to owners interested in making reasonable accommodations or units accessible to persons with disabilities.

b. Applications under this NOFA must also meet the following threshold requirements to be eligible for funding under this NOFA.

(1) Each applicant must have a HUD-approved Designated Housing plan. These Designated Housing Plans must be listed on the following Web site: <http://www.hud.gov/offices/pih/programs/ph/dhp/designated.cfm> (Click on MS-Excel file).

(2) Each applicant must meet the PIC reporting requirements under PIH Notice 2007-29 (HA) that will be assessed for the month immediately preceding the month in which the applications under this NOFA are due. This threshold requirement will not apply to MTW agencies.

(3) Each applicant must have achieved points (15 or 20) under the Section 8 Management Assessment Program (SEMAP) leasing indicator (24 CFR 985.3(n)) and not be designated as troubled for its most recent assessed fiscal year. MTW agencies that are not required to report under SEMAP shall be held to the 95 percent lease-up and budget authority utilization requirements referenced above. These MTW agencies are required to submit a certification with their application certifying that they are not required to report under SEMAP, and that they meet the 95 percent lease-up or budget authority utilization requirements.

(4) The PHA applicant must not have any major unresolved program

management findings from an Inspector General audit, HUD management review or Independent Public Accountant (IPA) audit for the PHA's HCV program or other significant program compliance problems (such as fair housing and/or civil rights violations or findings) that were not resolved prior to this NOFA's application deadline. Major program management findings, or significant program compliance problems, are those that would cast doubt on the capacity of the applicant to effectively administer any new HCV funding in accordance with applicable HUD regulatory and statutory requirements.

(5) The PHA must not be involved in litigation where HUD determines that the litigation may seriously impede the ability of the applicant to administer the vouchers.

3. Eligible Participants. Non-elderly disabled families that are income eligible under 24 CFR 982.201(b)(1) and were on the PHA's public housing waiting list at the time of designation may receive a HCV awarded under this NOFA. Such families need not be listed on the PHA's HCV waiting list in order to be offered a voucher. These families may be admitted to the HCV program as special admissions under 24 CFR Section 982.203. Additional information on the eligibility requirements is located on the following HUD Web site: www.hud.gov/offices/pih/programs/hcv/pwd/designated.cfm.

4. Environmental Review. In accordance with 24 CFR 50.19(b)(11) and 58.35(b)(1) of the HUD regulations, tenant-based rental activities under this program are categorically excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA) and are not subject to environmental review under the related laws and authorities. Activities under the homeownership option for existing units and for units under construction at the time the family enters into the contract for sale are categorically excluded from NEPA requirements and excluded from other environmental requirements under 24 CFR 58.5 in accordance with 24 CFR Section 58.35(b)(5), but PHAs are responsible for the environmental requirements in 24 CFR Section 982.626(c). With regard to activities under the homeownership option for units not yet under construction at the time the family enters into the contract for sale, the additional environmental review requirements referenced in 24 CFR 982.628(e), 982.631(c)(3) and 982.637(b) also apply in addition to Section 982.626(c), and the PHA shall submit all relevant environmental information to the responsible entity or to HUD to

assist in the completion of those requirements.

IV. Application and Submission Information

A. Addresses to Request Application Package. Please read the 2008 General Section under Section IV.A. for full details on Web sites, electronic forms and electronic applicant submission requirements.

B. Content and Form of Application Submission. Please carefully read Section IV. of the 2008 General Section.

1. Content of Application under this NOFA.

a. Each PHA must complete the following forms:

(1) Form HUD-52515, *Funding Application, Section 8 Tenant-Based Assistance, Rental Certificate Program, Rental Voucher Program*.

(A) When completing this form, only complete the box for total dwelling units under vouchers in section B. Do not complete section C.

(B) In section D of the form, the PHA must include the following information related to its HUD-approved Designated Housing Plan:

(i) The number of vouchers requested, which may not exceed: (a) The number of units designated for elderly families only in its approved Designated Housing Plan; (b) the number of non-elderly disabled families on the PHA's waiting list for those units at the time of designation (which must be stated in the application); or (c) 100 whichever is less;

(ii) The number of previously awarded vouchers for units designated for elderly families only in its approved Designated Housing Plan;

(iii) The minimum number of vouchers that the PHA will accept if selected under a lottery system (See Section V.B.3. below).

(2) Form SF-424, *Application for Federal Assistance*. When completing this form, the Federal Identifier requested in section 5a is the PHA's five digit number (e.g., MD035 or AK002). PHA applicants should estimate proposed start date and end date in section 17. In Section 18 (Estimated Funding), complete only 18.a and 18.g. The amount entered in both fields should be the total number of vouchers requested in Section B of the form HUD-52515 times the per housing assistance payments unit cost for 2008 HCV renewal funding or the per unit cost for 2009 renewal funding, if those costs are available.

(3) Form HUD-2880, *Applicant/Recipient Disclosure/Update Report*;

(4) Form HUD-2993, *Acknowledgment of Application Receipt*;

(5) Form HUD-96011, *Third Party Documentation Facsimile Transmittal*; if applicable for cover letter;

(6) Form HUD-2991, *Certification of Consistency with the Consolidated Plan*, or a copy of the signed PHA Certification of Compliance for its current Annual PHA Plan; and

(7) SF-LLL, *Disclosure of Lobbying Activities*, if applicable.

C. Submission Date and Time. Your completed application must be received and validated by Grants.gov no later than 11:59:59 p.m. eastern time on the application deadline date.

D. Intergovernmental Review. This NOFA is not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

E. Funding Restrictions. Funds under this NOFA may only be used for housing assistance for eligible participants and may not be used for performance of routine HCV program functions that are reimbursed through HCV administrative fees.

F. Other Submission Requirements. See section IV.F.3. of the 2008 General Section. Electronic application submission is mandatory unless an applicant requests, and is granted, a waiver to the requirement. Applicants should submit their waiver requests in writing using e-mail. Waiver requests must be submitted no later than 15 days prior to the application deadline date and should be submitted to Danielle.L.Bastarache@hud.gov and Phyllis.A.Smelkinson@hud.gov. The subject line of the e-mail message should be FY 2008 Designated Housing NOFA Waiver Request. If an applicant is granted a waiver, then the approval will provide instructions for submitting paper copies to the appropriate HUD office(s). All paper applications must be received by the application deadline date to meet the requirements for timely submission.

V. Application Review Information

A. Criteria.

1. Factors Used to Evaluate and Rate Applications. None.

B. Review and Selection Process.

1. Technically Acceptable Applications. All technically acceptable applications that meet the threshold criteria of section III.C.2. above will be funded to the extent funds are available.

a. Funding Priority Categories. None.

b. Order of Funding. If funding under this NOFA is not available to fund all applications received by the NOFA

deadline, a lottery will be used until all funding is exhausted

c. Insufficient Funds. Not applicable.

2. Corrections to Deficient

Applications. The 2008 General Section provides the procedures for corrections to deficient applications. Please note that clarifications or corrections of technical deficiencies in accordance with the information provided by HUD to the applicant must be submitted within 14 calendar days of the date of receipt of the HUD notification.

3. Unacceptable Applications. After the technical deficiency correction period (as provided in the 2008 General Section), the HUD Grants Management Center (GMC) will disapprove PHA applications that it determines are not acceptable for processing. Applications from PHAs that fall into any of the following categories are ineligible for funding under this NOFA and will not be processed:

a. Any PHA that does not meet the threshold requirements of the 2008 General Section.

b. Any PHA that does not meet the threshold requirements of Section III.C.

c. A PHA's whose application does not comply with the requirements of this NOFA after the expiration of the 14-calendar day technical deficiency correction period.

d. A PHA whose application was submitted after the application due date.

e. A PHA whose application was not submitted to the official place of receipt.

C. Anticipated Announcement and Award Dates. It is anticipated that award announcements will take place during the month of June or July, 2009.

VI. Award Administration Information

A. Award Notices. Successful applicants will receive an award letter from HUD. Funding will be provided to successful applicants as an amendment to the Annual Contributions Contract of the applicant PHA.

Unsuccessful applicants will receive a notification of rejection letter from the GMC that will state the basis for the decision. The applicant may request an applicant debriefing. Beginning not less than 30 days after the awards for assistance are announced publicly, upon receiving a written request, HUD will provide a debriefing to the requesting applicant. (See the 2008 General Section for additional information regarding a debriefing.) Applicants requesting to be debriefed must send a written request to: Keia Neal, Acting Director, Grants Management Center, U.S. Department of Housing and Urban Development, 501 School Street, SW., Suite 800, Washington, DC 20024.

B. Administrative and National Policy Requirements.

1. HUD's Strategic Goals. HUD is committed to ensuring that programs result in the achievement of HUD's strategic mission. HCVs awarded under this NOFA support the Department's strategic goals of: (1) Increasing homeownership opportunities, and (2) promoting decent, affordable housing by expanding access to these opportunities for non-elderly persons with disabilities. For more information about HUD's Strategic Plan and Annual Performance Plan, you may visit HUD's Web site at <http://www.hud.gov/offices/cfo/reports/cforept.cfm>.

2. HUD Policy Priorities. HCVs awarded under this NOFA supports HUD's policy of: Providing increased homeownership and rental opportunities for low- and moderate-income persons with disabilities.

C. Reporting. Successful applicants (including MTW agencies) must report the usage of voucher funds under this NOFA through required submissions of the form HUD-50058, *Family Report*. PHAs must enter the program code "PHDES" on line 2n of the Family Report for families who are assisted with vouchers under this NOFA. PHAs must maintain this code on the form HUD-50058 for the duration of the family's participation in the HCV program. HUD's assessment of PHA compliance under this NOFA will be based on PIC system data.

VII. Agency Contacts

A. For Technical Assistance. For answers to your questions, you may contact the Public and Indian Housing Resource Center at 1-800-955-2232. Persons with hearing or speech impairments may access this number via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339. (These are toll-free numbers.) Prior to the application deadline, staff at the numbers given above, will be available to provide general guidance, but not guidance in actually preparing the application. Following selection, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award by HUD.

VIII. Other Information

A. Paperwork Reduction Act. The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2577-0169 and 2577-0083. In

accordance with the PRA, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

B. Public Access, Documentation, and Disclosure. See Section VIII. G. of the 2008 General Section.

C. Environmental Impact. This NOFA provides funding under, and does not alter the environmental requirements of 24 CFR part 982. Accordingly, under 24 CFR 50.19(c)(5), the NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). For environmental review of activities funded under this NOFA, see requirements described in section III.C.4 above.

Dated: November 18, 2008.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E8-28234 Filed 11-26-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Renewal of Information Collection: OMB Control Number 1091-0001, Applicant Background Survey

AGENCY: Office of Civil Rights.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Civil Rights, Office of the Secretary, Department of the Interior (DOI) announces the proposed extension of a public information collection and seeks public comments on the provisions thereof.

DATES: Consideration will be given to all comments received by *January 27, 2009*.

ADDRESSES: Send your written comments to the U.S. Department of the Interior, Office of the Secretary, Office of Civil Rights, Attn. John Burden, Deputy Director, 1849 C St. NW., MS 2607 MIB, Washington, DC 20240. Send any faxed comments to (202) 208-6112, attn. John Burden. Comments may also be emailed to *John_Burden@ios.doi.gov*.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information on this renewed information collection or its Applicant Background Survey Form should be directed to U.S. Department

of the Interior, Office of the Secretary, Office of Civil Rights, Attn. John Burden, Deputy Director, 1849 C St. NW., MS 2607 MIB, Washington, DC 20240. Before including your address, phone number, email 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.

SUPPLEMENTARY INFORMATION:

I. Abstract

DOI is below parity with the Relevant Civilian Labor Force representation for many mission critical occupations. The Department's Strategic Human Capital management Plan identifies the job skills that will be needed in its current and future workforce. The job skills it will need are dispersed throughout its eight bureaus and include, among others, making visitors welcome to various facilities, such as parks and refuges, processing permits for a wide variety of uses of the public lands, collecting royalties for minerals extracted from the public lands, rounding-up and adopting-out wild horses and burros found in the west, protecting archeological and cultural resources of the public lands, and enforcing criminal laws of the United States. As a result of this broad spectrum of duties and services, the Department touches the lives of most Americans.

The people who deal with the Department bring with them a wide variety of backgrounds, cultures, and experiences. A diverse workforce enables the Department to provide a measure of understanding to its customers by relating to the diverse background of those customers. By including employees of all backgrounds, all DOI employees gain a measure of knowledge, background, experience, and comfort in serving all of the Department's customers.

In order to determine if there are barriers in our recruitment and selection processes, DOI must track the demographic groups that apply for its jobs. There is no other statistically valid method to make these determinations, and no source of this information other than directly from applicants. The data collected is not provided to selecting officials and plays no part in the merit staffing or the selection processes. The data collected will be used in summary form to determine trends covering the

demographic make-up of applicant pools and job selections within a given occupation or organizational group. The records of those applicants not selected are destroyed in accordance with DOI's records management procedures.

II. Data

(1) *Title:* Applicant Background Survey.

OMB Control Number: 1091-0001.

Current Expiration Date: April 30, 2009.

Type of Review: Information Collection Renewal.

Affected Entities: Applicants for DOI jobs.

Estimated annual number of respondents: 13433.

Frequency of Response: Once per job application.

(2) *Annual reporting and record keeping burden:* Average reporting burden per application: 5 minutes.

Total annual reporting: 1119 hours.

(3) *Description of the need and use of the information:* This information is required to obtain the source of recruitment, ethnicity, race, and disability data on job applicants to determine if the recruitment is effectively reaching all aspects of relevant labor pools and to determine if there are proportionate acceptance rates at various stages of the recruitment process. Response is optional. The information is used for evaluating recruitment only, and plays no part in the selection of who is hired.

III. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to

a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information.

All written comments will be available for public inspection in the Main Interior Building, 1849 C Street, NW., Washington, DC during normal business hours, excluding legal holidays. For an appointment to inspect comments, please contact John Burden by telephone on (202) 208-3173, or by e-mail at John_Burden@ios.doi.gov. A valid picture identification is required for entry into the Department of the Interior.

Dated: November 14, 2008.

Sharon Eller,

Director, Office of Civil Rights, Office of the Secretary.

[FR Doc. E8-28340 Filed 11-26-08; 8:45 am]

BILLING CODE 4310-RE-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-R-2008-N0298; 1265-0000-10137-S3]

Hanford Reach National Monument; Adams, Benton, Franklin and Grant Counties, WA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision and availability of the record of decision.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce our decision and availability of the Record of Decision (ROD) for the Hanford Reach National Monument (Monument) Final Comprehensive Conservation Plan and Environmental Impact Statement (Final CCP/EIS). The ROD documents our selection of Alternative C-1, the Preferred Alternative in our Final CCP/EIS, for implementation as the Monument's CCP. Alternative C-1 addresses the key issues identified during the planning process and will best achieve the purposes and goals of the Monument as well as the mission of the National Wildlife Refuge System (NWRS). The Monument is located in Adams, Benton, Franklin, and Grant Counties, Washington.

ADDRESSES: A copy of the ROD or Final CCP/EIS may be obtained from Greg Hughes, Project Leader, Mid-Columbia River National Wildlife Refuge Complex, 64 Maple Street, Burbank, Washington 99323, Telephone (509) 546-8300, or from the Monument's Web site: <http://hanfordreach.fws.gov>.

FOR FURTHER INFORMATION CONTACT: Contact Greg Hughes, Project Leader, phone (509) 546-8300.

SUPPLEMENTARY INFORMATION: The Final CCP/EIS was released to the public and a Notice of Availability was published in the **Federal Register** on August 15, 2008 (71 FR 74929). A thorough analysis of the environmental, social and economic considerations was completed and presented in the Final CCP/EIS. In this notice, we announce our decision to implement Alternative C-1 as the CCP for the Monument, as documented in the ROD. The ROD was signed by the Fish and Wildlife Service's Regional Director for the Pacific Region, on September 25, 2008.

The CCP will provide management guidance for conserving resources and providing public use activities. This decision includes adoption of stipulations and mitigation measures identified in Alternative C-1 and Appendix I in the Final CCP/EIS. Implementation of the CCP will occur over the next 15 years, depending on future staffing levels and funding.

Factors Considered in Making the Decision

The decision was based on a thorough analysis of the environmental, social and economic considerations presented in the Final CCP/EIS. During the decision-making phase of the CCP process, the Service reviewed and considered: the impacts identified in Chapter 4 of the Draft and Final CCP/EIS; the results of various studies and surveys conducted in conjunction with the Draft and Final CCP/EIS; relevant issues, concerns and opportunities; comments on the Draft CCP/EIS; and other relevant factors, including the purposes for which the Monument was established and statutory and regulatory guidance. Alternative C-1 incorporates several components addressing a variety of needs including fish and wildlife sanctuary, habitat restoration and protection, public safety, and the NWRS's six priority public uses. It is, however, the unique combination of these components that contributes most to achieving the Monument's purposes and goals. Alternative C-1 strengthens the monitoring of fish, wildlife, habitat, and public uses on the Monument, which will provide the means to better respond to rapidly changing conditions within the surrounding environment. Alternative C-1 was selected for implementation because it provides the greatest number of opportunities to contribute to the fish, wildlife and habitat needs of the Mid-Columbia River Basin.

Dated: October 21, 2008.

David J. Wesley,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. E8-28214 Filed 11-26-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-320-1310-DT-OSHL]

Notice of Availability of Approved Resource Management Plan Amendments/Record of Decision (ROD) for Oil Shale and Tar Sands Resources To Address Land Use Allocations in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability (NOA).

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Energy Policy Act of 2005 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) announces the availability of the Approved Resource Management Plan Amendments/Record of Decision for Oil Shale and Tar Sands Resources to Address Land Use Allocations in Colorado, Utah, and Wyoming (PRMP Amendments) and Final Programmatic Environmental Impact Statement (FPEIS).

ADDRESSES: The document will be available electronically on the following Web site: <http://ostseis.anl.gov>. Copies of the Record of Decision (ROD) are available for public inspection at the following BLM Office locations:

- Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215.
- Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT 84101.
- Wyoming State Office, 5353 Yellowstone, Cheyenne, WY 82009.
- Vernal Field Office, 170 South 500 East, Vernal, UT 84078.
- Price Field Office, 125 South 600 West, Price, UT 84501.
- Richfield Field Office, 150 East 900 North, Richfield, UT 84701.
- Monticello Field Office, 435 North Main, P.O. Box 7, Monticello, UT 84535.
- White River Field Office, 220 E. Market Street, Meeker, CO 81641.
- Glenwood Springs Field Office, 2425 S. Grand Ave., Suite 101, Glenwood Springs, CO 81601.
- Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506.

- Kemmerer Field Office, 312 Highway 189 North, Kemmerer, WY 83101.
- Rawlins Field Office, at 1300 North Third, PO Box 2407, Rawlins, WY 82301.
- Rock Springs Field Office, 280 Highway 191 North, Rock Springs, WY 82901.

FOR FURTHER INFORMATION CONTACT:

Sherri Thompson, BLM Project Manager, at (303) 239-3758, (sherri_thompson@blm.gov), Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215 or Mitchell Leverette, BLM Division Chief, Solid Minerals, at (202) 452-5088, (mitchell_leverette@blm.gov), Bureau of Land Management, 1620 L Street, NW., Washington, DC 20036.

SUPPLEMENTARY INFORMATION: The decision in the ROD selects Alternative B as the Approved Resource Management Plan Amendments, which would amend 10 land use plans in Colorado, Utah, and Wyoming to make approximately 2 million acres of lands containing oil shale resources available for application for commercial leasing and approximately 430,000 acres available for application for commercial leasing of tar sands.

Because of the strategic importance and multiple state involvement in the process, the Assistant Secretary, Land and Minerals Management, in the Department of the Interior approved the proposed plan amendments on November 17, 2008.

Authority: 40 CFR 1506.6, 43 CFR 1610.2, 43 CFR 1610.5-1.

Dated: November 17, 2008.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

[FR Doc. E8-28348 Filed 11-26-08; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-910-09-1739-NSSI]

Call for Nominations: North Slope Science Initiative, Science Technical Advisory Panel, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations for the North Slope Science Initiative, Science Technical Advisory Panel.

SUMMARY: This notice announces a call for nominations to serve on the North Slope Science Initiative, Science Technical Advisory Panel in accordance

with the provisions of the Federal Advisory Committee Act (FACA) of 1972, 5 U.S.C. Appendix.

DATES: Submit a completed nomination form and nomination letter to the address listed below no later than 45 days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: John F. Payne, Ph.D, Executive Director, North Slope Science Initiative (AK-910), c/o Bureau of Land Management, Alaska State Office, 222 West 7th Avenue, #13, Anchorage, Alaska 99513, phone (907) 271-3431, or john_f_payne@blm.gov.

SUPPLEMENTARY INFORMATION: The purpose of the Science Technical Advisory Panel is to advise the North Slope Science Oversight Group on issues such as identifying and prioritizing inventory, monitoring and research needs, and providing other scientific as requested by the Oversight Group. The Oversight Group consists of the Alaska Regional Directors of the U.S. Fish and Wildlife Service, National Park Service, Minerals Management Service, and National Marine Fisheries Service; the BLM-Alaska State Director; The Commissioners of the Alaska Departments of Fish and Game and Natural Resources; the Mayor of the North Slope Borough and the president of the Arctic Slope Regional Corporation. Advisory to the Oversight Group are the Regional Executive, U.S. Geological Survey, Alaska Director, U.S. Arctic Research Commission, and the Regional Directors of the National Weather Service and U.S. Department of Energy, National Energy Technology Laboratory.

The Science Technical Advisory Panel shall consist of a representative group of not more than 15 scientists and technical experts from diverse professions and interests, including the oil and gas industry, subsistence users, Alaska Native entities, conservation organizations, and academia, as determined by the Secretary of the Interior. The members will be selected from among, but not limited to, the following disciplines: North Slope traditional and local knowledge, landscape ecology, petroleum engineering, civil engineering, geology, botany, hydrology, limnology, habitat biology, wildlife biology, biometrics, sociology, cultural anthropology, economics, ornithology, oceanography, fisheries biology, and climatology.

The duties of the Science Panel are solely advisory to the Oversight Group, which will give direction to the Science Panel regarding priorities for decisions needed for the Department of the

Interior's management. Duties could include the following:

- Advise the Oversight Group on science planning and relevant research and monitoring projects;
- Advise the Oversight Group on scientific information relevant to the Oversight Group's mission;
- Review selected reports to advise the Oversight Group on their content and relevance;
- Review ongoing scientific programs of North Slope Science Initiative (NSSI) member organizations on the North Slope at the request of the member organizations to promote compatibility in methodologies and compilation of data;
- Advise the Oversight Group on how to ensure that scientific products generated through NSSI activities are of the highest technical quality;
- Periodically review the North Slope Science Plan and provide recommendations for changes to the Oversight Group;
- Provide recommendations for proposed NSSI funded inventory, monitoring and research activities to the Oversight Group;
- Provide other scientific advice as requested by the Oversight Group; and
- Coordinate with groups and committees appointed or requested by the Oversight Group to provide science advice, as needed.

The Executive Director, North Slope Science Initiative shall serve as the Designated Federal Officer of the Science Technical Advisory Panel.

Qualifications and Procedures Required for Nomination

All membership shall consist of professionals with advanced degrees and a minimum of five years of work experience in Alaska in their field of expertise, preferably in the North Slope region. Professionals will be selected from among those disciplines and entities described above. Any individual or organization may nominate one or more persons to serve on the Science Technical Advisory Panel. Members will be appointed for three-year terms. At the discretion of the Secretary of the Interior, Science Technical Advisory Panel members may be reappointed indefinitely.

How To Nominate

Individuals may nominate themselves to the Science Technical Advisory Panel. You may obtain nomination forms from the Executive Director, North Slope Science Initiative (see address above), or from <http://www.northslope.org>. To make a nomination, or self nominate, you must

submit a completed nomination form with a letter of reference that describes the nominee's qualifications to serve on the Science Technical Advisory Panel. The professional discipline the nominee would like to represent should be identified in the letter of nomination and in the nomination form. Nominees may be scientists and technical experts from diverse professions and interests, including the oil and gas industry, subsistence users, Alaska Native entities, conservation organizations, and academia. Nominees selected to serve on the Science Technical Advisory Panel will serve only in their professional capacity and will not serve to represent any group, agency or entity with whom they may be affiliated. The Executive Director shall collect the nomination forms and letters of reference and distribute them to the Oversight Group of the North Slope Science Initiative. The Oversight Group will submit their recommendations through the Bureau of Land Management to the Secretary of the Interior who has the responsibility for making the appointments. Members of the Science Technical Advisory Panel will serve without monetary compensation. Members will be reimbursed for travel and per diem expenses at the current rate for Government employees.

Certification

I hereby certify that the establishment of the Science Technical Advisory Panel for the North Slope Science Initiative is necessary and in the public interest in connection with the Secretary of the Interior, and in compliance with Section 348, Energy Policy Act of 2005 (Pub. L. 109-58).

Thomas P. Lonnie,
State Director.

[FR Doc. E8-28366 Filed 11-26-08; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of the Final Programmatic Environmental Impact Statement for the Designation of Energy Corridors on Federal Land in the 11 Western States, Including Proposed Amendments to Selected Land Use Plans LLW0350000.L14300000.PN0000

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) and the Department of Energy (DOE) as co-lead agencies, and the U.S. Forest Service (FS) of the Department of Agriculture (USDA), the Department of Defense (DOD), and the U.S. Fish and Wildlife Service (USFWS) of the Department of the Interior (DOI) as cooperating Federal Agencies (the Agencies) announce the availability of the Final Programmatic Environmental Impact Statement for the Designation of Energy Corridors on Federal Land in the 11 Western States (Final PEIS) (DOE/EIS-0386) that also proposes to amend 138 land use plans.

The Coeur d'Alene Tribe, the California Energy Commission (CEC), the California Public Utilities Commission (CPUC), the State of Wyoming, and the Lincoln, Sweetwater, and Uinta counties and conservation districts in Wyoming are also cooperating agencies. The Department of Commerce (DOC) and the Federal Energy Regulatory Commission (FERC) are consulting agencies.

The Agencies prepared the Final PEIS pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*; the Council on Environmental Quality NEPA regulations, 40 CFR Parts 1500-1508; the DOE NEPA regulations, 10 CFR Part 1021; Compliance with Floodplain and Wetland Environmental Review Requirements, 10 CFR Part 1022; the BLM planning regulations, 43 CFR subpart 1610; and applicable FS planning regulations.

Section 368 of the Energy Policy Act of 2005 (EPA 2005), Public Law 109-58, directs the Secretaries of Agriculture, Commerce, Defense, Energy, and the Interior, in consultation with FERC, states, tribal or local units of governments, as appropriate; affected utility industries; and other interested persons to designate, under their respective authorities, corridors on Federal land in the 11 Western States for oil, gas, and hydrogen pipelines as well as electricity transmission and distribution facilities; perform any environmental reviews that may be required to complete the designation of such corridors; and incorporate the designated corridors into relevant agency land use and resource management plans or equivalent plans.

The 11 Western States are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

DATES: Copies of the Final PEIS were distributed beginning November 20, 2008 to Members of Congress, American Indian Tribal governments, state and

local governments, other Federal agencies, and organizations and individuals who are known to have an interest in the Final PEIS.

The DOI, USDA and DOD would issue separate Records of Decision (ROD) to amend selected land use plans for the purpose of designating EPA 2005 Section 368 corridors no sooner than 30 days after the Environmental Protection Agency publishes the Notice of Availability of the Final PEIS. BLM's ROD must also await a 60-day Governors' Consistency Review in accordance with 43 CFR 1610.3-2.

ADDRESSES: Send written requests for compact discs (CD) or printed copies of the Final PEIS to: West-wide Energy Corridor Final PEIS, Argonne National Laboratory, 9700 S. Cass Avenue, Bldg. 900, Mailstop 4, Argonne, IL 60439; by toll-free fax: 1-866-542-5904; or order online at <http://corridoreis.anl.gov>.

The Final PEIS consists of a stand alone Summary, the PEIS Chapters (Volume 1-648 pages), the Appendices (Volume 2-564 pages), Maps (Volume 3-148 pages), and Comments and Responses (Volume 4-174 pages). The Final PEIS Volume 3 map atlas is printed on 11x17-inch paper. The CD version of the Final PEIS includes the map atlas in PDF format. The most powerful and flexible version of the map data is available on the project Web site (<http://corridoreis.anl.gov>). The Web site maps are available within a geographic information system (GIS) database that allows users to merge, enlarge, and view multiple map-data layers. Software and instructions to use the GIS data are user-friendly and available for free download on the Web site. The Final PEIS is available on the project Web site at <http://corridoreis.anl.gov>, on the DOE NEPA Web site at <http://www.gc.energy.gov/nepa>, and at the following reading room locations:

- The BLM state and field offices and FS regional offices in the 11 Western States, and
- The DOE Freedom of Information Act Office and Reading Room, Room 1E-190, 1000 Independence Ave., SW., Washington, DC 20585; phone 202-586-3142.

FOR FURTHER INFORMATION CONTACT: For information on the Final PEIS, please contact Kate Winthrop, BLM, WO-350, MS 1000 LS, 1849 C Street, NW., Washington, DC 20240; by phone: 202-452-5051; or by e-mail: kate_winthrop@blm.gov.

SUPPLEMENTARY INFORMATION: The Agencies prepared the Final PEIS to implement Section 368 of EPA 2005 to designate preferred locations for future

oil, gas, and hydrogen pipelines as well as electricity transmission and distribution facilities and to incorporate the designated corridors into the relevant agencies' land use and resource management plans or equivalent plans. Section 368 directs the Agencies to take into account the need for upgraded and new infrastructure and to take actions to improve reliability, relieve congestion, and enhance the capability of the national grid to deliver energy. This action only pertains to the designation of corridors for potential facilities on Federal lands located within the 11 Western States.

In addition, Section 368 is intended to improve coordination among the Agencies to increase the efficiency of using designated corridors. In many areas of the United States, including the West, the infrastructure required to deliver energy has not always kept pace with growth in energy demand. The Agencies hope to improve the delivery of energy, while enhancing the electric transmission grid for the future, by establishing a coordinated network of Federal energy corridors on Federal lands in the West. The Final PEIS analyzes the environmental impacts of designating Federal energy corridors in 11 Western States and incorporating those designations into relevant agency land use and resource management plans or equivalent plans.

The Agencies are preparing this PEIS at the designation stage because they believe it is an appropriate time to examine environmental concerns at the programmatic level. Impacts that affect the quality of the environment will only occur after specific proposals are submitted, analyzed through the NEPA process, and approved by the land

management agency. The Agencies expect that the PEIS will greatly assist subsequent site-specific analyses for individual project proposals by allowing the Agencies to incorporate this PEIS into those later analyses.

The Final PEIS analyzes a No Action Alternative and a Proposed Action. Under the No Action Alternative, Federal energy corridors would not be designated on Federal lands in the 11 Western States. The siting and development of future energy transport projects would continue under current agency procedures for granting rights-of-way (ROW). Under the Proposed Action, the Agencies would designate and incorporate identified Federal energy corridors that would consist of existing, locally designated Federal energy corridors together with additional, newly designated energy corridors located on Federal land into relevant land use and resource management plans. The Proposed Action is the Agencies' preferred alternative.

These energy corridors would comprise a comprehensive, coordinated network of preferred locations for future energy projects that could be developed to satisfy demand for energy. Under the Proposed Action, approximately 6,120 miles of Federal energy corridors would be designated on Federal lands within the 11 Western States as the preferred location for oil, natural gas, and hydrogen pipelines as well as electricity transmission and distribution lines. Environmental, engineering, and land use screening criteria were applied during the development of the Proposed Action to reduce potential environmental and land use conflicts. The energy corridors would typically be 3,500 feet wide, although the width may

vary in certain areas due to environmental, topographic, or management constraints. The DOI, USDA and DOD would amend their respective land use or equivalent plans to incorporate the designated energy corridors; the amendments would be effective upon signing of the relevant agency's ROD.

The policies and Interagency Operating Procedures (IOPs) developed under the Proposed Action would establish minimum requirements for the management of future individual energy transport projects. The proposed policies identify management objectives and address the administration of energy transport development activities. The proposed IOPs identify required management procedures that would need to be incorporated into future project-specific energy transport development proposals. The Proposed Action would amend a total of 138 (93 BLM, 38 FS, 4 DOD, and 3 NPS) land use and equivalent plans in the 11 Western States. The proposed land use plan amendments would incorporate the programmatic energy transport development policies and IOPs set forth in the Final PEIS. The proposed land use plan amendments would facilitate preparation and consideration of future energy transport development ROW applications on DOI-, USDA-, and DOD-administered lands in these states, but would not eliminate the need for site-specific NEPA analysis of individual development proposals.

The Agencies propose to amend the following land use management plans, itemized in appendix A of the Final PEIS:

LAND USE OR EQUIVALENT PLANS PROPOSED FOR AMENDMENT TO INCORPORATE EPACT SECTION 368 ENERGY CORRIDORS ON FEDERAL LANDS IN THE 11 WESTERN STATES

	State land use plan	Agency office(s)
Arizona	Apache-Sitgreaves NS LRMP	FS, Apache-Sitgreaves NF
	Arizona Strip RMP	BLM, Arizona Strip FO
	Coronado NF LRMP	FS, Coronado NF
	Glen Canyon NRA GMP	NPS, Glen Canyon NRA
	Kaibab NF LRMP	FS, Kaibab NF
	Kingman RMP	BLM, Kingman FO
	Lake Havasu RMP	BLM, Lake Havasu FO
	Lower Gila North MFP	BLM, Hassayampa FO
	Lower Gila South RMP	BLM, Hassayampa FO
	Lower Sonoran RMP	BLM, Lower Sonoran FO
	Phoenix RMP	BLM, Hassayampa FO
	Prescott NF LRMP	FS, Prescott NF
	Safford RMP	BLM, Safford FO
	Tonto NF LRMP	FS, Tonto NF
	Yuma Proving Ground INRMP	DOD, U.S. Army, Yuma Proving Ground
	Yuma RMP	BLM, Yuma FO
California	Alturas RMP	BLM, Alturas FO
	Angeles NF LRMP	FS, Angeles NF
	Bishop RMP	BLM, Bishop FO

**LAND USE OR EQUIVALENT PLANS PROPOSED FOR AMENDMENT TO INCORPORATE EPACT SECTION 368 ENERGY
CORRIDORS ON FEDERAL LANDS IN THE 11 WESTERN STATES—Continued**

	State land use plan	Agency office(s)
	California Desert Conservation Area Plan	BLM, Barstow FO, El Centro FO, Lake Havasu FO, Needles FO, Ridgecrest FO, Palm Springs-South Coast FO
	China Lake Naval Air Weapons Station INRMP	DOD, U.S. Navy, China Lake Naval Air Weapons Station
	Cleveland NF LRMP	FS, Cleveland NF
	Eagle Lake RMP	BLM, Eagle Lake FO
	Inyo NF LRMP	FS, Inyo NF
	Klamath NF LRMP	FS, Klamath NF
	Lassen NF LRMP	FS, Lassen NF
	Modoc NF LRMP	FS, Modoc NF
	Redding RMP	BLM, Redding FO
	San Bernadino NF LRMP	FS, San Bernadino NF
	Shasta-Trinity NF LRMP	FS, Shasta-Trinity NF
	Sierra RMP	BLM, Folsom FO
	Six Rivers NF LRMP	FS, Six Rivers NF
	South Coast RMP	BLM, Palm Springs-South Coast FO
	Surprise RMP	BLM, Surprise FO
	Tahoe NF LRMP	FS, Tahoe NF
	Toiyabe NF LRMP	FS, Toiyabe NF
Colorado	Arapaho-Roosevelt NF and Pawnee NG LRMP	FS, Arapaho-Roosevelt NF and Pawnee NG
	Curecanti NCA GMP	NPS, Curecanti NRA
	Glenwood Springs RMP	BLM, Glenwood Springs FO
	Grand Junction RMP	BLM, Grand Junction FO
	Grand Mesa-Uncompahgre-Gunnison NF LRMP	FS, Grand Mesa-Uncompahgre-Gunnison NF
	Gunnison RMP	BLM, Gunnison FO
	Kremmling RMP	BLM, Kremmling FO
	Little Snake RMP	BLM, Little Snake FO
	Routt NF LRMP	FS, Routt-Medicine Bow NF, Thunder Basin NG
	Royal Gorge RMP	BLM, Royal Gorge FO
	Pike-San Isabel NF LRMP	FS, Pike-San Isabel NF
	San Juan NF LRMP	FS, San Juan NF
	San Juan/San Miguel RMP	BLM, Dolores FO, Uncompahgre FO
	Uncompahgre Basin RMP	BLM, Uncompahgre FO
	White River RMP	BLM, White River FO
Idaho	Big Desert MFP	BLM, Upper Snake FO
	Bruneau MFP	BLM, Bruneau FO
	Caribou-Targhee NF LRMP	FS, Caribou-Targhee NF
	Cassia RMP	BLM, Burley FO
	Coeur d'Alene RMP	BLM, Coeur d'Alene FO
	Idaho Panhandle NF LRMP	FS, Idaho Panhandle NF
	Jarbridge RMP	BLM, Bruneau FO, Four Rivers FO, Jarbridge FO
	Kuna MFP	BLM, Four Rivers FO
	Medicine Lodge RMP	BLM, Upper Snake FO
	Monument RMP	BLM, Burley FO, Shoshone FO
	Pocatello RMP	BLM, Pocatello FO
	Owyhee RMP	BLM, Four Rivers FO, Owyhee FO
	Twin Falls MFP	BLM, Burley FO
Montana	Beaverhead-Deerlodge NF LRMP	FS, Beaverhead-Deerlodge NF
	Billings RMP	BLM, Billings FO
	Dillon RMP	BLM, Dillon FO
	Garnet RMP	BLM, Missoula FO
	Headwaters RMP	BLM, Butte FO
	Lolo NF LRMP	FS, Lolo NF
Nevada	Black Rock-High Rock Emigrant Trail NCA RMP	BLM, Winnemucca FO
	Carson City FO Consolidated RMP	BLM, Carson City FO
	Elko RMP	BLM, Elko FO
	Ely RMP	BLM, Ely FO
	Hawthorne Army Depot INRMP	DOD, U.S. Army, Hawthorne AD
	Humboldt NF LRMP	FS, Humboldt-Toiyabe NF
	Lake Mead NRA GMP	NPS, Lake Mead NRA
	Las Vegas RMP	BLM, Las Vegas FO
	Nellis AFB Plan 126-4 INRMP	DOD, U.S. Air Force, Nellis AFB
	Paradise-Denio MFP	BLM, Winnemucca FO
	Sonoma Gerlach MFP	BLM, Winnemucca FO
	Surprise RMP	BLM, Surprise FO
	Toiyabe NF LRMP	FS, Humboldt-Toiyabe NF

**LAND USE OR EQUIVALENT PLANS PROPOSED FOR AMENDMENT TO INCORPORATE EPACT SECTION 368 ENERGY
CORRIDORS ON FEDERAL LANDS IN THE 11 WESTERN STATES—Continued**

	State land use plan	Agency office(s)
New Mexico	Tonopah RMP	BLM, Battle Mountain FO
	Wells RMP	BLM, Elko FO
	Carlsbad RMP	BLM, Carlsbad FO
	Farmington RMP	BLM, Farmington FO
	Mimbres RMP	BLM, Las Cruces DO
	Rio Puerco RMP	BLM, Rio Puerco FO
	Roswell RMP	BLM, Roswell FO
Oregon	Socorro RMP	BLM, Socorro FO
	White Sands RMP	BLM, Las Cruces DO
	Andrews-Steens RMP	BLM, Andrews FO
	Baker RMP	BLM, Baker FO
	Brothers-Lapine RMP	BLM, Central Oregon FO, Deschutes FO
	Deschutes NF LRMP	FS, Deschutes NF
	Eugene RMP	BLM, Upper Willamette FO
	Fremont NF LRMP	FS, Fremont-Winema NFs
	Klamath Falls RMP	BLM, Klamath Falls FO
	Lakeview RMP	BLM, Lakeview FO
Utah	Medford RMP	BLM, Ashland FO, Butte Falls FO, Gledale FO
	Mt. Hood NF LRMP	FS, Mt. Hood NF
	Roseburg RMP	BLM, South River FO, Swiftwater FO, Upper Willamette FO
	Salem RMP	BLM, Cascades FO, Tillamook FO
	Southeastern Oregon RMP	BLM, Jordan FO, Malheur FO
	Three Rivers RMP	BLM, Three Rivers FO
	Two Rivers RMP	BLM, Deschutes FO
	Upper Deschutes RMP	BLM, Deschutes FO
	Winema NF LRMP	FS, Fremont-Winema NF
	Cedar-Beaver-Garfield-Antimony RMP	BLM, Cedar City FO
	Dixie NF LRMP	FS, Dixie NF
	Fishlake NF LRMP	FS, Fishlake NF
	Grand Staircase-Escalante National Monument Management Plan	BLM, Grand Staircase-Escalante NM FO
	House Range RMP	BLM, Fillmore FO
	Kanab RMP	BLM, Kanab FO
	Moab RMP	BLM, Moab FO
	Pinyon MFP	BLM, Cedar City FO
	Pony Express RMP	BLM, Salt Lake FO
	Price RMP	BLM, Price FO
	Richfield RMP	BLM, Richfield FO
Washington	St. George (Dixie) RMP	BLM, St. George FO
	San Juan RMP	BLM, Monticello FO
	Uinta NF LRMP	FS, Uinta-Wasatch-Cache NF
Wyoming	Vernal RMP	BLM, Vernal FO
	Warm Springs RMP	BLM, Fillmore FO
	Wasatch-Cache NF LRMP	FS, Uinta-Wasatch-Cache NF
	Mount Baker-Snoqualmie NF LRMP	FS, Mount Baker-Snoqualmie NF
Washington	Spokane RMP	BLM, Wenatchee FO
	Wenatchee NF LRMP	FS, Wenatchee NF
	Ashley NF LRMP	FS, Ashley NF
	Casper RMP	BLM, Casper FO
	Cody RMP	BLM, Cody FO
	Grass Creek RMP	BLM, Worland FO
	Great Divide RMP	BLM, Rawlins FO
	Green River RMP	BLM, Rock Springs FO
	Kemmerer RMP	BLM, Kemmerer FO
	Lander RMP	BLM, Lander FO
	Medicine Bow NF LRMP	FS, Routt-Medicine Bow NF, Thunder Basin NG
	Washakie RMP	BLM, Worland FO

AFB = Air Force Base; BLM = Bureau of Land Management; CBGA = Cedar-Beaver-Garfield-Antimony; CCCP = Complex Comprehensive Conservation Plan; DO = district office; DOD = Department of Defense; FO = field office; FS = Forest Service; GMP = General Management Plan; INRMP = Integrated Natural Resources Management Plan; LMP = Land Management Plan; LRMP = Land and Resource Management Plan; MFP = Management Framework Plan; NCA = National Conservation Area; NF = National Forest; NM = National Monument; NG = National Grassland; NPS = National Park Service; NRA = National Recreation Area; RAMP = Recreation Area Management Plan; RFP = Revised Forest Plan; RMP = Resource Management Plan.

This list represents the most current plans. This list differs in some particulars from the list in the Draft PEIS, Vol. 2. Since planning is dynamic and there may also be further changes in the locations of specific corridors, the individual agency Records of Decision may also include changes in this list.

The Draft Programmatic Environmental Impact Statement for the Designation of Energy Corridors on Federal Land in the 11 Western States (Draft PEIS) was made available for public review and comment from November 16, 2007, to February 14, 2008. The Draft PEIS was posted on the project Web site at <http://corridoreis.anl.gov>, the DOE NEPA Web site at <http://www.gc.energy.gov/nepa>, and provided, on request, as a CD or printed document. Notice was provided to more than 2,200 individuals and organizations who registered on the project Web site to receive information about the PEIS. Approximately 14,000 individuals and organizations commented on the Draft PEIS, providing more than 3,500 substantive comments. About 57 percent of the comment documents were received via the project Web site, 21 percent were submitted by regular mail, and 22 percent were submitted at the public hearings, as oral statements, written submissions, or both.

Volume IV of the Final PEIS contains the public comments on the Draft PEIS and the agencies' responses. Public comments addressed a broad range of issues. Nearly 35 percent of the comments addressed various topics related to the alternatives presented in the PEIS, 20 percent commented on the purpose and need, and 17 percent commented on corridor location. Nearly 5 percent of the comments were concerned with ecological issues, approximately 4 percent raised concerns about multiple impact areas, 4 percent addressed cumulative impacts, and slightly more than 2 percent dealt with tribal issues.

The remaining comments were divided among a number of topics, each comprising less than 2 percent of the total. The topics (listed in decreasing order) include general impacts, land use, water resources, health and safety, cultural resources, maps, visual resources, socioeconomic, regulations, air quality, environmental justice, and noise.

Public and internal agency review comments on the Draft PEIS were incorporated into the Final PEIS. Public comments resulted in changes to the text and modifications to corridor segments. These changes have improved the analysis and clarified the discussion of important issues but did not significantly modify the Proposed Action or proposed land use plan amendments. The Final PEIS contains a number of modifications to corridor segments in response to public and agency comments. These changes are

detailed in appendix K of the Final PEIS.

Government-to-government consultation regarding potential energy transport development and land use plan amendments on DOI-, USDA-, and DOD-administered lands was conducted with federally recognized Tribes whose interests might be directly and substantially affected. The Tribes contacted are listed in appendix C of the Final PEIS.

In addition, the Agencies have initiated activities to coordinate and consult with the governors of each of the 11 Western States addressed in the PEIS and with State agencies. Prior to the Agencies' issuance of their respective RODs, the governor of each state has the opportunity to identify any inconsistencies between the proposed land use plan amendments and State or local plans and to provide recommendations, in writing, during the 60-day consistency review period required by the BLM land use planning regulations (43 CFR 1610.3-2).

The DOI Assistant Secretary, Land and Minerals Management (AS/LM) is the responsible official for publishing the proposed plan amendments affecting public lands. The Federal Land Policy and Management Act of 1976 and its implementing regulations provide land use planning authority to the Secretary, which has been delegated to this Assistant Secretary. Because any decision regarding these plan amendments is being made by the AS/LM, it is the final decision for the DOI. This decision is not subject to administrative review (protest) under the BLM (DOI) land use planning regulations (43 CFR 1610.5-2).

The USDA Under Secretary of Natural Resources and Environment is the responsible official for publishing the proposed plan amendments on National Forest System lands. The Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976, and their implementing regulations provide land use planning authority to the Secretary, as delegated to this Under Secretary. Because any decision regarding these plan amendments is being made by the Under Secretary, Natural Resources and Environment, it is the final decision for the Department of Agriculture. This decision is not subject to administrative review (objection) under the FS or Departmental regulations (36 CFR 219.13(a)(2)).

Copies of the Final PEIS have been sent to the Environmental Protection Agency, DOI Office of Environmental Policy and Compliance, DOI Library,

and the governors' offices in each of the 11 Western States covered by this PEIS. Copies of the Final PEIS are available at the BLM state offices and FS regional offices in the 11 Western States, DOE Headquarters Reading Room, the BLM Washington, DC, Public Affairs office and the FS Washington, DC, offices. Those interested may also review the Final PEIS and proposed land use plan amendments online at <http://corridoreis.anl.gov>.

Michael D. Nedd,

Assistant Director, Minerals and Realty Management, Bureau of Land Management, Department of the Interior.

[FR Doc. E8-28279 Filed 11-26-08; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The following Water Management Plans are available for review:

- Glide Irrigation District
- Kanawha Water District
- Panoche Water District
- Clear Creek Community Services District

• Arvin Edison Irrigation District

To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Management Plans (Criteria). For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. The above entities have developed a Plan, which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice in order to allow the public to review the plans and comment on the preliminary determinations. Public comment on Reclamation's preliminary (i.e., draft) determination is invited at this time.

DATES: All public comments must be received by December 29, 2008.

ADDRESSES: Please mail comments to Ms. Laurie Sharp, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, or contact at 916-978-5232 (TDD 978-5608), or e-mail at lsharp@mp.usbr.gov.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Ms. Laurie Sharp at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (i.e., draft) determination of Plan adequacy. Section 3405(e) of the CVPIA (Title 34 Pub. L. 102-575), requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall “* * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.” Also, according to Section 3405(e)(1), these criteria must be developed “* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.” These criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District.
2. Inventory of Water Resources.
3. Best Management Practices (BMPs) for Agricultural Contractors.
4. BMPs for Urban Contractors.
5. Plan Implementation.
6. Exemption Process.
7. Regional Criteria.
8. Five-Year Revisions.

Reclamation will evaluate Plans based on these criteria. A copy of these Plans will be available for review at Reclamation's Mid-Pacific (MP) Regional Office located in Sacramento, California, and the local area office. Our practice is to make comments, including names and home addresses of respondents, available for public review.

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you wish to review a copy of these Plans, please contact Ms. Laurie Sharp to find the office nearest you.

Dated: October 23, 2008.

Richard J. Woodley,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. E8-28271 Filed 11-26-08; 8:45 am]

BILLING CODE 4310-MN-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-604]

In the Matter of Certain Sucralose, Sweeteners Containing Sucralose, and Related Intermediate Compounds Thereof; Notice of Commission Determination To Review a Final Initial Determination of the Administrative Law Judge

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 final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”). The ALJ found no violation of section 337 except with respect to certain non-participating and defaulted respondents.

FOR FURTHER INFORMATION CONTACT:

James A. 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 (<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: The Commission instituted this investigation on May 10, 2007, based upon a complaint filed on behalf of Tate & Lyle Technology Ltd. of London, United Kingdom, and Tate & Lyle Sucralose, Inc. of Decatur, Illinois (collectively,

“Tate & Lyle”). The complaint alleged violations of section 337(a)(1)(B) of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of sucralose, sweeteners containing sucralose, and related intermediate compounds thereof by reason of infringement of various claims of United States Patent Nos. 4,980,463 (“the ‘463 patent’”); 5,470,969 (“the ‘969 patent’”); 5,034,551 (“the ‘551 patent’”); 5,498,709; and 7,049,435. The notice of investigation named twenty-five respondents.

On August 15, 2007, the Commission issued notice of its determination not to review an ID allowing JK Sucralose, Inc. to intervene as a respondent to the investigation. On August 30, 2007, the Commission issued notice of its determination not to review an ID terminating the investigation with respect to ProFood International Inc. on the basis of a consent order. On October 3, 2007, the Commission issued notice of its determination not to review an ID adding Heartland Sweeteners, LLC as a respondent to the investigation.

On September 22, 2008, the presiding administrative law judge issued a final initial determination (“final ID”) finding no violation of section 337 in the above-identified investigation (with the exception of certain non-participating and defaulted respondents).

On October 6, 2008, Tate & Lyle, four sets of respondents, and the Commission investigative each filed a petition for review. On October 14, 2008, each filed a response.

Having examined the final ID, the petitions for review, the responses thereto, and the relevant portions of the record in this investigation, the Commission has determined to review the final ID in its entirety.

The Commission requests briefing based on the evidentiary record on the issues on review. The Commission is particularly interested in responses to the following questions:

(1) Regarding the issue of whether 19 U.S.C. 1337(a)(1)(B)(ii) extends to the ‘551, ‘969, and ‘463 patents: Is this issue a matter of jurisdiction or does it go to the merits of whether there is a violation of section 337? Does the exclusion order in the investigation which was the subject of *In re Northern Pigment Co.*, 71 F.2d 447, 22 CCPA 166 (1934) suggest that § 1337(a)(1)(B)(ii) has the same scope as 35 U.S.C. 271(g)?

(2) Would a sucralose product containing the tin catalyst that is addressed by the process claimed in the ‘551 patent be safe for human consumption and otherwise salable as a

commercial product? In your response, please include a discussion of the testimony of Dr. Fraser-Reid at page 1874 of the transcript.

(3) Is there infringement of the asserted claims of the '463 patent under the doctrine of equivalents?

(4) Was the presence of 1',6'-dichlorosucrose-6-ester necessary to distinguish the asserted claims of the '463 patent from the prior art? Is it necessary to interpret the phrase "in situ" in the Mufti reference in order to determine the validity of the '463 patent?

(5) What proof would be necessary for Tate & Lyle to show infringement of the asserted claims of the '551 and '969 patents?

(6) Are the asserted claims of the '551 and '969 patents invalid for obviousness in light of the use of organic tin catalysts in the prior art?

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. 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 are likely to do so. For background information, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360.

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 President has 60 days to

approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be 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.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is requested to supply the expiration dates of the patents at issue and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on December 5, 2008. Reply submissions must be filed no later than the close of business on December 12, 2008. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 12 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) 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 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and under sections 210.42-.46 of the

Commission's Rules of Practice and Procedure (19 CFR 210.42-.46).

Issued: November 21, 2008

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E8-28223 Filed 11-26-08; 8:45 am]

BILLING CODE 7020-02-P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 09-03]

Notice of the December 11, 2008 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 2 p.m. to 4 p.m., Thursday, December 11, 2008.

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Suzi M. Morris via e-mail at Board@mcc.gov or by telephone at (202) 521-3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the "Board") of the Millennium Challenge Corporation ("MCC") will hold a meeting to consider the selection of countries that will be eligible for FY 2009 Millennium Challenge Account ("MCA") assistance under Section 607 of the Millennium Challenge Act of 2003 (the "Act"), codified at 22 U.S.C. 7706, and Threshold Program assistance under Section 616 of the Act (22 U.S.C. 7715); discuss progress on proposed Compacts with certain MCA-eligible countries; discuss MCC's proposed policy on suspension, remediation, and termination of assistance and eligibility; and certain administrative matters. The agenda items are expected to involve the consideration of classified information and the meeting will be closed to the public.

Dated: November 24, 2008.

Henry C. Pitney,

Acting Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. E8-28482 Filed 11-25-08; 4:15 pm]

BILLING CODE 9210-01-P

NATIONAL SCIENCE FOUNDATION**National Science Board Task Force on Cost Sharing; Committee on Strategy and Budget; Sunshine Act Meetings; Notice**

The National Science Board's Task Force on Cost Sharing of the Committee on Strategy and Budget pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: December 3, 2008 from 4 p.m. to 5 p.m.

SUBJECT MATTER: Discussion of Draft Report.

STATUS: Open.

PLACE: This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Room 130 will be available to the public to listen to this teleconference meeting.

Please refer to the National Science Board Web site (<http://www.nsf.gov/nsb>) for information or schedule updates, or contact: Jennifer Richards, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292-7000.

Ann Ferrante,

Writer-Editor.

[FR Doc. E8-28329 Filed 11-26-08; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2008-0557]

Revision of the NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Revision.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is publishing a revision to its Enforcement Policy (Enforcement Policy or Policy) to address the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (Act). The Act requires Federal agencies to adjust civil monetary penalties to reflect inflation.

DATES: This action was effective on October 23, 2008. Comments on this

revision should be submitted on or before December 29, 2008, and will be considered by the NRC before the next Enforcement Policy revision in early calendar year 2009. The Commission will apply the modified Policy to violations that occur after the effective date.

ADDRESSES: Comments will be made available to the public in their entirety; personal information, such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission. You may submit comments by any one of the following methods:

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov>; search on docket ID: NRC-2008-0557. Address questions about NRC dockets to Carol Gallagher 301-415-5905; e-mail carol.gallagher@nrc.gov.

Mail comments to: Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Office of Administration, Mail Stop: T-6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, MD 20852, between the hours of 7:45 a.m. and 4:15 p.m., Federal workdays.

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

Federal e-Rulemaking Portal: Documents related to this notice, including public comments, are accessible at <http://www.regulations.gov>, by searching on docket ID: NRC-2008-0557.

NRC's Public Document Room (PDR): The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Public File Area O-1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Document Access and Management System (ADAMS): The Enforcement Policy is available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. In addition, the Enforcement Policy is available at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. If you do not have Internet access or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Doug Starkey, Senior Enforcement

Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, 301-415-3456, e-mail doug.starkey@nrc.gov.

SUPPLEMENTARY INFORMATION: Section 234 of the Atomic Energy Act of 1954, as amended (AEA), limits the maximum civil penalty amount that the NRC may issue for violations of the AEA at \$100,000 per violation, per day. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (Act), requires that the head of each agency adjust by regulation the civil monetary penalties (CMPs) provided by law within the jurisdiction of the agency for inflation at least once every four years. The last adjustment made by the NRC to the maximum civil penalty amount was on November 26, 2004 to \$130,000. (See 69 FR 62485; October 26, 2004.) Thus, the NRC is required to adjust this civil penalty by November 26, 2008. On September 23, 2008 (73 FR 54671), the NRC published a final rule in the **Federal Register** to amend 10 CFR 2.205 to reflect the new maximum CMP mandated by the Act.

The inflation adjustment mandated by the Act results in a 9.8 percent increase to the maximum CMPs.¹ Increases are to be rounded to the nearest multiple of \$10,000 in the case of penalties greater than \$100,000, but less than or equal to \$200,000.

After this mandatory adjustment for inflation and the rounding mandated by statute, the new maximum civil penalty amount will be \$140,000 per violation, per day. The new maximum civil penalty applies only to violations that occur after the date that the increase takes effect (i.e., October 23, 2008).

The changes mandated by the Act apply to the maximum CMP. This is also the amount that, under the Enforcement Policy approved by the Commission, is assigned as the base civil penalty for power reactors and gaseous diffusion plants for a Severity Level I violation (considered the most significant severity level). Also as a matter of policy, the Commission has approved use of lesser amounts for other types of licensees, primarily materials licensees, and for violations that are assessed at lower severity levels. This approach is set out in Tables 1A and 1B of the Enforcement Policy. Although the 1996 Act does not mandate changes to these lesser civil penalty amounts, the NRC is modifying Table 1A of the Enforcement Policy by increasing each amount to maintain the same proportional relationships between the

¹ Adjustment for inflation = Consumer Price Index (CPI) for June 2007 - CPI for June 2004.

penalties. These changes apply to violations occurring after the effective date of this Policy Statement.

Paperwork Reduction Act

This policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0136.

Public Protection Notification

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

Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Accordingly, the NRC Enforcement Policy is revised to read as follows: NRC Enforcement Policy

* * * * *

VI. * * *

C. * * *

1. * * *

TABLE 1A—BASE CIVIL PENALTIES

	(\$)
a. Power reactors and gaseous diffusion plants	140,000
b. Fuel fabricators authorized to possess Category I or II quantities of SNM	70,000
c. Fuel fabricators, industrial processors, ¹ and independent spent fuel and monitored retrievable storage installations	35,000
d. Test reactors, mills and uranium conversion facilities, contractors, waste disposal licensees, industrial radiographers, and other large material users ..	14,000
e. Research reactors, academic, medical, or other small material users ²	7,000
f. Loss, abandonment, or improper transfer or disposal of a sealed source or device, regardless of the use or type of licensee: ³ .	
1. Sources or devices with a total activity greater than 3.7×10^4 MBq (1 Curie), excluding hydrogen-3 (tritium)	54,000

TABLE 1A—BASE CIVIL PENALTIES—
Continued

	(\$)
2. Other sources or devices containing the materials and quantities listed in 10 CFR 31.5(c)(13)(i)	17,000
3. Sources and devices not otherwise described above	7,000

¹ Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

² This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

³ These base civil penalty amounts have been determined to be approximately three times the average cost of disposal. For specific cases, NRC may adjust these amounts to correspond to three times the actual expected cost of authorized disposal.

* * * * *

2. * * *

d. * * *

As provided in Section VII, "Exercise of Discretion," discretion may be exercised by either escalating or mitigating the amount of the civil penalty determined after applying the civil penalty adjustment factors to ensure that the proposed civil penalty reflects all relevant circumstances of the particular case. However, in no instance will a civil penalty for any one violation exceed \$140,000 per day.

* * * * *

VII. * * *

A. * * *

The NRC considers violations categorized at Severity Level I, II, or III to be of significant regulatory concern. The NRC also considers violations associated with findings that the Reactor Oversight Process's Significance Determination Process evaluates as having low to moderate, or greater safety significance (i.e., white, yellow, or red) to be of significant regulatory concern. If the application of the normal guidance in this policy does not result in an appropriate sanction, with the approval of the Deputy Executive Director and consultation with the EDO and Commission, as warranted, the NRC may apply its full enforcement authority where the action is warranted. NRC action may include: (1) Escalating civil penalties; (2) issuing appropriate orders; and (3) assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of \$140,000 per violation, per day.

* * * * *

3. * * *

To recognize the added significance for those cases where a very strong message is warranted for a significant

violation that continues for more than one day, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit of \$140,000 for each day the violation continues. The NRC may exercise this discretion if a licensee was aware of or clearly should have been aware of a violation, or if the licensee had an opportunity to identify and correct the violation but failed to do so.

* * * * *

Dated at Rockville, Maryland, this 13th day of November 2008.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E8-28262 Filed 11-26-08; 8:45 am]

BILLING CODE 7590-01-P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Survey of Nonparticipating Single Premium Group Annuity Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Intent To Request Extension of OMB Approval of Information Collection.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of a collection of information that is not contained in a regulation (OMB control number 1212-0030; expires March 31, 2009). This voluntary collection of information is a quarterly survey of insurance company rates for pricing annuity contracts. The American Council of Life Insurers conducts this survey for PBGC. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by January 27, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.

E-mail: paperwork.comments@pbgc.gov.

Fax: 202-326-4224.

Mail or Hand Delivery: Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K

Street, NW., Washington, DC 20005–4026. Comments received will be posted to <http://www.pbgc.gov>.

Copies of the collection of information may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) PBGC's regulations on multiemployer plans may be accessed on PBGC's Web site at <http://www.pbgc.gov>.

FOR FURTHER INFORMATION CONTACT:

Thomas H. Gabriel, Attorney, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's regulations prescribe actuarial valuation methods and assumptions (including interest rate assumptions) to be used in determining the actuarial present value of benefits under single-employer plans that terminate (29 CFR Part 4044) and under multiemployer plans that undergo a mass withdrawal of contributing employers (29 CFR Part 4281). Each month PBGC publishes the interest rates to be used under those regulations for plans terminating or undergoing mass withdrawal during the next month.

The interest rates are intended to reflect current conditions in the annuity markets. To determine these interest rates, PBGC gathers pricing data from insurance companies that are providing annuity contracts to terminating pension plans through a quarterly "Survey of Nonparticipating Single Premium Group Annuity Rates." The American Council of Life Insurers distributes the survey and provides PBGC with "blind" data (*i.e.*, PBGC is unable to match responses with the companies that submitted them). PBGC also uses the information from the survey in determining the interest rates it uses to value benefits payable to participants and beneficiaries in PBGC-trusted plans for purposes of PBGC's financial statements.

The survey is directed at insurance companies that have volunteered to participate, most or all of which are members of the American Council of

Life Insurers. The survey is conducted quarterly and will be sent to approximately 22 insurance companies. Based on experience under the current approval, PBGC estimates that 6 insurance companies will complete and return the survey. PBGC further estimates that the average annual burden of this collection of information is 23 hours and \$75.

OMB has approved this collection of information under control number 1212–0030 through March 31, 2009. PBGC intends to request that OMB extend its approval for another three years. 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.

PBGC is soliciting public comments to—

- 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 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.

Issued in Washington, DC, this 24th day of November 2008.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. E8–28333 Filed 11–26–08; 8:45 am]

BILLING CODE 7709–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIME AND DATE: 1 p.m., Tuesday, December 2, and 8:30 a.m., Wednesday, December 3, 2008.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Tuesday, December 2 at 1 p.m. (Closed)

1. Financial Matters.
2. Strategic Issues.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Wednesday, December 3 at 8:30 a.m. (Closed)—(if needed)

1. Continuation of Tuesday's closed session agenda.

CONTACT PERSON FOR MORE INFORMATION:

Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. E8–28375 Filed 11–25–08; 11:15 am]

BILLING CODE 7710–12–P

PRESIDIO TRUST

Notice of Receipt of and Availability for Public Comment on an Application for Wireless Telecommunications Facilities Site

AGENCY: The Presidio Trust.

ACTION: Notice of receipt of and availability for public comment on an application for Wireless Telecommunications Facilities Site; the Presidio of San Francisco, California.

SUMMARY: This notice announces the Presidio Trust's receipt of and availability for public comment on an application from Omnipoint Communications, Inc. d/b/a T-Mobile for a temporary wireless telecommunications facilities site ("Project") in The Presidio of San Francisco. The proposed location of the Project is below the Highway 101 overpass adjacent to Doyle Drive, in the vicinity of 1158 Gorgas Avenue.

The Project involves (i) licensing a 28' x 22' area ("Site"), (ii) placing a trailer with a cellular facility on wheels ("COW") measuring approximately 27' x 8' on the Site, (iii) installing an 8'-high chain link fence with slats within a portion of an area already enclosed by a 12'-high chain link fence, and (iv) accessing electricity and telephone connectivity from 1158 Gorgas Avenue through surface conduit covered with an asphalt curb or crowned and sloped covering. The COW will host (a) a galvanized steel tower approximately 50' tall, holding six antenna, three of which will be located at approximately

42' and three of which will be located at approximately 47', each measuring less than 56" x 14" x 4", (b) radio equipment, and (c) all other equipment necessary to operate the Project, including an equipment cabinet measuring approximately 5.5' high x 4' x 3'.

Comments: Comments on the proposed project must be sent to Steve Carp, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052, and be received by December 31, 2008. A copy of T-Mobile's application is available upon request to the Presidio Trust.

FOR FURTHER INFORMATION CONTACT: Steve Carp, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052. E-mail: scarp@presidiotrust.gov. Telephone: 415.561.5300.

Dated: November 21, 2008.

Karen A. Cook,
General Counsel.

[FR Doc. E8-28260 Filed 11-26-08; 8:45 am]
S

BILLING CODE 4310-4R-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-28520]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 21, 2008

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November 2008. A copy of each application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549-1520 (tel. 202-551-5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 17, 2008, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F

Street, NE., Washington, DC 20549-1090.

FOR FURTHER INFORMATION CONTACT:

Diane L. Titus at (202) 551-6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549-4041.

Smith Barney Money Funds, Inc. [File No. 811-2490]; Smith Barney Municipal Money Market Fund, Inc. [File No. 811-3112]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, applicants transferred their assets to corresponding series of Legg Mason Partners Money Market Trust, based on net asset value. Expenses of \$5,595,239 and \$774,031, respectively, incurred in connection with the reorganizations were paid by applicants and Legg Mason, Inc., the parent company of applicants' investment adviser.

Filing Date: The applications were filed on October 30, 2008.

Applicants' Address: 55 Water St., New York, NY 10041.

Legg Mason Partners Small Cap Core Fund, Inc. [File No. 811-5928]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, applicant transferred its assets to a corresponding series of Legg Mason Partners Equity Trust, based on net asset value. Expenses of \$50,060 incurred in connection with the reorganization were paid by applicant and Legg Mason, Inc., the parent company of applicant's investment adviser.

Filing Date: The application was filed on October 30, 2008.

Applicant's Address: 55 Water St., New York, NY 10041.

Highland Capital Multi-Strategy Fund [File No. 811-22073]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 30, 2008, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$2,500 incurred in connection with the liquidation were paid by Highland Capital Management, L.P., applicant's investment adviser.

Filing Date: The application was filed on October 31, 2008.

Applicant's Address: NexBank Tower, 13455 Noel Rd., Suite 800, Dallas, TX 75240.

Legg Mason Partners Variable Portfolios V [File No. 811-7893]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 27, 2007, applicant transferred its assets to a corresponding series of Legg Mason Partners Variable Portfolios I, Inc., based on net asset value. Expenses of \$51,786 incurred in connection with the reorganization were paid by applicant and Legg Mason, Inc., the parent company of applicant's investment adviser.

Filing Date: The application was filed on October 30, 2008.

Applicant's Address: 125 Broad St., New York, NY 10004.

Legg Mason Partners Variable Portfolios I, Inc. [File No. 811-8443]; Legg Mason Partners Variable Portfolios III, Inc. [File No. 811-8372]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, applicants transferred their assets to corresponding series of Legg Mason Partners Variable Equity Trust and Legg Mason Partners Variable Income Trust, based on net asset value. Expenses of \$193,404 and \$963,711, respectively, incurred in connection with the reorganizations were paid by applicants and Legg Mason, Inc., the parent company of applicants' investment adviser.

Filing Date: The applications were filed on October 30, 2008.

Applicants' Address: 55 Water St., New York, NY 10041.

Everest Funds [File No. 811-10057]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 9, 2008, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$12,094 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on October 29, 2008.

Applicant's Address: 5805 S 86th Circle, Omaha, NE 68127.

Excelsior Funds, Inc. [File No. 811-4088]; Excelsior Tax-Exempt Funds, Inc. [File No. 811-4101]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Between March 24, 2008 and May 5, 2008, each applicant's series transferred their assets to corresponding series of Columbia Funds Series Trust and Columbia Funds Series Trust I, based on net asset value. Expenses of \$3,731,778 and \$829,865, respectively, incurred in connection

with the reorganizations were paid by applicants, the acquiring funds, and Columbia Management Advisors, LLC.

Filing Date: The applications were filed on October 3, 2008.

Applicants' Address: One Financial Center, Boston, MA 02111.

Excelsior Funds Trust [File No. 811-8490]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 24, 2008, and March 31, 2008, applicant's five series transferred their assets to corresponding series of Columbia Funds Series Trust I, based on net asset value. Expenses of \$210,965 incurred in connection with the reorganization were paid by applicant, the acquiring fund, and Columbia Management Advisors, LLC.

Filing Date: The application was filed on October 3, 2008.

Applicant's Address: One Financial Center, Boston, MA 02111.

Legg Mason Partners Funds Trust [File No. 811-5034]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 2, 2007, applicant transferred its assets to corresponding series of Legg Mason Partners Managed Municipals Fund, Inc., Legg Mason Partners California Municipals Fund, Inc. and Legg Mason Partners Municipal Funds, based on net asset value. Expenses of \$138,448 incurred in connection with the reorganization were paid by applicant and Legg Mason, Inc., the parent company of applicant's investment adviser.

Filing Date: The application was filed on October 30, 2008.

Applicant's Address: 125 Broad St., New York, NY 10004.

Legg Mason Partners Lifestyle Series, Inc. [File No. 811-7435]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, applicant transferred its assets to corresponding series of Legg Mason Partners Equity Trust and Legg Mason Partners Variable Equity Trust, based on net asset value. Expenses of \$1,411,223 incurred in connection with the reorganization were paid by applicant and Legg Mason, Inc., the parent company of applicant's investment adviser.

Filing Date: The application was filed on October 30, 2008.

Applicant's Address: 55 Water St., New York, NY 10041.

Legg Mason Partners Arizona Municipals Fund, Inc. [File No. 811-5066]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 2, 2007, applicant transferred its assets to Legg Mason Partners Managed Municipals Fund, Inc., based on net asset value. Expenses of \$43,975 incurred in connection with the reorganization were paid by applicant and Legg Mason, Inc., the parent company of applicant's investment adviser.

Filing Date: The application was filed on October 30, 2008.

Applicant's Address: 125 Broad St., New York, NY 10004.

Legg Mason Partners World Funds, Inc. [File No. 811-6290]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, applicant transferred its assets to corresponding series of Legg Mason Partners Equity Trust and Legg Mason Partners Income Trust, based on net asset value. Expenses of \$168,703 incurred in connection with the reorganization were paid by applicant and Legg Mason, Inc., the parent company of applicant's investment adviser.

Filing Date: The application was filed on October 30, 2008.

Applicant's Address: 55 Water St., New York, NY 10041.

Smith Barney Institutional Cash Management Fund, Inc. [File No. 811-9012]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, applicant transferred its assets to corresponding series of Legg Mason Partners Institutional Trust, based on net asset value. Expenses of \$306,567 incurred in connection with the reorganization were paid by applicant and Legg Mason, Inc., the parent company of applicant's investment adviser.

Filing Date: The application was filed on October 30, 2008.

Applicant's Address: 55 Water St., New York, NY 10041.

Western Asset Zenix Income Fund Inc. [File No. 811-5484]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 23, 2008, applicant transferred its assets to Western Asset High Income Fund II Inc., based on net asset value. Expenses of

\$105,000 incurred in connection with the reorganization were paid by Legg Mason Partners Fund Advisor, LLC, applicant's investment adviser. Applicant's transfer agent is holding shares of the acquiring fund for the shareholders of applicant who held shares in certificated form. Once the old certificates are submitted to the transfer agent, these shareholders will receive their shares of the acquiring fund.

Filing Date: The application was filed on October 10, 2008.

Applicant's Address: 55 Water St., New York, NY 10041.

VLC Trust [File No. 811-4788]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 17, 2008, applicant transferred its assets to Narragansett Insured Tax-Free Income Fund, based on net asset value. Expenses of approximately \$107,714 incurred in connection with the reorganization were paid by applicant and Aquila Investment Management LLC, the manager of the acquiring fund.

Filing Date: The application was filed on October 22, 2008.

Applicant's Address: One Regency Plaza, Suite One, Providence, RI 02903.

Liquid Reserves Portfolio [File No. 811-5813]; Tax Free Reserves Portfolio [File No. 811-6118]; U.S. Treasury Reserves Portfolio [File No. 811-6277]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, each applicant transferred its assets to a corresponding series of Master Portfolio Trust, based on net asset value. Applicants incurred no expenses in connection with the reorganizations.

Filing Date: The applications were filed on October 30, 2008.

Applicants' Address: 55 Water St., New York, NY 10041.

MuniHoldings New York Fund, Inc. [File No. 811-21628]; Enhanced Government Fund II, Inc. [File No. 811-21830]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Date: The applications were filed on October 14, 2008.

Applicants' Address: BlackRock, Inc., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Turnaround Investment Trust [File No. 811-21275]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 15, 2008, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$38,895 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on October 14, 2008.

Applicant's Address: 975 Willagillespie, Suite 200, Eugene, OR 97401.

Citigroup Alternative Investments Trust [File No. 811-21854]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 6, 2008 and June 24, 2008, applicant made liquidating distributions to its shareholders, based on net asset value. Expenses of approximately \$342,703 incurred in connection with the liquidation were paid by applicant and Citigroup Alternative Investments LLC, applicant's investment adviser. Applicant has set aside funds in a liquidating trust account to pay approximately \$20,000 in outstanding debts and liabilities.

Filing Dates: The application was filed on August 14, 2008, and amended on October 24, 2008.

Applicant's Address: 731 Lexington Ave., 28th Floor, New York, NY 10022.

Phoenix Multi-Portfolio Fund [File No. 811-5436]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 20, 2006, applicant's Phoenix Tax-Exempt Bond Fund series transferred its assets to a corresponding series of Phoenix Insight Funds Trust, based on net asset value. On June 27, 2007, applicant's Phoenix Emerging Markets Bond Fund and Phoenix Real Estate Securities Fund series transferred their assets to corresponding series of Phoenix Opportunities Trust, based on net asset value. On September 24, 2007, applicant's Phoenix International Strategies Fund transferred its assets to a corresponding series of Phoenix Opportunities Trust, based on net asset value. Expenses of \$27,152 incurred in connection with the reorganization of applicant's Phoenix Tax-Exempt Bond Fund series were paid by Phoenix Investment Counsel Inc., applicant's investment adviser. Total expenses of \$160,962 incurred in connection with the reorganization of applicant's

remaining three series were paid by the acquiring series of Phoenix Opportunities Trust.

Filing Date: The application was filed on September 26, 2008.

Applicant's Address: 56 Prospect St., PO Box 150480, Hartford, CT 06115-0480.

StateShares, Inc. [File No. 811-22000]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on October 14, 2008.

Applicant's Address: 420 Lexington Ave., Suite 2550, New York, NY 10170.

Western Asset Funds II, Inc. [File No. 811-6088]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, applicant transferred its assets to corresponding series of Legg Mason Partners Income Trust, based on net asset value. Expenses of \$32,580 incurred in connection with the reorganization were paid by applicant and Legg Mason, Inc., the parent company of applicant's investment adviser.

Filing Date: The application was filed on October 30, 2008.

Applicant's Address: 55 Water St., New York, NY 10041.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-28274 Filed 11-26-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58989; File No. SR-BATS-2008-010]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees of Other Market Centers Related to Clearly Erroneous Rulings

November 20, 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 November

19, 2008, BATS Exchange, Inc. ("BATS" or the "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. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change 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 is proposing to implement the proposed rule change immediately. 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.

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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**1. Purpose**

BATS Rule 11.17, which covers the breaking of trades determined to be clearly erroneous, includes a provision, paragraph (c)(2)(E), that assesses a fee of \$500.00 for unsuccessful appeals of clearly erroneous adjudications by the Exchange. The Exchange is now adding a sentence to the rule to provide that in instances where the Exchange, on behalf of a Member, requests a determination by another market center that a transaction is clearly erroneous, the Exchange will pass any resulting

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

charges through to the relevant Member. The proposed change reflects the fact that other market centers impose a similar \$500 appellate fee to that charged by the Exchange.

If a Member enters an order into the Exchange that is routed to another market center and executed there, the Member may not have standing to file under that market center's rules to seek a determination that the execution was clearly erroneous if it is not a member of that market center. Accordingly, BATS Trading, Inc., the Exchange's routing broker-dealer, which is a member of various market centers, including the NASDAQ Stock Market LLC ("NASDAQ") and NYSE Arca, Inc. ("NYSE Arca"), may file a petition under that market center's rules upon request of a Member. If an appeal is unsuccessful, the Exchange or its affiliated routing broker-dealer may be charged under the applicable market center's rules.⁵ Accordingly, the Exchange proposes to pass the charge through, on a dollar-for-dollar basis, to the Member that requested the appeal.

2. Statutory Basis

The Exchange believes that the rule change proposed in this submission 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 of the Act.⁶ Specifically, the proposed rule change is consistent with section 6(b)(4) of the Act,⁷ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange believes that the change will appropriately allocate charges for adjudications under the clearly erroneous rules of other market centers to the Members that initiate such adjudications.

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

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2) thereunder,⁹ because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

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-2008-010 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-2008-010. 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 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-2008-010 and should be submitted on or before December 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-28222 Filed 11-26-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58990; File No. SR-BSE-2008-36]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Delisting Standards

November 20, 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 November 3, 2008, the Boston Stock Exchange, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule 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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a Rule whereby the Exchange may determine to delist a security due to extraordinary circumstances under

⁵ For instance, both NASDAQ and NYSE Arca currently charge \$500.00 for unsuccessful appeals of clearly erroneous determinations. See NASDAQ Rule 11890(e)(3) and NYSE Arca Rule 7.10(c)(5).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

¹² 17 CFR 240.19b-4.

which the Exchange has terminated its Listing Program in connection with the discontinuation of trading in all securities listed on its market. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room, and is also available at http://www.nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange.

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 in 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

On September 5, 2007, the Exchange announced that it was terminating its programs for listing and trading cash equities. In addition to that announcement, in October 2007, all issuers were given additional notice that the Listings programs had ceased. However, not all issuers have formally delisted. At this point, the Exchange has determined it is appropriate to formally delist the securities of the twenty-nine issuers that currently have listings with the Exchange. Since there may not be a basis for delisting all of these securities under the rules of the Exchange as currently in effect, the Exchange is proposing to adopt a rule to be used in rare and unusual circumstances. Specifically, the new rule will provide that the Exchange may determine to delist a security due to extraordinary circumstances under which the Exchange has terminated its Listing Program in connection with the discontinuation of trading in all securities listed on its market.

This rule will only be utilized after a delisting determination is made by the Board of Directors or its designee, and:

(1) At least 15 days before issuing its delisting determination, notice is provided to companies; and

(2) as soon as practicable after the issuance of the delisting determination

notice is provided to the company and the SEC of such delisting determination.

(3) The notice to the company of the delisting determination shall inform the company of the opportunity to appeal.

This rule will provide the Exchange an additional tool to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

The Exchange would use this authority to delist on the grounds that it is not currently operating a listing program and, therefore, it is in the public interest that the Exchange not maintain any appearance of having any listings on the Exchange as long as programs for listing and trading cash equities and related activity have ceased. In addition, prior to implementing any involuntary delistings, the Exchange will contact each issuer and suggest that it file a Form 25 to effect a voluntary delisting. Issuers may initiate a voluntary delisting before the Exchange issues any determination. Thereafter, the Exchange will move to delist for those issuers that do not act in accordance with that suggestion. Moreover, issuers that are involuntarily delisted under the rule being adopted in this filing will have the appeal right provided for by new Section 2(c)(3) of Chapter XXVII of the Rules of the Exchange.³

The NASDAQ OMX Group, Inc. ("NASDAQ OMX"), has acquired the Exchange. NASDAQ OMX expects that the Exchange will resume a program for listing and trading cash equities. Accordingly, the Exchange believes it is appropriate to leave all of its listing rules, as amended, in place pending rule changes to its listing rules. Upon the resumption of a listing business by the Exchange, delisted issuers may be eligible for relisting if their securities meet the applicable standards of the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Section 6(b)(5) of the Act,⁵ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. This proposed rule change promotes the protection of investors and the public interest because the Exchange will not maintain any appearance of having any listings on the Exchange as long as all programs for listing and trading cash equities and related activity have ceased.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.stml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File

³ The Commission notes that the appeals procedures proposed in new Section 2(c)(3) of Chapter XXVII are identical to the appeals procedures currently set forth in Section 2(b)(2) of Chapter XXVII.

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

Number SR-BSE-2008-36 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-BSE-2008-36. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the BSE. 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-BSE-2008-36 and should be submitted on or before December 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-28240 Filed 11-26-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58999; File No. SR-BSE-2008-54]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. To Amend Certain BOX Rules Related to the PIP To Eliminate the Requirement That There Be at Least Three Market Makers Quoting in a Relevant Options Class in Order for a PIP To Commence

November 21, 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 November 17, 2008, the Boston Stock Exchange, Inc. ("BSE" 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 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 Exchange proposes to amend certain Rules of the Boston Options Exchange Group, LLC ("BOX") related to the Price Improvement Period ("PIP") to eliminate the requirement that there be at least three market makers quoting in a relevant options class in order for a PIP to commence. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange.

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

In order to provide additional opportunities for price improvement, the Exchange proposes to expand the PIP. The PIP permits Participants to provide penny price improvement for Customer Orders.³ Current BOX rules require, among other things, that there are at least three Market Makers quoting in the relevant series before a PIP may commence. The Exchange is now proposing to eliminate this requirement.

The Exchange does not believe that orders should be denied the benefits of the PIP simply because there may be less than three Market Makers quoting in a relevant series. The BOX Rules provide for broad participation in a PIP auction. Allowing all types of Participants on BOX, including Market Makers, OFFPs and Public Customers to compete within the PIP increases competition to provide price improvement, benefiting the Customer Order. Any concern regarding a PIP starting with a lower number of Market Makers quoting in the relevant series is offset by the broad participation and competition that is present in a PIP auction once commenced. The Exchange believes that this proposed rule change is a reasonable modification designed to provide additional flexibility for Participants to obtain executions on behalf of their customers while continuing to provide a meaningful, competitive auction.

In support of its proposal, the Exchange notes that the Commission recently approved a similar proposal of the International Securities Exchange ("ISE") to remove an identical requirement within its Price Improvement Mechanism ("PIM") rules.⁴ The ISE PIM now permits price improvement in non-standard increments without the condition that there be a minimum number of market makers quoting in the particular series.⁵ The PIP and PIM share the same purpose and goal of providing opportunities for customer price improvement. The Exchange believes that the PIP, and in turn the customers that benefit from the PIP, would be disadvantaged if the three Market Maker

³ See Section 18 of Chapter V of the BOX Rules.

⁴ See Securities Exchange Act Release No. 58710 (October 1, 2008), 73 FR 59008 (October 8, 2008) (SR-ISE-2008-63).

⁵ See ISE Rule 723.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 17 CFR 200.30-3(a)(12).

requirement remained as a condition to start a PIP.⁶ Because ISE is currently able to offer its customers price improvement in a non-standard increment without a minimum quoter requirement in the PIM, the Exchange believes it is essential for competitive reasons to be able to offer the same opportunities for price improvement on BOX through the PIP.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁷ in general, and Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to prevent fraudulent and manipulative acts, 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. In particular, the proposed rule change will allow Participants to guarantee executions and provide additional price improvement opportunities to their customers' orders. The Exchange believes that this proposed rule change is a reasonable modification designed to provide additional flexibility for Participants to obtain executions on behalf of their customers while continuing to provide a meaningful, competitive auction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

⁶ Both PIP and PIM have certain characteristics in common with each other. Both provide for the opportunity for customer price improvement, both have certain periods where the initial orders are exposed for potential price improvement, both have certain guidelines regarding the types of orders that may be eligible for this price improvement and both have certain defined rules related to the allocation of trades within these price improvement auctions.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of filing.¹¹ However, Rule 19b-4(f)(6)(iii)¹² 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. The Exchange asserts that waiver of the operative delay is appropriate in order to allow the Exchange to remain competitive with the ISE and to prevent delaying the benefits that the proposed rule change will confer to customers. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it recently approved a substantially similar rule change for ISE's PIM, and BSE's proposal raises no new regulatory issues.¹³ The Commission also notes that ISE's proposal was subject to full notice and comment, and the Commission received no comments on that proposal. Accordingly, the Commission designates that the proposed rule change become operative immediately.¹⁴

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

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) under the Act requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this notice requirement.

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² *Id.*

¹³ See *supra* note 4.

¹⁴ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-BSE-2008-54 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-BSE-2008-54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2008-54 and should be submitted on or before December 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-28243 Filed 11-26-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58985; File No. SR-ISE-2008-86]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Enable the Listing and Trading of Options on Index-Linked Securities

November 20, 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 November 14, 2008, the International Securities Exchange, LLC (“ISE” 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. The Exchange filed the proposed rule change as a “non-controversial” proposed rule change pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) 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 ISE proposes to amend ISE Rule 502, *Criteria for Underlying Securities*, and 503, *Withdrawal of Approval of Underlying Securities*, to enable the listing and trading on the Exchange of options on Index-Linked Securities, as defined below. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room, and on the Exchange’s Web site at <http://www.iseoptions.com>.

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

This proposed rule change is based on recent Chicago Board Options Exchange, Incorporated (“CBOE”) and NASDAQ OMX PHLX, Inc. (“PHLX”).⁵

The purpose of the proposed rule change is to revise ISE Rules 502 and 503 to enable the listing and trading of options on equity index-linked securities (“Equity Index-Linked Securities”), commodity-linked securities (“Commodity-Linked Securities”), currency-linked securities (“Currency-Linked Securities”), fixed income index-linked securities (“Fixed Income Index-Linked Securities”), futures-linked securities (“Futures-Linked Securities”) and multifactor index-linked securities (“Multifactor Index-Linked Securities”) (the six types of index-linked securities are collectively known as “Index-Linked Securities”) that are principally traded on a national securities exchange and are “NMS Stock” (as defined in Rule 600 of Regulation NMS under the Act).

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing (“Underlying Index” or “Underlying Indexes”). Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying

index, each trades as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options will apply to Index-Linked Securities. The Exchange does not propose any changes to rules pertaining to Index Options.

Listing Criteria

The Exchange will consider listing and trading options on Index-Linked Securities provided the Index-Linked Securities meet the criteria for underlying securities set forth in ISE Rules 502(a) and (b).

The Exchange proposes that Index-Linked Securities deemed appropriate for options trading represent ownership of a security that provides for the payment at maturity, as described below:

- Equity Index-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities (“Equity Reference Asset”);
- Commodity-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares or a basket or index of any of the foregoing (“Commodity Reference Asset”);
- Currency-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares⁶ or a basket or index of any of the foregoing (“Currency Reference Asset”);
- Fixed Income Index-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of one or more notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities,

⁶ See proposed ISE Rule 502(h). The term “Currency Trust Shares” is defined as a security that (a) holds a specified non-U.S. currency deposited with the trust or similar entity; (b) when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies; and (c) pays the beneficial owner interest and other distributions on deposited non-U.S. currency or currencies, if any, declared and paid by the trust.

¹⁵ 17 CFR 200.30-3(a)(12).

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).

⁵ See Exchange Act Release Nos. 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (SR-CBOE-2008-64) and 58571 (September 17, 2008), 73 FR 55188 (September 24, 2008) (SR-PHLX-2008-60). In addition, the Exchange is making minor changes to ISE Rule 502(h) to conform the Exchange’s rules to those of CBOE and PHLX.

supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing ("Fixed Income Reference Asset");

- Futures-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b) ("Futures Reference Asset"); and
- Multifactor Index-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets or Futures Reference Assets ("Multifactor Reference Asset").

For the purposes of proposed ISE Rule 502(k), Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets and Multifactor Reference Assets, will be collectively referred to as "Reference Assets."

Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in ISE Rules 502(a) and (b), or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset. In addition, the issuing company is obligated to issue or repurchase the securities in aggregation units for cash or cash equivalents satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus.

Continued Listing Requirements

Options on Index-Linked Securities will be subject to all Exchange rules governing the trading of equity options. The current continuing or maintenance listing standards for options traded on the Exchange will continue to apply.

The Exchange's proposed new rule 503(k) will include criteria related to the continued listing of options on Index-Linked Securities.

Under the applicable continued listing criteria in proposed ISE Rule 503(k), options on Index Linked Securities initially approved for trading pursuant to proposed ISE Rule 502(k) may be subject to the suspension of

opening transactions as follows: (1) Non-compliance with the terms of ISE Rule 502(k); (2) non-compliance with the terms of ISE Rules 503(a) and (b), except in the case of options covering Index Linked Securities approved pursuant to proposed ISE Rule 502(k)(3)(ii) that are redeemable at the option of the holder at least on a weekly basis, then option contracts of the class covering such Securities may only continue to be open for trading as long as the Securities are listed on a national securities exchange and are an "NMS stock" as defined in Rule 600 of Regulation NMS; (3) in the case of any Index-Linked Security trading pursuant to proposed ISE Rule 502(k), the value of the Reference Asset is no longer calculated or available; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

The Exchange represents that the listing and trading of options on Index-Linked Securities under proposed ISE Rule 502(k) will not have any effect on the rules pertaining to position and exercise limits⁷ or margin.⁸

The Exchange will implement surveillance procedures for options on Index-Linked Securities, including adequate comprehensive surveillance sharing agreements with markets trading in non-U.S. components, as applicable. The Exchange represents that these procedures will be adequate to properly monitor Exchange trading of options on these the securities and to deter and detect violations of Exchange rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,⁹ in general, and furthers the objectives of section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed 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 that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

⁷ See ISE Rules 412 and 414.

⁸ See ISE Rules 1200 to 1204.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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.

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

Because the 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 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. In addition, 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. 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 requests that the Commission waive the 30-day operative delay as well as the five business-day pre-filing requirement. The Commission believes that waiving the 30-day operative delay¹³ is consistent with the protection of investors and the public interest.¹⁴

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 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).

¹⁴ The Commission is also waiving the five business-day pre-filing requirement.

The proposed rule change is substantially similar to those of other options exchanges that have been previously approved by the Commission¹⁵ and does not appear to present any novel regulatory issues. Therefore, the Commission designates the proposal operative upon filing to enable the Exchange to list and trade options on index-linked securities without delay.

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 the 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-2008-86 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-2008-86. 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 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-ISE-2008-86 and should be submitted on or before December 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-28221 Filed 11-26-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58998; File No. SR-MSRB-2008-07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change to MSRB Rule G-34, CUSIP Numbers and New Issue Requirements, To Establish a Transparency System for Municipal Auction Rate Securities and Municipal Variable Rate Demand Obligations

November 21, 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 November 18, 2008, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change to establish a transparency system for municipal Auction Rate Securities ("ARS") and municipal Variable Rate Demand Obligations ("VRDO"). The proposed rule change would: (i) Implement an electronic system that would collect and disseminate ARS and VRDO information (the "Short-term Obligation Rate Transparency System Proposal"); (ii) provide free public access to information disseminated from the Short-term Obligation Rate Transparency ("SHORT") System through the MSRB's Electronic Municipal Market Access (EMMA) system (the "EMMA short-term obligation rate transparency service"); and (iii) amend Rule G-34, on CUSIP numbers and new issue requirements, to require brokers, dealers and municipal securities dealers (collectively "dealers") to report, or ensure the reporting of, interest rate and descriptive information to the SHORT System about ARS and VRDO following an ARS auction or VRDO interest rate reset (the "rule change proposal").

The text of the proposed rule change is available on the MSRB's Web site (<http://www.msrb.org>), at the MSRB's principal office, and at the Commission's Public Reference Room. If approved, the rule text for the Short-term Obligation Rate Transparency System, as well as for the EMMA variable rate transparency service, would be available on the MSRB Web site at <http://www.msrb.org/msrb1/rulesandforms> under the heading Information Facilities.

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 MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹⁵ See e.g., Exchange Act Release Nos. 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (SR-NYSEArca-2008-57); 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (SR-CBOE-2008-64); and 58571 (September 17, 2008), 73 FR 55188 (September 24, 2008) (SR-PHLX-2008-60).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would increase the amount of information available to market participants for municipal ARS and VRDO by: (i) Implementing the Short-term Obligation Rate Transparency System ("SHORT" System) to collect and disseminate information about securities bearing interest at short-term rates; (ii) providing free public access to information disseminated from the SHORT System through EMMA; and (iii) amending Rule G-34 to require dealers to report, or ensure the reporting of, interest rate and descriptive information to the SHORT System about ARS and VRDO following an ARS auction or VRDO interest rate reset.

Background

In recent years, there has been a growing market in municipal securities with long-term maturity dates and short-term (nine months or under) interest rate reset periods. ARS and VRDO comprise most of the securities in this sector. ARS and VRDO are similar in that they both are long-term securities with short-term interest rates. In both types of securities, interest rates are reset periodically through programs operated by dealers on behalf of the issuers of the securities.

VRDO Remarketing Process

VRDO are distinguished by the existence of a "put" or "tender" feature that allows holders to tender their securities back to an issuer-appointed representative, at par, on a periodic basis. VRDO normally operate with a letter of credit or stand-by bond purchase agreement designed to ensure liquidity. Interest rates typically are reset by a dealer serving as the "Remarketing Agent" for the issue at a rate that allows the securities to be sold at par.

ARS Auction Process

ARS are distinguished by the auction process that is used to reset interest rates. ARS are not characterized by, and generally do not have, put features or liquidity facilities. Although the auction process is designed to allow holders normally to sell their positions at par value during any auction, it is possible for auctions to fail, in which case holders are not able to liquidate their positions at par.

The auction methodology used in ARS is a type similar to a "Dutch

auction." An auction program employs one or more dealers ("ARS Program Dealers")³ that solicit orders from investors who wish to own the securities over the next interest rate reset period. Typical interest rate reset periods are 7, 28, and 35 days. The programs require one "ARS Auction Agent"—typically a bank—that receives orders from the ARS Program Dealer(s) and conducts auctions in accordance with the method described in program documents. The ARS Auction Agent provides the results of the auction to the ARS Program Dealer(s), which then inform their bidders of the auction results and the securities, if any, that have been allocated to them as a result of the auction.

The auction method specified in program documents for ARS takes into consideration the total quantity of orders received in each order category specified in ARS documents. Typical order categories include:

- Existing holders that want to hold at any rate decided by the auction;
- Potential investors bidding to purchase a specified amount of securities by stating minimum acceptable interest rates;
- Existing holders that want to hold, but only if the auction produces a rate equal to or greater than one that the existing holder specifies; and
- Existing holders that want to sell a specified amount.

Using order information that must be submitted by an ARS Program Dealer(s) before the auction deadline, the ARS Auction Agent employs an algorithm to determine the lowest interest rate at which all of the securities that have been offered for sale by current holders of the securities will clear the market (the "clearing rate"). The clearing rate then becomes the interest rate for all of the securities in the issue for the next interest rate reset period.

ARS also have provisions that address situations that may occur if no clearing rate can be determined through the normal auction process. For example, if all existing holders want to hold at any rate, then an "all hold rate" is used. The all hold rate is usually a multiple of a market index and is designed to be lower than the rate that normally would be expected as a clearing rate. Conversely, auctions also can "fail" if the auction agent does not receive enough bids to cover the aggregate amount of securities that need to be sold, or if the clearing rate is above a

"maximum rate" set in the program documents. In a failed auction, all existing holders hold their securities and the rate for the next interest rate reset period is set to the "maximum rate." Like the all hold rate, the maximum rate may be a multiple of a specified index. However, it is normally designed to be a rate higher than the rate that would normally be expected in a successful auction.

Existing Price Transparency Issues

As "short-term" securities under Rule G-14 on transaction reporting, both ARS and VRDO are subject to slightly different reporting requirements than other securities. In 2003, the MSRB proposed rules for a Real-Time Transaction Reporting System (RTRS), including a requirement to report trades no later than fifteen minutes after the time of trade execution, and, for customer transactions, a requirement that the trade report include both a dollar price and yield.⁴ In response, the MSRB received comments from dealers that, because of the special trade processing methodologies for short-term variable rate securities, it would be difficult or impossible to meet these requirements for such securities. Based on these concerns, the MSRB included special provisions that provide dealers with an end-of-day exception from the fifteen-minute reporting deadline and allows dealers to report customer transactions in variable rate securities without yield.

Since transactions in short-term variable rate securities normally are executed at a dollar price of par and the current interest rate for such variable securities are not included in the data sources used by RTRS and the municipal securities industry in general, the lack of yield means that RTRS does not currently provide a means by which to determine the return on an investment in these securities. The MSRB was aware of this in 2003 when it decided to provide the special variable rate securities provisions, noting:

The MSRB does not currently plan to require reports of yields or reset rates on variable rate and auction rate products, but continues to be interested in price transparency in this area. Accordingly, the MSRB will explore other ways to provide transparency for short-term rates that are being set * * * in variable rate and auction products.⁵

⁴ Inter-dealer trade reports, in general, are not required to include yield.

⁵ See Real-Time Transaction Reporting: Revised Schedule and Operational Plan, MSRB Notice 2003-44 (December 11, 2003).

³ The ARS Program Dealer(s) is so designated through an agreement with an Auction Agent and the issuer of or other obligated person with respect to the Auction Rate Security.

The MSRB has continued to consider the availability of this information through existing data sources and is not aware of any ready source of interest rate reset information available to retail investors or, in some cases, to market participants in general about ARS and VRDO.

Recent Market for ARS and VRDO

Since early 2008, downgrades of municipal bond insurers and other short-term liquidity concerns have created extreme volatility in the market for ARS. This has resulted in an unprecedented number of "failed auctions," meaning that investors who chose to liquidate positions through the auction process were not able to do so. As a result of the volatility in the market for ARS, there has been increased interest in the market for VRDO by both issuers and investors. At the same time, the extreme turmoil in the financial markets has resulted in considerable pressures on the supply of liquidity facilities for the VRDO market and, consequently, much higher levels of rate volatility. Given these developments in the market for VRDO, the MSRB has concerns about the lack of information available to market participants on VRDO similar to those concerns with respect to ARS.

Description of the Short System

To increase the information available about ARS and VRDO, the proposed rule change would implement the Short-term Obligation Rate Transparency System for the collection and dissemination of information about ARS and VRDO. The SHORT System will receive submissions of information about ARS and VRDO under the proposed amendments to Rule G-34. Information submitted to the SHORT System will be processed upon receipt and disseminated in real-time.

Submissions to the SHORT System

Information to be Submitted. The basic items of information proposed to be submitted to the SHORT System are the same as those required to be submitted to the MSRB under the proposed amendments to Rule G-34. The complete list of data elements that would be required on a submission to the SHORT System will be made available in input specifications and system procedures made available on <http://www.msrb.org>.

Submitters. Submissions to the SHORT System may be made solely by authorized submitters using password-

protected accounts in MSRB Gateway.⁶ Submissions may be made by the following classes of submitters:

- ARS Program Dealer;
- VRDO Remarketing Agent;
- ARS Auction Agent; and
- Designated Agent, which may

submit any information otherwise permitted to be submitted by another class of submitter which has designated such agent, as provided below.

Dealers may designate agents to submit information on their behalf, and may revoke the designation of any such agents, through MSRB Gateway. Such Designated Agents must register to obtain password-protected accounts through MSRB Gateway in order to make submissions on behalf of the designating dealers. All actions taken by a Designated Agent on behalf of a dealer that has designated such agent shall be the responsibility of the dealer.

The MSRB anticipates that a majority of ARS information will be submitted by ARS Auction Agents. ARS Auction Agents would be allowed to submit information about an auction to the SHORT System without prior designation by an ARS Program Dealer. In the event that an ARS Auction Agent submits information about an auction to the SHORT System, an ARS Program Dealer would not also be required to submit information provided that the ARS Program Dealer has been correctly identified on the submission by the ARS Auction Agent. In the event that an ARS Auction Agent fails to submit information about an ARS auction, the ARS Program Dealer is required to submit the required information about the auction to the SHORT System.⁷

Timing of Submissions. Submitters shall make submissions to the SHORT System within the timeframes set forth in MSRB rules. Submissions of information to the SHORT System may be made throughout any RTRS Business Day, as defined in Rule G-14 RTRS Procedures section (d)(ii), from at least the hours of 6 a.m. to 9 p.m. Eastern Time subject to the right of the MSRB to make such processes unavailable at times as needed to ensure the integrity

⁶ MSRB Gateway is designed to be a single, secure access point for all MSRB applications. Submitters of information to the SHORT System would be required to obtain an account in MSRB Gateway in order to submit information to the SHORT System. Through MSRB Gateway, submitters also have the ability to designate third-party agents to submit information to the SHORT System on the submitter's behalf. See MSRB Gateway Roll Out and Training, MSRB Notice 2008-43 (October 15, 2008).

⁷ In the event that an ARS Auction Agent fails to submit information about an ARS auction and multiple ARS Program Dealers are required to submit information, each ARS Program Dealer would be responsible for ensuring that the required information is provided in a timely manner.

of the SHORT System and any related systems. The MSRB shall provide advance notice of any planned periods of unavailability and shall endeavor to provide information to submitters as to the status of the submission interface during unanticipated periods of unavailability, to the extent technically feasible.

Method of Submission. Information may be submitted to the SHORT System through a secure, password-protected, web-based electronic submitter interface or through a secure, authenticated computer-to-computer data connection, at the election of the submitter. When making submissions using the web-based interface, related information is entered manually into an on-line form. Computer-to-computer submissions utilize XML files. Appropriate schemas and procedures for web-based and computer-to-computer submissions will be included in input specifications and system procedures made available on <http://www.msrb.org>.

SHORT System Processing

The SHORT System would perform various data checks to ensure that information submitted is in the correct format. In addition, data checks would be performed to monitor dealer compliance with MSRB Rule G-34(c) as well as to identify information submitted in correct formats that may contain errors due to information not falling within reasonable ranges of expected values for a given item of information. The MSRB expects to institute the following processes, which are subject to modification, addition and deletion as appropriate.

Measurement of Timely Submission. The time of receipt of a submission will be recorded by the SHORT System and compared with the submitting deadline (e.g., 6:30 p.m. Eastern Time on the day an interest reset occurs for a VRDO). Submissions not received by the appropriate deadline will be considered late.

Format Edits. Each submission will be reviewed to verify that its format is correct. This involves checking various required data elements to ensure that they are present in the correct form (e.g., dates are in date format) and with the correct number of digits or characters. Submissions that fail these edits will not be processed further. Input from web-based screens will be checked before information is transferred from the submitters personal computer to the SHORT System.

Submitter Validation. The SHORT System will accept information only from parties known to the MSRB. In addition, information submitted by a

Designated Agent on behalf of a dealer or ARS Auction Agent will only be accepted if such dealer or ARS Auction Agent for whom the Designated Agent is submitting information has previously been so designated by the dealer or ARS Auction Agent.

Content Edits. The values in submissions of data to the SHORT System will be checked to determine that they are within reasonable limits, in order to detect input errors. Any errors or possible errors found will be noted and an error message describing the deficiency will be returned to the submitter.

Feedback. All submissions processed by the SHORT System will generate an acknowledgement or error message. In addition, all dealers that have information submitted on their behalf by either an ARS Auction Agent or a Designated Agent will be able to monitor such information submissions in real-time, once such submissions have been successfully processed by the SHORT System.

SHORT System Data Dissemination

Information submitted to the SHORT System that passes the format edits described above will be processed and disseminated on a real-time basis. Any changes to submissions also will be processed and updated information will be disseminated in real-time. Such information will be disseminated through the EMMA portal. The MSRB also anticipates providing a subscription service for the information provided through the SHORT System pursuant to a future filing with the Commission.

Description of the Rule Change Proposal

The proposed rule change would amend Rule G–34, on CUSIP numbers and new issue requirements, to require that information about ARS and VRDO is submitted to the SHORT System following an ARS auction or VRDO interest rate reset. The MSRB proposes a January 30, 2009 effective date for the proposed rule change.

Amendments to Rule G–34 Relating to ARS

The proposed rule change would require an ARS Program Dealer to report (either directly or through a Designated Agent), or ensure that an ARS Auction Agent reports, the information below to the SHORT System by no later than 6:30 p.m. Eastern Time on the day that an auction occurs.⁸ The information

required to be provided to the MSRB about an ARS includes:

- CUSIP number;
- Interest rate for the next reset period;
- Identity of Program Dealer(s);
- Number of days of the reset period;
- Minimum denomination;
- Date and time of the auction;
- Date and time of posting of auction results by an Auction Agent;
- Indication of whether the clearing rate is a “maximum rate,” an “all hold rate,” or “set by auction;”
- Minimum and maximum rates, if any, applicable at the time of the auction or, if not calculable as of the time of auction, indication that such rate or rates are not calculable;⁹ and
- Par amount auctioned, not including hold orders effective at any rate.

Amendments to Rule G–34 Relating to VRDO

The proposed rule change would require a dealer that acts as a Remarketing Agent for a VRDO to report (either directly or through a Designated Agent) to the SHORT System the following items of information about a VRDO by no later than 6:30 p.m. Eastern Time on the day that an interest rate reset occurs:¹⁰

- CUSIP number;
- Interest rate for the next reset period;
- Identity of Remarketing Agent;
- Date of interest rate reset;
- Length of the interest rate reset period;
- Length of Notification Period;
- Indicate of whether interest rate is “set by formula,” “set by Remarketing Agent” or a maximum rate;
- Minimum and maximum rates, if any, applicable at the time of the interest rate reset or, if not calculable as of the time of the interest rate reset, indication that such rate or rates are not calculable;¹¹

on non-RTRS Business Days would be required to be submitted to the SHORT System by no later than 6:30 p.m. Eastern Time on the next RTRS Business Day. The MSRB plans to review the appropriateness of the 6:30 PM Eastern Time deadline once experience with the SHORT System and associated MSRB rules has been obtained with a view toward advancing the timing of the requirement to submit information to the SHORT System.

⁹ If a minimum or maximum rate is unable to be determined on the day that an ARS auction or VRDO interest rate reset occurs, for example because the maximum rate for an ARS is determined through a clawback provision, the submitter would be required to report that the maximum rate is not calculable. This exception does not apply to maximum rates that are linked to an index or bank lending rate, such as LIBOR. Such maximum rates would be required to be computed and provided to the MSRB.

¹⁰ See *supra* note 8.

¹¹ See *supra* note 9.

- Minimum denomination;
- Type of liquidity facility(ies);¹² and
- Expiration date of each liquidity facility.

Description of the Emma Short-Term Obligation Rate Transparency Service

The EMMA short-term obligation rate transparency service would make the information disseminated from the SHORT System publicly available, at no charge, on the MSRB’s EMMA portal. The EMMA short-term obligation rate transparency service would provide free public access to the information about ARS and VRDO that would be provided to the MSRB under the amendments to Rule G–34.

As proposed, EMMA would provide on-line search functions to enable users to readily access information about ARS and VRDO based on a broad range of search parameters. The MSRB would not be responsible for the content of the information submitted by submitters to the SHORT System displayed on the EMMA portal.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,¹³ which provides that the MSRB’s rules shall:

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act. The proposed rule change would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities by providing a centralized venue for free public access to information about ARS and VRDO. The proposed rule change would provide greater access to information about ARS and VRDO to all participants in the municipal securities market on an equal basis thereby removing potential barriers to obtaining such information. These factors serve to promote the statutory mandate of the

¹² An indication of whether each applicable liquidity facility is a letter of credit or standby bond purchase agreement would be required to be submitted to the SHORT System.

¹³ 15 U.S.C. 78o–4(b)(2)(C).

⁸ The 6:30 p.m. Eastern Time deadline only applies on those ARS auctions and VRDO interest rate resets that occur on an RTRS Business Day, as defined in Rule G–14(d)(ii). Information about ARS auctions and VRDO interest rate resets that occur

MSRB to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On March 17, 2008, the MSRB requested comment on a proposed plan for increasing the information available for ARS ("March ARS Notice")¹⁴ and on May 23, 2008, the MSRB requested comment on a proposed plan for increasing the information available for VRDO ("May VRDO Notice").¹⁵ These notices, the comments received, and the MSRB's responses are discussed below.

March ARS Notice

The March ARS Notice proposed a plan to create a centralized system for the collection and dissemination of critical market information about ARS. The proposed plan would require ARS Program Dealers to report the following information to a central system operated by the MSRB on the day that an auction occurs:

ARS Interest Rate and Descriptive Information

- CUSIP number;
- Name of Program Dealer(s);
- Number of days of the reset period;
- Minimum denomination;
- Date and time of the auction;
- Interest rate for the next reset period;
- Indication of whether the clearing rate is a "maximum rate," an "all hold rate," or "set by auction";
- Dollar amount of securities auctioned

ARS Bidding Information

- Number of bidders;
- Par amount of securities for sale in the auction;
- Number and aggregate dollar amount of bids made;
- Number of bidders other than the Program Dealer(s), issuer or conduit borrower;
- Number, interest rate(s) and amount of bids by a Program Dealer for its own account;

- Number, interest rate(s) and amount of bids by issuer or conduit borrower;
- Par amount of securities allocated to bids at clearing rate;
- High bid;
- Low bid;
- Median bid.

In addition to the information listed above, the March ARS Notice also proposed collecting documents concerning ARS that are not currently required to be filed with the MSRB under Rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD).

May VRDO Notice

The May VRDO Notice proposed a plan to collect and disseminate critical market information about VRDO using the same system proposed in the March ARS Notice. Under the plan proposed in the May VRDO Notice, dealers that act as Remarketing Agents would be required to report the following information about a VRDO by the end of the day on which an interest rate reset occurs:

VRDO Interest Rate and Descriptive Information

- CUSIP number;
- Name of Remarketing Agent;
- Date of interest rate reset;
- Interest rate for the next reset period;
- Length of the interest rate reset period;
- Length of Notification Period;
- Whether interest rate is "set by formula" or "set by Remarketing Agent";
- Minimum and maximum rates, if any;
- Minimum denomination;
- Type of liquidity facility(ies);
- Expiration date of each liquidity facility.

In addition to the specific items of information listed above, the May VRDO Notice also proposed collecting documents concerning VRDOs that are not currently required to be filed with the MSRB under Rule G-36, such as the letter of credit or standby bond purchase agreement.

Discussion of Comments

The MSRB received comments on the March ARS Notice from seven commentators¹⁶ and on the May VRDO

Notice from nine commentators.¹⁷ After reviewing these comments, the MSRB approved a phased-in approach to collecting the information and documents identified in the March ARS Notice and May VRDO Notice. This first phase of this approach includes the collection of ARS and VRDO interest rate and descriptive information, listed above. The principal comments concerning the collection of ARS and VRDO interest rate and descriptive information are discussed below.¹⁸

Support for MSRB Plan to Increase Information Available for ARS and VRDO

In response to the March ARS Notice, commentators generally stated support for the creation of a system to increase the information available on ARS. SIFMA "fully supports the development by the MSRB of a system to display auction information on a Web site." RBDA stated that "the MSRB's proposal...represents a reasonable response to the problem of a lack of transparency regarding the conduct of auctions in the [municipal ARS] market." However, RBDA stated that "since the downturn in [ARS], the market for [ARS] has shrunk significantly" and that "if the [ARS] continues to shrink, ... [RBDA] believe[s] the MSRB's and dealers' resources would be more productively directed to other initiatives." The MSRB agrees with RBDA's view that the amount of information that could be

Association ("RBDA") to Mr. Pica, dated April 21, 2008; Joseph S. Fichera, Senior Managing Director and CEO, Saber Partners, LLC ("Saber Partners") to Mr. Pica, dated July 9, 2008; Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA") to Mr. Pica, dated April 21, 2008; and, Jeff Yankauer to Mr. Pica, e-mail dated April 17, 2008.

¹⁷ See letters from Ms. Stuart, DAC, to Mr. Pica, dated July 1, 2008; Daniel Thieke, Vice President, Depository Trust and Clearing Corporation ("DTCC") to Mr. Pica, dated June 26, 2008; Christine Walsh, Managing Director, Merrill Lynch to Mr. Pica, dated June 26, 2008; S. Lauren Heyne, Chief Compliance Officer, RW Smith and Associates, Inc. ("RW Smith") to Mr. Pica, dated June 30, 2008; Mr. Fichera, Saber Partners, to Mr. Pica, dated July 9, 2008; Ms. Norwood, SIFMA, to Mr. Pica, dated June 30, 2008; Dara L. Smith, Managing Director, SunTrust Robinson Humphrey ("SunTrust") to Mr. Pica, dated June 27, 2008; Joseph A. Whitehead, Thornton Farish Inc. ("Thornton Farish") to Mr. Pica, dated June 30, 2008; and, Belle Walker, Senior Vice President, W.R. Taylor and Company, LLC ("W.R. Taylor") to Mr. Pica, dated August 7, 2008.

¹⁸ Future phases may include the collection and dissemination of the other information and documents identified in the March ARS Notice and May VRDO Notice. Comments relating to the collection and dissemination of such information and documents will be discussed in connection with the future filings of relevant proposed rule changes with the SEC.

¹⁴ See MSRB Notice 2008-15 (March 17, 2008).

¹⁵ See MSRB Notice 2008-24 (May 23, 2008).

¹⁶ See letters from Paula Stuart, Chief Executive Officer, Digital Assurance Certification, LLC ("DAC") to Justin Pica, dated April 21, 2008; Jack B. McPherson to Mr. Pica, dated March 27, 2008; Mikag@cox.net to Mr. Pica, e-mail dated April 23, 2008; Michael Decker and Mike Nicholas, Co-Chief Executive Officers, Regional Bond Dealers

collected in any new information system must be balanced with the cost of system development and in review of comments on the March ARS Notice, the question of increased transparency for VRDO surfaced. Accordingly, the MSRB published the May VRDO Notice.

In response to the May VRDO Notice, commentators also stated support for increasing the information available about VRDO using the same system proposed in the March ARS Notice. SIFMA “fully supports the development by the MSRB of a system to display remarketing information on a Web site.” RW Smith “believes the most effective way to ensure efficient, liquid markets is through timely distribution of security data, market pricing and transaction information.” Thornton Farish stated “the transparency and communication of appropriate information for [VRDO] should be a priority of [the] MSRB.” One commentator, W.R. Taylor, opposed the proposed requirement for VRDO Remarketing Agents to report information to an MSRB system following a VRDO interest rate reset.

Information Proposed To Be Collected and Disseminated

In response to the ARS interest rate and descriptive information proposed to be collected in the March ARS Notice, Mr. Yankauer stated that he is “in agreement that all of the proposed items * * * should be disclosed.”¹⁹ Mr. Yankauer suggested that the MSRB collect information on how ARS maximum rates are computed. While the MSRB agrees that such information would be of value, the MSRB has instead included in the ARS interest rate and descriptive information required to be submitted to the MSRB the current computation of the maximum rate, when such value is able to be computed. SIFMA stated that it agrees with the items proposed for collection, but recommended a phased-in approach that initially only includes the collection of ARS interest rate and descriptive information. SIFMA states that this would allow the system to be brought up as quickly as possible.

In response to the May VRDO Notice, SunTrust stated that the items of information proposed to be collected and disseminated about VRDOs are

appropriate and that there are no additional items of information that should be added to the list of information. SIFMA “considers the * * * information proposed to be collected and disseminated to be appropriate.”²⁰

Information Collection Methodology

DTCC, in commenting on the May VRDO Notice, proposed that its New Issue Information Dissemination System (NIIDS) could be used as a mechanism for reporting information about VRDOs to the MSRB. DTCC stated that since NIIDS “contains many of the sought-after data elements for [VRDOs], there would be a limited amount of system modifications needed to support this initiative.” While NIIDS is designed to receive and disseminate many of the items of information listed in the May VRDO Notice, the MSRB notes that modifications to NIIDS would be needed to receive the ARS interest rate and descriptive information. Further, NIIDS is only currently designed to receive and disseminate information about new issues of municipal securities.

The MSRB believes that the amount of changes to NIIDS to support the collection and dissemination of ARS information and to receive information from dealers on an ongoing basis would not be insignificant. Since underwriters of new issues of VRDOs would be required to input many of the items of information to NIIDS in connection with filing an application for depositary eligibility, the MSRB will work with DTCC to see if such data could, in the future, serve as a “template” for Remarketing Agents to minimize the amount of information that would need to be provided to the MSRB in connection with a VRDO interest rate reset under the proposed rule change.

RW Smith and SunTrust stated that Remarketing Agents typically communicate information about VRDOs to information vendors and SunTrust suggested that if a Remarketing Agent can designate an information vendor for purposes of submitting information to the MSRB, “then the impact to the remarketing agent will be minimal.” The MSRB notes that dealers would be able to designate agents, including information vendors, for purposes of submitting information to the MSRB on a dealer’s behalf.

¹⁹ Mr. Yankauer further suggested that the MSRB collect information about whether an auction for a specific security has ever failed and the date of the most recent failure. While the MSRB believes that such information would be useful to market participants, the MSRB decided to not require Program Dealers to provide historical information about an ARS. The MSRB notes that on a prospective basis, such information would be available to market participants.

²⁰ Thornton Farish suggests that Remarketing Agents that market VRDOs solely to institutional investors should be exempt from a proposed rule to report information about the VRDO. However, the MSRB believes it is important that the information available on VRDOs be comprehensive.

Allocations of Responsibilities Among ARS Program Dealers

Some ARS programs employ multiple Program Dealers. SIFMA noted that unlike in an underwriting of municipal securities where a lead underwriter executes a bond purchase agreement on behalf of all underwriters, “there is generally no ‘lead’ Program Dealer specifically designated as such in programs involving multiple Program Dealers.” SIFMA recommended that when more than one Program Dealer exists in an auction program, the Program Dealers should designate one Program Dealer “to act as ‘manager’ for all Program Dealers for purposes of compliance with the proposed rule.”

The MSRB anticipates that ARS Auction Agents would submit information on behalf of all Program Dealers for those securities that have multiple Program Dealers. The MSRB acknowledges that having multiple submission of identical information by separate dealers would not be efficient and could result in data discrepancies. In the event that an Auction Agent does not submit information on behalf of ARS Program Dealers, dealers would be able to designate agents for purposes of reporting information to the MSRB and in this case, Program Dealers would be able to designate a “lead” Program Dealer to report information to the MSRB or a third party, such as a vendor, to report information on behalf of all Program Dealers connected with an ARS.²¹

Deadline for Submission of Information

Both the March ARS Notice and May VRDO Notice proposed requiring ARS Program Dealers and VRDO Remarketing Agents to submit interest rate information on the day that an ARS auction or a VRDO rate reset occurs. Several commentators suggested an end-of-day submission deadline and SIFMA recommended that the deadline should be the same as the deadline under MSRB Rule G–14, on transaction reporting, for reporting transactions in short-term securities to the MSRB Real-Time Transaction Reporting System. The MSRB agrees with these commentators that an “end-of-day” deadline for reporting information to the MSRB should coincide with the end-of-day in MSRB rules on transaction reporting and has included a 6:30 p.m. Eastern Time deadline for submitting ARS and VRDO information to the MSRB in the proposed rule change.

²¹ See *supra* note 7.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2008-07 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-MSRB-2008-07. 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 MSRB. 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-MSRB-2008-07 and should be submitted on or before December 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-28242 Filed 11-26-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58984; File No. SR-NYSEArca-2008-121]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 5.2(j)(6) To Increase the Permissible Aggregate Weight of Underlying Foreign Country Securities

November 20, 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 29, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), 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

The Exchange proposes to amend Rule 5.2(j)(6) in order to permit foreign country securities whose primary foreign markets are not subject to a comprehensive surveillance sharing agreement to account for up to 50% of the aggregate weight of the index. 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

Currently, the Exchange's listing standards for equity index linked securities ("Equity Index-Linked Securities") limit the permissible aggregate weight of underlying foreign country securities to 20% of the overall index where the primary trading markets of the foreign country securities or American Depositary Receipts ("ADRs") are not members of the Intermarket Surveillance Group ("ISG") or are not otherwise parties to comprehensive surveillance sharing agreements ("CSSA") with the Exchange. The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v) to increase the permissible aggregate weight of such underlying foreign country securities up to 50% of the overall index.³ According to the proposal, the Exchange will permit the listing and trading of Equity Index-Linked Securities where the underlying foreign country securities or ADRs, which trade on foreign markets that are not ISG members or are not otherwise subject to a CSSA agreement with the Exchange, account for up to 50% of the aggregate dollar weight of the index, so long as: (i) The securities of any one primary foreign market which is not an ISG member or does not have a CSSA with the Exchange do not represent more than 20% of the dollar weight of the index, and (ii) the securities of any two primary foreign markets which are not ISG members or do not have a CSSA with the Exchange do not represent more than 33% of the dollar weight of the index. As a result

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ E-mail from Andrew Stevens, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated November 20, 2008.

of the proposed amendment, the Exchange also seeks to make additional minor modifications to Rule 5.2(j)(6)(B)(I)(1)(b)(v) relating to punctuation and format and other non-substantive changes.⁴

This amendment is consistent with NYSE Arca Options Rule 5.3(g)(2)(A), which establishes the standards for the listing and trading of options on Exchange-Traded Funds. Approved in 2001, the Commission specifically noted in its order that requiring comprehensive surveillance agreement to be in place between the Exchange and the primary markets for foreign securities that comprise 50% or more of the weight of the underlying index “provides an adequate mechanism for the exchange of surveillance sharing information necessary to detect and deter possible market manipulation.”⁵ The Commission also recognized that the additional conditions regarding the concentration of foreign securities in any one or more uncovered countries, ensure that a “significant percentage of the portfolio is not made up of securities from uncovered countries.”⁶

The Exchange believes that the proposed amendment does not impose any burden on competition or significantly affect the protection of investors. The revised standard allows for increased flexibility with respect to listing and trading Equity Index-Linked Securities, while also providing an adequate mechanism for the exchange of surveillance sharing information necessary to detect and deter possible market manipulation.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁷ of the Act, in general, and furthers the objectives of Section 6(b)(5)⁸ 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 standard, which is consistent with NYSE Arca Options Rule 5.3(g)(2)(A), provides an appropriate mechanism for the exchange of surveillance sharing information necessary to detect and deter possible market manipulation.

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-2008-121 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-2008-121. 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-2008-121 and should be submitted on or before December 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-28220 Filed 11-26-08; 8:45 am]

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⁴ E-mail from Tim Malinowski, Director, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated November 5, 2008.

⁵ See Securities Exchange Act Release No. 44025 (February 28, 2001), 66 FR 13986 (March 8, 2001) (SR-PCX-01-12). This rule change is also consistent with Commentary .06 of Rule 915 of the American Stock Exchange, Inc. [sic] (“Amex”). See Securities Exchange Act Release No. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998) (SR-Amex-96-44) (order approving Commentary .06 to Amex Rule 915, establishing the 50% / 20% / 33% standards for purposes of listing and trading options on Exchange Traded Funds).

⁶ *Id.* See also Securities Exchange Act Release No. 40761 (December 8 1998), 63 FR 70952 (December 22, 1998) (S7-13-98) (in its guidance to self-regulatory organizations on new derivative securities products, the Commission noted the then recent approval of Commentary .06 to Amex Rule 915 for its discussion of an appropriate percentage of CSSA coverage (as it pertained to the specific product class of options)).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58993; File No. SR-NYSEArca-2008-128]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Listing of PowerShares DB Funds

November 21, 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 November 5, 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 by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Act,³ the Exchange, through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), proposes to list and trade shares of the PowerShares DB Commodity Index Tracking Fund (symbol: DBC); PowerShares DB Energy Fund (DBE); PowerShares DB Oil Fund (DBO); PowerShares DB Precious Metals Fund (DBP); PowerShares DB Gold Fund (DGL); PowerShares DB Silver Fund (DBS); PowerShares DB Base Metals Fund (DBB); PowerShares DB Agriculture Fund (DBA); PowerShares DB G10 Currency Harvest Fund (DBV); PowerShares DB U.S. Dollar Index Bullish Fund (UUP); and PowerShares DB U.S. Dollar Index Bearish Fund (UDN) (collectively the “Funds”) under Commentary .02 to NYSE Arca Equities Rule 8.200. 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 III 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

Pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200, the Exchange may approve for listing and trading trust issued receipts (“TIRs”) investing in shares or securities (“Investment Shares”) that hold investments in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities.⁴ The Exchange proposes to list and trade the shares of each of the Funds (the “Shares”), which represent beneficial ownership interests in the corresponding Master Fund’s net assets, as described in the Registration Statements for the Funds.⁵

The Funds are currently listed on NYSE Alternext U.S. LLC (NYSE Alternext U.S. (formerly, the American Stock Exchange LLC (“Amex”))⁶ and

are traded on the Exchange pursuant to unlisted trading privileges (“UTP”).⁷ Prior to listing on the Exchange, the Funds would be required to satisfy the applicable delisting procedures of NYSE Alternext U.S. and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the Securities Exchange Act of 1934 (“Exchange Act”),⁸ relating to listing the Shares on the Exchange.⁹

Descriptions of the Funds and their underlying indexes (“Indexes”) are included in the Amex Filings, the UTP Filings, and the respective Registration Statements for the Funds.¹⁰ The Exchange represents that the Funds satisfy the requirements of Rule 8.200, Commentary .02 and thereby qualify for listing on the Exchange. The Exchange states that all of the facts describing the Funds and the Shares contained in the Amex Filings are true and correct as of the date of this filing. The Exchange states further that the representations included in the Amex Filings relating to the dissemination and availability of information regarding the Shares will apply to listing and trading of the Shares on the Exchange.¹¹ To the extent

the PowerShares DB U.S. Dollar Index Bullish Fund and PowerShares DB U.S. Dollar Index Bearish Fund; 54450 (September 14, 2006), 71 FR 55230 (September 21, 2006) (SR-Amex-2006-44) (approving listing of DB Currency Index Value Fund (now known as PowerShares DB G10 Currency Harvest Fund)); 55029 (December 29, 2006), 72 FR 806 (January 8, 2007) (SR-Amex-2006-76) (approving listing of PowerShares DB Energy Fund, the PowerShares DB Oil Fund, PowerShares DB Precious Metals Fund, the PowerShares DB Gold Fund, the PowerShares DB Silver Fund, the PowerShares DB Base Metals Fund, and the PowerShares DB Agriculture Fund) (collectively, “Amex Filings”).

⁷ See Securities Exchange Act Release Nos. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR-PCX-2006-22) (order approving UTP trading of DB Commodity Index Tracking Fund (now known as PowerShares DB Commodity Index Tracking Fund); 54569 (October 4, 2006), 71 FR 60594 (October 13, 2006) (SR-NYSEArca-2006-64) (order approving UTP trading of PowerShares DB G10 Currency Harvest Fund); 55484 (March 16, 2007), 72 FR 13847 (March 23, 2007) (SR-NYSEArca-2006-67) (order approving UTP trading of PowerShares DB U.S. Dollar Index Bullish Fund and PowerShares DB U.S. Dollar Index Bearish Fund); 55453 (March 13, 2007), 72 FR 13333 (March 21, 2007) (SR-NYSEArca-2006-62) (order approving UTP trading of PowerShares DB Energy Fund, PowerShares DB Oil Fund, PowerShares DB Precious Metals Fund, PowerShares DB Gold Fund, PowerShares DB Silver Fund, PowerShares DB Base Metals Fund, and PowerShares DB Agriculture Fund) (collectively, “UTP Filings”).

⁸ 15 U.S.C. 78(l).

⁹ The Exchange will seek the voluntary consent of the issuer of the Shares to be delisted from NYSE Alternext U.S. and listed on the Exchange. The Exchange notes that its approval of the Funds’ listing applications would be required prior to listing.

¹⁰ See notes 5-7, *supra*.

¹¹ The Exchange notes that the Funds’ Web site is <http://www.DBFunds.DB.com>. The Exchange’s

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ In April 2006, the Commission approved Commentary .02 to NYSE Arca Equities Rule 8.200, which sets forth the rules related to listing and trading criteria for Investment Shares. See Securities Exchange Act Release No. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR-PCX-2006-22).

⁵ See Registration Statements on Form S-1 o Form S-1A for PowerShares DB Commodity Index Tracking Fund (No. 333-150217, dated April 11, 2008); PowerShares DB G10 Currency Harvest Fund (No. 132484, May 16, 2008); PowerShares DB U.S. Dollar Index Bullish Fund and PowerShares DB U.S. Dollar Index Bearish Fund (No. 333-150588, dated May 2, 2008); PowerShares DB Energy Fund, PowerShares DB Oil Fund, PowerShares DB Precious Metals Fund, PowerShares DB Gold Fund, the PowerShares DB Silver Fund, the PowerShares DB Base Metals Fund, and PowerShares DB Agriculture Fund (No. 333-150501, dated June 25, 2008).

⁶ See Securities Exchange Act Release Nos. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR-Amex-2005-59) (approving listing of DB Commodity Index Tracking Fund (now known as PowerShares DB Commodity Index Tracking Fund)); 55292 (February 14, 2007), 72 FR 8406 (February 26, 2007) (SR-Amex-2006-86) (approving listing of

NYSE Alternext US has any affirmative obligations with respect to dissemination of information or key values relating to the Shares, the Exchange represents that it would take the place of NYSE Alternext US in such role and discharge such obligations.

The Funds will comply with the requirements of Rule 10A-3¹² under the Act.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be \$0.01.

The trading of the Shares will be subject to Commentary .02(e)(1)-(4) to NYSE Arca Equities Rule 8.200, which sets forth certain restrictions on ETP Holders acting as registered Market Makers in TIRs that invest in Investment Shares to facilitate surveillance. See "Surveillance" below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying futures contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule¹³ or by the halt or suspension of trading of the underlying futures contracts.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Trust Issued Receipts, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and

detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, the physical commodities included in, or options, futures or options on futures on, the Indexes or any other derivatives based on the Indexes, through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. With regard to the Index components, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange, the InterContinental Exchange and the London Metal Exchange, pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current Index components are traded are members of the Intermarket Surveillance Group ("ISG") and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange. A list of ISG members is available at <http://www.isgportal.org>.

In addition, not more than 10% of the weight of the applicable Index in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3)

how information regarding the IFVs is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) the risks involved in trading the Shares in the Opening and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated.¹⁴

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. The Exchange notes that investors purchasing Shares directly from a Fund (by delivery of the corresponding Cash Deposit Amount) will receive a prospectus. ETP Holders purchasing Shares from a Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the CFTC has regulatory jurisdiction over the trading of futures contracts.

The Information Bulletin will also disclose the trading hours of the Shares of the Funds and that the NAV for the Shares is calculated after 4 p.m. ET each trading day. The Bulletin will disclose that information about the Shares of each Fund and the corresponding Indexes is publicly available on the Funds' Web site.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)¹⁵ of the Act in general and furthers the objectives of Section 6(b)(5)¹⁶ 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 mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will permit the

Web site (<http://www.nyse.com>) will contain a link to the Funds' Web site. Additional information relating to the Funds is available on <http://www.invescopowershares.com>.

¹² 17 CFR 240.10A-3.

¹³ See NYSE Arca Equities Rule 7.12.

¹⁴ See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Mitra Mehr, Special Counsel and Brian O'Neill, Attorney, Division of Trading and Markets, Commission, dated November 20, 2008.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

listing of the Shares on the Exchange, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.200 are intended to protect investors and the public interest.

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. 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-2008-128 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-2008-128. 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-2008-128 and should be submitted on or before December 19, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,¹⁸ which requires, among other things, that the rules of a national securities exchange be designed 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 proposes to list and trade the Shares pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200. NYSE Arca represents that the Shares satisfy the requirements of Commentary .02 of Rule 8.200, which include initial and continued listing criteria to which the Shares will be subject. The Exchange deems the Shares to be equity securities, thus subjecting the Shares to the Exchange's existing rules governing the trading of equity securities. The Shares will trade on the Exchange from 4 a.m. to 8 p.m. Eastern Time. The Commission approved the listing and trading of the Shares on Amex,¹⁹ now known as NYSE Alternext US, and trading of the Shares pursuant to UTP on NYSE Arca.²⁰

The Commission believes that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,²¹ which sets

forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange states that: (1) The representations included in the Amex Filings relating to the dissemination and availability of information regarding the Shares will apply to listing and trading of the Shares on the Exchange; and (2) to the extent NYSE Alternext US has any affirmative obligations with respect to dissemination of information or key values relating to the Shares, the Exchange will assume the role of NYSE Alternext US and discharge such obligations. Accordingly, among other things:

1. Shortly after 4 p.m. each business day, the NAV of the Trust, (for orders properly placed by 4 p.m. during the day), and the next day's Indicative Basket Amount are disseminated;²²

2. The IFV will be disseminated on a per Share basis at least every 15 seconds between 9:30 a.m. and 4:15 p.m. Eastern Time;²³

3. The Trust's Web site is and will be publicly accessible at no charge and will contain, among other things, the NAV of the Shares and the underlying Basket Amount as of the prior business day, the Indicative Basket Amount, the Bid-Ask Price, and a calculation of the premium or discount of the Bid-Ask Price in relation to the closing NAV;²⁴

4. The Trust's Web site, to which the NYSE Arca will link, will also provide data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters, the Prospectus, and other applicable quantitative information;²⁵ and

5. The Exchange will provide a hyperlink on its Web site to the Funds' Web site (<http://www.DBFunds.DB.com>).²⁶

The Commission also believes that the proposal to list and trade the Shares is

²² See *supra* note 6, 71 FR at 3133; *supra* note 6, 72 FR at 8407; *supra* note 6, 71 FR at 55232; and *supra* note 6, 72 FR at 808.

²³ See *supra* note 6, 71 FR at 3132; *supra* note 6, 72 FR at 8407; *supra* note 6, 71 FR at 55233; and *supra* note 6, 72 FR at 808.

²⁴ See *supra* note 6, 71 FR at 3133; *supra* note 6, 72 FR at 8407; *supra* note 6, 71 FR at 55233; and *supra* note 6, 72 FR at 808.

²⁵ See *supra* note 6, 71 FR at 3133; *supra* note 6, 72 FR at 8407; *supra* note 6, 71 FR at 55233; and *supra* note 6, 72 FR at 808.

²⁶ See *supra* note 6, 71 FR at 3133; *supra* note 6, 72 FR at 8407; *supra* note 6, 71 FR at 55233; and *supra* note 6, 72 FR at 808.

¹⁷ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See Amex Filings, *supra* note 6.

²⁰ See UTP Filings, *supra* note 7.

²¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. Under its continued listing standards, the Exchange will consider suspending trading in the Shares or removing them from listing if: (1) After the 12-month period following the commencement of trading on the Exchange, the issuer has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders for 30 or more consecutive days, the issuer has fewer than 50,000 Shares outstanding, or a market value less than \$1,000,000;²⁷ (2) the value of the underlying commodity is no longer calculated or available on at least a 15-second delayed basis or if the sponsor or Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value;²⁸ or (3) the IFV is no longer made available on at least a 15-second delayed basis.²⁹ With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.³⁰ In addition, the Commission notes that if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants pursuant to NYSE Arca Equities Rule 7.34(a)(5).³¹

The Commission also notes that Commentary .02 of Rule 8.200 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance.

In support of this proposal, the Exchange has made the following representations:

(1) The Shares satisfy the requirements of Commentary .02 of Rule 8.200, which includes the initial and continued listing criteria for Trust Issued Receipts.

²⁷ See Commentary .02 (d)(2)(i) to NYSE Arca Equities Rule 8.200.

²⁸ See Commentary .02 (d)(2)(ii) to NYSE Arca Equities Rule 8.200.

²⁹ See Commentary .02 (d)(2)(iii) to NYSE Arca Equities Rule 8.200.

³⁰ Trading may be halted because of market conditions or for reasons that make trading in the Shares inadvisable, including: (1) The extent to which trading is not occurring in the underlying futures contracts; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. The Exchange will also halt trading pursuant to the Exchange's to NYSE Arca Equities Rule 7.12 during extraordinary market volatility or by the halt or suspension of trading in the underlying futures contracts.

³¹ See NYSE Arca Equities Rule 7.34(a)(5).

(2) All of the facts describing the Funds and the Shares contained in the Amex filings are true and correct as of the date of this filing.

(3) The representations included in the Amex Filings relating to the dissemination and availability of information regarding the Shares will apply to listing and trading of the Shares on the Exchange. To the extent NYSE Alternext U.S. has any affirmative obligations with respect to dissemination of information or key values relating to the Shares, the Exchange will take the place of NYSE Alternext U.S. in such role and discharge such obligations.

(4) The Exchange's surveillance procedures are adequate to properly monitor trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(5) With regard to the Index components, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange, the InterContinental Exchange and the London Metal Exchange, pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current Index components are traded are members of the ISG and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange.

(6) Not more than 10% of the weight of the applicable Index in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(7) The Exchange will distribute an Information Bulletin, the contents of which are more fully described above, to ETP Holders in connection with the trading of the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,³² for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. Previously, the Commission approved the listing and trading of the Shares on Amex,³³ and

³² 15 U.S.C. 78s(b)(2).

³³ See Amex Filings, *supra*, note 6.

the trading of the Shares pursuant to UTP on the Exchange.³⁴ The Exchange's proposal to list and trade the Shares does not appear to present any novel or significant regulatory issues. As such, the Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such products.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁵ that the proposed rule change (SR–NYSEArca–2008–128) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–28241 Filed 11–26–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58992; File No. SR–NASDAQ–2008–088]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Its Obvious Errors Rule and the Adoption of a Catastrophic Error Provision

November 21, 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 November 19, 2008, The NASDAQ Stock Market LLC (“Nasdaq” or the “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 Nasdaq. Nasdaq 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

³⁴ See UTP Filings, *supra*, note 7.

³⁵ 15 U.S.C. 78s(b)(2).

³⁶ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 17 C.F.R. 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")⁴ and Rule 19b-4 thereunder,⁵ The NASDAQ Stock Market LLC ("Nasdaq") is filing with the Securities and Exchange Commission ("Commission") a proposal for the NASDAQ Options Market ("NOM") to modify Chapter V, Section 6 (Obvious Errors) of its options rules to: (1) adopt a catastrophic error provision; and (2) change the notification period for obvious errors from 15 to 20 minutes.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].⁶

* * * * *

Chapter V Regulation of Trading on NOM

Sec. 1-5 No change.

Sec. 6 Obvious Errors.

(a) Nasdaq shall either nullify a transaction or adjust the execution price of a transaction that meets the standards provided in this Section.

(b) Definition of Obvious Error. For purposes of this Section only, an Obvious Error will be deemed to have occurred when:

(i) the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below \$2	.25
\$2 to \$5	.40
Above \$5 to \$10	.50
Above \$10 to \$20	.80
Above \$20	1.00

(ii) the trade resulted in an execution price in a series that was, and for five seconds prior to the execution remained, quoted no bid and at least one strike price below (for calls) or above (for puts) in the same class were quoted no bid at the time of the erroneous execution (in which case the trade shall be nullified). For purposes of this subparagraph, bids and offers of the parties to the subject trade that are in any of the series in the same options class shall not be considered.

(c) Definition of Theoretical Price. For purposes of this Section only, the Theoretical Price of an option series is,

(i) If the series is traded on at least one other options exchange, the mid-point of the National Best Bid and Offer ("NBBO"), just prior to the transaction; or

(ii) If there are no quotes for comparison purposes, as determined by MarketWatch as defined in Chapter I.

(d) Obvious Error Procedure. If a party believes that it participated in a transaction that was the result of an Obvious Error, it must notify MarketWatch via written or electronic complaint within [15] 20 minutes of the execution. Absent unusual circumstances, Nasdaq will not grant relief under this Section unless notification is made within the prescribed periods of time. A designated employee in Nasdaq Regulation that is trained in the application of this rule ("Nasdaq Official") shall administer the application of this Section.

(e) Adjust or Bust. A Nasdaq Official will determine whether there was an Obvious Error as defined above. If it is determined that an Obvious Error has occurred, MarketWatch shall take one of the actions listed below. Upon taking final action, MarketWatch shall promptly notify both parties to the trade electronically or via telephone.

(i) Where each party to the transaction is an Options Participant, the execution price of the transaction will be adjusted by the Nasdaq Official to the prices provided in subparagraphs (A) and (B) below unless both parties agree to adjust the transaction to a different price or agree to bust the trade within ten (10) minutes of being notified by MarketWatch of the Obvious Error.

(A) Erroneous buy transactions will be adjusted to their Theoretical Price plus \$.15 if the Theoretical Price is under \$3, or plus \$.30 if the Theoretical Price is at or above \$3.

(B) Erroneous sell transactions will be adjusted to their Theoretical Price minus \$.15 if the Theoretical Price is under \$3, or minus \$.30 if the Theoretical Price is at or above \$3.

(ii) Where at least one party to the Obvious Error is not an Options Participant, the trade will be nullified unless both parties agree to an adjustment price for the transaction within 30 minutes of being notified by MarketWatch of the Obvious Error.

(iii) Trades meeting the Obvious Errors definition in (b)(ii) above shall be nullified.

(iv) Mutual Agreement. The determination as to whether a trade was automatically executed at an erroneous price may be made by mutual agreement

of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree.

(f) Catastrophic Errors

(i) Definition. For purposes of this Section only, a Catastrophic Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount (\$)
Below \$2	1
\$2 to \$5	2
Above \$5 to \$10	5
Above \$10 to \$50	10
Above \$50 to \$100	20
Above \$100	30

(ii) Catastrophic Error Procedure. If a party believes that it participated in a transaction that qualifies as a Catastrophic Error, it must notify MarketWatch via a written or electronic complaint by 8:30 am ET, on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party must notify MarketWatch by 5:00 pm ET that same day.

Nasdaq will not grant relief under this Section unless notification is made within the prescribed periods of time. Relief will not be granted if MarketWatch has previously rendered a decision with respect to the transaction in question pursuant to this Section. A Nasdaq Official, as defined in paragraph (d) above, shall administer the application of this Section.

(iii) Adjust or Bust. A Nasdaq Official will determine whether there was a Catastrophic Error as defined above. If it is determined that a Catastrophic Error has occurred, whether or not each party to the transaction is an Options Participant, MarketWatch shall adjust the execution price of the transaction, unless both parties agree to adjust the transaction to a different price, to the theoretical price (i) plus the adjustment value provided below for erroneous buy transactions, and (ii) minus the adjustment value provided for erroneous sell transactions:

Theoretical price	Minimum amount (\$)
Below \$2	1
\$2 to \$5	2
Above \$5 to \$10	3
Above \$10 to \$50	5
Above \$50 to \$100	7
Above \$100	10

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaqomx.cchwallstreet.com>.

Upon taking final action, MarketWatch shall promptly notify both parties to the trade electronically or via telephone.

(g) Review by the Market Operations Review Committee ("MORC")

(i) A party to a transaction affected by a decision made under this section may appeal that decision to the MORC. An appeal must be made in writing, and must be received by Nasdaq within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed. The MORC may review any decision appealed, including whether a complaint was timely, whether an Obvious Error or Catastrophic Error occurred, whether the correct Theoretical Price was used, and whether an adjustment was made at the correct price.

(ii) A MORC panel will be comprised minimally of representatives of one (1) member engaged in Market Making and two (2) industry representatives not engaged in Market Making. At no time should a review panel have more than 50% members engaged in Market Making.

(iii) The MORC, pursuant to the standards set forth in this rule, shall affirm, modify, or reverse the determination.

(iv) The decision of the MORC pursuant to an appeal, or a determination by a Nasdaq Official that is not appealed, shall be final and binding upon all parties and shall constitute final Nasdaq action on the matter in issue. Any determination by a Nasdaq Official or the MORC shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

(v) The party initiating the appeal shall be assessed a \$500.00 fee if the MORC upholds the decision of the Nasdaq Official. In addition, in instances where Nasdaq, on behalf of an Options Participant, requests a determination by another market center that a transaction is clearly erroneous, Nasdaq will pass any resulting charges through to the relevant Options Participant.

Sec. 7-9 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is proposing to amend NOM's Obvious Errors Rule to adopt a catastrophic error provision to address egregious trading errors and thereby help NOM participants better manage their risk. The current rule governing obvious errors is being amended to define a catastrophic error and establish procedures for granting relief from trades that result from a Catastrophic Error, as defined therein. Specifically, similar to NOM's existing obvious error provision, the proposal defines a Catastrophic Error by comparing the execution price to the Theoretical Price;⁷ if they differ by the amount indicated in the chart in proposed new paragraph (f), the procedures for Catastrophic Errors in that paragraph can be invoked. Accordingly, the proposal sets forth objective criteria for determining when a catastrophic error has occurred. The proposed amounts for catastrophic errors are significantly higher than the amounts for obvious errors, which Nasdaq believes should limit the application of the catastrophic error provision to errors involving significant losses.

If a party believes that it participated in a transaction that qualifies as a Catastrophic Error, it must notify MarketWatch via a written or electronic complaint by 8:30 a.m. ET, on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party member must notify MarketWatch by 5 p.m. ET that same day. This is similar to the current obvious error rule, except the timeframes are increased to reflect the egregious nature of a catastrophic error; the proposed timeframes are the same as those of other exchanges.⁸

A Nasdaq Official will determine whether there was a Catastrophic Error as defined above. If it is determined that a Catastrophic Error has occurred, whether or not each party to the transaction is an Options Participant, MarketWatch shall adjust the execution price of the transaction, unless both parties agree to adjust the transaction to

a different price, to a price specified in the rule, which is identical to the rules of the other exchanges.⁹ The adjustment value is significantly higher for catastrophic errors than for obvious errors, in light of the egregious nature of the error.

Under the proposal, relief will not be granted if MarketWatch has previously rendered a decision with respect to the transaction in question pursuant to this Section. Catastrophic error decisions are appealable to the Market Operations Review Committee ("MORC") pursuant to renumbered paragraph (g), just like obvious error decisions. Nasdaq believes that the proposal establishes a specific and objective process for catastrophic error handling.

Lastly, Nasdaq proposes to change to notification period for obvious errors (as opposed to the proposed new catastrophic errors) from 15 to 20 minutes in order to afford participants additional time to enter a complaint under the obvious error procedure. The 20-minute notification period is the same as certain other options exchanges.¹⁰

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹¹ in general, and with Section 6(b)(5) of the Act,¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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, because it will allow a longer opportunity to seek relief from errors that result in large losses.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

⁹ See e.g., ISE Rule 720(d)(3) and PHLX Rule 1092(f)(iii).

¹⁰ See PHLX Rule 1092(e)(i) respecting member organizations entering orders from off the floor (the notification period for specialists and Registered Options Traders remains 15 minutes); see also ISE Rule 720(b)(1) respecting Electronic Access Members (market makers have five minutes) and similar provisions in NYSE Arca Rule 6.87(a)(3)(A) and BSE Section 20(d)(i) [sic].

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

⁷ The current definition of Theoretical Price in paragraph (c) continues to apply.

⁸ See e.g., ISE Rule 720(d)(1) and PHLX Rule 1092(f)(i).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received. However, Nasdaq received one e-mail in support of the extension of the notification period for obvious errors to 20 minutes.

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

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.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁵ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)¹⁶ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq requests that the Commission waive the 30-day operative delay to immediately offer market participants on Nasdaq the same potential for relief that is available at other options exchanges for catastrophic errors. The Exchange argued that the proposed changes should serve to help market participants seek relief from egregious errors and better manage their risk. The Commission believes that waiving the 30-day operative delay¹⁷ 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, the proposal does not appear to present any novel regulatory issues. Therefore, the Commission designates the proposal operative upon filing.

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-NASDAQ-2008-088 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-NASDAQ-2008-088. 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 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-NASDAQ-2008-088 and

should be submitted on or before December 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-28219 Filed 11-26-08; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice 6441]

Culturally Significant Objects Imported for Exhibition Determinations: "Carvers and Collectors: The Lasting Allure of Ancient Gems"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition "Carvers and Collectors: The Lasting Allure of Ancient Gems," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Getty Villa, Malibu, CA, from on or about March 19, 2009, until on or about September 7, 2009, at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202-453-8050). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: November 20, 2008.

C. Miller Crouch,
Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8-28319 Filed 11-26-08; 8:45 am]

BILLING CODE 4710-05-P

¹⁸ 17 CFR 200.30-3(a)(12).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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. Nasdaq has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 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).

DEPARTMENT OF STATE**[Public Notice 6434]****Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations****AGENCY:** Office of the Legal Adviser, U.S. Department of State.

This notice amends and supplements Department of State Public Notice 5868, 72 FR 39127-28 (July 17, 2007).

Background. Section 459A of the Social Security Act (42 U.S.C. 659A) authorizes the Secretary of State with the concurrence of the Secretary of Health and Human Services to declare foreign countries or their political subdivisions to be reciprocating countries for the purpose of the enforcement of family support

obligations if the country has established or has undertaken to establish procedures for the establishment and enforcement of duties of support for residents of the United States. These procedures must be in substantial conformity with the standards set forth in the statute. The statutory standards are: Establishment of child support orders, including the establishment of paternity if necessary to establish the order; enforcement of child support orders, including collection and distribution of payments under such orders; cost-free services (including administrative and legal services), as well as paternity testing; and the designation of an agency as Central Authority to facilitate enforcement.

Once such a declaration is made, support agencies in jurisdictions of the

United States participating in the program established by Title IV-D of the Social Security Act (the IV-D program) must provide enforcement services under that program to such reciprocating countries as if the request for service came from a U.S. State.

The declaration authorized by the statute may be made "in the form of an international agreement, in connection with an international agreement or corresponding foreign declaration, or on a unilateral basis." The Secretary of State has authorized either the Legal Adviser or the Assistant Secretary for Consular Affairs to make such a declaration after consultation with the other. As of this date, the following countries (or Canadian provinces or territories) have been designated foreign reciprocating countries:

Country	Effective date
Australia	May 21, 2001.
Czech Republic	May 3, 2000.
El Salvador	June 21, 2007.
Finland	Sept. 29, 2007.
Hungary	Jan. 22, 2007.
Ireland	Sept. 10, 1997.
Netherlands	May 1, 2002.
Norway	June 10, 2002.
Poland	June 14, 1999.
Portugal	Mar. 17, 2001.
Slovak Republic	Feb. 1, 1998.
Switzerland	Sept. 30, 2004.
Canadian Provinces or Territories:	
Alberta	Sept. 4, 2002.
British Columbia	Dec. 15, 1999.
Manitoba	July 11, 2000.
New Brunswick	Feb. 1, 2004.
Northwest Territories	Feb. 7, 2004.
Nunavut	Jan. 20, 2004.
Newfoundland/Labrador	Aug. 7, 2002.
Nova Scotia	Dec. 18, 1998.
Ontario	Aug. 7, 2002.
Saskatchewan	Jan. 24, 2007.
Yukon	May 22, 2007.
United Kingdom of Great Britain and Northern Ireland	Dec. 17, 2007.

Each of these countries (or Canadian provinces or territories) has designated a Central Authority to facilitate enforcement and ensure compliance with the standards of the statute. Information relating to the designated Central Authorities, and the procedures for processing requests may be obtained by contacting the United States Central Authority for International Child Support, Department of Health and Human Services, Office of Child Support Enforcement (OCSE), 370 L'Enfant Promenade, SW., 4-East, Washington, DC 20447; phone (202) 401-9373, fax (202) 205-5927, e-mail: ocseinternational@acf.hhs.gov.

As of this date, a reciprocity agreement has been signed, but is not yet in effect, with Costa Rica.

The law also permits individual states of the United States to establish or continue existing reciprocating arrangements with foreign countries when there has been no Federal declaration. Many states have such arrangements with additional countries not yet the subject of a Federal declaration. Information as to these arrangements may be obtained from the individual State IV-D Agency.

FOR FURTHER INFORMATION CONTACT:

Questions regarding this notice, the status of negotiations, declarations and agreements may be obtained by contacting Mary Helen Carlson at the

Office of the Assistant Legal Adviser for Private International Law, Suite 203 South Building, 2430 E Street, NW., Washington, DC 20037-2851; phone (202) 776-8420, fax (202) 776-8482, email: carlsonmh@state.gov.

Dated: November 17, 2008.

Mary Helen Carlson,

Attorney-Adviser, Office of the Legal Adviser for Private International Law, Department of State.

[FR Doc. E8-28323 Filed 11-26-08; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE**[Public Notice 6406]****Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting**

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 "C" Street, NW., Washington, DC, December 10, 2008, in Conference Room 1105 and December 11, 2008, in Conference Room 1107. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Nathaniel Smith, Office of the Historian (202-663-3268) no later than December 1, 2008, to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the enumerated forms of ID, please consult with Nathaniel Smith for acceptable alternative forms of picture identification.

The Committee will meet in open session from 1:30 p.m. through 2:30 p.m. on Wednesday, December 10, 2008, in the Department of State, 2201 "C" Street, NW., Washington, DC, in Conference Room 1105, to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions from 2:45 p.m. until 4:30 p.m. on Wednesday, December 10, 2008, and 9 a.m. until 12 p.m. on Thursday, December 11, 2008, in Conference Room 1107 will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663-1123, e-mail history@state.gov.

Dated: November 20, 2008.

Marc Susser,*Executive Secretary, Department of State.*

[FR Doc. E8-28315 Filed 11-26-08; 8:45 am]

BILLING CODE 4710-11-P**DEPARTMENT OF STATE****[Public Notice 6409]****Advisory Committee on International Economic Policy; Notice of Open Meeting**

The Advisory Committee on International Economic Policy (ACIEP) will meet from 1 p.m. to 2:30 p.m. on Friday, December 19, 2008, at the U.S. Department of State, 2201 C Street, NW., Room 1107, Washington, DC. The meeting will be hosted by Assistant Secretary of State for Economic, Energy, and Business Affairs Daniel S. Sullivan and Committee Chair Ted Kassinger. The ACIEP serves the U.S. Government in a solely advisory capacity, and provides advice concerning issues and challenges in international economic policy. The meeting will focus on a discussion about international financial issues—the financial markets and the world economy. Subcommittee reports and discussions will be led by the Economic Empowerment in Strategic Regions Subcommittee and the Economic Sanctions Subcommittee.

This meeting is open to public participation, though seating is limited. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by Wednesday, December 17, their name, professional affiliation, valid government-issued ID number (i.e., U.S. Government ID [agency], U.S. military ID [branch], passport [country], or drivers license [state]), date of birth, and citizenship to Sherry Booth by fax (202) 647-5936, e-mail (BoothSL@state.gov), or telephone (202) 647-0847. One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, U.S. Government identification card, or any valid passport. Enter the Department of State from the C Street lobby. In view of escorting requirements, non-Government attendees should plan to arrive 15 minutes before the meeting begins.

For additional information, contact Senior Coordinator Nancy Smith-Nissley, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic, Energy and Business Affairs, at (202) 647-1682 or Smith-NissleyN@state.gov.

Dated: November 20, 2008.

Sandra E. Clark,*Office Director, Office of Economic Policy Analysis and Public Diplomacy, Department of State.*

[FR Doc. E8-28316 Filed 11-26-08; 8:45 am]

BILLING CODE 4710-07-P**DEPARTMENT OF STATE****[Public Notice 6407]****Industry Advisory Panel; Notice of Open Meeting**

The Industry Advisory Panel of Overseas Buildings Operations will meet on Thursday, December 18, 2008, from 9:30 a.m. until 12 p.m. Eastern Standard Time. The meeting will be held in room 1107 of the U.S. Department of State, located at 2201 C Street, NW. (entrance on 23rd Street), Washington, DC. For logistical and security reasons, it is imperative that everyone enter and exit using only the 23rd Street entrance. The majority of the meeting is devoted to an exchange of ideas between the Department's Bureau of Overseas Building Operations' senior management and the panel members, on design, operations, and building maintenance. Members of the public are asked to kindly refrain from joining the discussion until Director Shinnick opens the discussion to them.

Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by December 10, 2008, their name, professional affiliation, date of birth, citizenship, and a valid government-issued ID number (i.e., U.S. government ID, U.S. military ID, passport, or drivers license with state) by e-mailing: iapr@state.gov. Because of space restrictions, we request that companies interested in attending send only one representative.

If you have any questions, please contact Andrea Walk at walkam@state.gov or on (703) 516-1544.

Dated: November 18, 2008.

Richard J. Shinnick,*Director, ad interim, Overseas Building Operations, Department of State.*

[FR Doc. E8-28314 Filed 11-26-08; 8:45 am]

BILLING CODE 4710-24-P

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****Agency Information Collection; Activity Under OMB Review; (14 CFR Part 221—Exemption From Passenger Tariff-Filing Requirements in Certain Instances and Mandatory Electronic Filing of Residual Passenger Tariffs)**

AGENCY: Office of the Secretary (OST), DOT.

Docket: OST–2008–0259, Pricing and Multilateral Affairs Division.

ACTION: Notice and request for comments; Extension of a currently approved information collection.

Correction: The 30-day **Federal Register** Notice is amended to change the number of responses from 229,200 to 46,000, and change the total annual burden from 45,840 to 230,000. In the original 30-day notice, the figures for number of responses and burden hours were transposed. In addition to correcting the transposition, we are rounding the figures.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. 3501 *et seq.*) this notice announces that the Information Collection Request, abstracted below, is being forwarded to the Office of Management and Budget for (notice and request for comments) of currently approved (Exemption from Passenger Tariff-Filing Requirements in Certain Instances, and Mandatory Electronic Filing of Residual Passenger Tariffs). Earlier, a **Federal Register** Notice with a 60-day comment period was published (September 9, 2008) (Volume 73, Number 175) (Page 52445–52447). One comment was received from Airline Tariff Company (ATPCO) that states that it files fares and rules data electronically with the Department of Transportation (DOT) through a single industry centralized tool, the ATPCO Government Filing System (GFS). If a decision is made to continue the current tariff-filing process, ATPCO believes that a single industry centralized tool is the best solution, and it will partner with DOT to explore additional efficiencies.

DATES: Written comments should be submitted by December 29, 2008.

FOR FURTHER INFORMATION CONTACT: Bernice Gray, 202–366–2418 or John Kiser, (202–366–2435), Pricing and Multilateral Affairs Division, Office of the Secretary, Department of Transportation, 1200 New Jersey Avenue, SE., Room W86–319 or W86–433, Washington, DC 20590. Office

hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Comments: Comments should be sent to OMB: Attention DOT/OST Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503 or oir_submission@omb.eop.gov (e-mail).

SUPPLEMENTARY INFORMATION:

OMB Control No.: 2106–0009.

Title: Exemption from Passenger Tariff-filing Requirements in Certain Instances and Mandatory Electronic Filing of Residual Passenger Tariffs.

Respondents: The vast majority of the air carriers filing international tariffs are large operators with revenues in excess of several million dollars each year. Small air carriers operating aircraft with 60 seats or less and 18,000 pounds payload or less that offer on-demand air-taxi service are not required to file such tariffs.

Number of Respondents: 148.

Number of Responses: 46,000.

Total Annual Burden: 230,000.

Abstract: Chapter 415 of Title 49 of the United States Code requires that every air carrier and foreign air carrier file with the Department of Transportation (DOT), publish and keep open (i.e., post) for public inspection tariffs showing all “foreign” or “international” fares, and related charges for air transportation between points served by it, and any other air carrier or foreign air carrier when through services, fares and related charges have been established; and showing, to the extent required by DOT regulations, all classifications, rules, regulations, practices, and services in connection with such air transportation. Once tariffs are filed and approved by DOT, they become a legally binding contract of carriage between carriers and users of foreign air transportation.

Part 221 of the Department’s Economic Regulations (14 CFR part 221) set forth specific technical and substantive requirements governing the filing of tariff material with the DOT Office of International Aviation’s Pricing and Multilateral Affairs Division. A carrier initiates an electronic tariff filing whenever it wants to amend an existing tariff for commercial and competitive reasons or when it desires to file a new one. Electronic tariffs filed pursuant to part 221 are used by carriers, computer reservation systems, travel agents, DOT, other government agencies and the general public to determine the prices, rules and related charges for international passenger air

transportation. In addition, DOT needs U.S. and foreign air carrier passenger tariff information to monitor international air commerce, carry out carrier route selections and conduct international negotiations.

Part 293 exempts carriers from their statutory and regulatory duty to file international tariffs in many specific markets.

Comments are invited on: (a) 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; (b) the accuracy of the Department’s estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and d) ways to minimize the burden of the collection of information on respondents, by the use of electronic means, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on November 20, 2008.

Patricia Lawton,

DOT PRA Clearance Officer, Office of the Chief Information Officer.

[FR Doc. E8–28277 Filed 11–26–08; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****RTCA Program Management Committee**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held December 16, 2008 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is

hereby given for a Program Management Committee meeting. The agenda will include:

- Opening Plenary Session (welcome and introductions).
- Review/Approve Summary of October 2, 2008 PMC Meeting, RTCA Paper No. 263-08/PMC-664.
- Publication Consideration/Approval.
- Final Draft, Revised DO-253B, *Minimum Operational Performance Standards for GPS Local Area Augmentation System Airborne Equipment*, RTCA Paper No. 281-08/PMC-669, prepared by SC-159.
- Final Draft, Revised DO-246C—*GNSS-Based Precision Approach Local Area Augmentation System (LAAS) Signal-in-Space Interface Control Document (ICD)*, RTCA Paper No. 283-08/PMC-670, prepared by SC-159.
- Final Draft, Change 1 to DO-307, *Aircraft Design and Certification for Portable Electronic Device (PED) Tolerance*, RTCA Paper No. 272-08/PMC-666, prepared by SC-202.
- Final Draft, Revised DO-294B, *Guidance on Allowing Transmitting Portable Electronic Devices (T-PEDs) on Aircraft*, RTCA Paper No. 274-08/PMC-667, prepared by SC-202.
- Final Draft, New Document, *Safety, Performance and Interoperability Requirements Document for Enhanced Visual Separation on Approach (ATSA-VSA)*, RTCA Paper No. 288-08/PMC-671, prepared by SC-186.
- Final Draft, Revised DO-262, *Minimum Operational Performance Standards for Avionics Supporting Next Generation Satellite Systems (NGSS)*, RTCA Paper No. 289-08/PMC-672, prepared by SC-215.
- Final Draft, New Document, *Minimum Aviation System Performance Standards (MASPS) for Enhanced Vision Systems, Synthetic Vision Systems and Enhanced Flight Vision Systems*, RTCA Paper No. 290-08/PMC-673, prepared by SC-213.
- Action Item Review.
- SC-213—Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS)—Discussion—Committee Status and Review/Approve Terms of Reference.
- SC-214—Standards for Air traffic Data Communications Services—Discussion—Status—Review/Approve Terms of Reference.
- SC-211—Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries—Discussion—Status—Review/Approve Terms of Reference.
- PMC Ad Hoc—Interrelationships between Communication, Navigation and Surveillance committee activities—Discussion—Recommendation Review.

- Discussion—Terms of Reference Template.
 - Discussion.
 - SC-218—Future ADS-B/TCAS Relationships—Discussion—Committee Status and Review/Approve Terms of Reference.
 - SC-217—Terrain and Airport Databases—Discussion—Committee Status and Review/Approve Terms of Reference.
 - Special Committee Chairman's Reports.
 - Closing Plenary Session (Other Business, Document Production, Date and Place of Next Meeting, Adjourn).
- Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 20, 2008.

Francisco Estrada C.,
RTCA Advisory Committee.

[FR Doc. E8-28238 Filed 11-26-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highways in Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to various proposed highway projects in the State of Texas. Those actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on any of the listed highway projects will be barred unless the claim is filed on or before May 27, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:

Salvador Deocampo, District Engineer, Texas Division, Federal Highway Administration, 826 Federal Building Room 826 300E. 8th Street Austin, Texas 78701, 8 a.m. to 5 p.m. Monday through Friday, 512-536-5950, salvador.deocampo@fhwa.dot.gov. Ms. Dianna Noble, P.E., Director Environmental Affairs Division, Texas Department of Transportation, 118 E. Riverside, Austin, Texas, 78704; 512-416-2734; e-mail: dnoble@dot.state.tx.us. Texas Department of Transportation normal business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below. The actions by the Federal agencies on the projects, and the laws under which such actions were taken, are described in the documented Categorical Exclusion (CE) and Environmental Assessments (EAs), issued in connection with the projects, and in other documents project records. The CE, EAs, Findings of No Significant Impacts (FONSI) and other project records for the listed projects are available by contacting the FHWA or TxDOT at the addresses provided above and can be viewed and downloaded from the following Web site: <http://www.635project.com>.

This notice applies to all Federal agency decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

- I. General: National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4351); Federal-Aid Highway Act (FAHA) (23 U.S.C. 109).
- II. Air: Clean Air Act (CAA), [42 U.S.C. 7401-7671(q)].
- III. Land: Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 303).
- IV. Wildlife: Endangered Species Act (ESA) (16 U.S.C. 1531-1544 and Section 1536), Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712).
- V. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 (ARPA) [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act (AHPA) [16 U.S.C. 469-469(c)].

VI. Social and Economic: Civil Rights Act of 1964 (Civil Rights) [42 U.S.C. 2000(d)–2000(d)(1)].

VII. Wetlands and Water Resources: Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 402, Section 319); Rivers and Harbors Act of 1899 (RHA), 33 U.S.C. 401–406.

VIII. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 11514 Protection and Enhancement of Environmental Quality.

The projects subject to this notice are:

1. Project Location: Interstate Highway 635 (I–635) from Luna Road to U.S. Highway 75 (US 75) in Dallas County. Project Reference Number: TxDOT CSJ: 2374–01–032, 2374–01–068, and 2374–07–046.

Project Type: The project will: (1) Reconstruct and widen the existing I–635 main lanes; (2) replace the existing I–635 high occupancy vehicle (HOV) lane in both directions with two managed (tolled) lanes in each direction from east of Luna Road to between Josey Lane and Webb Chapel Road; (3) add three subsurface managed HOV lanes in both directions from between Josey Lane and Webb Chapel Road to west of U.S. 75; and (4) construct two- and three-lane frontage roads to link the existing discontinuous frontage roads in each direction. Project Length: Approximately 8.89 miles. General Purpose: The project will improve system linkage and mobility in the area in response to current and future traffic demand needs and development along I–635. Final agency actions taken under: NEPA, FAHA, CAA, Section 106, ESA, MBTA, ARPA, AHPA, Civil Rights Act, Section 404, Section 401, E.O. 11990, and E.O. 11514. NEPA Document: EA approved on May 1, 2003, FONSI issued on April 29, 2004, and was reaffirmed on June 20, 2008.

2. Project Location: I–635 at U.S. 75 in Dallas County. Project Reference Number: TxDOT CSJ: 5800–00–915. Project Type: The project will provide interim eastbound and westbound entrance and exit ramps, and toll gantries on the I–635 interim HOV/managed (tolled) lanes. Project Length: Approximately two miles. General Purpose: The project will improve system linkage and mobility in the area in response to current and future traffic demand needs and development along I–635. Final agency actions taken under: NEPA, FAHA, CAA, ESA, MBTA, ARPA, AHPA, Civil Rights Act, Section 401, E.O. 11990, and E.O. 11514. NEPA Document: CE approved on June 19, 2008.

3. Project Location: Loop 12/I–35E from Spur 408 to I–635 in Dallas County. Project Reference Number: TxDOT CSJ: 0196–03–137; 0581–02–077, 121, 124, 128; 0094–03–060. Project Type: The project will: (1) Reconstruct and widen the existing six main lanes to eight main lanes; (2) reconstruct and widen the existing two-lane discontinuous frontage roads to four to six lanes; (3) add new frontage roads to link the discontinuous frontage roads; (4) construct a two-to three-lane reversible managed (tolled) HOV facility; and (5) construct two three-lane elevated direct connections between the Loop 12/I–35E interchange and the I–635 interchange. Project Length: Approximately 12.9 miles. General Purpose: The project will improve system linkage and mobility in the area in response to current and future traffic demand needs and development along Loop 12 and I–35E. Final agency actions taken under: NEPA, FAHA, CAA, Section 4(f), Section 106, ESA, MBTA, ARPA, AHPA, Civil Rights Act, Section 404, Section 401, E.O. 11990, and E.O. 11514. NEPA Document: EA approved on July 3, 2002, FONSI issued on December 11, 2002, and was reaffirmed on June 24, 2008.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: November 20, 2008.

Salvador Deocampo,
District Engineer.

[FR Doc. E8–28344 Filed 11–26–08; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35168]

Progressive Rail Inc.—Intra-Corporate Family Transaction Exemption—Airlake Terminal Railway Company, LLC

Progressive Rail Inc. (PGR), a Class III rail common carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a transaction within a corporate family. The transaction allows PGR to remain in control of Airlake Terminal Railway Company, LLC (ATRC), also a Class III rail carrier.¹ PGR

¹ See Airlake Terminal Railway Company—Acquisition and Operation Exemption—Rail Line of

acknowledges that its authority to remain in control of ATRC should have been sought at the time ATRC obtained acquisition authority from the Board. PGR also controls Central Midland Railway Company, a Class III rail carrier, and has Board authority to control Montgomery Short Line LLC upon its becoming a Class III rail carrier.²

The transaction is expected to be consummated on December 12, 2008, the effective date of this exemption (30 days after the exemption was filed).

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). According to PGR, the transaction will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the 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 transaction. Petitions for stay must be filed no later than December 5, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35168, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Michael J. Barron, Jr., 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>.

Empire Builder Investments Incorporated and Progressive Rail, Incorporated, STB Finance Docket No. 34295 (STB served Dec. 27, 2002).

² See Progressive Rail Inc.—Acquisition of Control Exemption—Central Midland Railway Company, STB Finance Docket No. 35051 (STB served July 5, 2007), and Progressive Rail Inc.—Continuance in Control Exemption—Montgomery Short Line LLC, STB Finance Docket No. 35092 (STB served Nov. 9, 2007).

Decided: November 20, 2008.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Kulunie L. Cannon,
Clearance Clerk.

[FR Doc. E8-28000 Filed 11-26-08; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of the Tier 2 Tax Rates

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Notice.

SUMMARY: Publication of the tier 2 tax rates for calendar year 2009 as required by section 3241(d) of the Internal Revenue Code (26 U.S.C. section 3241). Tier 2 taxes on railroad employees, employers, and employee representatives are one source of funding for benefits under the Railroad Retirement Act.

DATES: The tier 2 tax rates for calendar year 2009 apply to compensation paid in calendar year 2009.

FOR FURTHER INFORMATION CONTACT: David G. Mills, CC:TEGE:EOEG:ET1, Internal Revenue Service, 1111

Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 622-0047 (not a toll-free number).

Tier 2 Tax Rates: The tier 2 tax rate for 2009 under section 3201(b) on employees is 3.9 percent of compensation. The tier 2 tax rate for 2009 under section 3221(b) on employers is 12.1 percent of compensation. The tier 2 tax rate for 2009 under section 3211(b) on employee representatives is 12.1 percent of compensation.

Dated: November 14, 2008.

Nancy Marks,

*Division Counsel/Associate Chief Counsel
(Tax Exempt and Government Entities).*

[FR Doc. E8-28213 Filed 11-26-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Van Buren First Spouse Gold Coin Prices

ACTION: Notification of Van Buren First Spouse Gold Coin Prices.

SUMMARY: The United States Mint is setting prices for the Martin Van Buren First Spouse Gold Proof and Uncirculated Coins.

Pursuant to 31 U.S.C. 5112(o), and in accordance with 31 U.S.C. 9701(b)(2)(B), the United States Mint is setting the price of these coins to reflect the market price of gold. These prices are consistent with recently re-priced, previously introduced 2008 First Spouse Gold Coins.

Effective November 25, 2008, the United States Mint will commence selling Van Buren First Spouse Gold Proof and Uncirculated Gold Coins according to the following price schedule:

Description	Price (\$)
Van Buren First Spouse Gold Proof Coin	549.95
Van Buren First Spouse Gold Uncirculated Coin	524.95

FOR FURTHER INFORMATION CONTACT: B. B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 Ninth Street, NW., Washington, DC 20220; or call 202-354-7500.

Dated: November 21, 2008.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E8-28331 Filed 11-26-08; 8:45 am]

BILLING CODE 4810-37-P



Federal Register

**Friday,
November 28, 2008**

Part II

Environmental Protection Agency

40 CFR Part 450

**Effluent Limitations Guidelines and
Standards for the Construction and
Development Point Source Category;
Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 450****[EPA-HQ-OW-2008-0465; FRL-8744-1]****RIN 2040-AE91****Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing a regulation that would strengthen the existing regulatory program for discharges from construction sites by establishing technology-based Effluent Limitations Guidelines and New Source Performance Standards for the Construction and Development (C&D) point source category. This proposal, if implemented, would significantly reduce the amount of sediment and other pollutants discharged from construction sites. EPA estimates that this proposed rule would cost \$1.9 billion dollars per year with annual monetized benefits of \$332.9 million. This proposed rule requests comment and information on the proposed regulation and an alternate option with a different numeric limit based on different technologies, as well as specific aspects of the proposal such as technologies, costs, loading reductions, and economic achievability.

DATES: Comments must be received on or before February 26, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2008-0465, by one of the following methods:

- <http://www.regulations.gov>: This is EPA's preferred approach, although you may use the alternatives presented

below. Follow the on-line instructions for submitting comments.

- *E-mail:* OW-Docket@epa.gov.
- *Mail:* USEPA Docket Center, Environmental Protection Agency, Docket Number EPA-HQ-OW-2008-0465, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* USEPA Docket Center, Public Reading Room, 1301 Constitution Ave., NW., Room 3334, EPA West Building, Washington DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW-2008-0465. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the USEPA Docket Center, Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Ave., NW., Washington DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-2426. Please note that several of the support documents are available at no charge on EPA's Web site; see Supporting Documentation below.

FOR FURTHER INFORMATION CONTACT: For technical information concerning today's proposed rule, contact Mr. Jesse W. Pritts at 202-566-1038 (pritts.jesse@epa.gov). For economic information contact Mr. Todd Doley at 202-566-1160 (doley.todd@epa.gov).

SUPPLEMENTARY INFORMATION:**Regulated Entities**

Entities potentially regulated by this action include:

Category	Examples of regulated entities	North American Industry Classification System (NAICS) code
Industry	Construction activities required to obtain NPDES permit coverage and performing the following activities:	
	Construction of buildings, including building, developing and general contracting	236
	Heavy and civil engineering construction, including land subdivision	237

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be

regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 450.10 of

today's proposed rule and the definition of "construction activity" and "small construction activity" in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the

applicability of this action to a particular entity, consult one of the persons listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Supporting Documentation

Several key documents support the proposed regulation:

1. "Development Document for Proposed Effluent Guidelines and Standards for the Construction and Development Category," EPA-821-R-08-007. ("Development Document") This document presents EPA's methodology and technical conclusions concerning the C&D category.

2. "Economic Analysis for Proposed Effluent Guidelines and Standards for the Construction and Development Category," EPA-821-R-08-008. ("Economic Analysis") This document presents the methodology employed to assess economic impacts of the proposed rule and the results of the analysis.

3. "Environmental Impact and Benefits Assessment for Proposed Effluent Guidelines and Standards for the Construction and Development Category," EPA-821-R-08-009. ("Environmental Assessment"). This document presents the methodology to assess environmental impacts and benefits of the proposed rule and the results of the analysis.

Major supporting documents are available in hard copy from the National Service Center for Environmental Publications (NSCEP), U.S. EPA/NSCEP, P.O. Box 42419, Cincinnati, Ohio, USA 45242-2419, telephone 800-490-9198, <http://www.epa.gov/ncepihom/>. You can obtain electronic copies of this preamble and proposed rule as well as the technical and economic support documents for today's proposal at EPA's Web site for the C&D rule, <http://www.epa.gov/waterscience/guide/construction>.

Overview

This preamble describes the terms, acronyms, and abbreviations used in this document; the background documents that support these proposed regulations; the legal authority of this proposed rule; a summary of the proposal; background information; and the technical and economic methodologies used by the Agency to develop this proposed regulation. While EPA solicits comments on this entire proposal, EPA emphasizes specific areas of interest where we would particularly like comments, information and data.

Table of Contents

I. Legal Authority

- II. Purpose & Summary of the Proposed Rule
- III. Background on Existing Regulatory Program
 - A. Clean Water Act
 - B. NPDES Stormwater Permit Program
 - C. Other State and Local Stormwater Requirements
 - D. Technology-Based Effluent Limitations Guidelines and Standards
- IV. Scope of the Proposal
- V. Overview of the Construction and Development Industry and Construction Activities
- VI. Summary of Data Collection Activities
 - A. State Data
 - B. National Land Cover Dataset (NLCD)
 - C. Enhanced River Reach File 1.2 (ERF1)
 - D. NPDES Notice of Intent (NOI) Data
 - E. Soils Data
 - F. NOAA Rainfall Data
 - G. Parameter Elevation Regressions on Independent Slopes Model (PRISM)
 - H. Revised Universal Soil Loss Equation (RUSLE) R Factors
 - I. Economic Data
- VII. Characteristics of Discharges From Construction Activity
- VIII. Description of Available Technologies
 - A. Introduction
 - B. Erosion Control Measures
 - C. Sediment Control Measures
 - D. Other Construction and Development Site Management Practices
- IX. Development of Effluent Limitations Guidelines and Standards
 - A. Description of the Regulatory Options Considered
 - B. Effluent Limitations Included in All Regulatory Options
 - C. Options for BPT, BCT, BAT and NSPS
 - D. Option Selection Rationale for BPT
 - E. Option Selection Rationale for BAT and NSPS
 - F. Option Selection Rationale for BCT
- X. Methodology for Estimating Costs to the Construction and Development Industry
- XI. Economic Impact and Social Cost Analysis
 - A. Introduction
 - B. Description of Economic Activity
 - C. Method for Estimating Economic Impacts
 - D. Results
- XII. Cost-Effectiveness Analysis
- XIII. Non Water-Quality Environmental Impacts
 - A. Air Pollution
 - B. Solid Waste Generation
 - C. Energy Usage
- XIV. Environmental Assessment
 - A. Introduction
 - B. Methodology for Estimating Environmental Impacts and Pollutant Reductions
- XV. Benefit Analysis
 - A. Benefits Categories Estimated
 - B. Quantification of Benefits
- XVI. Monetized Benefit-Cost Comparison
- XVII. Approach to Determining Long-Term Averages, Variability Factors, and Effluent Limitations and Standards
 - A. Definitions
 - B. Data Selection
 - C. Statistical Percentile Basis for Limitations
 - D. Daily Maximum Limitations

- E. Engineering Review of Limitations
- F. Monthly Average Limitations
- XVIII. Regulatory Implementation
 - A. Relationship of Effluent Guidelines to NPDES Permits and ELG Compliance Dates
 - B. Upset and Bypass Provisions
 - C. Variances and Waivers
 - D. Other Clean Water Act Requirements
- XIX. Related Acts of Congress, Executive Orders, and Agency Initiatives
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act (UMRA)
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
 - G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - H. Executive Order 13211 (Energy Effects)
 - I. National Technology Transfer and Advancement Act
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations.
- XX. Solicitation of Data and Comments
 - A. General Solicitation of Comment
 - B. Specific Solicitation of Comments and Data
 - C. Guidelines for Submission of Analytical Data

I. Legal Authority

EPA is proposing this regulation under the authorities of sections 301, 304, 306, 308, 402, 501 and 510 of the Clean Water Act (CWA), 33 U.S.C. 1311, 1314, 1316, 1318, 1342, 1361 and 1370 and pursuant to the Pollution Prevention Act of 1990, 42 U.S.C. 13101 *et seq.*

II. Purpose & Summary of the Proposed Rule

Despite substantial improvements in the nation's water quality since the inception of the Clean Water Act, 45 percent of assessed river and stream miles, 47 percent of assessed lake acres, and 32 percent of assessed square miles of estuaries show impairments from a wide range of sources. Improper control of stormwater discharges from construction activity is among the many contributors of sediment which is one of the major remaining water quality problems throughout the United States. Sediment is the leading cause of water quality impairment for streams and rivers. It is also one of the leading causes of lake and reservoir water quality impairment and wetland degradation. Turbidity and suspended solids are also major sources of water quality impairment nationwide. Turbidity or suspended solids impair 695,133 miles of streams nationwide. In

addition, 376,832 acres of lakes and reservoirs have been documented as impaired by turbidity or suspended solids nationwide. The sediment and turbidity entrained in stormwater discharges from construction activity contributes to harm in aquatic ecosystems, increases drinking water treatment costs, and contributes to impairment to recreational uses of impacted waters. Sediment can also accumulate in rivers, lakes, and reservoirs, leading to the need for dredging or other mitigation.

Construction activity typically involves site selection and planning, and land-disturbing tasks such as clearing, excavating and grading. Disturbed soil, if not managed properly, can be easily washed off-site during storm events. Stormwater discharges generated during construction activities can cause an array of physical, chemical and biological impacts. Sediment discharges can cause an array of physical and biological impacts on receiving waters. In addition to sediment, a number of other pollutants (e.g., metals and nutrients) are preferentially absorbed or adsorbed onto mineral or organic particles found in fine sediment. These pollutants can cause an array of chemical and biological water quality impairments. The interconnected processes of erosion (i.e., detachment of soil particles by water), sediment transport, and delivery to receiving waters are the primary pathways for the addition of pollutants from construction and development (C&D) sites into aquatic systems.

A primary concern at most C&D sites is the erosion and transport process related to fine sediment because rain splash, rills (small channels typically less than one foot deep) and sheetwash (thin sheets of water flowing across a surface) encourage the detachment and transport of sediment to water bodies. Although streams and rivers naturally carry sediment loads, discharges from construction activity can elevate these loads to levels above those in undisturbed watersheds.

Existing national stormwater regulations at 40 CFR 122.26 require permittees to implement control measures to manage discharges associated with construction activity. Today's proposal would establish a technology-based "floor" or minimum requirements on a national basis. This rule would constitute the nationally applicable, technology-based effluent limitations guidelines (ELGs) and new source performance standards (NSPS) (referred to collectively in this notice as "ELGs" or "effluent limitations guidelines," unless specifically

referencing NSPS), applicable to all dischargers currently required to obtain a National Pollutant Discharge Elimination System (NPDES) permit pursuant to 40 CFR 122.26(b)(14)(x) and 122.26(b)(15). The proposed ELGs would require stormwater discharges from certain C&D sites to meet effluent limitations designed to reduce the amount of sediment, turbidity, Total Suspended Solids (TSS) and other pollutants in stormwater discharges from the site. EPA acknowledges that many state and local governments have existing effluent limitations and standards for controlling stormwater and wastewater discharges from construction sites. Today's proposed ELGs are intended to work in concert with these existing state and local programs. Today's proposed regulation would establish a numeric effluent limit for turbidity in discharges from some C&D sites. EPA envisions these turbidity effluent limits as requiring an additional layer of management practices and/or treatment above what most state and local programs are currently requiring. Permitting authorities would be required to incorporate these turbidity limitations into their permits and permittees would be required to implement control measures to meet a numeric turbidity limit in discharges of stormwater from their C&D sites. EPA is not dictating that a specific technology be used to meet the numeric limit, but is specifying the maximum turbidity level that can be present in discharges from C&D sites. However, EPA's proposed limits are based on its assessment of what specific technologies can reliably achieve. Permittees would have the flexibility to select management practices that are best suited to site-specific conditions present on each individual C&D site if they are able to consistently meet the limits.

III. Background on Existing Regulatory Program

A. Clean Water Act

Congress passed the Federal Water Pollution Control Act of 1972 (Pub. L. 92-500, October 18, 1972) (hereinafter the Clean Water Act or CWA), 33 U.S.C. 1251 *et seq.*, with the stated objectives to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 101(a), 33 U.S.C. 1251(a). To achieve this goal, the CWA provides that "the discharge of any pollutant by any person shall be unlawful" except in compliance with other provisions of the statute. CWA section 301(a). U.S.C. 1311. The CWA defines "discharge of a pollutant"

broadly to include "any addition of any pollutant to navigable waters from any point source." CWA section 502(12). 33 U.S.C. 1362(12). EPA is authorized under CWA section 402(a) to issue a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of any pollutant from a point source notwithstanding Section 301(a). These NPDES permits are issued by EPA regional offices or NPDES authorized state or tribal agencies. Since 1972, EPA and the states have issued NPDES permits to thousands of dischargers, both industrial (e.g., manufacturing, energy and mining facilities) and municipal (e.g., sewage treatment plants). As required under Title III of the CWA, EPA has promulgated ELGs and standards for many industrial point source categories, and these requirements are incorporated into the permits.

The Water Quality Act of 1987 (Pub. L. 100-4, February 4, 1987) amended the CWA, adding CWA section 402(p) to require implementation of a comprehensive program for addressing stormwater discharges. 33 U.S.C. 1342(p). The NPDES program was expanded by requiring EPA or NPDES authorized states or tribes to issue NPDES permits for stormwater discharges listed under Section 402(p)(2), which include municipal and industrial stormwater discharges. Industrial stormwater dischargers, municipal separate storm sewer systems and other stormwater dischargers designated by EPA must obtain NPDES permits pursuant to CWA section 402(p). Stormwater discharges associated with industrial activity must meet all applicable provisions of CWA sections 301 and 402, including meeting technology-based effluent limitations.

B. NPDES Stormwater Permit Program

EPA's Phase I stormwater regulations promulgated in 1990 identified stormwater discharges associated with construction activity as one of several types of industrial activity requiring an NPDES permit. Dischargers must apply for and obtain authorization to discharge (or "permit coverage") (40 CFR 122.26(b)(14)(x) and (c)(1)). As described in the Phase I regulations, a permit is required for discharges associated with construction activity, including clearing, grading, and excavation, if the construction activity:

- Will disturb five acres or greater; or
- Will disturb less than five acres but is part of a larger common plan of development or sale whose total land disturbing activities total five acres or greater.

EPA defines these “large” construction sites as one of the eleven categories of stormwater dischargers associated with industrial activity. (See 40 CFR 122.26(b)(14)).

The Phase II stormwater regulations, promulgated in 1999, extended permit coverage to construction activity that results in land disturbance of one acre or greater (40 CFR 122.26(b)(15)), including sites less than one acre that are part of a larger common plan of development or sale whose total land disturbing activities total more than an acre. EPA’s NPDES regulations define these sites, *i.e.*, sites disturbing between one and five acres, as “small” construction sites.

In addition to requiring permits for discharges associated with construction activity, the NPDES regulations require permits for certain municipal separate storm sewer systems (MS4s). Operators of these MS4s, typically local governments, must develop and implement a stormwater management program, including a requirement to address stormwater discharges from construction activity. More details on the requirements of MS4 programs are described in section III.B.2.

1. Stormwater Permits for Construction Activity

The NPDES regulations provide two options for obtaining authorization to discharge or “permit coverage”: General permits and individual permits. A brief description of these types of permits as they apply to construction sites follows.

a. General NPDES Permits

The vast majority of discharges from construction activity are covered under NPDES general permits. EPA, states and tribes use general permits to cover a group of similar dischargers under one permit. See 40 CFR 122.28. General permits simplify the process for dischargers to obtain authorization to discharge, provide permit requirements for any discharger that files a notice of intent to be covered, and reduce the administrative workload for NPDES permitting authorities. General permits, including a fact sheet describing the rationale for permit conditions, are issued by NPDES permitting authorities through public notice. Typically, to obtain authorization to discharge under a construction general permit, a discharger (typically, a developer, builder, or contractor) submits to the permitting authority a Notice of Intent (NOI) to be covered under the general permit. By submitting the NOI, the discharger acknowledges that it is eligible for coverage under the general permit and agrees to the conditions in

the published general permit. Discharges from the construction activity are authorized consistent with the terms and conditions established in the general permit.

EPA regulations allow NPDES permitting authorities to regulate discharges from small C&D sites under a general permit without the discharger submitting an NOI if the permitting authority determines an NOI is inappropriate and the general permit includes language acknowledging that an NOI is unnecessary (40 CFR 122.28(b)(2)(v)). To implement such a requirement, the permitting authority must specify in the public notice of the general permit any reasons why an NOI is not required. In these instances, any stormwater discharges associated with small construction activity are automatically covered under an applicable general permit and the discharger is required to comply with the terms, conditions and effluent limitations of such permit.

Similarly, EPA, states and tribes have the authority to notify a C&D site operator that it is covered by a general permit, even if that operator has not submitted an NOI (40 CFR 122.28(b)(2)(vi)). In these instances, the operator is given the opportunity to request coverage under an individual permit. Individual permits are discussed in section III.B.1.d.

b. EPA Construction General Permit

Since 1992, EPA has issued a series of “national” Construction General Permits (CGP) that cover areas where EPA is the NPDES permitting authority. At present, EPA is the permitting authority in five states (Alaska, Idaho, Massachusetts, New Hampshire, and New Mexico), the District of Columbia, Puerto Rico, all other U.S. territories with the exception of the Virgin Islands, federal facilities in four states (Colorado, Delaware, Vermont, and Washington), most Indian lands and a couple of other specifically designated activities in specific states (e.g., oil and gas activities in Texas and Oklahoma). EPA issued a final “national” CGP on July 1, 2003 (63 FR 7898), modified on November 22, 2004 (changes effective January 21, 2005). EPA’s current CGP became effective on June 30, 2008 (see 74 FR 40338). Following promulgation of the effluent limitations guidelines, EPA will issue a revised CGP incorporating the new ELGs.

The key component of EPA’s CGP is the requirement to minimize discharges of pollutants in stormwater discharges using control measures that reflect best engineering practices. Dischargers must minimize their discharge of pollutants

in stormwater using appropriate erosion and sediment control “best management practices” (BMPs) and control measures for other pollutants such as litter, construction debris, and construction chemicals that could be exposed to stormwater and other wastewater. The 2008 CGP requires dischargers to develop and implement a stormwater pollution prevention plan (SWPPP) to document the steps they will take to comply with the terms, conditions and effluent limitations of the permit. EPA’s guidance manual, “Developing Your Stormwater Pollution Prevention Plan: A Guide for Construction Sites,” (EPA 833/R-060-04, May 2007; available on EPA’s Web site at <http://www.epa.gov/npdes/stormwater>) describes the SWPPP process in detail. As detailed in EPA’s CGP, the SWPPP must include a description of the C&D site with maps showing drainage patterns, discharge points, and locations of runoff controls; a description of the control measures used; and inspection procedures. A copy of the SWPPP must be kept on the construction site from the date of project initiation to the date of final stabilization. The CGP does not require permittees to submit a SWPPP to the permitting authority; however a copy must be readily available to authorized inspectors during normal business hours.

Other requirements in the CGP include conducting regular inspections and reporting releases of reportable quantities of hazardous substances.

To discontinue permit coverage, a discharger must either complete final stabilization of the site, transfer responsibility to another party (e.g., a developer transferring land to a home builder), or for a residential property, complete temporary stabilization and transfer the property to the homeowner. The permittee submits a Notice of Termination (NOT) Form to the permitting authority upon satisfying the appropriate permit termination conditions described in the CGP.

c. State Construction General Permits

Whether EPA, a state or a tribe issues the general permit, the CWA requires that NPDES permits must include technology-based effluent limitations. In addition, where technology-based effluent limitations are insufficient for the discharge to meet applicable water quality standards, the permit must contain water quality-based effluent limitations as necessary to meet those standards. See sections 301, 304, 303, 306, and 402 of the CWA. PUD No. 1 of *Jefferson County v. Washington Department of Ecology*, 511 U.S. 700, 704–705 (1994).

For the most part, state-issued general permits for stormwater discharges from construction activity have followed EPA's CGP format and content, starting with EPA's first CGP issued in 1992 (57 FR 41176; September 9, 1992). Over time, some states have changed components of their permits to better address the specific conditions encountered at construction sites within their jurisdiction (e.g., soil types, topographic or climatic characteristics, or other relevant factors). For example, Washington, Oregon and Vermont's CGPs include turbidity action levels and discharge monitoring requirements for C&D sites applicable to all or a subset of construction sites.

d. Individual NPDES Permits

A permitting authority may require any C&D site to apply for an individual permit rather than using the general permit. Likewise, any discharger may request to be covered under an individual permit rather than seek coverage under an otherwise applicable general permit (40 CFR 122.28(b)(3)). Unlike a general permit, an individual permit is intended to be issued to one permittee, or a few co-permittees. Individual permits for stormwater discharges from construction sites are rarely used, but when done so, are most often used for very large projects or projects located in sensitive watersheds. EPA estimates that fewer than one half of one percent (< 0.5%) of all construction sites are covered under individual permits.

2. Municipal Stormwater Permits and Local Government Regulation of Stormwater Discharges Associated With Construction Activity

Many local governments, as MS4 permittees, have a role to play in the regulation of construction activities. This section provides an overview of MS4 responsibilities associated with controlling stormwater discharges from construction activity.

a. NPDES Requirements

A municipal separate storm sewer system (MS4) is a conveyance or system of conveyances designed or used for collecting or conveying stormwater. These systems are not combined sewers and not part of a Publicly Owned Treatment Works (POTW). See 40 CFR 122.26(b)(8). A municipal separate storm sewer system (MS4) is all large, medium, and small municipal storm sewers or those designated as such under the regulations. See 40 CFR 122.26(b)(18). The NPDES stormwater regulations require many MS4s to apply for permits. In general, the 1990 Phase

I rule requires MS4s serving populations of 100,000 or more to obtain coverage under an MS4 individual permit. See 40 CFR 122.26(a)(3). The 1999 Phase II rule requires most small MS4s located in urbanized areas also to obtain coverage. See 40 CFR 122.33. The Phase II regulations also provide permitting authorities with the authority to designate any additional MS4s located outside of urbanized areas for permit coverage where the permitting authority determines that storm water controls are needed for the discharge based on wasteload allocations that are part of total maximum daily loads that address pollutants of concern or the permitting authority or the EPA Regional Administrator determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. 40 CFR 122.26(9)(i)(C) and (D). Regardless of the type of permit, MS4s are required to develop stormwater management programs that detail the procedures they will use to control discharges of pollutants in stormwater from the MS4.

Both the Phase I and II rules require regulated municipalities to develop comprehensive stormwater management programs which include, among other elements, the regulation of discharges from construction sites. The Phase I regulations require medium and large MS4s to implement and maintain a program to reduce pollutants in stormwater runoff from construction sites, including procedures for site planning, requirements for structural and non-structural BMPs, procedures for identifying priorities for inspecting sites and enforcing control measures, and development and dissemination of appropriate educational and training materials. In general, the Phase II regulations require small MS4s to develop, implement, and enforce a program to control pollutants in stormwater runoff from construction activities which includes developing an ordinance to require implementation of erosion and sediment control practices, to control waste and to have procedures for site plan review and site inspections. Thus, as described above, both the Phase I and Phase II regulations specifically anticipate a local program for regulating stormwater discharges from construction activity. See 40 CFR 122.26(d)(2)(iv)(D) for Phase I MS4s and 40 CFR 122.34(b)(4) for Phase II MS4s. EPA has provided many guidance materials to the NPDES permitting authorities and MS4s that recommend

components and activities for a well-operated local stormwater management program.

EPA promulgated two provisions intended to minimize potential duplication of requirements or inconsistencies between requirements. First, 40 CFR 122.35 provides that a small MS4 is allowed to rely on another entity to satisfy its NPDES permit obligations, including construction site control, provided the other entity implements a program that is at least as stringent as the corresponding NPDES permit requirements and the other entity agrees to implement the control measures on the small MS4's behalf. Thus, for example, where a county implements a construction site stormwater control program already, and that program is at least as stringent as the controls required by a small MS4's NPDES permit, the MS4 may reference that program in the Notice of Intent to be covered by a general permit, or in its permit application, rather than developing and implementing a new program to require control of construction site stormwater within its jurisdiction.

Similarly, EPA or the state permitting authority may substitute certain aspects of the requirements of the EPA or state permit by incorporating by reference the requirements of a "qualifying local program" in the EPA or state CGP. A "qualifying local program" is an existing sediment and erosion control program that meets the minimum requirements as established in 40 CFR 122.44(s). By incorporating a qualifying local, state or tribal program into the EPA or state CGP, construction sites covered by the qualifying program in that jurisdiction would simply follow the incorporated local requirements in order to meet the corresponding requirements of the EPA or state CGP.

b. EPA Guidance to Municipalities

EPA developed several guidance documents for municipalities to implement the NPDES Phase II rule.

- National Menu of BMPs (<http://www.epa.gov/npdes/menuofbmps/menu.htm>). This document provides guidance to regulated MS4s as to the types of practices they could use to develop and implement their stormwater management programs. The menu includes descriptions of practices that local programs can implement to reduce impacts of stormwater discharges from construction activities.

- Measurable Goals Guidance for Phase II MS4s (<http://www.epa.gov/npdes/stormwater/measurablegoals>). This document assists small MS4s in defining performance targets and

includes examples of goals for practices to control stormwater discharges from construction activities.

- Storm Water Phase II Compliance Assistance Guide (EPA 833-R-00-002, March 2000, http://cfpub.epa.gov/npdes/stormwater/smms4.cfm?program_id=6). The guide provides an overview of compliance responsibilities for MS4s, small construction sites, and certain other industrial stormwater discharges affected by the Phase II rule.
- Fact Sheets on various stormwater control technologies, including hydrodynamic separators (EPA 832-F-99-017), infiltrative practices (EPA 832-F-99-018 and EPA 832-F-99-019), modular treatment systems (EPA 832-F-99-044), porous pavement (EPA 832-F-99-023), sand filters (EPA 832-F-99-007), turf reinforcement mats (EPA 832-F-99-002), vegetative covers (EPA 832-F-99-027), swales (EPA 832-F-99-006) and wet detention ponds (EPA 832-F-99-048). (Available at <http://www.epa.gov/npdes/stormwater/>; click on "Publications.")

C. Other State and Local Stormwater Requirements

States and municipalities may have other requirements for flood control, erosion and sediment control, and in many cases, stormwater management. Many of these provisions were enacted before the promulgation of the EPA Phase I stormwater rule although many have been updated since. An EPA analysis found that all states have laws for erosion and sediment control measures, with these laws implemented by state, county, or local governments. A summary of existing state requirements is provided in the Development Document.

D. Technology-Based Effluent Limitations Guidelines and Standards

Effluent limitation guidelines and new source performance standards are technology-based effluent limitations required by CWA sections 301 and 306 for categories or subcategories of point source dischargers. These limitations, which can be either numeric or non-numeric, along with water quality-based effluent limitations, if necessary, are incorporated into NPDES permits. ELGs and NSPS are based on the degree of control that can be achieved using various levels of pollutant control technology, as defined in Title III of the CWA and outlined below.

1. Best Practicable Control Technology Currently Available (BPT)

In establishing effluent guidelines for a point source category, the CWA

requires EPA to specify BPT effluent limits for conventional, toxic, and nonconventional pollutants. In doing so, EPA is required to determine what level of control is technologically available and economically practicable. CWA section 301(b)(1)(A). In specifying BPT, the CWA requires EPA to look at a number of factors. EPA considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate. CWA section 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performance of facilities within the category of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, EPA may require higher levels of control than currently in place in a category if the Agency determines that the technology can be practicably applied. See e.g., *American Frozen Foods Inst. v. Train*, 539 F.2d 107, 117 (D.C. Cir. 1976).

EPA assesses cost-reasonableness of BPT limitations by considering the cost of treatment technologies in relation to the effluent reduction benefits achieved. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology unless the required additional reductions are "wholly out of proportion to the costs of achieving such marginal level of reduction." Moreover, the inquiry does not require the Agency to quantify benefits in monetary terms. See, e.g., *American Iron and Steel Institute v. EPA*, 526 F.2d 1027, 1051 (3rd Cir. 1975).

In balancing costs against the effluent reduction, EPA considers the volume and nature of expected discharges after application of BPT, the general environmental effects of pollutants, and the cost and economic impacts of the required level of pollution control. In past effluent limitation guidelines, BPT cost-reasonableness comparisons ranged from \$0.26 to \$41.44 per pound removed in year 2008 dollars. This range is not inclusive of all categories regulated by BPT, but nonetheless represents a very broad range of cost-reasonableness values. About half of the cost-reasonableness values represented by this range are less than \$2.50 per pound (in 2001 dollars). In developing guidelines, the Act does not require

consideration of water quality problems attributable to particular point sources, nor does it require consideration of water quality improvements in particular bodies of water. See *American Frozen Foods Inst. v. Train*, 539 F.2d 107, 117 (D.C. Cir. 1976); *Weyerhaeuser Company v. Costle*, 590 F.2d 1011, 1036, 1041-44 (D.C. Cir. 1978).

2. Best Available Technology Economically Achievable (BAT)

BAT effluent guidelines are applicable to toxic (priority) and nonconventional pollutants. EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific substances have been designated priority toxic pollutants. 40 CFR 401.15 and 40 CFR part 423, Appendix A. In general, BAT represents the best available performance of direct discharging facilities in the subcategory or category. CWA section 304(b)(2)(A). The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the processes employed, engineering aspects of the control technology, potential process changes, non-water quality environmental impacts (including energy requirements), and such factors as the Administrator deems appropriate. CWA section 304(b)(2). The Agency retains considerable discretion in assigning the weight to be accorded to these factors. *Natural Resources Defense Council v. EPA*, 863 F.2d 1420, 1426 (9th Cir. 1988). An additional statutory factor considered in setting BAT is "economic achievability." EPA may determine the economic achievability of an option on the basis of the total cost to the subcategory and the overall effect of the rule on the industry's financial health. The Agency may base BAT limitations upon effluent reductions attainable through changes in a facility's processes and operations. See *Texas Oil & Gas Ass'n v. EPA*, 161 F.3d 923, 928 (5th Cir. 1998) (citing "process changes" as one factor EPA must consider in determining BAT); see also, *American Meat Institute v. EPA*, 526 F.2d 442, 464 (7th Cir. 1975). As with BPT, where existing performance is uniformly inadequate, EPA may base BAT upon technology transferred from a different subcategory or from another category. See *CPC International Inc. v. Train*, 515 F.2d 1032, 1048 (8th Cir. 1975) (established criteria EPA must consider in determining whether technology from one industry can be applied to another); see also, *Tanners' Council of America, Inc. v. Train*, 540 F.2d 1188 (4th Cir. 1976). In addition,

the Agency may base BAT upon manufacturing process changes or internal controls, even when these technologies are not common industry practice. See *American Frozen Foods Inst. v. Train*, 539 F.2d 107, 132 (D.C. Cir. 1976).

3. Best Conventional Pollutant Control Technology (BCT)

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing point sources. BCT is not an additional limitation, but replaces Best Available Technology (BAT) for control of conventional pollutants. In addition to other factors specified in CWA section 304(b)(4)(B), the Act requires that EPA establish BCT limitations after consideration of a two-part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

Section 304(a)(4) designates the following as conventional pollutants: Biochemical oxygen demand (BOD₅), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. 40 CFR 401.16. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

4. New Source Performance Standards (NSPS)

NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New sources, as defined in CWA section 306, have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the greatest degree of effluent reduction achievable through the application of the best available demonstrated control technology for all pollutants (i.e., conventional, nonconventional, and priority pollutants). In establishing NSPS, CWA section 306 directs EPA to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards

The CWA also defines standards for indirect discharges, i.e., discharges into publicly owned treatment works (POTWs). These standards are known as Pretreatment Standards for Existing Sources (PSES) and Pretreatment Standards for New Sources (PSNS), and

are promulgated under CWA section 307(b). EPA has no data indicating that construction sites typically discharge directly to POTWs. Therefore, EPA is not proposing PSES or PSNS for the C&D category. EPA determined that the majority of construction sites discharge either directly to waters of the U.S. or through MS4s. In some urban areas, construction sites may discharge to combined sewer systems (i.e., sewers carrying both stormwater and domestic sewage through a single pipe) which lead to POTWs. Sediment and turbidity, which are the primary pollutants associated with construction site discharges, are susceptible to treatment in POTWs, using technologies commonly employed such as primary clarification. EPA has no evidence that construction site discharges to POTWs would cause interference, pollutant pass-through or sludge contamination.

6. EPA Authority to Promulgate Non-Numeric Effluent Limitations

The regulatory options proposed today include non-numeric effluent limitations that will control the discharge of pollutants from C&D sites. It is well established that EPA has the authority to promulgate non-numeric effluent limitations in addition to or in lieu of numeric limits. The CWA does not mandate the use of numeric limitations only and EPA's position finds support in the language of the CWA. The definition of "effluent limitation" means "any restriction * * * on quantities, rates, and concentrations of chemical, physical, biological, and other constituents * * *" CWA section 502(11).

Federal courts have recognized the CWA does not mandate that EPA use numeric effluent limitations. In *Citizens Coal Council v. U.S. EPA*, 447 F.3d 879, 895–96 (6th Cir. 2006), the Sixth Circuit, in upholding EPA's use of non-numeric effluent limitations, agreed with EPA that it derives authority under CWA sections 402(a), 304(b) and 502(11) to incorporate non-numeric effluent limitations for conventional and non-conventional pollutants. The Sixth Circuit further held as reasonable the Agency position that CWA sections 304(b), 304(e) and 502(11), read together, allow non-numeric effluent limitations to supplement CWA section 304(b), or can stand as effluent limitations themselves. See also, *Waterkeeper Alliance, Inc. v. U.S. EPA*, 399 F.3d 486, 496–97, 502 (2d Cir. 2005) (EPA use of non-numerical effluent limitations in the form of best management practices are effluent limitations under the CWA); *Natural Res. Def. Council, Inc. v. EPA*, 673 F.2d

400, 403 (D.C. Cir. 1982) ("section 502(11) [of the CWA] defines 'effluent limitation' as 'any restriction' on the amounts of pollutants discharged, not just a numerical restriction."); *Natural Res. Def. Council, Inc. v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977) (in determining EPA did not have the authority to exclude a particular point source from the NPDES program, the Court held "when numerical effluent limitations are infeasible, EPA may issue permits with conditions designed to reduce the level of effluent discharges to acceptable levels. This may well mean opting for a gross reduction in pollutant discharge rather than fine-tuning suggested by numerical limitations.")

EPA's NPDES regulations reflect EPA's long standing interpretation, as supported by federal court decisions, that the CWA allows for non-numeric effluent limitations. 40 CFR 122.44(k).

7. 2002 Construction and Development Proposal and Subsequent Litigation

EPA identified the C&D industry in its CWA section 304(m) plan in 2000 as an industrial point source category for which EPA intended to conduct rulemaking. 65 FR at 53,008 and 53,011 (August 31, 2000). On June 24, 2002, EPA published a proposed rule that contained several options for the control of stormwater discharges from construction sites, including ELGs and NSPS. (67 FR 42644; June 24, 2002).

On April 26, 2004, EPA determined that national effluent limitations guidelines would not be the most effective way to control discharges from construction sites, and instead chose to rely on the range of existing programs, regulations, and initiatives that already existed at the federal, state and local level. (69 FR 22472; April 26, 2004).

On October 6, 2004, the Natural Resources Defense Council, Inc. and additional plaintiffs filed a complaint in district court alleging that EPA's decision not to promulgate ELGs and NSPSs for the C&D industry violated a mandatory duty under the CWA. The district court, in *NRDC v. EPA*, 437 F.Supp.2d 1137, 1139 (C.D. Cal. 2006), held that CWA section 304(m) imposes on EPA a mandatory duty to promulgate ELGs and NSPSs for new industrial point source categories named in a CWA section 304(m) plan. The district court enjoined EPA to propose ELGs and NSPSs for the C&D industry by December 1, 2008 and to promulgate ELGs and NSPSs as soon as practicable, but in no event later than December 1, 2009. On appeal, the *Ninth Circuit in NRDC v. EPA*, 2008 WL 4253944 (9th Cir. 2008) affirmed the district court's

decision holding that “* * * the CWA is unambiguous that the EPA must promulgate ELGs and NSPSs for the point-source categories listed in a plan pursuant to [section] 304(m) * * *.” The deadline to seek re-hearing in the Ninth Circuit was November 3, 2008. The Agency requested a 30-day extension of the re-hearing deadline, which was granted, thus the new deadline for EPA to seek re-hearing is December 3, 2008.

IV. Scope of the Proposal

EPA is proposing a regulation that would strengthen the existing controls on discharges from construction activity by establishing technology-based effluent limitations guidelines and new source performance standards for the C&D point source category. This proposal, if implemented, would significantly reduce the amount of sediment, TSS, turbidity and other pollutants discharged from construction sites due to construction activities. EPA estimates that today's proposed rule would cost \$1.9 billion dollars per year. These estimates do not include costs for Alaska, Hawaii and the U.S. territories because EPA lacked data on the amount of construction occurring in these areas. However, EPA does expect that some construction sites in these areas would incur compliance costs as a result of today's proposal. EPA solicits data that can be used to estimate the number of acres of construction activity that occurs annually in these areas.

The proposed rule would establish a set of non-numeric effluent limitations requiring dischargers to provide and maintain effective erosion control measures, sediment control measures, and other pollution prevention measures to minimize and control the discharge of pollutants in stormwater and other wastewater from construction sites. The rule would specify particular minimum BMPs to meet the effluent limitations requiring effective erosion control and pollution prevention.

In addition, reflecting current requirements in the EPA CGP, sites disturbing 10 or more acres at one time would be required to install a sediment basin to contain and settle sediment from stormwater runoff. The proposed rule would require minimum standards of design for sediment basins; however, alternatives that control sediment discharges in a manner equivalent to sediment basins would be authorized where approved by the permitting authority.

Finally, reflecting the BAT and NSPS levels of control, for certain large sites located in areas of high rainfall energy and with soils with significant clay content, discharges of stormwater from

the site would be required to meet a numeric effluent limit on the allowable level of turbidity. The numeric turbidity limit is 13 nephelometric turbidity units (NTUs). The turbidity limit is intended to remove fine-grained and slowly settling or non-settleable particles contained in stormwater. Particles such as clays and fine silts contained in stormwater discharges from C&D sites typically cannot be effectively removed by conventional stormwater BMPs (such as sediment basins and sediment traps) that rely solely on settling unless sufficient detention time or additives are implemented. The technology basis for the turbidity limit is active treatment systems (ATS), which consists of polymer-assisted clarification followed by filtration.

In addition to this proposed option, EPA is specifically soliciting comment on setting a turbidity limit in the range of 50 to 150 NTUs (or some other number) based on passive treatment, instead of ATS. See section IX.A.5.a of today's proposal for additional discussion of this alternative approach.

EPA considered several other regulatory approaches while developing this proposed rule, such as specifying certain design criteria for sediment basins, or using different site size, rainfall, or soil type thresholds for determining which sites would be required to comply with a turbidity limit. EPA also considered setting BAT and NSPS equal to the proposed BPT level of control, based on non-numeric BMP-based effluent limitations, as well as an expanded version of today's proposed rule. EPA requests comment on these alternative regulatory approaches. Details of the proposed rule and alternative approaches considered are described in this notice, the Development Document, Economic Analysis, and Environmental Assessment (see the Supporting Documentation section of this notice) and additional documentation is contained in the record.

V. Overview of the Construction and Development Industry and Construction Activities

The C&D point source category covers firms classified by the Census Bureau into two North American Industry Classification System (NAICS) codes.

- Construction of Buildings (NAICS 236) includes residential, nonresidential, industrial, commercial and institutional building construction.
- Heavy and Civil Engineering Construction (NAICS 237) includes utility systems construction (water and sewer lines, oil and gas pipelines, power and communication lines); land

subdivision; highway, street, and bridge construction; and other heavy and civil engineering construction.

Other types of entities not included in this list could also be regulated.

A single construction project may involve many firms from both subsectors. The number of firms involved and their financial and operational relationships may vary greatly from project to project. In typical construction projects, the firms identifying themselves as “operators” under a construction general permit are usually general building contractors or developers. While the projects often engage the services of specialty contractors such as excavation companies, these specialty firms are typically subcontractors to the general building contractor and are not separately identified as operators in stormwater permits. Other classes of subcontractors such as carpentry, painting, plumbing and electrical services typically do not apply for, nor receive, NPDES permits. The types and numbers of firms in the construction industry are described in more detail in the Development Document and the Economic Analysis.

Construction on any size parcel of land almost always calls for a remodeling of the earth. Therefore, actual site construction typically begins with site clearing and grading. Earthwork activities are important in site preparation because they ensure that a sufficient layer of organic material (ground cover and other vegetation, especially roots) is removed. The size of the site, extent of water present, the types of soils, topography and weather determine the types of equipment that will be needed during site clearing and grading. Material that will not be used on the site may be hauled away. Clearing activities involve the movement of materials from one area of the site to another or complete removal from the site. When grading a site, builders typically take measures to ensure that new grades are as close to the original grade as possible to reduce erosion and stormwater runoff. Proper grade also ensures a flat surface for development and is designed to attain proper drainage away from the constructed buildings. A wide variety of equipment is often used during excavation and grading. The type of equipment used generally depends on the functions to be performed and on specific site conditions. Shaping and compacting the earth is an important part of site preparation. Earthwork activities might require that fill material be used on the site. In such cases, the

fill must be spread in uniform, thick layers and compacted to a specific density. An optimum moisture content must also be reached. Graders and bulldozers are the most common earth-spreading machines, and compaction is often accomplished with various types of rollers. If rock is to be removed from the site, the contractor must first loosen and break the rock into small pieces using various types of drilling equipment or explosives. (Adapted from Peurifoy, Robert L. and Oberlender, Garold D. (1989). *Estimating Construction Costs* (4th ed.). New York: McGraw Hill Book Company.)

Once materials have been excavated and removed and the ground has been cleared and graded, the site is ready for construction of buildings, roads, and/or other structures. During construction activity, the disturbed land can remain exposed without vegetative cover for a substantial period of time. Where the soil surface is unprotected, soil particles and other pollutants are particularly susceptible to erosion and may be easily washed away by rain or snow melt and discharged from the site. Permittees typically use a combination of erosion and sediment control measures designed to prevent mobilization of the soil particles and capture of those particles that do mobilize and become entrained in stormwater from the C&D site. In most cases these control measures take the form of BMPs, but in some cases construction sites actively treat a portion of the discharge using filtration or other treatment technologies. Erosion and sediment control measures are described further in the Development Document.

VI. Summary of Data Collection Activities

In developing today's proposal, EPA gathered and evaluated technical and economic data from various sources. EPA also used data collected previously to develop the 2002 proposed C&D rule and the 2004 withdrawal of the proposed rule.

EPA used these data to estimate costs, pollutant loading reductions, environmental benefits and economic impacts of various regulatory options. This section summarizes EPA's data collection efforts.

A. State Data

EPA compiled and evaluated existing state program information about the control of construction site stormwater. EPA collected data by reviewing state construction general permits, Web sites, summary references, state regulations, and erosion and sediment control design and guidance manuals. A

summary of criteria and standards for construction site stormwater erosion and sediment control that are implemented by states are presented in Appendix A of the Development Document for this proposed rulemaking. EPA did not collect information from counties or municipalities regarding current construction site stormwater requirements. EPA relied on state-level requirements to characterize requirements in all areas of the state. So, if county or municipal requirements are more stringent than state-level requirements for control of construction site stormwater discharges, EPA's baseline estimates of costs and pollutant reductions would not reflect these more stringent requirements currently in place. Therefore, certain components of EPA's cost and loadings estimates for the regulatory options may be overestimates. In addition, EPA did not account for those sites that would already be required to meet a turbidity limit. For example, some construction sites around the country are already required to meet numeric effluent limits for turbidity that are comparable to EPA's proposed turbidity limit. EPA has not accounted for these sites in its analysis of costs and loading reductions, although the number of these sites is likely to be only a small fraction of construction sites nationwide.

B. National Land Cover Dataset (NLCD)

The NLCD provides a national source of data on land cover. EPA used these data to estimate the amount of land across the U.S. that was converted to development (e.g., from forest or farmland to residential communities), which in turn was used to estimate the amount of acreage that may be subject to the requirements of the C&D rule.

The Multi-Resolution Land Characteristics Consortium (MRLC) has produced the NLCD datasets that created a 30-meter resolution land cover data layer over the conterminous United States using remote sensing data. There are approximately 24 billion data points from remote sensing data that comprise the NLCD database. NLCD data is publicly available for the years 1992 and 2001.

Due to new developments in mapping methodology, new sources of input data, and changes in the mapping legend for the 2001 National Land Cover Database (NLCD 2001), direct comparison between NLCD 2001 and the 1992 National Land Cover Dataset (NLCD 1992) is difficult. Thus, MRLC prepared the NLCD 1992/2001 Land Cover Change Product (see http://www.mrlc.gov/change_detection.asp). The NLCD 1992/2001 Land Cover

Change Product was developed to offer more accurate direct change analysis between the two products. This land cover change map and all documents pertaining to it are considered "provisional" until a formal accuracy assessment can be conducted. Detailed definitions and discussion of the NLCD 1992/2001 Land Cover Change Product is summarized in the Development Document.

EPA estimated the annual number of acres of land converted to development in the U.S. and used that estimate as a surrogate measure of the acres of construction activities subject to national effluent guidelines regulations, since no national database of the number and size of construction activities exists. EPA used estimates of the amount of construction activity occurring in each state based on NLCD data as a basis for calculating state-level compliance costs. NLCD data was also used to estimate the amount of construction activity occurring in each of the watersheds in the U.S. based on the EPA Reach File cataloging system (discussed below). Watershed level data (along with other data sources) was used to estimate the quantity of construction activities and the associated pollutant loads occurring in each watershed and to link these loads to stream reaches for modeling of water quality improvements and benefits estimates.

C. Enhanced River Reach File 1.2 (ERF1)

EPA used the EPA Reach File 1.2 dataset (ERF1) to summarize land cover change in drainage area units (or watersheds). ERF1 for the Conterminous United States is a vector database of approximately 700,000 miles of streams and open waters in the conterminous United States. ERF1 was prepared by EPA in 1982 from National Oceanographic and Atmospheric Administration (NOAA) aeronautical charts having a scale of 1:500,000. ERF1 contains 67,171 watersheds with a minimum size of 247 acres (1 km²) and an average size of 30,182 acres (122 km²). ERF1 serves as the foundation for SPARROW (Spatially Referenced Regressions [of nutrient transport] on Watershed) modeling (see Section XIV of this proposal for a discussion of SPARROW).

D. NPDES Notice of Intent (NOI) Data

As stated above, when a discharger wishes to be authorized to discharge under a general permit, it files a NOI to be covered under the general permit. EPA used NOI data to estimate the distribution of construction activity by site size and development type. Using NOI data, EPA broadly characterized the

construction industry into three land use types (residential construction, non-residential construction and road/highway construction). Differentiation of construction activities by site size and project type was also done for EPA's technical and economic analyses. EPA used NOI data from approximately 138,000 permit applications, containing data from 38 States for construction activities occurring primarily between the mid-1990s and 2006. Depending on the state, the number of NOI records available ranged from fewer than 10 to more than 10,000. The data are available either from a database of permits processed directly by EPA (referred to as the EPA NOI database) or from per-state databases obtained independently.

E. Soils Data

EPA used the State Soil Geographic (STATSGO) data compiled by Penn State University (<http://www.soilinfo.psu.edu/>) in order to estimate variation in soil types nationwide. The variation in soil types found within the United States is a significant factor in estimating sediment discharges, pollutant load reductions, and stormwater pollution prevention costs for construction sites. EPA used the STATSGO soils data in support of the loadings and removal estimates for this proposal. EPA used the Revised Universal Soil Loss Equation (RUSLE) in combination with the soils data to determine soil erosion rates from model construction sites in different areas of the country. EPA used these estimates, in combination with estimates of pollutant removal efficiencies for the various technologies evaluated, to estimate sediment discharges from C&D sites under baseline conditions and under each regulatory option evaluated. Although EPA was not able to find a national database of measured sediment concentrations in treated and untreated construction site stormwater runoff, EPA did find monitoring data from several states and compared these measured concentrations to the estimate concentration based on RUSLE. A discussion of this comparison is provided below in section IX. F. Additional details on the soil data collected can be found in the Development Document.

F. NOAA Rainfall Data

Variations in rainfall depth and intensity are also important factors in determining erosion rates, sediment discharges, pollutant load reductions and control technology costs for construction sites. In order to account for variations in rainfall patterns, EPA collected rainfall data for one indicator

city within each of the 48 conterminous states. Data for each of these indicator cities were used as point estimates for estimating rainfall depths and intensities for construction activities for the entire state. A major urban area was chosen as the indicator city in each state; which in most cases was the capital city.

For each indicator city, precipitation data was gathered and analyzed using the National Oceanic and Atmospheric Administration (NOAA) National Weather Service (NWS) Precipitation Frequency Data Server (PFDS), NOAA Atlas 14, a series of maps presented in older NWS publications, and NOAA Atlas 2 (Precipitation Frequency Atlas of the Western United States (1973)). Alaska and Hawaii, as well as the U.S. territories, were not included in this analysis because EPA lacked sufficient data on the annual amount of construction occurring in these areas. More details on EPA's analysis can be found in the Development Document.

G. Parameter Elevation Regressions on Independent Slopes Model (PRISM)

PRISM is a climate mapping system that was used to estimate the annual acres that would be subject to the regulatory options given various annual rainfall cutoffs. Using PRISM GIS layers of average annual precipitation along with RF1-level estimates of annual acres of new construction, EPA was able to estimate acres that would be subject to various regulatory options given various average annual precipitation cutoffs.

H. Revised Universal Soil Loss Equation (RUSLE) R Factors

EPA used maps of rainfall-runoff erosivity factors (or R factors) contained in the RUSLE documentation. These maps, in GIS form, along with RF1-level estimates of annual acres of new construction, were used to estimate acres that would be subject to regulations given various R factor values.

I. Economic Data

EPA utilized various economic data sources in developing today's proposal. The primary data source is the 2002 Economic Census, conducted every five years by the U.S. Census Bureau. The U.S. Small Business Administration (SBA) and Census Bureau also provide important information in Statistics of U.S. Business (SUSB). SUSB provides firm-level data that is particularly important for the firm and industry impact assessment and for the small entity analysis. An important source of project level data is Reed Construction, a commercial construction industry data

service that collects and reports information on multifamily, commercial/institutional, and industrial construction projects undertaken nationally. EPA assigned baseline financial characteristics—balance sheet, income statement, and metrics of financial performance and condition—to each of the model firms as defined by NAICS sector and revenue size range, from financial statement information reported by Risk Management Association's (RMA) publication, Annual Statement Studies. The Census Bureau's 2006 American Community Survey (ACS) was used to characterize new home prices and lot sizes (2006 was chosen because it is the most recent year for which the required Metropolitan Statistical Area (MSA)-level data are available from the Census).

VII. Characteristics of Discharges From Construction Activity

The nature of construction activity is that it changes, often significantly, many elements of the natural environment. Typically, construction activities involve clearing the land of vegetation, digging, earth moving and grading, followed by the active construction period when the affected land is usually left denuded and the soil compacted, often leading to an increase in the peak discharge rate and the total volume of stormwater discharged and higher rates of erosion. During the land disturbance period, affected land is generally exposed after removal of grass, rocks, pavement and other protective ground covers. Where the soil surface is unprotected, soil and sand particles may be easily picked up by wind and/or washed away by rain or snow melt. Typically, the water carrying these particles eventually reaches a water body.

Discharges from construction activity have been documented to increase the loadings of several pollutants in the receiving waterbodies. The most prominent and most widespread pollutant discharged from C&D sites is sediment. The level of sediment is often identified through the measurement of the pollutants' turbidity, suspended solids, total suspended solids (TSS), suspended sediment concentration (SSC), and/or settleable solids. CWA section 304(a)(4) identified suspended solids as a conventional pollutant and in 1978 EPA defined "suspended solids" as "total suspended solids (non-filterable) (TSS)" and stated that TSS "is a laboratory measure of the organic and inorganic particulate matter in wastewater which does not pass through a specified glass filter disk." See 40 CFR

401.16; 43 FR 32857, 32858 (July 28, 1978). Turbidity and settleable solids are non-conventional pollutants. See CWA section 301(b)(2)(F); 304(a)(4); *Rybachek v. EPA*, 904 F.2d 1276, 1291–92 (9th Cir. 1990). The Agency defined “turbidity” as “an expression of the optical property that causes light to be scattered and absorbed rather than transmitted with no change in direction of flux level through the sample * * * caused by suspended and colloidal matter such as clay, silt, finely divided organic and inorganic matter and plankton and other microscopic organisms.” 40 CFR 136.3; 72 FR 11200, 11247 (March 12, 2007). (See Section IX for a discussion of why EPA proposes turbidity as the desired pollutant to control in determining the appropriate technology).

Stormwater discharges can have highly variable levels of pollutants. Available data show that turbidity levels range from as low as 10–50 NTU to several thousand NTU. When the denuded and exposed areas contain nutrients, pathogens, metals or organic compounds, these other pollutants are likely to be carried at increased rates (relative to discharges from undisturbed areas) to surrounding waterbodies via stormwater and other discharges (e.g., inadequately controlled construction equipment wash water). Discharges of these pollutants from construction activities can cause changes in the physical characteristics of waterbodies, such as pH, water temperature, or stream flow velocity, as well as changes in biological characteristics such as aquatic species abundance and composition.

Actions taken to stabilize disturbed areas of the C&D site can include seeding to restore vegetative cover. When fertilizers or herbicides are applied to these areas, a portion of the chemicals applied may become entrained in stormwater and will be discharged from the site. Fertilizers contribute nutrients such as nitrogen and phosphorus to the wastestream.

Discharges from construction activity are expected to contain varying concentrations of metals, some of which may be contributed by equipment used onsite for grading and other construction activities. Metals are also naturally present in soils and, by removing vegetative cover and increasing erosion and sediment loss, there will likely be an increase in the amount of metals discharged from the C&D site. Metals present as a contaminant or additive in fertilizers and other soil amendments may serve as another source of pollutants in the stormwater discharge.

Fuels and lubricants are maintained onsite to refuel and maintain vehicles and equipment used during construction activities. These products, should they come in contact with stormwater and other site discharges, would contribute toxic organic pollutants. Pathogenic pollutants can be present in stormwater that comes into contact with sanitary wastes where portable sanitation facilities are poorly located or maintained.

The environmental impacts associated with discharges from construction sites are described in section XIV.

VIII. Description of Available Technologies

A. Introduction

As described in Section VII, construction activity results in the discharge of pollutants to waters of the U.S. These discharges can be controlled by applying site design techniques that preserve or avoid areas prone to erosion and through the effective use of a combination of erosion and sediment control measures. Construction activities should be managed to reduce erosion and retain sediment on the C&D site. Erosion and sedimentation are two separate processes and the practices to control them differ. Erosion is the process of wearing away of the land surface by water, wind, ice, gravity, or other geologic agents. Sedimentation is the deposition of soil particles, both mineral and organic, which have been transported by water, wind, air, gravity or ice (adapted from North Carolina Erosion and Sediment Control Planning and Design Manual, September 1, 1988).

Erosion control measures are intended to minimize dislodging and mobilizing of sediment particles. Sediment control measures are controls that serve to capture particles that have mobilized and are entrained in stormwater, with the objective of removing sediment and other pollutants from the stormwater discharge. An overview of available technologies and practices is presented below; see the Development Document for more complete descriptions. Many states and local governments and other entities have also published detailed manuals for erosion and sediment control measures, and other stormwater management practices.

B. Erosion Control Measures

The use of erosion control measures is widely recognized as the most important means of limiting soil detachment and mobilization of sediment. The controls described in this notice are designed to reduce mobilization of soil particles and

minimize the amount of sediment and other pollutants entrained in discharges from construction activity. Erosion can be minimized by a variety of practices. The selection of control measures that will be most effective for a particular site is dictated by site-specific conditions (e.g., topography, soil type, rainfall patterns). The main strategies used to reduce erosion include minimizing the time bare soil is exposed, preventing the detachment of soil and reducing the mobilization and transportation of soil particles off-site.

Decreasing the amount of land disturbed can significantly reduce sediment detachment and mobilization, as well as overall erosion and sediment control costs. This can be accomplished by reducing the overall area of disturbed land or by phasing construction so that only a portion of the site is disturbed at a time. Another effective approach is to schedule clearing and grading events to reduce the probability that bare soils will be exposed to rainfall.

Managing stormwater flows on the site can be highly effective at reducing erosion. Typical practices include actively managing off-site and on-site stormwater using diversion berms, conveyance channels and slope drains to avoid stormwater contact with disturbed areas. In addition, stormwater should be managed using energy dissipation approaches to prevent high runoff velocities and concentrated flows that are erosive. Vegetative filter strips are often considered as sediment controls, but they can also be quite effective at dissipating energy and reducing the velocity (and thus erosive power) of stormwater.

After land has been disturbed and construction activity has ceased on any portion of the site, exposed soils should be covered and stabilized immediately. Vegetative stabilization using annual grasses is a common practice used to control erosion. Polymers, physical barriers such as geotextiles, straw, rolled erosion control products and mulch are other common methods of controlling erosion. These materials and methods are intended to reduce erosion where soil particles can be initially dislodged on a C&D site, either from rainfall, snow melt or up-slope runoff.

The effectiveness of erosion control measures is dependent on periodic inspection and identification and correction of deficiencies (e.g., after each storm event). Erosion control measures alone will not eliminate the mobilization of soil particles and such controls must be used in conjunction with sediment control measures.

C. Sediment Control Measures

Despite the proper use of erosion control measures, some sediment detachment and movement is inevitable. Sediment control measures are used to control and trap sediment that is entrained in stormwater runoff. Typical sediment controls include perimeter controls such as silt fences constructed with filter fabric, straw bale dikes, berms or swales. Trapping devices such as sediment traps and basins and inlet protectors are examples of in-line sediment controls. Sediment traps and basins are commonly used approaches for settling out sediment eroded from small and large disturbed areas. Their performance can be enhanced using baffles and skimmers and active treatment processes such as electrocoagulation, filtration, and chemically enhanced settling (e.g., polymer addition).

Active treatment systems are typically used in conjunction with other sediment controls to improve pollutant removals, especially to improve removals of fine-grained and slowly settling or non-settleable particles and turbidity contained in stormwater. Unless sufficient detention time is provided or additives are implemented, particles such as clays and fine silts contained in stormwater discharges from construction sites typically cannot be effectively removed by conventional stormwater BMPs (such as sediment basins and sediment traps) that rely solely on gravity settling. EPA has identified several demonstrated technologies capable of achieving significant reductions of these particles. Based on the information in the record, electrocoagulation, polymer clarification, and chitosan-enhanced filtration treatment technologies are demonstrated as being capable of achieving low levels of turbidity in stormwater discharges.

The active treatment systems EPA has evaluated operate by destabilizing the suspended particles by various mechanisms, aggregating them into larger particles that are easier to remove through settling or filtering. In addition to physical characteristics (e.g., particle surface area, density) that impede timely settling by gravity, these small particles (often clay particles) typically are substantially influenced by net electrical repulsive forces at particle surfaces that prevent the particles from joining together. Coagulation refers to the process whereby these repulsive electrical forces are reduced, allowing particles to come into contact with one another. Flocculation refers to the agglomeration of the destabilized

particles by joining and bridging to form larger particles. Following coagulation/flocculation, the densified floc can more easily and effectively be removed via gravitational settling or media filtration (e.g., sand, gravel, bag, or cartridge filters).

Electrocoagulation treatment uses an electrical field to disturb the natural electrical charges of the colloidal particles suspended in stormwater, enabling the particles to coagulate and flocculate, and facilitating gravity settling. This settling may be followed by filtration prior to discharge of the stormwater.

Polymer clarification can operate as a batch process whereby a polymer is added to stormwater contained in a basin. The polymer causes clays and other fine particles to flocculate and gravity settle. Once the turbidity reaches the necessary value and other permit requirements are met, the stormwater is discharged from the basin. Polymer clarification can also be used in flow-through systems. In this application, liquid polymer is injected into the influent to the sediment basin or gel or solid polymer is added by placing polymer-filled socks or "floc logs" in channels or pipes carrying sediment-laden runoff into the basin. Stormwater flowing over the socks or logs dissolves the solid polymer, and turbulence at the basin inflow point facilitates mixing and aids in the coagulation/flocculation process.

Chitosan-enhanced filtration is a process that adds a polymer (in this instance, a polymer produced from the chitin in crab shells) to the stormwater to promote flocculation. The flocculated stormwater is then passed through one or more filtration steps and, if permit conditions are met, can be discharged.

These active treatment systems are often equipped with automated instrumentation to monitor stormwater quality, flow rate, and dosage control for both influent and effluent flows.

It has been suggested that, while operating active treatment systems that use polymers to reduce the turbidity of stormwater, construction site dischargers may overuse polymers and, in doing so, introduce toxicity or cause other adverse effects. EPA believes toxic effects from discharges treated to meet a turbidity limit should not be occurring and such events would be indicative of a poorly operated treatment system. Polymers are widely used at a variety of wastewater treatment systems and facilities throughout the country, and EPA is not aware of any studies indicating that polymer addition to treat stormwater from construction sites using ATS has been found to pose a

significant risk to water quality at those facilities. There are ample regulatory (i.e., enforcement actions) and financial (e.g., chemical costs) disincentives for dischargers to willfully overuse polymers in their treatment systems. In addition, vendors have indicated that dosages of polymers are carefully metered in ATS systems. Upon closer review of the matter, it appears that this concern has been raised due to anecdotal suggestions, rather than documented evidence of actual discharge events causing toxic effects. To date, EPA has not identified any documented cases where the use of a polymer to treat C&D stormwater discharges caused an adverse effect in the receiving waters. Also, Washington and other States have researched toxicity of some polymers and established a sound basis for testing and significant controls on dosage and usage. For example, Washington State has established protocols for residual chemical and toxicity testing for ATS systems and has required vendors to receive state approval. However, California, in a draft permit fact sheet describing chemical treatment, states the following:

"These systems can be very effective in reducing the sediment in storm water runoff, but the systems that use additives/polymers to enhance sedimentation also pose a potential risk to water quality (e.g., operational failure, equipment failure, additive/polymer release, etc.). We are concerned about the potential acute and chronic impacts that the polymers and other chemical additives may have on fish and aquatic organisms if released in sufficient quantities or concentrations. In addition to anecdotal evidence of polymer releases causing aquatic toxicity in California, the literature supports this concern. For example, cationic polymers have been shown to bind with the negatively charged gills of fish, resulting in mechanical suffocation. Due to potential toxicity impacts, which may be caused by the release of additives/polymers into receiving waters, residual polymer monitoring and toxicity requirements have been established in this General Permit for discharges from construction sites that utilize an ATS in order to protect receiving water quality and beneficial uses." (see DCN 41137).

Therefore, EPA recognizes the merits of ensuring that chemical additives are properly used. EPA solicits information and data that quantify the number of instances where overuse of polymers occurred, the circumstances resulting in such overuse, and the actual or potential environmental impacts associated with such events. In addition, EPA solicits comments on the need for approaches (either voluntary or regulatory) to prevent or minimize the potential for such instances and the need for EPA to

develop guidance on use of polymers at construction sites.

More detailed descriptions of sediment and erosion control measures can be found in the Development Document.

D. Other Construction and Development Site Management Practices

Construction activity generates a variety of wastes and wastewater, including concrete truck rinsate, municipal solid waste (MSW), trash, and other pollutants. Construction materials and chemicals should be handled, stored and disposed of properly to avoid contamination of runoff. Dischargers utilize various practices to manage these wastes and minimize discharges to surface waters, including:

- Protecting construction materials, chemicals and fuels and lubricants from exposure to rainfall;
- Limiting exposure of freshly placed concrete to rainfall;
- Segregating stormwater and other wastewaters from fuels, lubricants, sanitary wastes, and chemicals such as fertilizers, pesticides and herbicides;
- Neat and orderly storage of chemicals, pesticides, fertilizers, and fuels that are being stored on the site;
- Prompt collection and management of trash and sanitary waste;
- Prompt cleanup of spills of liquid or dry materials.

IX. Development of Effluent Limitations Guidelines and Standards

A. Description of the Regulatory Options Considered

In developing today's proposal, EPA evaluated several different options for reducing pollutant discharges from construction activity. The options evaluated by EPA are intended to control the discharge of sediment, turbidity and other pollutants in stormwater and other wastewater from C&D sites. Construction activity typically involves clearing, grading and excavating of land areas. Prior to construction, these land areas may have been agricultural, forested or other undeveloped lands. Construction can also occur as redevelopment of existing rural or urban areas, or infill development on open space within existing developed areas. During the C&D process, vegetation or surface cover is typically removed and underlying soils become more susceptible to detachment by rainfall and erosion by stormwater runoff. Soil is often compacted by construction equipment, reducing the infiltration capacity of underlying soils and increasing

stormwater discharge rates. Sediments and other pollutants contained in stormwater can and often are transported off-site and discharged from construction sites. Today's proposal provides regulatory tools to improve erosion and sediment control measures and pollution prevention measures on C&D sites to minimize and control stormwater and other discharges from construction activity.

Certain limitations being proposed today are common to each regulatory option. These common requirements consist of a set of non-numeric effluent limitations that require dischargers to provide and maintain effective erosion control measures, sediment control measures, and other pollution prevention measures to minimize the discharge of pollutants in stormwater and other wastewater from construction sites. These non-numeric effluent limitations included in each regulatory option are described in Section IX.B below.

B. Effluent Limitations Included in All Regulatory Options

EPA's preferred approach is twofold: First, prevent the discharges of sediment and other pollutants from occurring through the use of effective site-specific planning, erosion control measures and pollution prevention measures; and second, control discharges that do occur through the use of effective sediment control measures. Under each regulatory option, dischargers would be required to meet non-numeric effluent limitations requiring them to minimize and control discharges from the site by providing and maintaining effective erosion and sediment control measures and pollution prevention measures.

Dischargers would be required to prevent soil erosion and minimize the discharge of sediment from all areas of the site by providing and maintaining effective erosion control measures. Erosion controls are considered effective when bare soil is uniformly and evenly covered with vegetation or other suitable materials, stormwater is controlled so that rills and gullies are not visible, and channels and streambanks are not eroding. Dischargers would be required to provide and maintain recognized and accepted erosion control measures, including stabilizing disturbed soils immediately after clearing, grading, or excavating activities have permanently or temporarily ceased (i.e., when such activities have been stopped on a portion of the site and will not resume for a period exceeding 14 calendar days). In addition, dischargers would be required to minimize the amount of soil

exposed and control stormwater within the site to prevent soil erosion by using effective erosion control measures. Stormwater discharges leaving the site would also need to be controlled to prevent channel and streambank erosion and erosion at outlets.

The following list of principles and practices are generally recognized and accepted as effective erosion controls and would be provided in the rule to help guide the selection, design, and implementation of control measures to meet the effluent limitations on individual construction sites.

- Preserve topsoil and natural vegetation.
- Minimize soil compaction.
- Sequence or phase construction activities to minimize the areas disturbed at any one time.
- Stabilize disturbed areas using temporary or permanent vegetation, and controls such as mulch, geotextiles, or sod.
- Minimize the disturbance of steep slopes, and where such slopes are disturbed implement erosion controls designed to control soil erosion on slopes.
- Establish and maintain natural buffers around surface waters.
- Minimize the construction of stream crossings.
- Divert stormwater that may run onto the site away from any disturbed areas of the site.

Dischargers would also be required to meet non-numeric effluent limits requiring that they provide and maintain effective sediment controls to minimize the discharge of sediment and other pollutants from C&D sites. Sediment control measures implemented at the site would include, at a minimum, the following:

- Establishing perimeter controls for any portion of the down-slope and side-slope perimeter where stormwater will be discharged from disturbed areas of the site.
- Establishing and using stabilized construction entrances and exits that control sediment discharges from the site. Ensuring that vehicles entering and exiting the site use such access points to prevent tracking of sediment onto roads or other areas that convey sediment to surface waters. Removing any sediment or other pollutants, including construction materials, from paved surfaces daily. Washing sediment or other pollutants off paved surfaces into storm drains would be prohibited.
- Establishing and using controls and practices to minimize the introduction of sediment and other pollutants to storm drain inlets that receive stormwater discharges from the site.

- Controlling sediment and other contaminants from dewatering activities. Discharges of dewatering wastes are prohibited unless treated in a sediment basin or similar control measure.

Each regulatory option includes pollution prevention measures that would minimize or prohibit the discharge of pollutants from a variety of sources and activities at C&D sites. Each option would prohibit discharges of construction wastes, trash, sanitary wastes, and wastewater from washout of concrete, paint, and other such materials. The regulatory options would also prohibit the discharge of fuels, oils, and other materials used in vehicle and equipment operation and maintenance. The discharge of wastewater from washing vehicles and equipment where soaps or solvents are used would be prohibited. The discharge of pollutants resulting from the washing of equipment and vehicles using only water would also be prohibited, unless wash waters were treated in a sediment basin or alternative control that provides equivalent or better treatment. Dischargers would be required to implement measures to minimize the exposure of stormwater to building materials, landscape materials, fertilizers, pesticides, herbicides, detergents, and other liquid or dry products. In addition, dischargers would be required to implement appropriate spill prevention and response procedures for these materials.

C. Options for BPT, BCT, BAT and NSPS

EPA considered the following three regulatory options for today's proposal.

- *Option 1*

Each C&D site subject to the rule would be required to implement the limitations described above in Section IX.B. In addition, certain larger sites would be required to install and maintain sediment basins or equivalent sediment controls. Specifically, for portions of sites that drain to one location and will have 10 or more acres disturbed at one time, dischargers would be required to install a sediment basin to control and treat the stormwater discharges. The proposed rule would impose minimum standards of design and performance for sediment basins. The basin would be required to provide storage for a calculated volume of stormwater (called the water storage volume) from a 2-year, 24-hour storm from each disturbed acre drained plus a sediment storage volume of at least an additional 1,000 cubic feet, until final stabilization of the disturbed area. Alternatively, a sediment basin

providing a water storage volume of 3,600 cubic feet per acre drained plus the sediment storage volume would be required. To ensure adequate retention time to facilitate settling of sediment particles, the proposed rule would require that the effective length of the basin must be at least four times the width of the basin and that the water storage volume be designed to drain over a period of at least 72 hours using a surface outlet (such as a skimmer), unless otherwise designated by the permitting authority. The size of the basin that would be required is based on the size of the drainage area that will have vegetation removed and soils disturbed (i.e., if the total drainage area is 15 acres, but only 13 acres of this area will have vegetation removed and soils disturbed during the course of the project and the remaining 2 acres will remain vegetated and stormwater is directed around both the disturbed area and the sediment basin, then the storage volume can be sized based on 13 acres).

In addition, the design of the sediment basin would be required to address site-specific factors such as amount, frequency, intensity and duration of stormwater runoff; soil types; and other factors affecting pollutant removal efficacy. For example, particle settling characteristics, and thus pollutant removal efficacy, can be affected by physical parameters of the basin such as inlet and outlet velocities, basin surface area, and basin depth and volume necessary to provide sufficient storage for sediment load and stormwater runoff. Effective erosion and sediment controls are generally recognized as including actions to divert stormwater away from disturbed areas of the site, so that sediment erosion is reduced and sediment controls, such as basins, are not overwhelmed by stormwater volumes.

To minimize carryover and discharge of suspended particles from the sediment basin, the basins would be required to incorporate an outlet device designed to remove water from the top of the water column in order to minimize the amount of sediment and other pollutants entrained in the discharge. This can be accomplished by using technologies such as a siphoning outlet, surface skimmer or floating weir.

Recognizing that there may be impediments to using sediment basins in some instances or that alternative approaches may provide better controls depending on site-specific conditions, the proposed rule would authorize dischargers to use alternative controls equivalent to sediment basins where approved by the permitting authority.

EPA encourages dischargers to use improved sediment basin designs that incorporate features such as baffles and to increase the length to width ratio of the basin to maximize detention time and settling. The use of these practices may significantly improve the performance of sediment basins in certain cases. The North Carolina Department of Transportation (NCDOT) has developed draft specifications for baffles in sediment basins (see DCN 43083). EPA solicits comments on whether porous baffles, as described in the draft NCDOT specifications, should be minimum requirements for all sediment basins nationwide. EPA also requests comments on the costs and effectiveness of baffles used in sediment basins, either alone or in combination with skimmers and polymer addition. EPA also solicits comments on the detention time requirements for sediment basins contained in today's proposal, and whether the proposed rule should include other specific detention time, overflow rate or other design or performance requirements for sediment basins. EPA also solicits comments on whether the regulation should require that sediment basins be designed to remove a specified particle size. EPA also requests comments on whether sediment basin designs should be required to address downstream channel erosion by requiring peak or discharge rates to match predevelopment conditions, and for what storm events such a standard should apply.

Option 1 is estimated to cost approximately \$132 million per year (2008 \$), not including costs for Alaska, Hawaii and the U.S. territories, and reduce discharges of pollutants by 670 million pounds annually. Monetized benefits of Option 1 are estimated to be \$18 million per year. The cost estimates for Option 1 only include costs for larger sediment basins in those states whose sizing requirements are less stringent than those contained in the proposal. These cost estimates do not include any additional costs for implementing skimmers or the additional volume for sediment storage. EPA assumed that these costs would not impact sediment basin costs significantly. Skimmers can be purchased from commercial suppliers, or fabricated on-site. Also not included are costs for deep ripping and decompaction of soils, and several other required BMPs that are not currently part of the CGP or most state permits. EPA solicits comments on the cost assumptions of Option 1. The efficacy of Option 1 (percent of raw stormwater

sediment load removed) may be underestimated because only the basins are modeled in the loading analysis. Removals due to other on-site BMPs have not been modeled or included in the analysis.

While developing and evaluating Option 1, EPA considered several possible variations for sediment basin requirements. One approach would have eliminated flexibility for dischargers to use a 3600 cf/acre basin in lieu of the 2-year, 24-hour basin. In effect, all sites required to install a sediment basin under Option 1 would have been required to construct a basin sized to treat runoff from the 2-year, 24-hour storm (or use equivalent control measures). EPA estimated that this variation of Option 1 would cost approximately \$1.09 billion per year. EPA also considered an approach that, in addition to specifying a particular size of basin, would require that the sediment basin be sized and constructed to enable settling of a specified-size particle—e.g., 10-micron particles. This approach would be a design standard rather than a numeric limitation on the sediment basin effluent. For example, the California Stormwater Quality Association Construction Handbook (see DCN 43017) contains an example of designing a sediment basin to remove a specified particle size standard based on wet sieve analysis for the 10 micron particle for a 10-year, 6-hour storm event. EPA estimates, using this approach, that sediment basins required to remove particles greater than 10 microns nationwide would cost approximately \$1.7 billion per year. More information about these potential sediment basin approaches is presented in the Development Document. EPA solicits comment on whether Option 1 or other variations described here would be appropriate regulatory approaches and, if so, why, based on the statutory requirements of CWA section 304, they should be considered to represent BPT, BCT, BAT, or NSPS level of control for this industry.

- *Option 2*

The requirements that would be established under Option 2 incorporate all of the Option 1 requirements. In addition, a numeric limit on turbidity of stormwater discharges would apply to sites that meet certain criteria for size of the site, average clay content of the soil (with clay content being defined as soil particles less than 2 microns in diameter), and rainfall erosivity factor ("R factor") as defined by the Revised Universal Soil Loss Equation (see *Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss*

Equation (RUSLE), United States Department of Agriculture, Agriculture Handbook Number 703, January 1997). Option 2 would establish a numeric effluent limit on the turbidity of stormwater discharges for any site that meets all three of the following criteria: (1) Average soil clay content of more than 10 percent; (2) annual R factor of 50 or more; and (3) has a size of 30 or more acres. The numeric turbidity standard would apply to discharges produced from rainfall events up to the local 2-year, 24-hour storm. Any volume in excess of the 2-year, 24-hour storm would be exempt from the turbidity standard. The turbidity limitation would apply to these sites in addition to the Option 1 requirements (i.e., such sites would also be required to implement the non-numeric erosion and sediment control measures described under Option 1). Under Option 2, dischargers would be required to monitor stormwater discharges for turbidity, which can be done either by using automated instrumentation or with a portable, hand-held turbidimeter or similar device. Sites with a common drainage location that serves an area with 10 or more acres of land disturbed land at one time that are not required to meet the turbidity requirement, either because the total size of the site is less than 30 acres, the R factor is less than 50 or the average clay content of soils is less than 10 percent, would be required to install sediment basins as described under Option 1. Site size for sites subject to the proposed turbidity limit is based on the total size of the site, not the amount of disturbed acres or some other subset of the site. Any site which is 30 acres or larger regardless of how much of the site will be disturbed would be subject to the turbidity limit if they also meet the R factor and soil clay content thresholds.

By considering the construction site's soil clay content, this option takes into account the pollutant reductions that are achievable using the erosion control measures and traditional sediment control measures (i.e., those other than active treatment systems) included in the proposed rule. These more traditional approaches to controlling stormwater discharges can be very effective in soils with low clay content where the entrained sediment is amenable to gravity settling. However, as the amount of clay in the soil rises, gravity settling processes are less effective and processes to enhance the removal of pollutants from stormwater are necessary. By applying the proposed turbidity limit in Option 2 to sites with 10% or more clay content, the proposed

rule would achieve significant reductions of the slowly settling or non-settleable particles and turbidity contained in stormwater. In order to remove these fine-grained particles from stormwater discharges, active treatment technologies, such as those described in Section VIII, typically would need to be employed. The information in the record shows that these systems can achieve low levels of turbidity in the stormwater discharges.

While it is impossible to predict the weather several months in advance of construction, for many areas of the country, there are definite optimal periods for conducting construction activities in order to limit soil erosion, such as a dry season when rain tends to fall less frequently and with less force. When feasible, this is the time to disturb the earth, so that the site is stabilized by the time the seasonal wet weather returns. The R factor is intended to reflect consideration of the amount and intensity of precipitation expected during the time the earth will be exposed.

The method for determining a site's R factor is based on the Universal Soil Loss Equation (USLE) developed by the U.S. Department of Agriculture (USDA) in the 1950s to help farmers conserve topsoil. The USLE has been updated to the Revised USLE (RUSLE). Using a computer model supported by decades worth of rainfall data, USDA established estimates of rainfall erosivity factors (R) for locations throughout the country. These R factors are used as surrogate measures of the impact that rainfall has on erosion from a particular site. The R factor represents the driving force for erosion, taking into consideration total rainfall, intensity and seasonal distribution of the rain. Isoerodent maps depicting the R factor in various parts of the country have been created by USDA and are included in Chapter 2 of Agriculture Handbook Number 703.

While developing and evaluating Option 2, EPA considered several possible variations for the applicability of a limitation on turbidity of stormwater discharges. One approach would replace the R factor criteria with one based on total annual rainfall for the site location. Under this approach, EPA preliminarily considered values of 20 inches and 40 inches of total annual rainfall. EPA considers the R factor approach better than total annual rainfall at addressing stormwater discharges because the R factor captures both rainfall energy (a function of the volume of rainfall and runoff) and intensity (which has direct bearing on the erosive power of a rainfall event). EPA has structured the regulatory

option accordingly. However, since R factors have not been calculated for all areas of Alaska and the U.S. territories, a criterion of 20-inches total annual rainfall (30-year average using National Weather Service records) has been retained as a substitute for R factor for construction sites in those locations unless an R factor applicable to the construction site is calculated.

EPA also considered approaches that would apply the turbidity effluent limitation to larger sites (e.g., 50 acres instead of 30 acres) or with higher clay content of the soil (e.g., 20 percent instead of 10 percent clay). More information about these potential approaches is presented in the Development Document. EPA solicits comment on whether Option 2 or other combinations of rainfall, clay content and acreage limitations like those described above would be more appropriate regulatory approaches and, if so, why, based on the statutory requirements of CWA section 304, they should be considered to represent BPT, BCT, BAT, or NSPS level of control for this industry. Another option would be to base Option 2 on disturbed acres, instead of the total site size. EPA solicits comments on this approach.

EPA evaluated the advantages and disadvantages of establishing a limitation on turbidity vs. total suspended solids (TSS) in stormwater discharges from construction sites. EPA selected turbidity for two reasons. First, EPA is specifically targeting fine silt, clay and colloidal particles in stormwater runoff. These particles have small diameters and frequently contain a surface charge that prevents agglomeration. As a result, these particles typically do not settle in sediment basins and are not effectively removed by conventional BMPs such as silt fences, which have a large pore diameter. Consequently, discharges from sites with appreciable clay soils may have low TSS concentrations but may still have high turbidity levels. Second, turbidity can be easily measured in the field while TSS requires collection of a sample and analysis in a laboratory. Since most BMPs and treatment systems are flow-through systems, TSS would not be a practical means of estimating compliance because permittees would not be able to verify whether or not they had met the standard before discharging. With turbidity, permittees can measure turbidity levels in discharges continuously and adjust treatment parameters accordingly or recycle effluent if they are in danger of exceeding the turbidity limit. For these reasons, EPA believes that turbidity is a

more appropriate measure of effectiveness and can be implemented more easily than TSS. EPA requests comments on this approach.

Option 2 is estimated to cost \$1.9 billion per year (2008 \$), not including costs for Alaska, Hawaii and the U.S. territories, and reduce discharges of pollutants by 27 billion pounds annually, with a sensitivity analysis estimate of 6.2 billion pounds annually. Monetized benefits of Option 2 are estimated to be \$333 million annually.

• Option 3

Under Option 3, all sites with common drainage locations that serve an area with 10 or more acres disturbed at one time would be required to comply with the turbidity effluent limitation (in addition to the non-numeric effluent limitations in Option 1). This option does not establish thresholds for R factor (or total annual rainfall) or soil type (i.e., clay content). Under this option, all other sites (i.e., sites with less than 10 acres disturbed at one time) would be required to implement the requirements described under Option 1 (for sites with common drainage locations that serve an area of less than 10 acres disturbed at one time).

Option 3 is estimated to cost \$3.8 billion per year (2008 \$), not including costs for Alaska, Hawaii and the U.S. territories, and reduce discharges of pollutants by 50 billion pounds annually, with a sensitivity analysis estimate of 11.1 billion pounds annually. Monetized benefits of Option 3 are \$470 million annually. EPA notes that its modeling of acres subject to the options evaluated is based on total site size instead of amount of disturbed area on a site. EPA does not have data that can be used to estimate the percentage of a site that is typically disturbed. For example, if a site is 15 acres, but only 7 acres were to be disturbed, then under Option 3 this site would not be subject to the turbidity standard. However, EPA has estimated costs for Option 3 for all sites that, in total, are more than 10 acres. Therefore, to the extent that EPA has overestimated the quantity of acres that would be subject to Option 3, EPA's estimates of costs, benefits and loadings reductions for turbidity controls under Option 3 would also be overestimated.

With regard to Option 3, depending on the location of the construction site and time of year, it is possible that relatively little rain would be expected during construction (based on historical average rainfall patterns) and perhaps dischargers could opt to not install active treatment systems. However, such an approach would expose permittees to the risk of discharging stormwater that

exceeds the turbidity limit. On the other hand, taking an overly precautionary approach could result in sites installing treatment equipment that sees little or no use. EPA seeks comment on this issue.

Also with regard to Option 3, EPA has also considered the availability of treatment systems capable of achieving the turbidity effluent limit, as well as whether there is sufficient vendor capacity to meet the demand that would be presented by extending the turbidity effluent limit to all construction sites disturbing more than 10 acres at a time. Option 3 means that substantial numbers of active treatment systems would need to be manufactured and mobilized, along with sizeable levels of vendor support, in a relatively short period of time as NPDES permits incorporating the ELGs and NSPS are issued.

EPA solicits comments on this issue.

D. Option Selection Rationale for BPT

EPA proposes to select Option 1 as the basis for establishing BPT effluent limitations. The requirements established by Option 1 are well-established for construction activities in all parts of the country and are generally consistent with and in some cases more stringent than the control measures currently in place under EPA's Construction General Permit. Some requirements of Option 1 are more stringent than many state general permits, while other requirements are less stringent than some state general permits. EPA has determined that Option 1 represents a level of control that is technologically available and economically practicable. EPA considered the non-water quality environmental impacts of this option and found them to be minimal and thus acceptable. Selecting Option 1 as BPT for this point source category is consistent with the CWA and regulatory determinations made for other point source categories, in that the Option 1 requirements represent limitations based on the average of the best performance of facilities within the C&D industry. *See Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1053–54 (D.C. Cir. 1978). As stated in Section III, EPA assesses cost-reasonableness of BPT effluent limitations by considering the cost of treatment in relation to the effluent reduction benefits achieved. EPA has determined that the pollutant reduction benefits achieved by Option 1 justify the costs. We have typically described this as dollars/pound and compare the results with other rules. The incremental costs of Option 1 are approximately \$132 million per year

(2008 \$). EPA anticipates that construction sites in approximately 11 states would incur costs to comply with the proposed Option 1 BPT requirements requiring sediment basins generally consistent with the EPA CGP. As noted above, the efficacy of this option may be underestimated.

EPA rejected Options 2 and 3 because EPA views BPT performance as the first level of technology-based control representing the average of the best performance. EPA's record does not indicate that meeting a turbidity limit, even for the subset of facilities identified in Option 2 would represent today's average of the best performance and it would not represent the BPT level of control for this point source category. EPA requests comment on what should be considered BPT for this category.

E. Option Selection Rationale for BAT and NSPS

1. Selection Rationale

EPA proposes to select Option 2 as the basis for BAT and NSPS. This option would require all C&D sites to implement the non-numeric effluent limitations described for Option 1, as well as requiring certain sites to meet a numeric limitation of 13 NTU (nephelometric turbidity units) to control turbidity for stormwater discharges. Turbidity is being regulated in this proposed rule as a nonconventional pollutant and an indicator pollutant for the control of other pollutants associated with sediment and materials on construction sites that can become entrained in stormwater discharges from construction sites, including metals and nutrients. Turbidity, measured as NTU, which in construction site runoff primarily reflects sediment, is a nonconventional pollutant because it is not identified as either a toxic or conventional pollutant under the CWA. See CWA section 301(b)(2)(F); 304(a)(4); 40 CFR 401.16; *Rybachek v. EPA*, 904 F.2d 1276, 1291–92 (9th Cir. 1990). Turbidity is “an expression of the optical property that causes light to be scattered and absorbed rather than transmitted with no change in direction of flux level through the sample * * * caused by suspended and colloidal matter such as clay, silt, finely divided organic and inorganic matter and plankton and other microscopic organisms.” 40 CFR 136.3; 72 FR 11200, 11247 (March 12, 2007). In this rulemaking, EPA is identifying turbidity as a pollutant of concern in construction site discharges. By providing a measure of the sediment entrained in stormwater discharges, turbidity is an indicator of

the degree to which sediment and other pollutants associated with sediment and found in stormwater discharges are reduced. Turbidity is also a more effective measure of the presence of fine silts, clays and colloids, which are the particles in stormwater discharges that EPA is specifically targeting in today's proposal.

Metals, nutrients, and other toxic and nonconventional pollutants are naturally present in soils, and can also be contributed by equipment/materials used during construction or by activities that occurred at the site prior to the construction activity. Many of these pollutants are present as particulates and will be removed with other particles. Dissolved forms of pollutants are often absorbed or adsorbed to particulate matter and can also be removed along with the particulates (i.e., sediment). EPA has determined that effluent limitations that reduce turbidity in the stormwater discharge will also achieve reductions of the other pollutants of concern. Demonstrating compliance with a turbidity limit would be relatively easy and inexpensive for construction site dischargers to implement. Hand-held turbidity meters (turbidimeters) can be used to measure turbidity in discharges, or data loggers coupled with in-line turbidity meters can be used to automatically measure and log turbidity measurement reducing labor requirements associated with sampling. In addition, the use of turbidity meters will provide dischargers with immediate, real-time information on the efficacy of their treatment systems and sediment control measures to facilitate timely adjustments of system operation where necessary.

The requirements of Option 2 have been demonstrated to be technologically available. Active treatment systems have been used and are currently being used at several hundred construction sites throughout the country. Construction sites where these active treatment systems have been used are primarily located in California, Oregon and Washington, with some in Florida, Maryland, Vermont and other states. Oregon requires sites to meet a 160 NTU benchmark if the site is discharging to a waterbody listed as not meeting applicable water quality standards under section 303(d) or a waterbody with a total maximum daily load (TMDL) for sediment and turbidity. Washington has turbidity benchmark limits that are set at values relative to the turbidity in the receiving stream. Benchmark requirements (e.g., in the context of the Oregon and Washington permits), as opposed to numeric effluent

limits, require the facility to take some action to address the potential water quality issue such as additional monitoring or BMP review and do not result in a permit violation. Vermont requires what it defines as “moderate risk” projects to take corrective action if turbidity exceeds 25 NTUs. Also, several other states have turbidity limitations or standards that are either in draft permits (such as California), are set relative to background levels (Georgia), or are set only for specific regions or specific waterbodies within the state (such as the Lake Tahoe Basin of California) or for specific construction projects (such as construction of a new runway at the Sea-Tac airport). To comply with these turbidity-based requirements, dischargers have used the active treatment systems described previously—electrocoagulation, polymer clarification, and chitosan-enhanced sand filtration, as well as other approaches. The information in the record demonstrates the efficacy of these treatment systems, showing that they consistently achieve very low levels of turbidity in stormwater discharges. A summary of existing state requirements are contained in the TDD.

EPA also considered the recommendations of the National Research Council (NRC). EPA commissioned the NRC to evaluate the NPDES stormwater program and make recommendations for improvement of the program. The Water Sciences and Technology Board released the report *Urban Stormwater Management in the United States* (Committee on Reducing Stormwater Discharge Contributions to Water Pollution, National Research Council, National Academies Press) in October of 2008. The report is the product of a 2-year process undertaken by a 15-member committee of national experts.

While the report did not specifically endorse numeric effluent limits for construction sites, the report did contain several recommendations, including that “Numeric enforcement criteria can be used to define what constitutes an egregious water quality violation at construction sites and provide a technical criterion to measure the effectiveness of erosion and sediment control practices.” The study continues to report that “A maximum turbidity limit would establish definitive criteria as to what constitutes a direct sediment control violation and trigger an assessment for remediation and prevention actions. For example, local erosion and sediment control ordinances could establish a numeric turbidity limit of 75 Nephelometric

Turbidity Units (NTU) as an instantaneous maximum for rainfall events less than an inch (or a 25 NTU monthly average) and would prohibit visible sediment in water discharged from upland construction sites. While the exact turbidity limit would need to be derived on a regional basis to reflect geology, soils, and receiving water sensitivity, research conducted in the Puget Sound of Washington indicates that turbidity limits in the 25 to 75 NTU can be consistently achieved at most highway construction sites using current erosion and sediment control technology that is properly maintained (Horner *et al.*, 1990). If turbidity limits are exceeded, a detailed assessment of site conditions and follow-up remediation actions would be required. If turbidity limits continue to be exceeded, penalties and enforcement actions would be imposed. Enforcement of turbidity limits could be performed either by state, local, or third party erosion and sediment control inspectors, or—under appropriate protocols, training, and documentation—by citizens or watershed groups.”

EPA recognizes that the turbidity limits discussed in the report are more like the action levels specified by Washington and other states, rather than binding numeric effluent limitations being proposed by EPA. However, EPA’s analysis of ATS effluent data from more than 6,000 data points indicates that a limit of 13 NTUs is technologically available.

California assembled a blue ribbon panel to evaluate, among other things, the feasibility of establishing numeric effluent limits from construction sites (see DCN 41010). The blue ribbon panel found that “It is the consensus of the Panel that active treatment technologies make Numeric Limits technically feasible for pollutants commonly associated with stormwater discharges from construction sites (e.g. TSS and turbidity) for larger construction sites. Technical practicalities and cost-effectiveness may make these technologies less feasible for smaller sites, including small drainages within a larger site, as these technologies have seen limited use at small construction sites. If chemical addition is not permitted, then Numeric Limits are not likely feasible.”

EPA’s selection of Option 2, which requires a turbidity limit only for larger sites, is therefore consistent with the panel’s conclusion. EPA notes that although the panel mentions that a numeric limit is not feasible without chemical addition (e.g., polymers) there are technologies available (such as

electrocoagulation) that do not use polymers. Further, data in the literature suggests that a somewhat higher limit (e.g., 50–150 NTU) may be achievable using enhanced sediment basin design practices without relying on ATS. An option based on this approach is discussed in more detail below.

The panel, in determining that numeric effluent limits are technically feasible, did express concerns, including cost-effectiveness for small sites, toxicity of treatment chemicals, and the potential for discharges with low TSS and turbidity into receiving waters with high background levels (such as in some arid and semi-arid areas) contributing to channel erosion. EPA has determined that Option 2 addresses these concerns, because the turbidity standard only applies to larger sites and does not apply in arid and semi-arid areas because of the R-factor applicability criteria. EPA is soliciting comment on the need for regulatory requirements or guidance to address the concerns regarding potential toxicity of treatment chemicals. EPA also solicits comments on whether and how toxicity concerns should factor into EPA’s BAT determination.

Based on the analysis conducted for this proposed rule, EPA believes that the requirements of Option 2 are economically achievable. Option 2 is projected to have a total industry compliance cost, once fully implemented in NPDES permits, of \$1.9 billion per year (2008 \$). Since EPA expects that the effluent guidelines requirements will be implemented over time as states revise their general permits, EPA expects full implementation within five years of the effective date of the final rule, currently required to be promulgated in December 2009, which would be 2014. EPA estimates that, once fully implemented, there will be nearly 82,000 firms that perform work falling within scope of Option 2. Average annual revenue for these in-scope firms is \$544.14 billion (2008 \$). Option 2 compliance costs are 0.35 percent of in-scope firm revenues. Of these 82,000 firms, 6,396 would incur costs under option 2. These firms have revenues of \$409.02 billion (2008\$) and costs are 0.46% of revenues for firms incurring costs.

Under Option 2, an estimated 774 firms (0.9 percent of all in-scope firms) are estimated to incur compliance costs exceeding 1 percent of annual revenue, and 76 firms (0.1 percent of in-scope firms) are expected to incur compliance costs exceeding 3 percent of revenue. When using EPA’s assumption that under normal business conditions firms can pass most of their compliance costs

along to customers (85 percent of costs for residential construction and 71 percent for non-residential), there are 20 firms estimated to incur (net) costs exceeding 1 percent of revenue, and no firms expected to incur (net) costs exceeding 3 percent of revenue.

EPA has attempted to analyze the secondary impacts on home buyers when costs are fully passed through. As part of this analysis, EPA converted compliance costs into the likely dollar increase in housing prices. Making assumptions about likely terms of financing, this was converted to an increase in the monthly mortgage payment, where the percent increase in home price is approximately equal to the percent increase in mortgage payment. This analysis assumes there is no change in the set of households that are new home buyers because of the proposed regulation. EPA then used income distribution data to estimate the change in the number of households in the market for a new home that would qualify to purchase the median and lower quartile priced new home under the higher monthly mortgage payment. This analysis was performed using the median and lower quartile priced new home for each metropolitan statistical area (MSA). For the MSA’s, the weighted average median priced for a home is \$322,000, and the percent increase would be 0.65%. In this way, EPA has attempted to characterize how the potential increase in mortgage payment may affect housing affordability. EPA estimated that 2,195 of these prospective home purchasers would no longer qualify to purchase a median priced home affected by the rule, and 3,243 would no longer qualify to purchase a new lower quartile priced home affected by the rule. However, this approach only looks at two specific points along the spectrum of housing prices and therefore does not represent the total number of households potentially impacted by the rule. EPA is interested in developing an analysis reflective of the number of households that would likely be adversely affected by the proposed regulation, and solicits comment on appropriate methodology and any data that would be required to conduct such an analysis. Based on our analysis thus far EPA believes that the secondary impacts to new home buyers are affordable.

Under normal business conditions with cost pass-through (85% residential and 71% non-residential) EPA estimates the number of firms expected to incur financial stress as a result of the regulatory requirements to be 147 firms which represents 0.2 percent of in-scope firms and 2.3 percent of firms incurring

costs under Option 2. A total of 103 firms are estimated to experience negative business value and be at risk of closure due to regulatory requirements, which represents 0.1 percent of in-scope firms and 1.6 percent of total firms incurring costs. These impact measures are not additive, as they evaluate different aspects of a firm's financial viability, and the same firm may be counted under more than one measure. EPA recognizes that this industry is subject to business cycles and performed an adverse business conditions analysis to assess the impacts during an economic downturn. The adverse business conditions case assumes no cost pass-through as well as other less favorable operating factors for the industry. No-cost pass through is a rigid assumption where all impacts are born by the permittee, and there are no secondary impacts on builders who buy lots or buyers of the finished construction. For the adverse case, the results for Option 2 show the number of firms expected to incur financial stress as a result of the regulatory requirements to be 479 firms, which represents 0.6 percent of in-scope firms and 8.3 percent of firms incurring costs under Option 2. A total of 662 firms are estimated to experience negative business value and be at risk of closure due to regulatory requirements, which represents 0.9 percent of in-scope firms and 11.4 percent of firms incurring costs. Nevertheless, given the measures of financial impact, in terms of percentage of in-scope firms and firms incurring costs, EPA considers the rule to be economically achievable by the construction industry. EPA requests comments on its economic achievability analyses and on its proposed determination that Option 2 is economically achievable.

EPA's analysis shows that Option 2 has acceptable non-water quality environmental impacts. The pollution prevention, sediment and erosion control measures included in the proposed rule, including the collection and treatment of stormwater at some construction sites, will not result in a significant incremental increase in the energy consumption, air emissions, or generation of solid waste at construction sites.

EPA has proposed to reject Option 1 as the basis for BAT and NSPS in part because it would not represent the best available or best demonstrated technology for controlling discharges from this industry. Narrative effluent limitations, such as those contained in Option 1, to prevent and minimize erosion and sediment dischargers have been a feature of NPDES permits for

many years. Controls are available and demonstrated that provide a higher degree of pollution reduction than Option 1 and consistently provide low turbidity values, making a numeric turbidity limit feasible. In addition, in considering economic achievability of the option, EPA believes that the measures of affordability EPA has used in the past, facility closure and firm failure, and the firm stress metric used in Regulatory Flexibility Analysis also considered here (percent of revenue lost and whether that measure is above 1 or 3 percent) demonstrate that Option 2 can be reasonably borne by the industry.

EPA has also proposed to reject Option 3 as the basis for BAT and NSPS, due primarily to the total industry cost (estimated at \$3.8 billion annually). Option 3, once fully implemented, would cost \$1.9 billion more annually than Option 2. EPA closely evaluated whether establishing a turbidity limit on all construction sites disturbing more than 10 acres at a time represents the BAT or NSPS level of control—and believes that it does not. Option 3 would require all construction sites, in every part of the country and at all times of the year, to meet a numeric effluent limitation on turbidity if the construction activity disturbs 10 or more acres of land at a time. Construction sites that have soils containing relatively little clay (e.g., a site in coastal Florida with sandy soils) or with low rainfall-runoff erosivity (such as those in certain parts of Idaho) can likely control the discharge of sediments and other pollutants through effective use of the erosion and sediment control measures included in the non-numeric effluent limitations being proposed today. With relatively little of the difficult-to-settle clay present, and with low rainfall energy, sediment production is expected to be low and EPA expects much of the sediment to be removed from stormwater through the use of effective sediment controls. Therefore, EPA believes that requiring these sites to meet a numeric turbidity limit, including the additional costs for monitoring that a numeric turbidity limit would impose, does not represent BAT for these sites. EPA solicits comments on this approach.

In light of the high total cost of Option 3 and the appropriateness of ELG and NSPS turbidity limits in arid areas and at construction sites where rainfall energy is low and soils contain little clay, EPA believes that Option 3 does not represent the best available or best demonstrated technology for the C&D point source category.

In summary, EPA believes that Option 2 is technologically available, economically achievable, and has acceptable non-water quality environmental impacts. EPA believes that establishing a numeric turbidity limitation on a segment of the point source category represents best available and best available demonstrated technology for the C&D industry, striking an appropriate balance that addresses the factors EPA is required to consider under the CWA and the nature of stormwater discharges from construction sites. In addition, EPA has determined that the non-numeric effluent limitations being proposed under Option 2 represent best available and best available demonstrated technology for all dischargers in the C&D industry.

Although EPA has proposed Option 2 as a basis for BAT and NSPS, EPA is soliciting comment on the appropriateness of the numeric turbidity limit of 13 NTUs and the technology basis (i.e., ATS) for Option 2. EPA has identified information that indicates that a limit in the range of 50–150 NTUs might be met by relying on passive, rather than active, treatment systems. Passive treatment systems consist of a number of techniques that do not rely on pumping of stormwater or mechanical filtration and that are not as complex, do not cost as much and do not utilize as much energy as ATS.

Data in the literature indicate that passive systems may be able to provide a high level of turbidity reduction at a significantly lower cost than active treatment systems. For example, McLaughlin (see DCN 41005) evaluated several modifications to standard sediment trap designs at the North Carolina State University Sediment and Erosion Control Research and Education Facility (SECREP). He evaluated standard trap designs as contained in the North Carolina Erosion and Sediment Control Manual utilizing a stone outlet structure as well as alternative designs utilizing a skimmer outlet and various types of porous baffles. Baffle materials tested included silt fence, jute/coconut and tree protection fence tripled over. Tests were conducted using simulated storm events in which sediment was added to stormwater at flows of 10 to 30 liters per second. McLaughlin found that a standard gravel outlet did not significantly reduce turbidity values. Average turbidity values in the basin were 843 NTUs, while average turbidity in the effluent was 758 NTUs using the standard outlet. Use of a skimmer instead of a standard gravel outlet reduced turbidity to an average of 353

NTUs. Additional tests were conducted to evaluate the addition of polyacrylamide (PAM) through the use of floc logs. Floc logs are a solid form of PAM which are designed to be placed in flowing water. They are typically anchored by a rope or by placing them in a mesh bag or cage either in open channels or in pipes. As the water flows over the floc logs, the PAM dissolves somewhat proportional to flow. The floc logs typically have substantial amounts of non-PAM components, which are intended to improve PAM release, maintain the physical integrity of the blocks and enhance PAM performance (McLaughlin—Soil Facts; Chemical Treatments to Control Turbidity on Construction Sites). McLaughlin found that addition of PAM to sediment traps resulted in average effluent turbidities of 152 NTUs using a rock outlet and 162 NTUs using a skimmer outlet. For one set of tests, use of a standard stone outlet along with PAM was able to attain an average effluent turbidity of 51 NTUs, while tests with jute/coconut mesh baffles with PAM were only slightly higher, at 71 NTUs.

Warner (see DCN 43071) evaluated several innovative erosion and sediment controls at a full-scale demonstration site in Georgia as part of the Erosion and Sedimentation Control Technical Study Committee (known as "Dirt II"). The Dirt II project consisted, among other things, of field monitoring as well as modeling of erosion and sediment control effectiveness at construction sites. The demonstration site was a 50-acre lot in a suburban area near Atlanta where a school was being constructed. In total, 22.5 acres of the site was disturbed. A comprehensive system of erosion and sediment controls were designed and implemented to mimic pre-developed peak flow and runoff volumes with respect to both quantity and duration. The system included perimeter controls that were designed to discharge through multiple outlets to a riparian buffer, elongated sediment controls (called seep berms) designed to contain runoff volume from 3 to 4 inch storms and slowly discharge to down-gradient areas, multi-chambered sediment basins designed with a siphon outlet that discharged to a sand filter, and various other controls. Extensive monitoring was conducted at the site. For one particularly intense storm event of 1.04 inches (0.7 inches of which occurred during one 27 minute period), the peak sediment concentration monitored prior to the basin was 160,000 mg/L while the peak concentration discharged from the sand filter after the basin was 168 mg/L.

Effluent turbidity values ranged from approximately 30 to 80 NTUs. Using computer modeling, it was shown that discharge from the sand filter, which flowed to a riparian buffer, was completely infiltrated for this event. Thus, no sediment was discharged to waters of the state from the sand filter for this event. For another storm event, a 25-year rainfall event of 3.7 inches occurred over a 2 day period. Effluent from one sand filter during this storm was 175 mg/L while discharge from a second sand filter was 100 mg/L, except for the first-flush data point occurring at the beginning of the storm event.

There are other references in the literature describing the various types of passive treatment systems and the efficacy of passive treatment systems. One potential application of a passive system would be to add liquid polymer, such as PAM, to the influent of a conventional sediment basin. This can be accomplished by using a small metering pump to introduce a pre-established dose of polymer in the influent pipe or channel. If the polymer is added in a channel far enough above the basin, then turbulent mixing in the channel can aid in the flocculation process. Otherwise, some sort of provision may need to be made to provide mixing in the basin to produce flocs. Polymers typically used in this particular application include PAM, chitosan, polyaluminum chloride (PAC), aluminum sulfate (alum) and gypsum. With any polymer, jar tests should be performed beforehand with soils present on the site in order to determine an appropriate polymer type and dosage.

The Auckland (New Zealand) Regional Council conducted several trials to evaluate the effectiveness of chemical flocculants and coagulants in improving settling of suspended sediment contained in sediment laden runoff from earthworks sites (Auckland Regional Council. The Use of Flocculants and Coagulants to Aid the Settlement of Suspended Sediment in Earthworks Runoff—Trials, Methodology and Design. Technical Publication 227. June, 2004). Trials were conducted using both liquid and solid forms of flocculants. Trials were initially conducted on two projects: a highway project and residential development.

The highway project (ALPURT) evaluated both a liquid polymer system and solid polymers. Liquid polymers evaluated were alum and PAC and solid polymers evaluated were all polyacrylamide products (Percol AN1, Percol AN2 and Percol CN1). Bench tests indicated that AN2 performed best among the solid polymers and that both

PAC and alum were effective in flocculating the soils present on the site.

Following bench testing of the polymers, liquid and solid dosing systems were developed. For the liquid dosing system, initial consideration was given to a runoff proportional dosing system which would include a weir or flume for flow measurement, an ultrasonic sensor and signal generating unit, and a battery driven dosing pump. These components, together with costs for necessary site preparatory work, chemical storage tanks and a secure housing, were estimated to cost approximately \$12,000 (1999 NZ \$) per installation. An alternative system was developed that provided a chemical dose proportional to rainfall. This rainfall driven system, which did not require either a runoff flow measurement system or a dosing pump, had a total cost of \$2,400 (1999 NZ \$) per installation.

The rainfall driven system operated by collecting rainfall in a rainfall catchment tray. Rainfall into this tray was used to displace the liquid treatment chemical from a storage tank into the stormwater diversion channel prior to entering the sediment basin. The size of the catchment tray was determined based on the size of the catchment draining to the basin, taking into consideration the desired chemical dosage rate obtained from the bench tests. Accumulated rainfall from the catchment tray fills a displacement tank that floats in the chemical storage tank. As the displacement tank fills with rainfall and sinks, liquid chemical is displaced from the chemical storage tank and flows via gravity to the dosing point.

Field trials of the liquid treatment system using alum were conducted at the ALPURT site. The authors report that the system performed "satisfactorily in terms of reduction of suspended solids under a range of rainfall conditions varying from light rain to a very high intensity, short duration storm, where 24mm of rainfall fell over a period of 25 minutes." Suspended solids removal for the intense storm conditions was 92% with alum treatment. For a similar storm on the same catchment with the same retention pond without alum treatment, suspended solids removal was about 10%.

Field trials at the ALPURT site were also conducted using PAC. In total, 21 systems were used with contributing catchments ranging between 0.5 and 15 hectares (approximately 1 to 37 acres). The overall treatment efficiency of the PAC treated basins in terms of suspended sediment reduction were

reported to be between 90% and 99% for ponds with good physical designs. The authors noted that some systems did not perform as well due to mechanical problems with the system or physical problems such as high inflow energy (which likely caused erosion or sediment resuspension) or poor separation of basin inlets and outlets. The suspended solids removal for all ponds incorporating PAC ranged from 77% to 99.9%, while the removal in a pond not incorporating PAC ranged from 4% to 12%. Influent suspended solids concentrations for the systems incorporating PAC ranged from 128 to 28,845 mg/L while effluent concentrations ranged from 3 to 966 mg/L. In comparison, influent suspended solids concentrations for the untreated ponds were approximately 1,500 mg/L while effluent concentrations were approximately 1,400 mg/L. The authors also noted that dissolved aluminum concentrations in the outflow from the basins treated with PAC, in most cases, were actually less than the inflow concentrations, and were also less than the outflow concentrations from the untreated ponds. Outflow aluminum concentrations in the PAC treated ponds ranged from 0.01 to 0.072 mg/L. The ALPURT trials generally indicate that a relatively simple, passive treatment system using liquid polymers can result in significant reductions in suspended sediment concentrations, even with influent concentrations in excess of 25,000 mg/L. Although some effluent concentrations were as high as several hundred mg/L, the majority were below 100 mg/L. This indicates that a passive liquid polymer system, perhaps coupled with a gravity sand filter or distributed discharge to a vegetated buffer (as described by Warner, 2001) could be used to meet a numeric effluent limit for turbidity at a significantly lower cost than ATS. EPA solicits comments on this issue.

Field trials of polymer treatment using solid forms of PAM by the Auckland Regional Council were conducted at the ALPURT site as well as a residential project (Greenhithe). Trials at the ALPURT site were conducted by placing the floc blocks in plastic mesh bags in plywood flumes through which the runoff from the site was directed. Initial trials encountered problems due to the high bedload of granular material, which accumulated against and stuck to the floc logs inhibiting solubility of the polymer. The system was reconfigured to incorporate a forebay before the flumes in order to facilitate removal of the bedload fraction. The authors noted that while

this system was generally effective at low flow rates, it was difficult to control dosage rates and sediment accumulation in the flumes continued to be a problem. The authors concluded that "Floc Block treatment has a high potential for removal of suspended solids from stormwater with consistent quality, particularly for small catchments; when flow balancing can be achieved prior to treatment."

Field trials were also conducted at the Greenhithe site, which was a 4 hectare (approximately 10 acre) residential project. As with the ALPURT trial, a flume was constructed and placed in the flow path immediately before the sediment basin. Results of the trials were mixed. The authors noted several problems with the floc logs, such as drying and breakdown of the logs due to prolonged exposure to the air and softening and breakdown during periods of prolonged submergence. Sediment accumulation around the logs and breakdown continued to be a problem. Incorporating an effective sediment forebay and limiting bedload are suggestions for increasing performance. In addition, the authors recommended soaking the floc logs in water to allow hydration before use and periodic spraying with water as ways to limit drying of the floc logs. EPA notes that similar problems with floc logs have been noted by some construction site field inspectors (see DCN 41109) and by McLaughlin (see DCN 43082). EPA solicits comments on the effectiveness of floc logs as components of passive treatment systems. EPA also solicits comments on any operational or maintenance considerations that should accompany use of solid forms of polymers.

Results of the PAC studies at the ALPURT sites have led the Auckland regional council to require chemical treatment for any site that produces more than 1.5 metric tons of (net) sediment as determined by the Universal Soil Loss Equation. Sites that exceed this threshold will require chemical treatment in accordance with a site chemical treatment plan. Exceptions include projects of less than one month duration and sites with granular volcanic soils and sand areas. Chemical treatment may also not be required if bench testing indicates that chemical treatment will provide no improvement in sediment removal efficiency (see DCN 41111). EPA solicits comments on the approach adopted by the Auckland Regional Council and its applicability to construction and development site discharges in the U.S.

In addition to (or in place of) adding polymers to sediment basins, polymers

can be introduced on other areas of the site as a soil stabilization measure or as components of other BMPs. For example, McLaughlin (DCN 41005) evaluated adding polymer to check dams on highway projects. Various other researchers evaluated PAM as a soil stabilization agent. There are a number of documents in the administrative record for this rulemaking describing the use of PAM.

The data from these studies indicate that various types of passive treatment systems that utilize both solid and liquid forms of polymers have been reported to be effective in reducing turbidity levels in discharges from construction and development sites. EPA is therefore soliciting comments on whether a turbidity limitation of 50 to 150 NTUs (or some other value) based on passive treatment systems should instead serve as the basis for BAT limitations and NSPS. EPA solicits comments on the costs, pollutant removal effectiveness and effluent quality attainable by passive treatment systems and on the technical basis for establishing a particular a numeric turbidity limit of 50 to 150 NTUs (or some other value). EPA also solicits comment on the ability to reliably meet a 50 to 150 NTU limit using passive systems on different types of construction and development sites and in locations across the country and on the appropriate monitoring requirements that should accompany passive treatment systems. EPA also solicits comments on the applicability of a 50 to 150 NTU (or some other value) standard. Specifically, since passive systems may be less costly and require less expertise and operator supervision than active treatment systems, EPA solicits comments on whether a standard based on passive systems should apply more broadly and to more sites than are covered by EPA's proposed Option 2, or if EPA should establish a tiered set of turbidity limitations, reflecting variation of site parameters such as site size, rainfall patterns, soil types, soil erodibility, or some other parameter and the specific thresholds that should apply to such parameters. EPA also requests comment on whether it should develop an enhanced non-numeric limitation based on the types of passive technologies discussed above without establishing a specific numeric limit, as well as whether it should consider an "action level" based approach such as is required by Washington and several other states through their construction general permits. EPA further requests comment on the feasibility and burden

on permitting authorities of an “action level” established nationally.

2. Definition of “New Source” for the Construction and Development Category

EPA interprets the definition of “new source” at CWA section 306(a)(2) as not including discharges associated with construction activity. Section 306(a)(2) of the CWA defines “new source” as “any source, the construction of which is commenced after publication of proposed regulations * * *”. The plain language of section 306 excludes C&D sites because a construction site cannot itself be constructed. Further, the term “source” is defined in 306(a)(3) of the CWA to mean “any building, structure, facility, or installation * * *” or in other-words sources that are the product of the construction, not the construction activity itself. Additionally, there is an independent definition of “construction” in section 306(a)(5). If construction sites were intended to be “new sources,” the Agency finds it illogical that there would be a separate definition for “construction” or that there would be a requirement in section 306 of the CWA that “sources” be “constructed” prior to becoming “new sources.”

Though EPA interprets the CWA not to apply NSPS under section 306 of the CWA to the C&D point source category, the District Court order enjoins EPA to propose and promulgate NSPS. Therefore, EPA proposes to define “new source” for purposes of part 450 as any source of stormwater discharge associated with construction activity that itself will result in an industrial source from which there will be a discharge of pollutants regulated by a new source performance standard in subchapter N other than today’s rulemaking. (All new source performance standards promulgated by EPA for categories of point sources are codified in subchapter N). The definition of new source proposed today for purposes of part 450 would mean that the land-disturbing activity associated with constructing a particular facility would itself constitute a “new source” when the facility being constructed would be a “new source” regulated by new source performance standards under section 306 of the CWA. For example, construction activity that builds a new pharmaceutical plant covered by 40 CFR 439.15 would be subject to new source performance standards under 40 CFR 450.24.

F. Option Selection Rationale for BCT

EPA is proposing to establish BCT requirements equivalent to BPT. As

discussed in IX.C above, the requirements of the proposed BPT have been demonstrated to be technologically available and EPA’s analyses show that the requirements are economically achievable.

Establishing BCT effluent limitations for a point source category begins by identifying technology options that provide additional conventional pollutant control beyond that provided by application of BPT effluent limitations. Conventional pollutants under the CWA are biochemical oxygen demand (BOD₅), total suspended solids (TSS), fecal coliform, pH, and oil and grease. CWA section 304(a); 40 CFR 401.16. Stormwater discharges, if not adequately controlled, can contain very high levels of TSS. In addition, many of the construction materials used at the site can contribute BOD or oil and grease. Fecal coliform can also be present at elevated levels, due to natural sources (contributed by animal wastes) or if stormwater is not segregated from sanitary waste facilities. See Section VII for additional discussion of pollutant sources.

EPA evaluates the candidate BCT options by applying the two-part BCT cost test. The first part of the BCT cost test is the POTW test. To “pass” the POTW test, the cost per pound of conventional pollutant discharges removed in upgrading from BPT to the candidate BCT must be less than the cost per pound of conventional pollutant removed in upgrading POTWs from secondary treatment to advanced secondary treatment. Using the RS Means Historical Cost Indices, the inflation-adjusted POTW benchmark (originally calculated to be \$0.25 in 1976 dollars) is \$0.92 (2008 \$). To examine whether an option passes this first test, EPA calculates incremental values of the candidate option relative to the proposed BPT (Option 1). EPA calculated the incremental cost per pound of conventional pollutants removed (\$/lb TSS) for Option 2 to be \$0.068. Since this result is less than the POTW benchmark, Option 2 passes the first part of the two-part BCT cost test. EPA also calculated the incremental cost per pound of conventional pollutants removed for Option 3, which is \$0.074. Therefore, Option 3 also passes the first part of the BCT cost test.

To pass the second part of the BCT cost test, the industry cost effectiveness test, EPA computes a ratio of two incremental costs. The numerator is the cost per pound of conventional pollutants removed by the BCT candidate technology relative to BPT. The denominator is the cost per pound of conventional pollutants removed by

BPT relative to no treatment (i.e., raw wasteload). As in the POTW test, the ratio of the numerator divided by the denominator is compared to an industry cost benchmark. The industry cost benchmark is the ratio of two incremental costs: The cost per pound to upgrade a POTW from secondary treatment to advanced secondary treatment, divided by the cost per pound to initially achieve secondary treatment from raw wasteload. If the calculated ratio is lower than the industry cost benchmark of 1.29 (i.e., the normalized cost increase must be less than 29 percent), then the candidate technology passes the industry cost test. The calculated ratio for Option 2 is 4.46; therefore, it fails the second part of the BCT cost test. The calculated ratio for Option 3 is 4.81; therefore, it also fails the second part of the BCT cost test. Therefore, EPA is proposing to set BCT equal to Option 1.

EPA estimated loading reductions, which are used as the basis of the BCT cost test (as well as the removals, water quality impacts and monetized benefits analysis), by using a model site approach and modeling soil erosion using the Revised Universal Soil Loss Equation (RUSLE). An alternative approach would be to estimate removals on a concentration basis by comparing average effluent TSS concentrations in construction site discharges under baseline conditions to concentrations following EPA’s candidate BCT technology options. EPA could then estimate total stormwater treatment volumes and, based on the change in concentrations following treatment, determine the total load of conventional pollutants removed.

EPA did not use a concentration based approach because a nationally representative database of discharge data from construction sites does not exist and EPA believes that the data from several states identified in the literature is inadequate to use as a basis for national estimates. Instead, EPA used RUSLE to estimate soil erosion rates from construction sites. EPA chose to use RUSLE because it is a nationally-recognized model that is based on extensive field data. RUSLE, and its predecessors and variants (such as the Universal Soil Loss Equation (USLE) and the Modified Universal Soil Loss Equation (MUSLE)), have been widely used to estimate erosion rates from agricultural areas. The Office of Surface Mining has developed guidelines (see DCN 41113) for using RUSLE on mine lands, construction sites and reclaimed areas and RUSLE has been widely used to estimate soil erosion rates from these areas. RUSLE estimates soil erosion

rates based on a number of input parameters. These input parameters are the rainfall-runoff erosivity factor (R), the soil erodibility factor (K), slope length factor (L), slope steepness factor (S), cover-management factor (C), and practice support factor (P). In developing estimates of soil erosion rates, EPA used a mix of data sources as well as estimates based on best professional judgment (BPJ). For R, EPA used the RUSLE 2 database (RUSLE 2 ARS Version January 19, 2005, Program Database) to extract values for each of the indicator cities modeled. For K and S, EPA used STATSGO soil survey data for each of the indicator cities modeled. For S, EPA inventoried STATSGO soil survey data for over 20 million acres of land surrounding eleven indicator cities to determine area-weighted average slopes present. EPA used the average slope value to calculate the loadings estimates, pollutant loading reductions and water quality changes and associated benefits contained in today's proposal. EPA also calculated a low slope estimate and a high slope estimate in order to evaluate how variation in slope values would affect the results. So as not to use the lowest slope values reported or the highest slope values reported in the STATSGO data, EPA calculated a low slope value as the average of the range of low slope values reported and the overall average slope calculated for the area. Likewise, EPA calculated a high slope estimate as the average between the range of the highest reported slope values reported and the overall average slope calculated for the area. EPA estimated baseline loads and pollutant load reductions using the high and low slope estimates, but did not determine water quality improvements or benefits using these values. For L, EPA assumed a range of slope lengths based on BPJ. For C and P, EPA used BPJ to select values contained in the SEDCAD documentation (SEDCAD 4, Design Manual and User's Guide, Warner, R.C. *et al.* 2006). For C, EPA used a value of 1.0, which corresponds to bare soil. For P, EPA used a value of 0.9, which represents a "Roughed and Irregularly Tracked" soil surface.

EPA recognizes that alternate reasonable assumptions might substantially lower the estimated erosion rates, however, we believe that our assumptions based on BPJ are reasonable. EPA notes that the RUSLE estimates developed in support of the BCT calculations are sensitive to the BPJ assumptions for P, C, and L. EPA assumed bare soil conditions with no soil cover for the duration of the construction project, which was

assumed to be 9 months. EPA also assumed that 90% of the construction project would be disturbed. EPA has not identified a data source that indicates typical values on construction sites for any of these parameters.

Changing C from 1 to some other value to reflect cover present on a portion of the site would reduce the erosion estimates for that portion of the site that has been covered. As an example, for subsoil on a 6% gradient with straw mulch at 1 ton per acre, the value of C may be 0.2. This would lower the erosion estimates for that portion of the site that has been covered by a factor of 5. EPA expects that some portion of the site would be bare soil for the duration of the construction period, while other portions of the site would have cover installed. EPA therefore recognizes that its estimates of sediment generation are tied to the BPJ assumptions associated with some of the RUSLE parameters and solicits data on the percentage of sites of different sizes that are likely to be bare soil vs. containing various types of cover, and the amount of time these conditions would be present.

Changes in P would also affect erosion rates. The values selected for P would reflect management practices used on the site such as silt fences, terraces and straw bale barriers. P is best determined using the RUSLE program, since values vary based on location. For example, in Lexington, Kentucky, the P value for contour furrowing with moderate ridge height on a 300 foot hillslope with a 10% gradient and hydrologic soil group B on nearly bare soil is 0.89. This value assumes no silt fences, terraces, straw bale barriers or other perimeter controls. Because P factors are usually associated with agricultural management practices, it is not clear to EPA how to compute a P value that would reflect the use practices common on construction sites. EPA solicits comments on this issue. As an alternate example of how P might change, if 50% cover were to be applied to the above example for Lexington, Kentucky, then the P value would change from 0.89 to 0.58, lowering the estimated soil erosion rates by 35% (not accounting for any effects that changes in cover would have on the other parameters in the model).

Likewise, changes in estimates for slope and slope length would change the erosion rate estimates. EPA notes that the United States Department of Transportation (USDOT) specifies maximum slope lengths for flows to silt fences, which range from 25 feet on a 50% slope to 500 feet on a slope of less than 2% for a 30-inch silt fence

(USDOT. 1995. Best management practices for erosion and sediment control. Report No. FHWA-FLP-94-005. Eastern Federal Lands Highway Design, U.S Department of Transportation, Sterling, Virginia), which are generally consistent with the BPJ slope lengths selected by EPA, which range from 150 to 425 feet. Maximum slope lengths can be even longer if super silt fence is used. Maryland Department of the Environment (MDE) specified maximum slope lengths for super silt fences ranging from 250 feet on a 50% or greater slope to 1,500 feet on a slope between 10 and 20%. For slopes less than 10%, there are no limitations on maximum slope lengths when super silt fence is used (see Table 7-14 of the TDD). In contrast, the March 18, 2008 draft California construction general permit would require dischargers for Risk Level 2 and 3 sites to apply linear sediment controls along the toe, face and at the grade breaks of exposed and erodible slopes. Maximum sheet flow lengths would be 20 feet for slopes between 0 and 25%, 15 feet for slopes between 25 to 50% and 10 feet for slopes over 50%. If EPA were to make different assumptions about slope length, or use different data to estimate slopes, this could significantly lower the soil erosion estimates. EPA solicits comments on using the USDOT, MDE, draft California, or other data or recommendations as appropriate bases for estimating slope lengths likely to be present on construction sites. EPA also solicits data indicating slope lengths as a function of slope present on actual construction sites as well as other methods to approximate slope lengths. It has been suggested that using the average slope value from STATSGO for areas surrounding EPA's indicator cities may not reflect the possibility that permittees may choose to select land that has flatter slopes than the average values calculated from the STATSGO data, or that permittees may quickly grade sites to be a flatter slope than the average values calculated from the STATSGO data before exposed soil is exposed to significant rainfall. EPA notes that in these cases, the slope length on these sites may be longer than the values estimated by EPA. Conversely, using the average slope value from STATSGO for areas surrounding EPA's indicator cities may not reflect steeper slopes that may be present on projects such as infill developments within existing urban or suburban areas. These sites may not have been developed earlier because flatter land was available to developers.

However, as development progresses outward from the urban core and land becomes less available, it is plausible to assume that undeveloped areas with steeper slopes may be developed. In these cases, slope lengths may be shorter than those estimated by EPA.

While EPA chose to use the RUSLE model because a nationally representative database of discharge data from construction sites does not exist, EPA did compare available data with its RUSLE model results. EPA identified several sources of discharge data. Table 5–1 of the TDD lists eight studies from six states (Maryland, Pennsylvania, Washington, Georgia, Texas and Ohio) that contain TSS data from construction site discharges. These studies show mean inflow TSS concentrations ranging from 359 to 17,500 mg/L, with a mean TSS concentration from all studies of 3,681 mg/L. Additionally, during the current rulemaking, EPA collected discharge data from two vendors and the Oregon Department of Environmental Quality associated with ATS systems on 17 sites located in the states of Oregon, Washington and California. These data show NTU measurements in the influent to the ATS ranging from 0.3 to 4,816 NTUs, with most measurements in the hundreds of NTUs. Although relationships between TSS and turbidity are highly site-specific, it has been suggested that TSS concentrations are roughly 3 times turbidity measured in NTUs. Using this conversion for the ATS data, influent concentrations ranged from approximately 1 to 14,400 mg/L, with most measurements below 2,000 mg/L. EPA also identified data in two studies discussed earlier in this notice. On a site located in Fulton County, GA, Warner found that influent to a basin for a 1.04 inch storm (with 0.7 inches falling in a 27 minute period) had a peak TSS concentration of 160,000 mg/l. For the Auckland monitoring studies, influent concentrations for ponds not using chemical treatment ranged from 680 to 1,500 mg/L. Influent concentrations to ponds utilizing chemical addition ranged from 128 to 28,845 mg/L.

In comparison, EPA's RUSLE model results for the 11 indicator cities ranged from a low of 5,984 mg/L in Albany, New York (using the low slope estimates) to a high of 283,417 mg/L in Las Vegas, Nevada (using the high slope estimate). For the average slope value, which is the basis for the load reduction, water quality improvement and benefits estimates contained in today's proposal, concentration values ranged from a low of 9,874 mg/L in Albany, New York to a high of 190,872

mg/L in Las Vegas, Nevada, with a median of 78,516 mg/L. These results are presented in the record (see DCN 41138).

Moreover, results from Seattle, WA from one of the eight studies mentioned above (Horner, Guerdy, and Kortenhoff, 1990, DCN 01350) can be compared with EPA's model results for Seattle. In Horner, the mean inflow TSS concentration was 17,500 mg/L. Using the RUSLE model, the modeled concentration was 125,593 mg/l.

EPA also compared its estimates of effluent concentrations from a standard sediment basin (without ATS) to available data. Warner monitored sediment basins in Georgia and noted TSS concentrations in basin effluents ranging from 100 to 20,000 mg/L with effluent turbidity values ranging from 125 to 3,500 NTUs. Data from the Auckland study found conventional sediment basin effluent concentrations of about 1,400 mg/L. Data from Horner, Guerdy and Kortenhoff, 1990, Schueler and Luginbill, 1990, and Jarrett, 1996 give mean effluent concentrations ranging from 63 mg/L to 876 mg/L, with a mean concentration of 365 mg/L (see DCN 41138). In addition, 2005 DMR data from 120 construction sites in King County, WA (Seattle) show a median effluent concentration of 9.2 NTU and a mean concentration of 43.11 NTU (which corresponds to about 30 mg/L to 130 mg/L using the rough conversion factor referenced above). See DCN 41138 for these DMR data. EPA solicits comments on the representativeness of the Seattle data as a basis for estimating sediment basin effluent concentrations, since it is EPA's understanding that this data consists of grab samples collected within 24 hours of a storm event (consistent with the Washington monitoring requirements) rather than flow-weighted or time-weighted composite samples collected during the entire effluent hydrograph. Likewise, EPA solicits comments on the other references cited above, and whether these studies should be considered representative of discharges from all areas of the country.

In comparison, EPA's RUSLE model and sediment basin removal calculation results for the 11 indicator cities ranged from a low effluent concentration of 2,992 mg/L in Albany, New York (using the low slope estimate) to a high of 79,585 mg/L in Denver, CO (using the high slope estimate). For average slope value, which is the basis for the load reduction, water quality improvement and benefits estimates contained in today's proposal, concentration values ranged from a low of 4,937 mg/L in Albany, New York to a high of 61,286

mg/L in Denver Colorado, with a median of 34,357mg/L. These results are presented in the record (see DCN 41138).

EPA is concerned about the significant difference between its RUSLE modeled results and the basin influent and discharge data from vendors, the state of Oregon, DMR data from King County and available studies, and the effect this could have on EPA's estimates of loadings, monetized benefits, and projected water quality impacts. EPA assumes this difference is a reflection of both those parameters in RUSLE for which EPA used its professional judgment (e.g., cover, practices and slope length), and the possibility that the measured values reported in the literature are not representative of average influent and sediment basin effluent concentrations for the range of storm events likely to occur for the duration of the construction project.

To address this concern, EPA conducted a sensitivity analysis to explore the potential impacts on its loadings analysis by revising several of the RUSLE assumptions. EPA changed its assumptions for the C factor and revised the slope length estimates to be consistent with the USDOT reference. For C, EPA assumed that half of the site was in bare soil conditions (with a C of 1) while the other half of the site had a C of 0.12 for sites with less than 5% slope or 0.06 for sites with greater than 5% slope. For slope lengths, EPA fit a curve to the USDOT data for maximum slope lengths for 30 inch silt fence and determined slope lengths for each model site based on the STATSGO average slope present. Using these assumptions, estimated load reductions for Option 2 were 6.2 billion pounds and estimated load reductions for Option 3 were 11.1 billion pounds. This represents a 77% reduction for Option 2 and a 78% reduction in estimated removals for Option 3, as compared to EPA's primary analysis. EPA solicits comments on this sensitivity analysis.

EPA notes that this sensitivity analysis does not capture the full range of uncertainty in its RUSLE based analysis as compared to available data. For example, looking just at Seattle, WA, one of EPA's 11 indicator cities, for which data are also available in Horner, Guerdy, and Kortenhoff, 1990, the measured influent value of 17,500 mg/L is about a factor of seven lower than EPA's calculated average influent value of 125,593 mg/L, while for the effluent, the measured value is 626 mg/L, which is about a factor of 57 below EPA's calculated effluent value of 36,422 mg/L. During the SBREFA outreach, URS

(on behalf of the National Association of Homebuilders) used alternative values for C, P, slopes and slope length and calculated sediment erosion rates that were lower by a factor of about 100 than EPA's estimates. EPA requests comment on all aspects of its RUSLE analysis and the sensitivity analysis.

EPA requests comment on all aspects of its modeling approach, particularly its input values. Additionally, EPA is interested in any other sources of sediment basin influent and effluent concentration data from construction sites. This data should also include information on the location of the site, site characteristics, weather patterns (specifically the volume and intensity of storms) and the timing of sampling with respect to storm events.

X. Methodology for Estimating Costs to the Construction and Development Industry

In developing today's proposed rule, EPA has used numeric models to estimate the costs of compliance with potential regulatory approaches. This approach was used to estimate the incremental costs associated with the regulatory options at the state and national level.

In order to estimate costs to different segments of the industry, EPA developed nine model project types. These nine model project types are: Small, medium and large transportation; small, medium and large residential; and small, medium and large non-residential. Small projects are those less than 10 acres, medium projects are 10 or more but less than 30 acres, and large projects are 30 or more acres. Using the NOI data discussed in Section VI.D, EPA developed a national distribution of construction projects and determined the median project size (in acres) of each of the nine model project types. Using estimates of the annual quantity of acres of new developed land determined from the NLCD data (discussed in Section VI.B.), EPA determined the number of model projects in each of the nine categories in each state (excluding Alaska, Hawaii and U.S. territories). Detailed results of this analysis are discussed in the Development Document.

For estimating baseline conditions, EPA evaluated each state's erosion and sediment control requirements to determine the size of sediment basins currently required in each state. For each of the model projects within each state, EPA calculated the size of the sediment basin that would be required. When a state's sediment basin requirements were based on containing runoff from a specific size of storm

(such as runoff from the 2-year, 24-hour storm), EPA used one indicator city in each state and obtained rainfall data from various NOAA sources (see discussion on rainfall data in Section VI.F). EPA used the rainfall data for each indicator city for all model projects within a given state. To determine runoff quantities, EPA calculated a runoff coefficient for each state (see discussion in the Development Document for detailed information on these calculations). While EPA acknowledges that using one indicator city to represent rainfall conditions in an entire state is a somewhat simplified approach, it does capture the range of precipitation that occurs across the country and serves as a reasonable method of estimating the costs of the regulatory options.

For each of the regulatory approaches considered, EPA determined the sediment basin volume (in cubic feet) that would be required for each of the model projects in each state. Using data on sediment basin costs, EPA estimated the increase in costs over baseline requirements for each model project in each state. Using the number of model projects in each state, EPA estimated the total costs due to larger sediment basins in each state.

For determining costs for options that include numeric effluent limits, EPA obtained data from vendors of stormwater treatment systems. The technology EPA used as a basis for estimating costs is chitosan-enhanced sand filtration, one type of active treatment system. Information in the record indicates other active treatment technologies have comparable costs. Using data submitted by the vendors, EPA determined a cost for treating stormwater for each of the model projects that would be expected to be subject to the turbidity limit. These costs include treatment chemical costs, labor costs and equipment rental costs, as well as sediment disposal and monitoring costs. However, EPA did not cost these items separately for each model project type. Rather, EPA concluded from examining these data that the average cost across all projects using chitosan-enhanced sand filtration is \$0.02 per gallon treated. This includes all of the costs that would be incurred by the operator to install, operate, maintain and remove the treatment systems. Using NOAA data on average annual rainfall for one indicator city within each state, and using state-specific runoff coefficients, EPA determined, for each state, the volume of stormwater that would require treatment for each of the nine model projects. EPA then estimated the costs

for treating stormwater from each model construction site within each state based on the \$0.02 per gallon estimate. EPA also included additional costs for installing storage necessary to impound runoff from the 2-year, 24-hour storm event, if this volume was greater than the sediment basin storage volume currently required in each state. Using the number of model construction projects within each state, EPA then determined the total costs for treatment at the state and national level.

Chapter 9 of the Development Document contains a more detailed discussion of the EPA's costing approach.

XI. Economic Impact and Social Cost Analysis

A. Introduction

EPA's Economic Analysis (see Supporting Documentation) describes the impacts of today's proposed rule in terms of firm financial performance, firm closures, employment losses, and market changes. In addition, the report provides information on the impacts of the proposal on sales and prices for residential construction. The results from the small business impact screening analysis support EPA's implementation of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). The report also presents identified, quantified, and monetized benefits of the proposal as described in Executive Order 12866.

This notice includes related sections such as the cost-effectiveness analysis in Section XII, benefits analysis in Section XV, and benefit-cost analysis in Section XVI. In their entirety, these sections comprise the economic analysis (referred to collectively as the "C&D economic analysis") for the proposed rule. EPA's Environmental Assessment provides the framework for the monetized benefits analysis. See the complete set of supporting documents for additional information on the environmental impacts, social costs, economic impact analysis, and benefit analyses.

The C&D economic analysis, covering subsectors that disturb land (NAICS 236 and 237), uses information from, and builds upon, the 2002 proposed rule (67 FR 42644; June 24, 2002) and the 2004 withdrawal of the proposed rule (69 FR 22472; April 26, 2004). In addition to CWA requirements, EPA has followed OMB guidance on the preparation of the economic analyses for federal regulations to comply with Executive

Order 12866. See section XIX of today's notice.

B. Description of Economic Activity

The construction sector is a major component of the United States economy as measured by the gross domestic product (GDP), a measure of the output of goods and services produced domestically in one year by the U.S. economy. Historically, the construction sector has directly contributed about five percent to the GDP. Moreover, one indicator of the economic performance in this industry, housing starts, is also a "leading economic indicator," one of the indicators of overall economic performance for the U.S. economy. Several other economic indicators that originate in the C&D industry include construction spending, new home sales, and home ownership.

During most of the 1990s, the construction sector experienced a period of relative prosperity along with the overall economy. Although cyclical, the number of housing starts increased from about 1.2 million in 1990 to almost 1.6 million in 2000, with annual cycles during this period. (U.S. Census Bureau, "Current Construction Reports, Series C20—Housing Starts," 2000. <http://www.census.gov/const/www>). At the beginning of the 21st century, the economy began to slow relative to previous highs in the 1990s. This slower economic growth had a negative impact on construction starts for new commercial and industrial projects. Driven in part by low mortgage interest

rates, consumer spending for new homes continued to remain strong through 2005. However, speculative buying and relaxed lending standards helped create a market bubble that burst in 2006. Currently the housing market is in an economic downturn, yet some near term future projections are for renewed growth in housing starts in the third quarter of 2009. (Global Insight, "U.S. Economic Service, Executive Summary" October, 2008.) EPA acknowledges that future predictions can be highly uncertain and that other projections may be less optimistic. Nonresidential construction, which was weak during the first five years of the decade, recovered to 2000 levels by 2007. (Global Insight, "The Nonresidential Picture: Will the Rescuer Need To Be Rescued?" 2007. Global Insight, "U.S. Economic Service, Executive Summary" October, 2008.) However, the construction industry is expected to experience declines for the residential, non-residential, and non-building sectors for the near future. The weakness in the construction industry will likely continue until residential markets work through the current inventory of unsold homes and credit markets and the general economy return to a better condition (Global Insight, "U.S. Economic Service, Executive Summary" October, 2008.)

The C&D point source category is comprised of activities that disturb land. The category contains business establishments (the Census Bureau uses the term "establishment" to mean a place of business; "Employer

establishment" means an establishment with employees) that are involved in building construction (NAICS 236) as well as heavy and civil engineering construction (NAICS 237). As a starting point, Table XI-1 shows the number of business establishments in the C&D category in 1992, 1997, and 2002. Only a portion of these establishments would be covered by the proposed regulation, because some of these establishments are house remodelers and others build on sites with less than one acre of disturbed land each year. The NAICS classification system changed between the issuance of the 1997 and 2002 Economic Census.

Table XI-1 shows a sharp decline in the number of developers between 1992 and 1997. The decrease in the number of developers may have been a response to changes in tax laws and the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 (Pub. L. 101-73, August 9, 1989) and the 1993 implementing regulations. The objective of FIRREA and the implementing regulations was to correct events and policies that led to a high rate of bankruptcies in the thrift industry in the late 1980s. The regulations changed lending practices by financial institutions, requiring a higher equity position for most projects, with lower loan-to-value ratios, and more documentation from developers and builders. (Kone, D. L. "Land Development 9th ed.", Home Builder Press of the National Association of Home Builders, Washington, DC, 2000).

TABLE XI-1—NUMBER OF C&D INDUSTRY ESTABLISHMENTS, 1992, 1997, AND 2002, ECONOMIC CENSUS DATA

NAICS	Description	1992 (No.)	1997 (No.)	2002 (No.)	Change 92-97 (%)	Change 97-02 (%)
236	Construction of Buildings, except all other Heavy Construction ^a .	168,407	191,101	211,629	13.50	10.70
237 except 2372	Heavy Construction, except Land Subdivision	37,180	42,554	49,433	14.50	16.20
2372	Land Subdivision	8,848	8,185	8,403	- 7.50	2.70
Total		214,435	241,840	269,465	14.10	11.30

^a In the 2002 NAICS classification framework, All Other Heavy Construction was assigned among NAICS 236, 237, and 238. To maintain relevant comparisons, 2002 All Other Heavy Construction data were reassigned back into NAICS 237 (Heavy Construction).

Figures do not necessarily add to totals due to rounding.

Source: U.S. Census Bureau (2005).

Building upon Table XI-1, Table XI-2 shows the number of firms that are expected to be covered under the C&D proposed regulation. Construction establishments are relatively permanent places of business where the usual business conducted is construction related. Construction firms are an aggregation of construction establishments owned by a parent company that share an annual payroll.

EPA estimates that for approximately 99 percent of construction firms there is only one establishment, and those that do have more than one establishment tend to be in the highest revenue categories.

For Table XI-2, EPA subtracted out firms that are engaged in home remodeling (NAICS 236118) from the total of about 269,000 firms in 2002, as they would not be subject to the

proposed regulations. The elimination of remodelers is based on the fact that remodeling and renovation activities generally disturb less than one acre of land, if at all. EPA requests comment on its methodology for removing remodelers from the analysis. Thus, the total number of C&D firms would be 178,835.

EPA used data from the Economic Census and other sources to define an

average housing density for the nation as a whole (average number of housing units per acre), then used this figure to identify firms to be excluded from regulation based on their likelihood of disturbing less than one acre on a per project basis. EPA believes that these estimates (of firms unaffected by the proposed options) are conservative, meaning that they potentially overestimate the actual number of firms that will be affected. First, while the regulatory threshold applies to each site, EPA excluded firms only if the estimated number of acres disturbed in

a whole year falls below the regulatory threshold. In addition, the analysis was not adjusted for the portion of a site that is potentially left undisturbed, such as open space and buffers. Furthermore, EPA assumes that all of the housing units built by a firm during a year are in a project covered by a single NPDES storm water permit, while in reality the firm could build on several separate sites. However, the Agency does not have information on the amount of houses that are built within subdivisions, rather than on discrete lots, by these firms. EPA requests

comment on its methodology for excluding firms that do not disturb more than one acre of land from the analysis.

Based upon these adjustments of the total number of firms, EPA believes there currently are about 81,628 firms that would be covered under the rule. However, the Agency has insufficient data to make any further adjustments to the population of developers and builders covered by the proposal. EPA solicits comment on the Agency's estimate of the number of firms that would be covered under the proposal.

TABLE XI-2—NUMBER OF FIRMS COVERED BY THE CONSTRUCTION AND DEVELOPMENT PROPOSED REGULATIONS

NAICS	Industry sector	Firms	
		Number	Percent of total
2361	Residential Building Construction		
236115	New Single-family Housing Construction (except operative builder)	33,609	41
236116	New Multifamily Housing Construction (except operative builder)	2,620	3
236117	New Housing Operative Builder	17,295	21
2362	Nonresidential Building Construction		
236210	Industrial Building Construction	1,610	2
236220	Commercial and Institutional Building Construction	20,797	26
237	Heavy and Civil Engineering Construction		
237310	Highway, Street, and Bridge Construction	5,696	7
Total		81,628	

Source: Economic Analysis.

C. Method for Estimating Economic Impacts

EPA has conducted economic impact analyses to determine the economic achievability of each of the three ELG options presented in this notice. An important aspect of the economic impact analysis is an assessment of how incremental costs would be shared by developers and home builders, home buyers, and society. This method is called "cost pass-through" analysis or CPT analysis. Details of this method may be found in Chapter 4 of the Economic Analysis.

The economic analysis for the C&D proposal also uses another method called partial equilibrium analysis that builds upon analytical models of the marketplace. These models are used to estimate the changes in market equilibrium that could occur as a result of the proposed regulations. In theory, incremental compliance costs would shift the market supply curve, lowering the supply of construction projects in the market place. This would increase the market price and lower the quantity of output, i.e., construction projects. If

the demand schedule remains unchanged, the new market equilibrium would result in higher costs for housing and lower quantity of output. The market analysis is an important methodology for estimating the impacts of the provision proposed in today's notice. The economic analysis also reflects comments in the October 2001 final report from the Small Business Advocacy Review (SBAR) Panel submitted to the EPA Administrator as part of the requirements under SBREFA. The SBAR Panel was convened as part of the 2002 rulemaking effort and EPA considers the information in the 2001 report to still be relevant to today's C&D proposal. Small Entity Representative (SERs) commenters questioned a number of the assumptions in EPA's economic and loading analysis. After considering these comments, EPA determined that it was appropriate to continue to rely on its existing analysis for this proposed rule. EPA will continue to consider the SER comments along with comments received on the proposed rule and revise its analyses for the final rule as appropriate.

EPA estimated the incremental compliance costs for the regulatory options using an engineering cost model that accounts for cost factors such as treatment costs, labor and operation and maintenance costs. Because some of the erosion and sediment controls considered have design requirements that take into account meteorological and soil conditions, EPA developed compliance costs that take into account regional differences.

EPA estimated both the incremental compliance costs and the economic impacts of each regulatory option at the project, firm, and industry (national) level. The economic impact analysis considered impacts on both the firms in the C&D industry, and on consumers who purchase the homes, and buy or rent industrial buildings and commercial and office space. In the case of public works projects, such as roads, schools, and libraries, the economic impacts would accrue to the final consumers, who, in most circumstances, are the taxpaying residents of the community. The sections below summarize each modeling effort.

Detailed information on the data, models, methods, and results of the economic impact analyses are available in the Economic Analysis.

1. Model Project Analysis

EPA estimated project-level costs and impacts for a series of model projects. The models establish the baseline economic and financial conditions for model projects and assess the significance of the change in cash flow that results from the incremental compliance costs. EPA used the model project analysis to indicate whether typical projects affected by the proposed regulations would be vulnerable to abandonment or closure. The Agency developed nine model projects based on consideration of size and construction categories. The construction categories were: Residential; commercial & industrial building; and transportation. These three categories were broken out further into small (one acre or more, but less than ten acres), medium (ten acres or more, but less than thirty acres) and large (thirty acres or more) projects.

Based on a review of NOI data, each model of the nine project types was assigned an average number of acres. Implicit in the model project analysis is the assumption that each project is undertaken in its entirety by a single entity acting as both developer and builder. EPA recognizes that in practice there may be several parties with financial investment, planning, and construction roles in a particular land development and construction project. For example, on some projects a developer may acquire the land, conduct the initial engineering and site assessments, and obtain the necessary approvals. The land may then be sold to another developer or builder who will undertake the actual construction work. Projects are also sometimes undertaken by a consortium of firms or individuals, through various types of limited liability partnerships (LLP). While it is important to acknowledge this variation, for modeling purposes EPA has simplified this aspect and assumed only a single entity is involved from beginning to end, referred to below as a "developer-builder." This approach measures the direct impact of the rule on permit holders expected to incur compliance costs. EPA acknowledges that a portion of these costs will likely be passed along to small builders. The ability of permittees to pass costs through to other builders will vary based on market conditions. These effects are addressed as part of the sensitivity analysis in Appendix 8–1 of the RFA Chapter in the Economic Analysis. Some of these small builders

may also be copermitees who are required to be in compliance with these standards. To the extent that they are copermitees, they are not accounted for in the firms incurring costs. However, all costs have been attributed to firms. Allocating costs over a broader number of firms may or may not increase the estimated impacts, but spreads the same costs over a larger number of firms. EPA requests comment about this economic modeling approach.

Land development and construction typically occurs in a series of stages or phases. The model projects developed by EPA incorporate assumptions concerning the costs incurred and revenue earned at each stage. EPA has modeled all of the projects to reflect three principal development stages:

(1) *Land acquisition.* The starting point is usually acquisition of a parcel of land deemed suitable for the nature and scale of development envisioned. The developer-builder puts together the necessary financing to purchase the parcel. When lenders are involved, they may require certain documentation, such as financial statements, tax returns, appraisals, proof of the developer's ability to obtain necessary zoning, evaluations of project location, assessments of the capacity of existing infrastructure, letters of intent from city/town to install infrastructure, environmental approvals, etc. To satisfy these needs, the developer may incur costs associated with compiling these data.

(2) *Land development.* The developer-builder obtains all necessary site approvals and prepares the site for the construction phase of the project. Costs incurred during this stage are divided among "soft" costs for architectural and engineering services, legal work, permits, fees, and testing, and "hard" costs such as land clearing, installing utilities and roads, and preparing foundations or pads. The result of this phase is a parcel with one or more finished lots ready for construction.

(3) *Construction.* The developer-builder undertakes the actual construction of the buildings. A substantial portion of this work may be subcontracted out to specialty subcontractors (foundation, framing, roofing, plumbing, electrical, painting, etc.). In the case of a housing subdivision, marketing often begins prior to the start of this phase, hence the developer-builder may also incur some marketing costs at this time. Housing units may come under agreement at any time prior to, during, or after completion of construction. Marketing costs are part of the baseline costs. EPA determined that no incremental

marketing costs would be imposed by today's proposed rule.

EPA conducted an analysis of the multiplier that determines how direct compliance costs translate into the change in the cost of the final product, or finished construction project. EPA developed estimates of the project-specific costs and revenue at each stage of project development as part of this baseline scenario. The general approach used in establishing the baseline scenario is to assume normal returns on invested capital and normal operating profit margins to arrive at the sales price for the final product (for example, completed new single-family homes in a residential development, or office space in a new office park). This produces a more accurate estimate of the costs of complying with the proposed regulation than the costs of installing and operating the technology alone. These are not the same assumptions that are used in the firm level analysis to follow, particularly for economic impacts.

EPA analyzed the impact of today's proposed rule by adding in the regulatory costs at the appropriate stage of the project life cycle. An important consideration for assessing who ultimately bears the financial burden of a new regulation is the ability of the regulated entity to pass the incremental costs of the rule on to their customers. If the developer-builder can pass all of their costs through to the buyer, the impact of the rule on developer-builders is negligible and the buyer bears all the impact. Conversely, if they are unable to pass any of the cost to buyers through higher prices, then they must assume the entire cost. For the economic impact analysis EPA uses three pass-through cases: Zero cost pass-through; full cost pass-through; and partial cost pass-through (85% for residential and 71% for non-residential).

Under the first case, the zero (0%) cost pass-through assumption, the incremental regulatory costs are assumed to accrue entirely to the builder-developer, and appear as a reduction in per-project profits. The sale price of the constructed unit and surrounding lot remains the same as the asking price in the baseline. Using the full (100%) cost pass-through assumption, all incremental regulatory costs are passed through to end consumers. Under this approach, the compliance costs are also adjusted to reflect the developer's cost of debt, equity, and overhead. Consumers experience the impact of the proposed regulatory options in the form of a higher price for each new building or housing unit. For the partial cost pass-

through case, firms are assumed to pass on part of the compliance outlay to other parties. For the partial cost pass-through case, EPA assumes a cost pass-through rate of 85% for residential sectors and 71% for non-residential and non-building sectors. This is the expected average long-term level of cost pass-through based on observed response of market supply and demand to changes in prices for new construction. For more on the method used for determining the level of cost pass-through see Section 3.5 of the Economic Analysis, Analysis of Social Cost of the Economic Analysis. When a sector is stressed, cost pass-through will tend to be below this long-term average (i.e., more costs being borne by builders). Conversely, when a sector is booming, most costs are likely to be passed through.

Information in the record indicates that builders do pass through much of the regulatory costs to customers. This is supported by the academic literature and industry publications. However, the financial impact analysis also calculates results under the two bounding cases, no cost pass-through for firms and full cost pass-through for customers, to assess the ability of these groups to absorb the impact of the regulation under a worst case scenario. The two bounding cases also provide an approximation of the sensitivity of impact estimates to the partial cost pass-through assumptions used for the primary case. EPA requests comment on the partial cost pass-through assumptions used for the primary case.

EPA notes that under certain conditions developers might also attempt to pass regulatory costs back to land sellers. For example, in a depressed market, builders may argue successfully that a regulatory cost increase would make a particular project unprofitable unless the land cost can be reduced. If the land seller is convinced that a residential subdivision project would not proceed, they may be willing to accept a lower price for undeveloped land. The ability of developers to pass such costs back would likely depend on the sophistication of the land owner, their experience in land development projects, knowledge of the local real estate market, and, in particular, their understanding of the regulations and their likely cost. While evidence of cost pass-back to land owners exists for fixed and readily identifiable regulatory costs such as development impact fees, it is unclear whether a builder's claim that costs would be higher due to construction site control regulations would induce land owners to make

concessions. EPA requests comment on the likely success of developers attempting to pass regulatory costs for incremental storm water controls back to land owners.

2. Model Firm Analysis

EPA analyzed the impacts of the regulations at the level of the firm by building financial models of representative construction firms. Model firms are broken out by revenue ranges for each of the NAICS sectors aligning with the principal C&D business segments expected to be affected by the regulation (See Table XI-2). These revenue range and sector breakouts are based on data reported by the Statistics of U.S. Business (SUSB) and the Economic Census. Within each business sector and revenue range model firms are further differentiated based on median, lower quartile, and upper quartile measures of baseline financial performance and condition (i.e., capital returns, profit margins, levels of debt and equity to capital, etc.). Firms in the upper quartile have better than normal financial metrics, while the metrics for firms in the lower quartile are worse than normal. Baseline financing costs (cost of debt and equity) was varied over revenue ranges, with firms in higher revenue ranges having access to more favorable terms. However, the financial data was not sufficiently disaggregated to allow financing terms to vary over the three quartiles. These model firms are used in combination with compliance cost estimates to examine the potential for financial stress, firm closures, employment effects, and increased barriers to the entrance of new firms to the industry. EPA did not base its analysis, as it has for many past ELGs, on firm-specific data because it did not have time under the court imposed deadline to survey the industry and gather such data.

The financial statements for the model firms are constructed to capture two business condition cases for the firm-level analysis: General Business Conditions case that reflects the financial performance and condition of C&D industry businesses during normal economic conditions; and Adverse Business Conditions case that is meant to reflect financial performance during weak economic conditions. The two business condition cases are differentiated by the baseline operating financial circumstances of the model firms as well as other important factors in firm financial performance, including cost of debt and equity capital.

Compliance costs for a given regulatory option are assigned to the

model firms, by sector and revenue size category, based on an estimate of "annual in-scope acreage per dollar of revenue" for the various model firms. The compliance costs for a given regulatory option were converted to a per-acre basis based on project size, type of construction and other compliance cost-related characteristics such as state and/or climatic region, depending on the option being considered. Since affected acreage is the principal driver of compliance costs, the number of projects and in-scope project acreage associated with a given level of firm revenue will be the primary basis on which compliance costs are assigned to the model firms. The basis for estimating number of projects and in-scope project acreage for model firms will vary by sector and principal construction activity. The estimated per-acre compliance costs for the areas subject to the proposed turbidity limits range from \$1,135 to \$16,535, with a median value of \$7,501.

EPA assigns the per acre compliance costs to each model firm based on an estimate of the acreage developed per million dollars of construction value for the model firm. For residential construction, the acreage per million dollars was derived from the Census Bureau's Census of Housing. For nonresidential construction, information on project acreage and estimated project value from Reed Construction Data is used to derive an average number of acres developed per million dollars of value (Reed Construction, March 2008; see DCN 51017). Using each model firm's acreage to revenue relationship, costs are then assigned to firms based on the number of in-scope firms in each revenue range category. EPA requests comment on its approach for assigning compliance costs to model firms.

EPA was then able to assess the impact of the annual compliance costs on key business ratios and other financial indicators. Specifically, EPA examined impacts on the following measures: (1) Costs to Revenue Ratio, (2) Pre-Tax Income to Total Assets Ratio, (3) Earnings before Interest and Taxes (EBIT) to Interest Ratio, and (4) change in business value. The first is a simple screening level measure which is important for measuring the impact on small entities. The second and third are financial measures reported by Risk Management Associates (RMA) for median, lower and upper quartiles by sector and business size that were used in constructing the baseline financial statements for the model firms. The change in business value measure is based on application of compliance

costs to the model firm financial statements, both as the estimated absolute dollar change in value and the fraction of firms whose net business value becomes negative because of compliance outlays. The impacts of the compliance costs were examined by calculating the values of each ratio with and without the compliance costs.

In previous effluent guidelines rulemakings, EPA has sometimes varied levels of cost pass-through and sometimes assumed no cost pass-through. In practice, the actual level of cost pass-through is difficult to estimate and changes over time. For example, when a particular industry faces severe economic distress, as with the current homebuilding industry, it is less likely that producers will be able to pass through as significant a portion of compliance costs. When an industry is healthy, higher levels of cost pass-through are likely. Also, the larger share of an industry subject to the regulatory requirements in question, the greater the ability of individual firms to pass through compliance costs, as they will have less competition from unregulated producers. For this analysis, EPA used both the partial and no cost pass-through scenarios, to assess potential economic impacts on the industry under the primary analysis and upper bound scenarios. Full cost pass-through would have no impact on the firms.

3. Housing Market Impacts

EPA developed models to assess the potential impacts of the regulations on the national housing market. Buyers of new nonresidential properties will also be impacted as costs are passed through to them. However, they account for a minority of the construction projects considered and EPA assumes that this group of customers is not as vulnerable to changes in prices as are households in the market for new homes. Therefore, impacts to purchasers of new nonresidential construction sites were not highlighted as part of the financial impact assessment and are accounted for on a more general basis as part of the analysis of impacts on the national economy.

To analyze the impacts of compliance costs on housing affordability, EPA estimated the level of income that would be necessary to purchase both the median and lower quartile priced new home without the proposed regulation, and the change in income needed to purchase the median and lower quartile priced new home under each of the regulatory options. The Agency then used income distribution data to estimate the change in the number of households that would qualify to

purchase the median and lower quartile priced new home under each of the regulatory options. In this way, EPA attempted to estimate the number of households that may not be able to afford the exact same new home they could under baseline conditions. The housing market analysis was performed at the level of the metropolitan statistical area (MSA) to account for regional differences in housing prices and income. The housing market analysis uses the full cost pass-through assumption, to estimate the worst-case impacts on new single-family home buyers.

When assessing the impact of the rule on housing affordability, EPA acknowledges that even those buyers who are able to afford the median valued single-family home at the new price may still experience an impact. Many households would continue to qualify to purchase (or rent) a housing unit of approximately the same price (or rent) as before the C&D regulation, but would instead experience a reduction in some desirable housing attributes instead. This analysis looks not only at the affordability effect at the median-priced housing unit but also considers the impact on housing affordability at lower housing prices, specifically the impact on households that can afford the lower quartile priced home. Focusing on housing prices below the median provides important insight into the regulation's impact on housing affordability accounting for the likely greater number of households at the income levels that just qualify to purchase/rent lower price units. EPA requests comment on its approach to assessing impacts of the rule on housing affordability.

4. Impacts on the National Economy

The market model generates an estimate of the change in the total value of construction produced by the industry, i.e., industry output. Two effects of the regulation are acting on the market value of construction output. First, the cost of construction increases, leading to a price rise and an increase in market value of final projects. Second, the quantity of houses sold is reduced because of the higher price due to compliance costs. The net effect on market value may be either positive or negative, depending on whether the elasticity of demand for housing is less than or greater than 1. There are also secondary impacts in other markets, caused by the shift in consumer spending, necessitated by the increased housing costs, from other goods to housing.

Markets vary in the level of activity, structure of the industry, and ultimately cost pass-through potential, from state-to-state and region-to-region. The modeling approach used for the national impact analysis captures such regional variation in the impacts of the proposed regulatory options by estimating partial equilibrium models at the state level for four major building construction sectors (single-family, multi-family, commercial, and industrial). The analysis of state- and national-level economic impacts is based on estimating changes to economic output, employment, and welfare measures that result from the estimated baseline market equilibrium to the estimated post-compliance market equilibrium for each construction sector in each state.

A partial equilibrium analysis assumes that the proposed regulation will only directly affect a single industry; in this case, the four major construction sectors considered. Holding other industries "constant" in this way is generally appropriate since the compliance costs of the proposed regulatory options are expected to result in only marginal changes in prices and quantities and the rule does not directly affect the other industries (HUD, 2006; see DCN 52015).

For the partial equilibrium analysis, EPA uses estimated elasticities of market supply and demand to calculate the impact of incremental costs on the supply curve and, thus, on prices and quantities of construction products under post-compliance conditions.

Economic impacts in the directly affected construction industry can trigger further shifts in output and employment losses in the set of broader U.S. industrial sectors as these changes pass through the economy. The U.S. Department of Commerce uses input-output techniques to derive "multipliers" which indicate, for a given change in one industry's output, how output and employment in the whole U.S. economy will respond. EPA has applied the multipliers from the Regional Input-Output Modeling System, version 2 (RIMS II) to the change in output estimated from the market model to estimate some of the anticipated impacts on national output and employment. EPA is also using the Regional Economic Models, Inc. (REMI) Economic Geography Forecasting and Policy Analysis Model to derive a more comprehensive estimate of the potential long-term effects on the national economy. The REMI model uses a similar set of industry sector multipliers, but also incorporates econometric and general equilibrium models to derive a more refined

estimate of the impacts on national output and employment.

D. Results

1. Firm-Level Impacts

EPA has estimated the economic impacts of the proposed rule at the firm level by estimating the number of firm closures, the number of lost jobs, and the decrease in firms' profits. The economic impact analysis at the firm level looks at two cases. The first assumes that none of the incremental costs would be passed through to the final consumer, i.e., zero cost pass-through. The Agency used this assumption for the economic impact analysis, because it presents the worst-case scenario (i.e., the largest impacts to

the firm). The second case assumes partial cost pass-through, and EPA believes this is more reflective of typical circumstances based on EPA's review of the academic literature and its discussions with industry officials who indicate that under normal business conditions most costs are passed through to the final consumer and are not absorbed by firms in the industry.

EPA analyzed economic impacts at the firm level. The firm is the entity responsible for managing financial and economic information. Moreover, the firm is responsible for maintaining and monitoring financial accounts. For the C&D category, most of the business establishments, as defined by the Census Bureau, are firms. Likewise, a

small number of establishments are entities within a larger firm. A small percentage of firms have multiple establishments and some firms are regional or national in scope.

Table XI-3 presents one economic indicator, the relationship of compliance cost to firms' annual revenue. A comparison between costs and revenues is typically done prior to any consideration of the pass-through of costs to buyers. Firms whose costs exceed 1% of revenue are only 4.5 percent of the approximately 82 thousand in-scope firms for the most costly option. Furthermore, firms whose costs exceed 3% of revenue are significantly less than 1% for all options considered for proposal.

TABLE XI-3—COST TO REVENUE, ASSUMING NO COST PASS-THROUGH

Option	Costs exceeding 1% revenue			Costs exceeding 3% revenue		
	Number of firms	Percent of firms in-scope	Percent of firms incurring costs	Number of firms	Percent of firms in-scope	Percent of firms incurring costs
Option 1	0	0.0	0.0	0	0.0	0.0
Option 2	774	0.9	12.1	33	0.0	0.5
Option 3	2,475	3.0	18.0	146	0.2	1.1

Source: Economic Analysis.

Table XI-4 presents two additional economic indicators that measure the potential decrease in firms' financial fitness. These indicators are presented

using the partial cost pass-through case, which represents the firms' expected ability to pass costs through to buyers. These two indicators were also assessed

using the no cost pass-through assumption as one of the revisions made to the adverse analysis case discussed below.

TABLE XI-4—FIRMS EXPECTED TO INCUR FINANCIAL STRESS, ASSUMING PARTIAL COST PASS-THROUGH

	Option 1	Option 2	Option 3
Firms Estimated To Incur Deterioration in Measures of Financial Performance			
Number Incurring Effect	17	147	445
% of All In-scope Firms	0.0	0.18	0.5
% of Firms Incurring Cost	0.5	2.3	3.2
Firms Whose Net Business Value Becomes Negative as a Result of Compliance (Potential Closures)			
Number Incurring Effect	18	103	389
% of All In-scope Firms	0.0	0.13	0.5
% of Firms Incurring Cost	0.6	1.6	2.8
Number of Jobs	1,087	11,359	25,266
% of In-scope Firm Employees	0.5	1.8	2.7

Source: Economic Analysis.

Deterioration of firm financial performance is based on assessing the impact of costs on two financial measures (Pre-Tax Income/Total Assets and Earnings before Interest and Taxes/Interest). EPA estimated the fraction of firms in the various sector and revenue ranges whose financial indicators decline below the lower quartile for these two measures, as reported by Risk

Management Associates (RMA). For each sector and revenue category, whichever of the two measures have the greatest decline is used to represent the impact on financial performance. For additional information on EPA's analysis of the change in financial position, see Section 3.3.4, Estimating the Change in Model Firm Financial

Performance and Condition, from the Economic Analysis.

The second economic indicator is firm closures and resulting job loss, by regulatory options. These numbers represent the impact on firms with thin profit margins who are most vulnerable to impacts from costs increases, and they do not represent the effects of a reduction in the overall quantity of

construction activity as a result of the C&D rule. Both phenomena can result in job losses, but they are two separate measures of job losses and are not necessarily wholly additive or overlapping. Construction is a highly competitive industry that is characterized by many small firms with a relatively high turnover and low barriers to entry. Firms routinely expand and contract their workforce in response to work load and as a result many workers laid off when a firm closes are rehired by new and other existing more financially healthy firms. Therefore, job losses due to firm closures are in many cases a temporary displacement of the workforce. By contrast, job losses due to market contraction result from an overall reduction in the volume of construction and can be considered a more lasting effect until market conditions change again. For more information on job losses due to market contraction, see Section 3.5 Analysis of Social Cost in the Economic Analysis.

The C&D industry has historically been a relatively volatile sector, and is subject to wider swings of economic performance than the economy as a whole. EPA has used historical financial and census data for the C&D industry to discern long-term trends within the market fluctuations. EPA based its primary economic analysis on data that reflects average long-term performance

rather than a temporary high or low. The industry is currently experiencing a period of weakness, which will persist until residential markets work through the current inventory of unsold homes, and credit markets and the general economy return to a better condition. There continues to be considerable uncertainty regarding how much the market for new construction will contract or how far real estate values will decline, before the construction industry begins to recover. EPA realizes that the rule will be promulgated during a low period for the industry, and there may be concerns that additional compliance costs, associated with the rule, could have a greater than normal impact on C&D firms and potentially slow the industry recovery. Again using historical census and financial data for the industry EPA identified periods of weakness for various industry sectors and used them to develop a secondary analysis that represents potential impacts of additional compliance costs during a period of adverse economic circumstances. Three key assumptions EPA used to represent adverse conditions for the industry were that there would be a contraction in overall market activity, firms would finance projects under less favorable terms and no costs incurred by the firm as a result of compliance would be passed through to the buyer. Table XI-5 below shows the results of the adverse analysis case.

The number of firms experiencing impacts reflects the market contraction, so they are not directly comparable to the primary analysis case, since they represent differing levels of regulated activity. However, a comparison of the percentage of in-scope firms experiencing impacts and firms incurring costs that experience impacts illustrate the relative difference between the two cases. With regard to Option 2, the percentage of firms in-scope incurring financial stress in the adverse case is three and a half times the percentage in the primary economic analysis and the percentage of in-scope firms at risk of closure in the adverse case is seven times the percentage in the primary economic analysis. There are also corresponding increases in short-term employment losses. However, even with the greater impacts seen under the adverse analysis case, the percentage of total firms experiencing financial hardship, under any of the metrics considered, does not exceed one percent of total in-scope firms or 12 percent of firms incurring costs, for the proposed option. Another important consideration for the adverse analysis case is that under the no-cost pass through assumption, there are no secondary impacts on small builders or affordability effects for buyers. For additional information on the adverse impact analysis case, see Chapters Three and Five of the Economic Analysis.

TABLE XI-5—ADVERSE IMPACT ANALYSIS RESULTS

Impact analysis concept	Option 1	Option 2	Option 3
Firms with Costs Exceeding 1 Percent of Revenue:			
Number of Firms	0	698	2,233
% of Firms In-Scope	0.0%	0.9%	3.0%
% of Firms Incurring Cost	0.0%	12.0%	17.9%
Firms with Costs Exceeding 3 Percent of Revenue:			
Number of Firms	0	30	132
% of Firms In-Scope	0.0%	0.0%	0.2%
% of Firms Incurring Cost	0.0%	0.5%	1.1%
Firms Incurring Financial Stress:			
Number of Firms	51	479	1,534
% of Firms In-Scope	0.1%	0.64%	2.0%
% of Firms Incurring Cost	1.75%	8.3%	12.3%
Firms with Negative Business Value (Potential Closures):			
Number of Firms	88	662	2,164
% of Firms In-Scope	0.1%	0.88%	2.9%
% of Firms Incurring Cost	3.03%	11.4%	17.4%

Source: Economic Analysis.

Since EPA expects that the effluent guidelines requirements will be implemented over time as states revise their general permits (EPA expects full implementation within five years of the effective date of the final rule, currently

required to be promulgated in December 2009, which would be 2014), EPA has used macroeconomic forecasts of construction activity to assess when the industry is likely to return to its long-term trend (Global Insight, "Housing

and Construction", 2008) (Global Insight, "U.S. Economic Service, Executive Summary" 2008). Based on these forecasts, EPA anticipates that the industry activity will have recovered to

the long-term trend during the period when the rule is being implemented.

2. Impacts on Governments

EPA has analyzed the impacts of today's proposed rule on government entities. This analysis includes the cost to governments for compliance at

government-owned construction project sites (construction-related). For construction-related costs, EPA assumed that 100 percent of the incremental compliance costs that contractors incur at government-owned construction sites are passed through to the government. EPA also estimated the additional

administrative costs that government entities would incur for reviewing the additional monitoring reports associated with the turbidity monitoring requirements of Options 2 and 3. Table XI-6 shows the costs that government entities are expected to incur at federal, state, and local levels.

TABLE XI-6—TOTAL COSTS BY GOVERNMENT UNIT
[Millions 2008 \$]

	Option 1	Option 2	Option 3
Compliance Costs			
Federal	\$2.3	\$34.0	\$66.5
State	4.4	68.1	128.2
Local	25.1	390.7	735.8
Administrative Costs			
Federal	0.0	0.0	0.0
State	0.0	0.1	0.2
Local	0.0	0.6	1.0
Total Costs			
Federal	2.3	34.0	66.5
State	4.4	68.2	128.4
Local	25.1	391.3	736.8
Total	31.8	593.5	931.7

Source: Economic Analysis.

These additional government costs are not expected to have a significant impact on state and local governments as they account for less than a tenth of a percent of state government revenues and less than a tenth of a percent of estimated local government revenues. For additional information on the effect of the rule on government entities see the UMRA analysis in Chapter 9 of the Economic Analysis.

3. Community-Level Impacts

EPA has estimated community-level impacts based upon the incremental costs of the proposed rule at the household level. The household impacts are those that would affect local communities in terms of the costs of housing. EPA's analysis considers the impacts on the price of housing based on the increase/decrease in the median price per house. Table XI-7 shows the

change by selected option in the price per house. It is important to note that these costs would not apply to all new houses built in the U.S., but rather only to those houses that are part of construction projects that are subject to the given regulatory option. Approximately 3 percent of total annual home sales are expected to be in projects subject to Option 1, 8 percent to Option 2 and 13 percent to Option 3. When considering only newly-built homes, approximately 21 percent of sales are expected to be in projects subject to Option 1, 52 percent to Option 2 and 90 percent to Option 3. The table also provides estimates of the expected change in monthly payments under each option for the median and lower quartile priced home. The monthly mortgage payments were calculated using the median and lower quartile priced house for each

Metropolitan Statistical Area (MSA) in the country. For the MSA's, the weighted average median price for a home is \$322,000, the 5th percentile is \$110,000, and the 95th percentile is \$560,000. For the lower quartile priced home, the weighted average is \$201,000, the 5th percentile is \$66,000, and the 95th percentile is \$404,000. The U.S. Census does not report lot sizes for the upper or lower quartile. However, housing census data indicates that lower-priced homes have a greater likelihood of having a smaller lot size (U.S. Census Characteristics of New Housing, 2006). To account for this factor, EPA performed the affordability analysis for the lower-quartile price home twice, using both the median lot size for all single family homes and the median lot size for attached single family homes.

TABLE XI-7—CHANGE IN MONTHLY MORTGAGE PAYMENT FOR NEW SINGLE-FAMILY HOME
[Full cost pass-through]

	Option 1	Option 2	Option 3
New Single-Family Median Priced Home			
Price Change New Single-Family Home on Median Sized Lot	\$330	\$2,100	\$2,242
Baseline Mortgage Payment (\$/month)	\$1,971	\$1,971	\$1,971
New Mortgage Payment (\$/month)	\$1,972	\$1,985	\$1,986

TABLE XI-7—CHANGE IN MONTHLY MORTGAGE PAYMENT FOR NEW SINGLE-FAMILY HOME—Continued
[Full cost pass-through]

	Option 1	Option 2	Option 3
% Change	0.05%	0.70%	0.75%
New Single-Family Lower Quartile Priced Home on Median Sized Lot			
Price Change New Single-Family Home on Median Sized Lot	\$330	\$2,100	\$2,242
Baseline Mortgage Payment (\$/month)	\$1,358	\$1,358	\$1,358
New Mortgage Payment (\$/month)	\$1,359	\$1,372	\$1,373
% Change	0.04%	1.01%	1.09%
New Single-Family Lower Quartile Priced Home on Median Sized Lot for Attached Single-Family Home			
Price Change New Single-Family Home on Median Sized Attached Lot	\$118	\$738	\$803
Baseline Mortgage Payment (\$/month)	\$1,358	\$1,358	\$1,358
New Mortgage Payment (\$/month)	\$1,359	\$1,363	\$1,364
% Change	0.01%	0.36%	0.39%

Source: Economic Analysis.

The increase in mortgage payments attributable to the proposed options compared to the estimated mortgage payment for the median price of a new house in the U.S., currently about \$1,971, is a small percentage of the overall payment. For these costs, the average monthly mortgage payment would increase by \$1, \$14, and \$15 per month for Options 1, 2, and 3, respectively. For the analysis, EPA assumes that buyers finance approximately 80% of the home purchase price using a 30-year conventional fixed rate mortgage with an interest rate of 7.39%.

EPA also estimated how the change in home prices would affect mortgage availability. EPA estimated that 2,195 prospective new home purchasers would no longer qualify to purchase a new median priced home affected by the rule, and 3,243 would no longer qualify to purchase a new lower quartile priced home affected by the rule. Most impacted home buyers, except those at the low end of the income distribution, would still be able to purchase newly built homes, but not as expensive a home as they could afford without the regulation. EPA has attempted to characterize how the potential increase in mortgage payment may affect housing affordability. However, this approach only looks at two specific points along the spectrum of housing prices and therefore does not represent the total number of households that would have to make a different homebuying decision as a result of the rule. EPA is interested in developing an analysis reflective of the number of households that would likely be adversely affected by the proposed regulation, and solicits comment on appropriate methodology and any data that would be required to

conduct such an analysis. For more information on the affordability analysis see Section 3.4, Analysis of Regional-Level Housing Affordability Impacts, of the Economic Analysis.

4. Foreign Trade Impacts

As part of its economic analysis, EPA has evaluated the potential for changes in U.S. trade (imports, exports) of C&D related goods and services. A significant component of the U.S. C&D category operates internationally, and, in addition, numerous foreign firms that participate in this category also operate in the U.S. EPA judged that the potential for U.S. C&D firms to be differentially affected by the proposed rule is negligible. The proposed rule will be implemented at the project level, not the firm level, and will affect projects within the U.S. only. All firms undertaking such projects, domestic or foreign, will be subject to the proposed rule. U.S. firms doing business outside the U.S. will not be differentially affected compared to foreign firms, nor will foreign firms doing business in the U.S.

This proposed rule could theoretically stimulate or depress demand for some construction-related goods. To the extent that the proposed rule acts to depress the overall construction market, demand for conventional construction-related products may decline. This decline may be offset by purchase of goods and services related to erosion and sediment control. Overall, EPA does not anticipate that any shifts in demand for such goods and services resulting from the proposal would have a significant implication for U.S. and foreign trade.

5. Impacts on New Firms

The construction sector is a relatively fluid industry, as documented in the industry profile, with low barriers to entry and considerable entry and exit activity from year to year. As a result, the potential employment losses or capital idling effects of weakness in a specific firm are likely to be offset by changing levels of activity in other existing firms or entry of new firms into the local market. EPA conducted an analysis to assess the impacts on new firms that choose to enter the C&D point source category. This analysis uses a method called "barrier to entry". EPA examined the ratio of compliance costs to current and total assets to determine if new market entrants could find it more difficult to assemble the capital requirements to start a project than would existing firms. The methodology is conservative, because it doesn't account for the fact that a firm would typically be expected to finance 20 percent of the incremental compliance costs from their own financial resource to obtain the loan, not the full amount as assumed here. In addition, existing firms would need to meet the same requirement, and therefore would not obtain a competitive advantage over new entrants. For more information on the analysis see Section 3.3.6 Assessing Potential Barriers to Entry of New Businesses to the C&D Industry from the Economic Analysis.

For the proposed regulatory option (Option 2), the increase in financing requirement varies from approximately 2.7 percent to 7.7 percent of baseline assets depending on the firms size and business sectors. This comparison assumes that the new firm's compliance outlay would be financed and recorded

on its balance sheet. To the extent that the compliance outlay is financed and recorded not on the firm's baseline sheet but as part of a separate project-based financing for each individual project, this comparison is likely to be overstated, perhaps substantially. EPA does not consider the increase in financing requirements to pose a significant barrier to entry for potential businesses and projects.

6. Social Costs

EPA's analysis of social costs for each option contains four costs components: (1) Firm compliance costs; (2) incremental increase in government administrative costs; and (3) deadweight loss (loss of economic efficiency in the construction market). When summed, these three cost categories comprise the total social costs for each option.

EPA has conducted a social cost analysis for each option. The Economic Analysis provides the complete social cost analysis for the proposed regulation. The firm-level estimate compliance cost, however, does not account for the potential affect of the proposed options on the quantity of construction activity/units performed in the various C&D markets. Compliance costs for each proposed option have the effect of increasing builder/developer costs, which can cause a leftward shift in the market's supply curve. Part of the increased costs may raise the price of new housing, with the balance of increased costs being absorbed by the builder, depending on the relative elasticities of supply and demand. The resulting shift in market equilibrium may also reduce the quantity of

construction units produced in a given market.

EPA has estimated a state-by-state linear partial equilibrium market model for each C&D building sector to estimate this potential market effect on the quantity of output. The estimated change in the quantity of output produced in each C&D market segment is then used to not only adjust the firm-level resource cost of compliance, but also to compute the economic value of the reduction in C&D output, and estimate the total loss of consumer and producer surplus, referred to as the deadweight loss. Table XI-8 shows the change in cost due to the quantity effect (i.e. reduction in market activity), the dead weight loss, and their combined effect on total costs.

TABLE XI-8—TOTAL SOCIAL COST OF OPTIONS
[Millions of \$2008]

	Option 1	Option 2	Option 3
Total Costs, Unadjusted for Quantity Effect	\$132	\$1,891	\$3,797
Change in Costs Due to Quantity Effect	0.1	7	17
Total Costs, Adjusted for Quantity Effect	132	1,884	3,780
Total Dead Weight Loss	0.0	3.5	8.4
Additional Government Administrative Costs	0.0	0.7	1.2
Total Social Cost of the Regulation	132	1,888	3,789

Source: Economic Analysis.

7. Small Business Impacts

Section XIX.C of today's document provides EPA's Regulatory Flexibility Analysis (RFA) analyzing the effects of the rule on small entities. For purposes of assessing the economic impacts of today's proposed rule on small entities, small entity is defined by the U.S. Small

Business Administration (SBA) size standards for small businesses and RFA default definitions for small governmental jurisdictions. The small entities regulated by this proposed rule are small land developers, small residential construction firms, small commercial, institutional, industrial and

manufacturing building firms, and small heavy construction firms.

Table XI-9 shows the impacts of the proposal using the one percent and three percent revenue tests, a method used by EPA to estimate the impacts on small businesses. The table presents the results for the regulatory options.

TABLE XI-9—SMALL BUSINESS ANALYSIS FOR OPTIONS, 1% AND 3% REVENUE TESTS, ASSUMING NO COST PASS-THROUGH

Option	1% Revenue test		3% Revenue test	
	Number of small firms	Percent of small firms	Number of small firms	Percent of small firms
Option 1	0	0.0	0	0.0
Option 2	618	0.8	51	0.1
Option 3	3,049	3.9	185	0.2

Source: Economic Analysis.

Table XI-9 shows that for the preferred option (Option 2), less than a thousand small firms would be likely to incur direct costs exceeding one percent of revenue, which accounts for less than one percent of the approximately 78 thousand small in-scope firms. Therefore, EPA does not consider the preferred option to have the potential to cause a significant economic impact on

a substantial number of small entities. EPA acknowledges that additional small builders may experience secondary impacts in the form of higher lot prices as larger developers attempt to pass some of their compliance costs through. The ability of large developers to pass-through costs to builders will vary based on market conditions in the same manner that the pass-through rate to the

purchaser of the finished construction can vary. These effects are addressed as part of the sensitivity analysis in Appendix 8-1 of the RFA Chapter in the Economic Analysis. Additionally, as noted above, some of these small builders may also be copermittees who are required to be in compliance with these standards. To the extent they are copermittees, they are not accounted for

in the firms incurring costs. However, all costs have been attributed to firms. Allocating costs over a broader number of firms may or may not increase the estimated impacts, but spreads the costs over a larger number of firms.

XII. Cost-Effectiveness Analysis

For many effluent guidelines, EPA performs a cost-effectiveness (C-E) analysis using toxic-weighted pound equivalents. The C-E analysis is useful for describing the relative efficiency of different technologies. The pollutant removals estimated for today's proposed rule are all based on sediment. While EPA expects that today's rule would

also result in a significant reduction of other pollutants associated with sediment at construction sites, such as nutrients and metals, and other pollutants found in urban stormwater runoff, such as organics, oil and grease, pesticides and herbicides, the Agency has not quantified these reductions. The Agency does not have a methodology for converting sediment, measured as TSS or turbidity, into toxic-weighted pound equivalents for a C-E analysis. Instead, EPA compared the cost of each regulatory option to the pounds of sediment removed. This unweighted pollutant removal analysis is

meaningful because it allows EPA to compare the cost effectiveness of one option against another, and to other sediment reduction efforts. Table XII-1 shows a comparison of the cost-effectiveness of the options for controlling sediment discharges. EPA notes that the total pollutant reductions for Options 2 and 3 are likely upper-bound estimates, because it is very difficult to estimate baseline sediment discharges from this industry given the variation in stormwater discharge rates, sediment concentrations and the range of conditions present on construction sites across the country.

TABLE XII-1—COST-EFFECTIVENESS OF OPTIONS

	Option 1	Option 2	Option 3
Compliance Cost (millions 2008\$)	\$132.2	\$1,891.0	\$3,796.5
Sediment Removed (million lbs/yr)	670	26,426	50,413
Cost per Pound Removed (\$/lb)	\$0.20	\$0.07	\$0.08

Source: Economic Analysis.

EPA notes that changes in the loading reduction estimates, as discussed earlier, would affect the cost per pound estimates presented in Table XII-1.

XIII. Non-Water Quality Environmental Impacts

Under sections 304(b) and 306(b) of the CWA, EPA is to consider the "non-water quality environmental impacts" (NWQEI) when setting ELGs and NSPS. EPA used various methods to estimate the NWQEI for each of the options considered for today's proposed rule.

A. Air Pollution

EPA estimates that today's proposed rule would have no significant effect on air pollution because none of the approaches considered would significantly alter the use of heavy equipment at construction sites, nor the manner in which construction sites are prepared. Accordingly, the levels of exhaust emissions from diesel-powered heavy construction equipment and fugitive dust emissions generated by construction activities would not change substantially from current conditions under the proposed rule. Use of active treatments systems that utilize diesel-powered pumps and generators would produce additional emissions, however, these emissions are expected to be small compared to current emissions for this industry. EPA estimates that fuel combustion used by ATS would increase industry emissions by approximately 0.3% under Option 2 and 0.5% under Option 3. Increased

emissions for Option 1 are expected to be less than 0.1%.

B. Solid Waste Generation

Generation of solid waste could be affected under Options 2 or 3 because of the large volumes of sediment contaminated with polymers or other chemicals that would accumulate in sediment basins. Where permittees are using polymers or other chemicals to treat stormwater, then sediment accumulated in sediment basins or filter backwash waters may need to be handled as solid waste, depending on the nature of the chemical used. However, most dischargers using chemical additives are expected to select polymers that would enable the operator to apply solids (i.e., sediment) on-site to avoid the transportation and disposal costs associated with hauling off-site. For example, chitosan is biodegradable and discussions with vendors indicate that accumulated sediments containing chitosan are usually incorporated as fill materials on-site. If ATS systems utilize bag or cartridge particulate filters, then disposal of these filters would produce additional solid waste. EPA expects that these filters can be managed as nonhazardous solid waste. If states decide to regulate sediment containing polymers as solid waste, then generation of solid waste could be substantially affected.

The Administration recently created an initiative to strengthen control of marine debris, which includes any man-made, solid material that enters the

nation's waterways either directly or indirectly via land- and ocean-based sources. Materials from construction sites may become marine debris if they are improperly disposed of or maintained (California Coastal Commission, June 2006). However, many actions can be taken at construction sites to prevent materials used on-site from becoming marine debris. For example, permittees can schedule regular collection and disposal of trash before dumpsters become full, or ensure that adequate waste and recycling receptacles are available and properly covered. Today's guideline includes control measures that should address these issues and preventative actions. (Source: Eliminating Land-based Discharges of Marine Debris in California: A Plan of Action From the Plastic Debris Project, California Coastal Commission, June 2006, available on the Internet at: http://www.plasticdebris.org/CA_Action_Plan_2006.pdf).

C. Energy Usage

The consumption of energy as a result of today's proposed rule is not expected to be significant regardless of the option selected because the operations that currently consume energy (both direct fossil fuel use and electricity) will not be changing to any substantial degree during land disturbance. Use of active treatment systems that utilize diesel-powered pumps and generators would result in increased fuel consumption. Likewise, the installation of larger sediment basins would require

additional run-time for construction equipment. However the additional fuel consumption for these activities is expected to be small compared to current consumption for this industry. EPA estimates that gasoline and diesel fuel consumption due to portable generators and pumps used as part of an ATS would be approximately 22 million gallons per year under Option 2 and approximately 45 million gallons under Option 3. This represents an increase in fuel usage by the industry of 0.3% under Option 2 and 0.5% under Option 3. Increased fuel consumption under Option 1 is expected to be less than 0.1%. In addition, polymers such as polyacrylamide are produced from petroleum, so additional polyacrylamide usage to treat construction site stormwater runoff would result in increased petroleum consumption. However, usage on construction sites is not expected to significantly increase demand for acrylamide (U.S. acrylamide demand in 2001 was estimated to be approximately 253 million pounds, and additional usage on construction sites would be small). Chitosan, another polymer commonly used on construction sites, and the basis for EPA's BAT option, is manufactured from crustacean shells. Therefore, additional petroleum and energy consumption due to chitosan production and usage is expected to be small. If every site subject to the turbidity limit were to use chitosan, then total chitosan acetate usage (assuming a dosage of 2 mg/L) under Option 2 would be approximately 2 million pounds per year, while under Option 3 would be approximately 2.3 million pounds per year. By comparison, the global chitin market is estimated to be approximately 113 million annually pounds by 2012. See section 11 of the TDD for additional discussion.

XIV. Environmental Assessment

A. Introduction

In its Environmental Assessment (see "Supporting Documentation"), EPA evaluated environmental impacts associated with the discharge of stormwater from construction activities.

As discussed in Section VII, construction stormwater discharges have been documented to increase the loadings of several pollutants to receiving surface waters. The most prominent and widespread pollutants from construction sites are turbidity and TSS, which are primarily caused by sediment. Discharges of metals, nutrients, and polycyclic aromatic hydrocarbons (PAHs) have also been

documented. Other possible construction site pollutants include materials that exert biochemical oxygen demand (BOD), pesticides and other toxic organic compounds.

Pollutants other than sediment derive from construction equipment and materials, contaminants naturally present in a site's soils, or contamination by some other source prior to the start of construction activity at a site. Construction activities mobilize sediments and other pollutants by disturbing soil and altering stormwater runoff quantity and patterns. Construction equipment washes and irrigation of revegetation areas, if not properly managed, can mobilize pollutants during dry weather.

Surface water effects from construction site discharges include physical and biological changes. Physical changes include increased turbidity levels, increased total suspended solids concentrations, increased sedimentation rates, increased levels of pollutants other than sediment, and modified stream flow. Biological changes include decreased organism abundance, modified species composition, and decreased species diversity.

Sediment is the predominant pollutant from construction activity and is also one of the most common sources of impairment under Clean Water Act Section 303(d). According to the *National Water Quality Inventory Report to Congress: 2002 Reporting Cycle* (USEPA, 2007), sediment is the top source of impairment for streams and rivers in the United States. Sediment and siltation impairs 100,446 stream and river miles and turbidity or suspended solids impair 695,133 miles. In addition, 1,317,938 acres of lakes and reservoirs have been documented as impaired by sediment or siltation and 376,832 acres are impaired by turbidity or suspended solids. The report states that sediment also has significant impacts on wetlands. Because only a subset of all surface waters were assessed for water quality impairment during the 2002 Reporting Cycle, it is likely that the quantity of surface water impaired by sediment is greater than the numbers above indicate.

Construction site discharges impair or place additional stress on already impaired waterbodies. Twenty-four states have been able to identify construction activity as a cause of impairment for some waterbodies under their jurisdiction. Identifying the causes of a waterbody's impairment is often a challenging task, however, so it is likely that construction activity is a cause of impairment for more waterbodies than

states have been able to identify at this time.

Ecological impacts from sediment discharges to surface waters can be acute or chronic and vary in severity depending on the quantity of sediment discharged, the nature of the receiving waterbody and aquatic community, and the length of time over which discharges take place. Sediment can depress aquatic organism growth, reproduction, and survival, leading to declines in organism abundance and changes in community species composition and distribution. Threatened and Endangered (T&E) and other special status species are particularly susceptible to adverse habitat impacts. According to the United States Fish and Wildlife Service, increased sedimentation is one of the main contributors to the demise of some fish, plants, and invertebrates (see Drennen, Daniel J. United States Fish and Wildlife Service. 2003. The urban life of darters (excessive sedimentation endangers darter fishes). Endangered Species Bulletin. Also see "Endangered Species Program: Species Information" at <http://www.fws.gov/endangered/wildlife.html>).

There are numerous processes by which sediment affects aquatic communities. Sediment deposition on waterbody beds can bury benthic communities, smothering fish eggs and other immobile benthic organisms and severing connections to organisms in the water column. Sedimentation also modifies certain types of benthic habitats by filling crevices and burying hard substrates, making recolonization by previously existing organisms difficult unless the sediment is removed.

In the water column, increased turbidity levels block light needed for photosynthesis by submerged aquatic vegetation (SAV), resulting in its reduced growth or death. Because SAV is a primary producer depended upon by many other aquatic organisms in ecosystems, its loss or reduction can create an impact cascade throughout an entire community, lowering the community's total health and productivity. Increased turbidity also impairs the ability of visual predators (e.g., many fish species) to forage successfully. Increased TSS concentrations in the water column can also impair fish gill function, reducing the ability of fish to breathe. These and additional processes by which sediment discharges impact aquatic ecosystems are discussed in more detail in the Environmental Assessment.

Increased sediment and turbidity levels in surface waters can also

adversely affect direct human uses of water resources such as navigable channels, reservoirs, drinking water supplies, industrial process water, agricultural uses, and recreational uses, as well as property values.

Sediment deposition on riverbeds can fill and impede use of navigable channels. Between 1995 and 2006, the U.S. Army Corps of Engineers (USACE) funded approximately 3,700 dredging projects at a cost of more than \$6.3 million (2007 dollars) to remove more than 2.3 billion cubic yards of sediment from U.S. navigable waters (United States Army Corps of Engineers Dredging Database. 2007).

Reservoirs and lakes serve a variety of functions, including drinking water storage, hydropower supply, flood control, and recreation. Sediment deposition on reservoir and lake beds reduces their capacity to serve these functions. An increase in sedimentation rate reduces the useful life of these waterbodies unless measures are taken to reclaim their capacity. In waters serving as a drinking water source, increased turbidity levels and TSS concentrations degrade water quality unless treatment levels are increased to remove the additional sediment.

Sediment can also have negative effects on industrial activities. Suspended sediment increases the rate at which hydraulic equipment, pumps, and other equipment wear out, causing accelerated depreciation of capital equipment. Sediment can clog cooling water systems at power plants and other large industrial facilities.

Irrigation water used for agriculture that contains sediment or other pollutants from construction site discharges can harm crops and reduce agricultural productivity. Suspended sediment can form a crust over a field, reducing water absorption, inhibiting soil aeration, and preventing emergence of seedlings. Sediment can also coat plant leaves, inhibiting plant growth and reducing crop value and marketability. Other pollutants can damage soil quality (Clark, Edwin, Jennifer A. Haverkamp, and William Chapman. 1985. "Eroding Soils: The Off-Farm Impacts." Washington, DC: The Conservation Foundation).

Sediment deposition in river channels, ditches, and culverts reduces their capacity and can increase flood levels and frequency, increasing the level of adjoining property damage from flooding. Sediment can also lower values of property near impacted surface waters by degrading surface water appearance (*ibid*). Degraded aesthetics can also lower the value of

surface waters for recreational activities such as boating, fishing, and swimming.

Sediment is the primary source of the pollutants turbidity and TSS known to be associated with construction activity, but as stated earlier in this section, other pollutants such as nutrients, PAHs, and metals are also discharged from construction sites. Environmental impacts associated with these other pollutants are qualitatively discussed in the Environmental Assessment. The remaining discussion in this section describes EPA's quantitative analysis of the water quality impacts associated with sediment discharges from construction activity. Additional qualitative information on sediment impacts is also provided in the Environmental Assessment. EPA solicits submission of additional information on discharges from construction activity and environmental impacts associated with those discharges.

B. Methodology for Estimating Environmental Impacts and Pollutant Reductions

This section describes the methodology EPA used to quantitatively assess water quality impacts from construction activity sediment discharges and the water quality benefits expected from today's proposed options. Other pollutants from construction activity, such as nutrients, PAHs, and metals, create water quality impacts, but the information available to EPA on discharges other than sediment from construction sites is insufficient for EPA to quantitatively analyze their impacts. These discharges are instead discussed qualitatively in the Environmental Assessment.

1. National Analysis

EPA conducted a national quantitative analysis of water quality impacts associated with construction activity sediment discharges. To conduct this analysis, EPA used a Spatially Referenced Regressions on Watershed Attributes (SPARROW) model. SPARROW is a statistically-based modeling approach developed by the United States Geological Survey that relates measured levels of water quality components to the attributes of contributing watersheds. SPARROW has been used previously to estimate deliveries of nitrogen and phosphorus to surface waters from point, nonpoint, and atmospheric sources at both national and regional scales. The sediment version of SPARROW allows EPA to estimate levels of total suspended solids (TSS) in the larger freshwater surface waters (Reach File 1 level) in the contiguous 48 states (see

description of Enhanced Reach File 1.2 (RF1) in Section VI). EPA used this analysis to examine expected water quality impact improvements under various options relative to current levels of water quality impact. To the extent that changes in the loadings estimates, as discussed above in the sensitivity analysis, may be lower, then the lower loadings estimates would lower the SPARROW estimates of water quality changes by a comparable amount. A full description of EPA's analysis is provided in the Environmental Assessment.

SPARROW estimates total sediment loadings to estuaries but is unable to estimate sediment concentrations in estuaries. EPA instead used the Dissolved Concentration Potential (DCP) approach developed by the National Oceanic and Atmospheric Administration (NOAA) to estimate ambient concentrations of conserved contaminants introduced to estuaries that are subject to mixing and dilution. NOAA has provided DCP factors for most major estuaries in the contiguous 48 states. These factors allow estimation of estuarine TSS concentrations without detailed numerical simulation modeling. A full description of this analysis is provided in the Environmental Assessment.

The compliance options vary in the number of RF1 river and stream miles they improve. Option 1 improves water quality in 175,775 RF1 reach miles. Option 2 improves water quality in 522,120 RF1 reach miles. Option 3 improves water quality in 542,408 RF1 reach miles. In addition to improving water quality in rivers and streams, each option also improves water quality in other types of surface waters such as lakes and estuaries.

Construction activity in the United States is unevenly distributed among watersheds. It is highly concentrated in some areas and very sparse in others. For this reason, EPA presents information on water quality improvements associated with the compliance options for two different groups of watersheds. The first group contains the 10 percent of RF1 watersheds in the conterminous United States with the highest number of construction acres during the 1992–2001 time period ("Top 10%") and includes 115,568 RF1 stream miles. This group represents 75 percent of all construction activity during this time period and therefore reflects conditions associated with the majority of construction site activity. The second group encompasses all RF1 watersheds containing construction activity during the 1992–2001 time period ("All") and

includes 517,982 RF1 stream miles. Median TSS concentration reductions under the compliance options are greater for the "Top 10%" group because construction sites exert a greater influence on water quality in these reaches. This is because construction activities comprise a higher percentage of watershed area in these watersheds.

For the group of watersheds representing 75 percent of construction activity during the 1992–2001 time period, Option 1 reduces sediment discharges by approximately 0.5 billion pounds per year. It reduces median TSS concentration from 248.34 mg/L to

248.05 mg/L, or 0.29 mg/L. Option 2 reduces sediment discharges more than 19 billion pounds per year. It reduces median TSS concentration from 248.34 mg/L to 239.16 mg/L, or 9.18 mg/L. Option 3 reduces sediment discharges by more than 37 billion pounds per year. It reduces median TSS concentration from 248.34 mg/L to 231.65 mg/L, or 16.69 mg/L. The corresponding changes in the group of "All" RF1 reaches are shown in Table XIV–1 below.

The median concentrations in Table XIV–1 reflect conditions over multi-year time periods and across a large geographic area. Most construction site

discharges are driven by precipitation events and are therefore highly episodic. In-stream TSS concentrations deriving from construction site discharges tend to be higher during and shortly after precipitation events and lower during periods in between precipitation events. In addition, the average median concentrations in Table XIV–1 do not describe the high level of variability seen among different locations affected by construction site discharges. For more information on these sources of variability, see the Environmental Assessment.

TABLE XIV–1—RF1 RIVER AND STREAM MEDIAN TSS CONCENTRATION IMPROVEMENTS UNDER THREE COMPLIANCE OPTIONS

	"Top 10%" RF1 watersheds—median TSS concentration (mg/L)	Reduction in median TSS concentration (mg/L)	"All" RF1 watersheds—median TSS concentration (mg/L)	Reduction in median TSS concentration (mg/L)
Baseline	266.86	.....	287.22	.....
Option 1	266.85	0.01	287.03	0.19
Option 2	257.10	9.76	282.23	4.99
Option 3	250.13	16.73	279.71	7.51

Estimates from EPA's national quantitative analysis of water quality impacts were used for an analysis of the potential economic benefits of each of today's proposed options. See Section XV for additional information on the economic benefits analysis.

2. Case Study Analysis

In addition to a national analysis of water quality, EPA is conducting a case study analysis. SPARROW allows national examination of water quality at the scale of Reach File 1 surface waters, which is a relatively coarse scale. Reach File 1 surface waters do not include many smaller rivers and streams in the national surface water network. In order to quantitatively examine the nature of water quality impacts from construction activity on smaller rivers and streams, EPA is using the Soil and Water Assessment Tool (SWAT) in combination with the Agricultural Policy—Environmental Extender (APEX) model. SWAT is a watershed-scale simulation model and APEX is a site-scale simulation model. SWAT–APEX was developed by the United States Department of Agriculture's Agricultural Research Service (USDA–ARS). Because of higher computational requirements for the SWAT–APEX model relative to the SPARROW model, EPA has chosen to use the SWAT–APEX

model for a single watershed in the Dallas metropolitan region that has experienced significant levels of construction. A description of the case study methodology is provided in the Environmental Assessment. The case study has not been completed, so EPA intends to consider the results of the case study and include the case study analysis in the documentation in support of the final rule. EPA requests comments on this modeling approach.

XV. Benefit Analysis

EPA has assessed the potential benefits associated with the proposed rule by identifying various types of benefits that can result from reducing the level of sediment and turbidity being discharged from construction sites. Where possible, EPA has attempted to quantify and monetize benefits attributable to the regulatory options. Section XIV, Environmental Assessment, established the analytical framework for the benefits analysis.

A. Benefits Categories Estimated

Discharges of sediment and other pollutants from construction activity can have a wide range of effects on down stream water resources. As discussed in Section XIV, there are numerous potential impacts to local aquatic environments, and there are also consequences for human welfare.

Human activities and uses affected by construction discharge-related environmental changes include recreation, commercial fishing, public and private property ownership, navigation, and water supply and use. Sediments and other pollutants in discharges from C&D sites can also cause environmental changes that affect the non-use values that individuals have for the assurance that environmental resources are in good condition. These existence services, sometimes described as "ecological benefits," are reflected under the Clean Water Act as aquatic life, wildlife, and habitat designated uses.

Stormwater control measures reduce the amount of sediment that reaches waterways from C&D sites. As sediment loads are reduced, TSS and turbidity levels in adjacent waters decline, which in turn increases the production of environmental services that people and industry value. These environmental services valued by industry and the public include: recreation, public and private property ownership, navigation, water supply and use, and existence services. Table XV–1 provides a summary of various water related activities and their associated environmental services potentially impacted by discharges of sediment from C&D sites.

TABLE XV-1—SUMMARY OF BENEFITS FROM REDUCING SEDIMENT RUNOFF FROM CONSTRUCTION SITES

Activity	Environmental service potentially affected by runoff from construction sites	Benefits category
Recreation	Aesthetics, water clarity, water safety, degree of sedimentation, weed growth, fish and shellfish populations.	Non-market direct use.
—Outings		
—Boating		
—Swimming		
—Fishing		
Commercial Fishing and Shellfishing	Fish and shellfish populations	Markets.
Property Ownership	Aesthetics, safety of property from flooding, property value.	Markets.
Water Conveyance and Supply	Turbidity, degree of sedimentation	Avoided Costs.
—Water conveyance		
—Water storage		
—Water treatment		
Transportation	Degree of sedimentation	Avoided Costs.
Water Use	Turbidity	Avoided Costs.
—Industrial		
—Municipal		
—Agricultural		
Knowledge (No Direct Uses)	Environmental health	Non-market existence value.

However, not all of the changes in these services can be readily quantified as it requires a thorough understanding of the relationship between changes in water pollutant loads and production of environmental services. This problem is exacerbated by the fact that both the pollutant source and load reductions are relatively small, sporadic, numerous, and dispersed over a wide area when compared to more traditional sources of pollutants, such as a wastewater treatment plant. As a result of the difficulty in assessing changes in each environmental service associated with an activity listed in Table XV-1, EPA chose to focus on two main categories of benefits: avoided costs and non-market benefits. The specific categories of avoided costs considered were: Reservoir dredging, navigable waterway dredging, and drinking water treatment and sludge disposal. Non-market benefits considered were improvements in recreational activities and existence value from improvements in the health of aquatic environments.

B. Quantification of Benefits

Reduced costs for water treatment, water storage, and navigational dredging

are three benefit categories that EPA is using to estimate the benefits of the proposed rule. EPA used estimates of changes in sediment deposition and in-stream TSS concentrations from the SPARROW model runs to quantify the reduction in the amount of sediment that would need to be dredged from reservoirs and the reduction in the amount of TSS that must be removed from the source water used for the production of potable water. The SPARROW results provided these changes for each waterbody in the RF1 network (approximately 60,000 stream segments). This allowed EPA to associate these changes with: Data from the U.S. Army Corps of Engineers on navigable waterways that are routinely dredged; EPA data on source water for drinking water treatment plants; and USGS data on the location of reservoirs used for hydroelectric power, flood control, a source for drinking water, and recreation. SPARROW results also allowed for the estimated change in TSS concentrations in the RF1 network which were mapped to a Water Quality Index (WQI). The index is used to map changes in pollutant parameters, such as

TSS, to effects on human uses and support for aquatic and terrestrial species habitat. Section 10.1.1 of the Environmental Assessment Document provides detail on the WQI index and its application to the benefits analysis for the C&D regulation. The WQI presents water quality by linking to suitability for various human uses, but does not in itself identify associated changes in human behavior. Behavioral changes and associated welfare effects are implied in the proposed benefit transfer approach for measuring economic values. For more on the benefit transfer approach see Appendix 7-1 Meta-Analysis Results from the Economic Analysis.

The benefits analysis results are shown in Table XV-2. To the extent that changes in the loadings estimates, as discussed above in the sensitivity analysis may lower the loadings estimates then the lower loadings estimates would lower the SPARROW estimates of water quality changes and the associated benefits presented in Table XV-2 by a comparable amount.

TABLE XV-2—ANNUAL BENEFITS (MILLION 2008 \$) FOR OPTIONS

	Regulatory options		
	Option 1	Option 2	Option 3
Avoided Costs			
Reservoir Dredging	\$0.6	\$17.6	\$30.6
Navigable Waterway Dredging	1.0	12.9	27.2
Drinking Water Treatment	0.2	7.4	13.1
Total Avoided Costs ^a	1.8	37.9	70.9
Welfare Improvements	16.6	295.0	398.5

TABLE XV-2—ANNUAL BENEFITS (MILLION 2008 \$) FOR OPTIONS—Continued

	Regulatory options		
	Option 1	Option 2	Option 3
Total Monetized Benefits	18.4	332.9	469.5

^a Totals do not add due to rounding.

Source: Economic Analysis; Environmental Assessment.

XVI. Monetized Benefit-Cost Comparison

EPA has conducted a benefit-cost analysis of the C&D effluent guidelines proposed in today's notice. The benefit-cost analysis may be found in the complete set of support documents. Sections XI, XIV, and XV of this notice

provide additional details of the benefit-cost analysis.

Table XVI-1 provides the results of the benefit-cost analysis. A discount rate of 3% was used to annualize costs and benefits. To the extent that changes in the loadings estimates, as discussed above in the sensitivity analysis may lower the loadings estimates, then the lower estimates would lower the

SPARROW estimates of water quality changes and the associated benefits presented in Table XVI-1 by a comparable amount. Moreover, changes in the RUSLE parameters as described earlier would reduce EPA's estimates of runoff volumes requiring treatment, which would reduce the costs of Options 2 and 3.

TABLE XVI-1—TOTAL ANNUALIZED BENEFITS AND COSTS OF OPTIONS
[Year 2008 \$]

Option	Social costs (2008 \$ millions per year)	Monetized benefits (2008 \$ millions per year)
Option 1	\$132	\$18
Option 2	1,891	333
Option 3	3,797	470

XVII. Approach to Determining Long-Term Averages, Variability Factors, and Effluent Limitations and Standards

This section describes the statistical methodology used to develop long-term averages, variability factors, and limitations for BAT and NSPS. For simplicity, the following discussion refers only to effluent limitations guidelines; however, the discussion also applies to new source performance standards. EPA also is soliciting comments on a limitation on pH as described in Section XX. Such a limitation would not be developed using the statistical methodology described below. Instead, EPA typically establishes a range of acceptable values from 6 to 9 to protect against extreme acidity or alkalinity.

A. Definitions

The proposed limitations for turbidity, as presented in today's notice, are provided as the maximum daily discharge limitation. Definitions provided in 40 CFR 122.2 state that the "maximum daily discharge limitation" is the "highest allowable 'daily discharge.'" "Daily discharge" is defined as the "'discharge of a pollutant' measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling." To be

consistent with the daily discharge definition, EPA averaged all measurements recorded each day from each treatment system before calculating the proposed limitations. In complying with the final rule, the number of measurements required each day would be determined by the permit authority. EPA would, however, discourage the practice of allowing the number of monitoring samples to vary arbitrarily merely to allow a site to achieve a desired average concentration, i.e., a value below the limitation that day. EPA expects that enforcement authorities would prefer, or even require, monitoring samples at some regular, pre-determined frequency. As explained below, if a site has difficulty complying with the limitation on an ongoing basis, then the site should improve its equipment, operations, and/or maintenance.

B. Data Selection

The proposed limitations are based upon data from sites located in three western states: California, Oregon and Washington. EPA is soliciting data (see Section XX for a detailed request for data), in part, to evaluate whether the limitations are appropriate for other locations. Typically, EPA qualitatively reviews all the data before making its data selection used to calculate the limitations in final rules. EPA generally

selects only from facilities that have the model technologies for the option and meet several other criteria. One criterion generally requires that the influents and effluents from the treatment components represent typical wastewater from the industry, with no incompatible wastewater from other sources (e.g., sanitary wastes). A second criterion typically ensures that the pollutants were present in the influent at sufficient concentrations to evaluate treatment effectiveness. A third criterion generally requires that the facility demonstrate good operation of the treatment component (e.g., data sets for episodes with generally high pollutant concentrations are often excluded). A fourth criterion typically requires that the data can not represent periods of treatment upsets or shut-down periods. EPA solicits comment on its data selection and criteria.

EPA relied on data from two vendors and the Oregon Department of Environmental Quality to calculate limits. Sites were located in California, Oregon and Washington and employed chitosan-enhanced sand filtration. Data were from 19 treatment systems located at 17 different sites. For some of these sites, EPA has data on site locations, treatment systems, flowrates, operating conditions, and treatment volumes. For other sites, this information was not available from the vendors. In total, EPA

has 6,537 individual data points on turbidity effluent from these systems. The influent concentrations in these data points are generally substantially lower than the concentrations modeled by EPA in its RUSLE analysis as discussed in section IX. F, which is not consistent with the first criterion above. EPA will be examining this discrepancy between this proposed rule and the final rule and its affect on EPA's analysis. In its calculations of the proposed limitations, EPA applied its criteria and excluded data that do not appear to demonstrate typical performance (e.g., extremely large values for a measurement, daily value, and/or site) and typographical errors. EPA retained 6,003 measurements after incorporating data exclusions. For the final rule, EPA intends to reevaluate its exclusions and inclusions of data, and seek additional information about the sites used as a basis for the proposed limitations. EPA also intends to evaluate, and incorporate as appropriate, any additional data provided by commenters and other sources. For example, a memorandum by GeoSyntec Consultants (see DCN 41114) contains additional data on ATS performance that EPA has not considered in evaluating the limitations.

C. Statistical Percentile Basis for Limitations

The daily maximum limitation is an estimate of the 99th percentile of the distribution of the daily measurements. EPA calculates the daily maximum limitation based upon a percentile chosen with the intention, on one hand, to accommodate reasonably anticipated variability within the control of the site and, on the other hand, to reflect a level of performance consistent with the Clean Water Act requirement that these effluent limitations be based on well operated and maintained facilities. The percentile for the daily maximum limitation is estimated using the product of the long-term average and the variability factor. For the proposed rule, EPA estimated the long-term average and variability factor using a statistical model based upon the lognormal distribution. The Development Document describes this model and others that EPA will consider in developing the final regulations.

D. Daily Maximum Limitation

In establishing the daily maximum limitation, EPA's objective is to restrict the discharges on a daily basis at a level that is achievable for a site that targets its treatment at the long-term average. EPA acknowledges that variability around the long-term average results from normal operations. This variability

means that at certain times sites may discharge at a level that is greater than the long-term average. This variability also means that sites may at other times discharge at a level that is considerably lower than the long-term average. To allow for these possibly higher daily discharges, EPA has established the daily maximum limitation that is based upon a long-term average and a variability factor.

1. Long-Term Average

In the first of two steps in estimating the different types of limitations, EPA determines an average performance level (the "long-term average") that a site with well-designed and operated model technologies (which reflect the appropriate level of control) is capable of achieving. This long-term average is calculated from the data from the sites using the model technologies for the option. EPA expects that all sites subject to the limitations will design and operate their treatment systems to achieve the long-term average performance level on a consistent basis because sites with well-designed and operated model technologies have demonstrated that this can be done. The proposed long-term average of 2.77 NTU is the median value of 19 long-term averages collected from 17 construction sites (two sites each had two treatment systems). The long-term averages ranged from a minimum of 0.43 NTU to a maximum of 21.86 NTU. The median is the midpoint of the 19 values, and thus, nine of the system averages are above the proposed long-term average and nine are below.

A site that discharges consistently at a level near the proposed daily maximum limitation of 13 NTU would not be operating its treatment to achieve the long-term average of 2.77 NTU, which is part of EPA's objective in establishing the daily maximum limitations. Targeting treatment to achieve the limitation may result in frequent values exceeding the limitation due to routine variability in treated effluent. Operators should instead target the long-term average, and if they do so, should be able to consistently discharge below the limit. To ensure that this is possible, EPA has incorporated an allowance for variability into the limitation.

2. Variability Factor

In the second step of developing a limitation, EPA determines an allowance for the variation in pollutant concentrations when processed through well designed and operated treatment systems. This allowance for variance incorporates all components of

variability including process and wastewater generation, sample collection, shipping, storage, and analytical variability. This allowance is incorporated into the limitations through the use of the variability factors, which are calculated from the data from the sites using the model technologies. If a site operates its treatment system to meet the relevant long-term average, EPA expects the site to be able to meet the limitations. The variability factor assures that normal fluctuations in a site's treatment are accounted for in the limitation. By accounting for these reasonable excursions above the long-term average, EPA's use of variability factors results in limitations that are generally well above the actual long-term averages. The proposed variability factor of 4.58 is the arithmetic average of 19 variability factors collected from the 17 construction sites also used to calculate the proposed long-term average. The variability factors ranged from a minimum of 1.96 to a maximum of 10.85.

In its evaluation of the proposed daily variability factor, EPA examined TSS limitations promulgated during the last 10 years. Engineering references (e.g., American Society of Civil Engineers (ASCE)/American Water Works Association (AWWA), *Water Treatment Plant Design*, 4th Edition, McGraw-Hill, NYC, NY, 2005) cite conversion factors for turbidity to TSS values. Because of the generally accepted relationship between turbidity and TSS, EPA assumes that the variability also would be similar for turbidity and TSS. Furthermore, although the regulations were based upon different treatment technologies, wastewater professionals generally agree that TSS and turbidity can be adequately controlled by many different types of treatment systems. Furthermore, each regulation used data from well operated and controlled treatment processes in determining the variability of TSS. As shown in the TDD, the values are relatively close in value, ranging from 2.9 to 5.4, with an arithmetic average of 4.1. Because the C&D technology is a relatively simple one, EPA concluded that the relatively large value of 4.58 for the proposed variability factor still ensures a level of control that EPA considers possible for a simple technology.

E. Engineering Review of Limitations

In conjunction with the statistical methods, EPA performs an engineering review to verify that the limitations are reasonable based upon the design and expected operation of the control technologies and the facility conditions. EPA compared the value of the

proposed limitation to the data values used to calculate the limitation. Most monitoring results were substantially lower than the proposed turbidity limit. In most instances where the effluent turbidity was higher than the proposed turbidity limit, the data indicated sudden jumps in turbidity levels which suggested that the treatment system was not being operated properly.

For the final rule, EPA will perform a more in-depth examination of the range of performance by the treatment systems used as the basis of the limitation. Data from some treatment systems demonstrate the best available technology. Data from other systems may demonstrate the same technology, but not the best demonstrated design and operating conditions for that technology. For these sites, EPA will evaluate the degree to which the site can upgrade its design, operating, and maintenance conditions to meet the limitations. If such upgrades are not possible, then EPA will modify the limitations to reflect the lowest levels that the technologies can reasonably be expected to achieve. EPA recognizes that, as a result of the proposed limitation, some dischargers may need to improve treatment systems, erosion and sediment controls, and/or treatment system operations in order to consistently meet the effluent limitation. EPA determined that this consequence is consistent with the Clean Water Act statutory framework, which requires that discharge limitations reflect the best available technology.

F. Monthly Average Limitations

Because this industry generally does not have continuous discharges, EPA is proposing only a daily maximum limitation that would apply only on days when the site discharges. While the actual monitoring requirements will be determined by the permitting authority, the Agency has assumed that sites will monitor every day that the discharge occurs. In similar situations when it has assumed daily monitoring for other industries, EPA typically has also promulgated monthly average limitations with the daily maximum limitations. In establishing monthly average limitations, EPA's objective is to provide an additional restriction to help ensure that sites target their average discharges to achieve the long-term average. The monthly average limitation requires continuous dischargers to provide on-going control, on a monthly basis, that complements controls imposed by the daily maximum limitation. However, EPA expects C&D discharges to be intermittent (only

during and after precipitation) with substantial variability in rainfall and site characteristics over the life of the project. Under these circumstances, EPA believes that it appropriate to rely on a daily maximum to ensure that systems are being operated properly. EPA solicits comment on whether monthly average limitations or some other approach would be appropriate to further ensure that sites target treatment at the long-term average.

XVIII. Regulatory Implementation

A. Relationship of Effluent Guidelines to NPDES Permits and ELG Compliance Dates

Effluent guidelines act as a primary mechanism to control the discharge of pollutants to waters of the U.S. Once finalized, the proposed C&D regulations would be applied to C&D sites through incorporation in individual NPDES permits or a general permit issued by EPA or authorized states or tribes under section 402 of the Act.

The Agency has developed the limitations for this proposed rule to cover the discharge of pollutants for this point source category. In specific cases, the NPDES permitting authority may elect to establish effluent limitations for pollutants not covered by this regulation. In addition, if state water quality standards or other provisions of state or federal law authorize or require limits on pollutants not covered by this regulation or authorize or require more stringent limits or standards on pollutants to achieve compliance, the permitting authority has authority to apply those effluent limitations or standards in their NPDES permits. EPA does not intend for this rule to preclude states from including controls in their stormwater programs that are found to be effective at controlling discharges of pollutants.

Since EPA expects that the effluent guidelines requirements will be implemented over time as states revise their general permits, EPA expects full implementation within five years of the effective date of the final rule, currently required to be promulgated in December 2009, which would be 2014.

B. Upset and Bypass Provisions

A "bypass" is an intentional diversion of the streams from any portion of a treatment facility. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets for

direct dischargers are set forth at 40 CFR 122.41(m) and (n).

Because much of today's proposed rule includes requirements for the design, installation, and maintenance of erosion and sediment controls, EPA considered the need for a bypass-type provision in regard to large storm events. However, EPA did not specifically include such a provision in the text of the proposed regulation because the proposed ELGs only require dischargers to meet a numeric turbidity limit for discharges from storm events smaller than the 2-year, 24-hour storm. Because EPA is not establishing requirements for control of larger storm events, specific bypass provisions were not necessary. Standard upset and bypass provisions are generally included in all NPDES permits, and EPA expects this will be the case for construction stormwater permits issued after this rule becomes effective.

C. Variances and Waivers

The CWA requires application of effluent limitation guidelines established pursuant to section 301 to all direct dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of ELGs for categories of existing sources for toxic, conventional, and nonconventional pollutants. "Ability to Pay" and "water quality" waivers do not apply to conventional or toxic pollutants (e.g., TSS, PCBs) and, therefore, do not apply to today's proposed rule. However, the variance for Fundamentally Different Factors (FDFs) may apply in some circumstances.

EPA will develop effluent limitations or standards different from the otherwise applicable requirements if an individual discharging facility is fundamentally different with respect to factors considered in establishing the limitation of standards applicable to the individual facility. Such a modification is known as a "fundamentally different factors" (FDF) variance.

Early on, EPA, by regulation provided for the FDF modifications from the BPT and BAT limitations for toxic and nonconventional pollutants and BPT limitations for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for modifications for PSES. FDF variances for toxic pollutants were challenged judicially and ultimately sustained by the Supreme Court. *Chemical*

Manufacturers Assn v. NRDC, 479 U.S. 116 (1985).

Subsequently, in the Water Quality Act of 1987, Congress added new section 301(n) of the Act explicitly to authorize modifications of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standard. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under section 301(n), an application for approval of a FDF variance must be based solely on (1) information submitted during rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and must not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR part 125, subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (e.g., volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility

in question is fundamentally different from the facilities and factors considered by EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (e.g., infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by the EPA in establishing the applicable guidelines. An FDF variance

is not available to a new source subject to NSPS.

D. Other Clean Water Act Requirements

Compliance with the provisions of this proposed rule would not exempt a discharger from any other requirements of the CWA. Notable, if construction activity results in the "discharge of dredged or fill material" into waters of the U.S. the discharger at the C&D site must obtain a separate permit under section 404 of the CWA.

XIX. Related Acts of Congress, Executive Orders, and Agency Initiatives

A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an "economically significant regulatory action" because it is likely to have an annual effect on the economy of \$100 million or more. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in Section 8.3, Comparison of Social Cost and Monetized Benefits in Chapter 8 of the Economic Analysis. A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here. Table XIX-1 provides the results of the benefit-cost analysis.

TABLE XIX-1—TOTAL ANNUALIZED BENEFITS AND COSTS OF THE REGULATORY OPTIONS

Option	Social costs (2008 \$ millions per year)	Monetized benefits (2008 \$ millions per year)
Option 1	\$132	\$18
Option 2	1,891	333
Option 3	3,797	470

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2336.01.

Today's proposed option, Option 2, would require operators to perform turbidity monitoring that would entail

measuring and recording the NTU level of effluent prior to discharge.

EPA estimates that this provision would create a total annual burden of about 224,000 hours for the proposed rule for permittees and about 25,000 hours for permitting authorities. This estimate is the incremental burden above the currently-approved burden level for the EPA and State construction general permits. EPA has received OMB approval for the current permit requirements under control no. 2040-

0188, "Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit." Burden is defined at 5 CFR 1320.3(b).

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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number [EPA-HQ-OW-2008-0465]. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 28, 2008, a comment to OMB is best assured of having its full effect if OMB receives it by December 29, 2008. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

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

For the purposes of assessing the impacts of today's rule on small entities, small entity is defined as either a: (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; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA does not anticipate any impacts on small organizations and impacts on small governments are covered under the UMRA analysis section. The RFA provides that EPA generally define small businesses according to the size standards established by the Small Business Administration (SBA). The SBA established criteria for identifying small businesses is based on either the number of employees or annual revenues (13 CFR 121). These size standards vary by NAICS (North American Industrial Classification

System) code. For the C&D industry NAICS categories (236 and 237) the small business annual revenue threshold is set at \$33.5 million. The SBA sets the small business threshold for NAICS 2372 (Land Subdivision of NAICS 237) at \$7 million. However, for the purpose of the economic analysis, EPA allocated this sector amongst the four primary building construction sectors: Single-family housing, multifamily housing, industrial building, and commercial and institutional building construction.

In order to gather more information on the potential impacts of today's proposal on small businesses, EPA voluntarily followed the provisions of section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). EPA voluntarily convened a panel for this rulemaking on September 10, 2008. EPA held an outreach meeting with SERs on September 17, 2008. A list of SERs and the outreach materials sent to SERs are included in the docket (see DCN 41115-41133). Because of the voluntary nature under which EPA followed section 609(b), EPA does not plan to complete the panel process or release an Initial Regulatory Flexibility Analysis (IRFA). However, EPA did prepare a report that summarizes information obtained from the panel, which is also included in the docket (see DCN 41136).

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Overall, EPA estimates that in a typical year there will be 82,000 in-scope firms, and of this total, approximately 78,000, or about 96 percent, are defined as small businesses. For this option, EPA estimates that about 618 small businesses would experience costs exceeding 1 percent of revenue and 51 small businesses would incur costs exceeding 3 percent of revenue. Both numbers represent very small percentages of the in-scope small firms. The 618 firms estimated to incur costs exceeding 1 percent of revenue represent about 0.4 percent of all small C&D sector firms and 0.8 percent of estimated potentially in-scope small businesses. The 51 firms estimated to incur costs exceeding 3 percent of revenue are again very small percentages at less than one-tenth of a percent of both small business counts. Therefore, EPA does not consider the preferred option to have the potential to cause a significant economic impact on a substantial number of small entities.

In developing the current set of proposed options, EPA considered potential affects on small firms, as demonstrated by the inclusion of a one to less than ten acre project size category for each option. The regulatory requirements for these small size projects are considered to be significantly less burdensome than those for the larger size projects. Although small firms do not directly equate to small projects, EPA's review of the construction industry suggests that smaller firms tend to undertake smaller projects.

Therefore, EPA considers the inclusion of a separate small site size category with less burdensome requirements to be an effective way to address potential impacts on small firms. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures 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.

EPA has determined that this rule contains a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year.

Accordingly, EPA has prepared under section 202 of the UMRA a written statement which is summarized below.

Consistent with the intergovernmental consultation provisions of section 204 of

the UMRA EPA has already initiated consultations with the governmental entities affected by this rule. EPA took and responded to comments from government entities on the earlier proposed C&D rule. To help characterize the potential impacts to government entities EPA has gathered state government data on NOI submissions, and from U.S. Census data and Reed Construction Data, EPA has compiled information on how much construction activity is undertaken by government entities. EPA has routinely consulted with EPA regional offices who maintain direct and regular contact with state entities. Finally, EPA met directly with

and solicited data from all the state Stormwater Coordinators who attended EPA's Annual Stormwater Conference in 2007. As part of the financial impact analysis, EPA looked specifically at the impact on government entities resulting from both compliance with construction site requirements and from administering the additional monitoring reports submitted by in-scope firms. Table XIX-2 shows the results of this analysis. For more information on how this analysis was performed see Section 9-1 Assessing Costs to Government Entities in Chapter 9 of the Economic Analysis.

TABLE XIX-2—IMPACTS OF REGULATORY OPTIONS ON STATE AND LOCAL GOVERNMENTS

[Million 2008 \$]

	Option 1	Option 2	Option 3
Compliance Costs			
Federal	\$2.3	\$34.0	\$66.5
State	4.4	68.1	128.2
Local	25.1	390.7	735.8
Administrative Costs			
Federal	0.0	0.0	0.0
State	0.0	0.1	0.2
Local	0.0	0.6	1.0
Total Costs			
Federal	2.3	34.0	66.5
State	4.4	68.2	128.4
Local	25.1	391.3	736.8

Source: Economic Analysis.

In developing this rule, EPA consulted with small governments pursuant to its plan established under section 203 of the UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. To ensure that the proposed Options were not disproportionately affecting small government entities EPA analyzed

impacts on small government entities. The assessment of impacts on small governmental entities involved three steps: (1) Identifying small government entities (i.e., those serving populations of less than 50,000, (5 U.S.C. 601[5])), (2) estimating the share of total government costs for the regulatory options incurred by small governments, and (3) estimating the potential impact

from these costs based on comparison of small government outlays with small government revenue and outlays. For details of this analysis see Section 9.2 Assessing Costs and Impacts on Small Government Entities in Chapter 9 of the Economic Analysis. Table XIX-3 has the results of the small government entity impact analysis.

TABLE XIX-3—IMPACTS OF REGULATORY OPTIONS ON SMALL GOVERNMENT UNITS

[Million 2008 \$]

	Option 1	Option 2	Option 3
Compliance Costs			
Small Government Entities	\$11.8	\$183.6	\$345.8
Administrative Costs			
Small Government Entities	\$0.0	\$0.3	\$0.5
Total Costs			
Small Government Entities	\$11.8	\$183.9	\$346.3

TABLE XIX-3—IMPACTS OF REGULATORY OPTIONS ON SMALL GOVERNMENT UNITS—Continued
[Million 2008 \$]

	Option 1	Option 2	Option 3
Small Government Impact Analysis Concepts			
Total Revenues	\$125,515	\$125,515	\$125,515
Total Costs as % of Total Revenues	0.01%	0.15%	0.28%
Capital Outlay	\$13,455	\$13,455	\$13,455
Total Costs as % of Total Capital Outlay	0.09%	1.37%	2.57%
Construction Outlay Only	\$8,529	\$8,529	\$8,529
Total Costs as % of Total Construction Outlay	0.14%	2.16%	4.06%

Source: Economic Analysis.

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. The proposed rule would not alter the basic state-federal scheme established in the Clean Water Act under which EPA authorizes states to carry out the NPDES permitting program. EPA expects the proposed rule would have little effect on the relationship between, or the distribution of power and responsibilities among, the federal and state governments. 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 comment on this proposed rule from State and local officials.

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 6, 2000), requires EPA to develop an accountable process to

ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”

“Policies that have Tribal implications” is defined in the Executive Order to include regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. This proposed rule does not have tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes as specified in Executive Order 13175. Today’s proposed rule contains no Federal mandates for Tribal governments and does not impose any enforceable duties on Tribal governments. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicits comment 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 does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This rule is based on technology performance, not health or safety risks.

H. Executive Order 13211 (Energy Effects)

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The treatment systems required by most sites affected by today’s proposed rule rely on treatment techniques that do not utilize mechanical equipment. The proposed rule may require larger sediment basins in certain cases and some sites would need to operate treatment systems designed to reduce the turbidity of stormwater discharges, and therefore may result in the use of additional fuel for construction equipment conducting excavation and soil moving activities or to operate electrical generators to power pumps. EPA determined that the additional fuel usage would be small, relative to the total fuel consumption at construction sites and the total annual U.S. fuel consumption.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, (Pub. L. 104–113, section 12(d); 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise

impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The Agency is not aware of any consensus-based technical standards for the types of controls contained in today's proposal. 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 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule 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. The proposed rule will reduce the negative effects of discharges from construction sites in the nation's waters to benefit all of society, including minority communities.

XX. Solicitation of Data and Comments

A. General Solicitation of Comment

EPA encourages public participation in this rulemaking. EPA asks that commenters address any deficiencies that they perceive in the record supporting this proposal and that suggested revisions or corrections to the rule, preamble or record be supported

by data. EPA invites all parties to coordinate their data collection activities with the Agency to facilitate cost-effective data submissions. Please refer to the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this preamble for technical contacts at EPA.

B. Specific Solicitation of Comments and Data

EPA solicits comments on all aspects of today's proposal. In addition to the various topics on which EPA has solicited comments throughout this proposal, EPA specifically solicits comments on the following:

1. EPA is proposing an effluent limit for turbidity. EPA solicits comments on the need to regulate additional pollutants or require monitoring of additional parameters, specifically pH. High pH can result from discharges of concrete truck washout as well as from stormwater that flows over recently placed concrete. EPA solicits comments on whether an effluent limit for pH is needed. Such a limitation would not be developed using the statistical methodology used to develop the turbidity limitation. Instead, EPA typically establishes a range of acceptable values from 6 to 9 to protect against extreme acidity or alkalinity.

2. EPA is proposing that construction activity located in areas of the country that have an annual R-factor of less than 50 not be required to meet the turbidity standard. EPA solicits comment on the use of the annual R-factor as an applicability provision. EPA also solicits comment on incorporating a seasonal R-factor applicability provision, similar to the waiver provision for small construction sites currently in place under the Phase II regulation, into this regulation. (EPA's rainfall erosivity factor calculator can be found at <http://cfpub.epa.gov/npdes/stormwater/lew/lewcalculator.cfm>). EPA solicits comment on the appropriate seasonal R-factor to consider, as well how it would be implemented. EPA is aware that R-factor information may not be widely available in Alaska, Hawaii and the U.S. territories. EPA solicits comment on the availability of R-factors in these areas. EPA also solicits comments on using annual precipitation instead of R-factor as an applicability provision for Alaska, as well as for other areas where R-factor information is not readily available.

3. EPA solicits comments on other factors related to soil type, climate or soil erosivity that should be considered as potential applicability provisions. EPA considered annual precipitation as an applicability provision in concert with or in place of an annual R-factor

applicability criterion. EPA solicits comments on the merits of an annual precipitation applicability criterion.

4. EPA is proposing that construction activity located in areas with less than 10 percent soil clay content, by mass, not be required to meet the turbidity standard. EPA solicits comments on the feasibility and ease of implementation of the proposed 10 percent clay content applicability criteria. Specifically, EPA requests comments on how permittees could demonstrate that soils on their construction sites contain less than 10 percent clay content. EPA envisions permittees using available soil survey data as a way of establishing applicability, or permittees conducting laboratory analysis of soils present on-site. For example, ASTM D-422 (Standard Test Method for Particle-Size Analysis of Soils) could be specified. EPA requests comment on these two approaches. Specifically, EPA requests comments on the availability of soil survey data for the entire U.S. (including Alaska, Hawaii and the U.S. territories) and also the appropriate laboratory methods or standards that should be used by permittees to analyze soils on their sites. EPA also solicits comments on the number of samples that should be collected, the type and location of samples to be collected (i.e., should EPA consider that the applicability provision apply to topsoil or should EPA consider all soils expected to be exposed during the duration of the construction project). EPA solicits comments on how to aggregate or weight soil data for different areas of the site and for different soil horizons. EPA also solicits comment on whether the proposed 10 percent clay content value is an appropriate value to use for an applicability provision of the turbidity standard.

5. EPA is proposing that C&D sites required to meet the turbidity limit provide storage and treatment for runoff expected from the local 2-year, 24-hour storm. EPA solicits comments on whether this volume is adequate, or whether additional storage (such as runoff from the 10-year, 24-hour storm or the 25-year, 24-hour storm) or less storage (such as runoff from the 1-year, 24-hour storm) should be required. EPA also solicits comments on whether specific analytical approaches or models (such as TR-55) should be used by permittees to calculate runoff volumes and storage requirements and whether specific assumptions in these models (such as specifying minimum runoff curve numbers that must be used) should be mandated through the regulation.

6. EPA solicits data on the costs and performance of stormwater treatment systems and construction site erosion and sediment controls. EPA requests comment on the \$0.02 per gallon cost for ATS EPA used as a basis for calculating costs for Options 2 and 3. EPA specifically solicits comments on treatment systems other than chitosan-enhanced filtration that could be used by permittees to meet the proposed or an alternate turbidity limit. EPA requests costs and performance data for these systems, as well as information on specific locations, project types or soil types for which these systems would be applicable. EPA also solicits comments on the costs to install conventional sediment basins.

7. EPA has based its baseline assumptions on requirements currently contained in state construction general permits. EPA has not considered existing local or municipal requirements or regulations that may be more stringent than requirements contained in state general permits. EPA solicits comments and data on existing or proposed state, local and municipal requirements that are more stringent than the data used in EPA's analysis so that EPA may more accurately characterize the baseline of regulatory programs nationwide. EPA also solicits comments on the extent to which water quality standards or Total Maximum Daily Loads are requiring a higher level of control than currently required by state construction general permits.

8. EPA solicits comments on the modeling approach used to estimate sediment generation and reductions due to the proposed option, which is described in the Development Document. EPA also solicits information and data on concentrations of pollutants, including sediment, turbidity, TSS, nutrients, metals, organics and other pollutants typically found in construction site stormwater discharges. EPA recognizes that currently available data generally show significantly lower influent and effluent sediment concentrations (for traditional sedimentation basins) than are reflected in EPA's modeling analysis. EPA solicits comment on whether and how these data should be incorporated into its analysis. More generally, EPA solicits comments on ways in which the load and pollutant removal estimates generated in support of this proposal can be improved, and how EPA's load estimates and benefits estimation methodologies can incorporate consideration of pollutants other than sediment.

9. EPA has used NOI data from approximately 38 states. EPA solicits

NOI data from other states, as well as other data that can be used to estimate the annual number of construction sites in the U.S. and the proportion of sites that would be subject to today's proposed regulations.

10. EPA solicits comments on the typical duration of construction projects, the percent of construction projects acres that are disturbed, and the typical duration that soils are exposed.

11. EPA solicits comments on the ability of dischargers to meet a numeric turbidity limit using passive, instead of active systems and the costs and performance of available technologies. EPA solicits comments on basing a turbidity limit on passive systems at a level in the range of 50–150 NTUs (or some other level) and the costs and pollutant load reductions that would be attributable to such a standard. EPA solicits comments on the applicability provisions of such a standard (i.e., should a 50–150 NTU (or some other level) standard apply to all permitted sites, only sites above 10 acres, should the standard include consideration of R-factor, annual precipitation or soil clay content, or other factors). EPA solicits information on the potential toxicity of polymers used in wastewater treatment, especially those used or marketed for use in stormwater treatment. EPA further solicits information on regulator and industry strategies and methods for avoiding any toxic effects of polymers used on construction sites. EPA requests comment on whether an approach based on passive controls could be implemented without specific numeric limits, or with action levels that would not themselves lead to permit violations but for which exceedances would result in additional controls, monitoring, inspection, and/or reporting requirements.

12. EPA solicits comments on the ability of dischargers located in areas with R-factors less than 50 and with less than 10% soil clay content to meet a numeric turbidity limit and what technologies would be necessary to meet the proposed standard under Option 2 using conventional BMPs or passive treatment systems. Specifically, EPA requests comment on whether or not these sites, due to low rainfall, soil erosivity and low clay content, could meet the proposed Option 2 turbidity standard using conventional BMPs and at a substantially lower costs than ATS.

13. EPA solicits comments on whether national standards regulating peak flowrates from sediment basins should be included in the effluent guideline in order to limit channel erosion and what specific criteria or

standards, such as matching predevelopment peak discharge rates for a specific design storm (such as the 1-year, 24-hour or 2-year, 24-hour) should be included.

14. EPA solicits comments on whether perimeter controls should be designed to remove a specific particle size and on any specific design or performance criteria that should be established for perimeter controls.

15. EPA solicits comments on the costs and feasibility of requiring that flow from silt fences discharge through a vegetated filter strip or buffer before leaving the construction site.

16. EPA solicits comments on ways in which permittees could certify that soils on their C&D site would not exceed the percent clay criteria associated with the turbidity limit.

17. EPA solicits comments on requiring porous baffles in sediment basins as minimum requirements nationwide and whether the draft porous baffle design standards published by the North Carolina Department of Transportation (see DCN 43083) would be appropriate, or if other design standards are appropriate.

18. EPA solicits comments on whether the detention time requirements proposed for sediment basins are appropriate and if other detention time requirements should be considered. EPA solicits comments on whether sediment basin requirements should address any other factors, such as a minimum surface area or a discharge rate per unit watershed area. EPA solicits data on effectiveness of any alternative criteria.

19. EPA solicits comments on whether it would be feasible to require construction sites to maintain a minimum cover factor for soils based on the C-factor in RUSLE. For example, would it be feasible to require permittees to document in their SWPPP or erosion and sedimentation control plan the various phases of their project and calculate an area-weighted C-factor for each phase. Permittees would be required to meet a minimum average C-factor for the entire site during all phases of the project. Such a standard could vary based on the size of the site, with a lower average C-factor applying to larger sites. EPA solicits comments on the costs and feasibility of such an approach, and comments on what the specific C-factors should be for sites of various sizes (or other criteria) under such a standard. EPA solicits comments on the appropriate C-factors that would apply to various rolled erosion control products, hydromulches and other types of ground covers and erosion control

products currently in use by the industry.

20. EPA solicits comments on whether or not the guideline should establish maximum slope lengths before a grade break or linear sediment control must be provided for steep slopes. EPA solicits comments on appropriate slope lengths for various slope values. EPA points readers to the March 18, 2008, Draft California CGP (see DCN 41137) for an example.

21. Under the current permitting system, permittees (such as a developer) may sell or transfer control of a property to a builder or several builders and file for an NOT at some point during the course of the project, thus ending permit coverage for the developer. The builder or builders assuming control of the property would then be the permittee(s). If the project, while under control of the developer, was subject to the proposed turbidity limit because the project was over 40 acres in size and met the R-factor and clay content applicability provisions, and the project was sold to two builders, each controlling 20 acres, neither builder now controls more than 30 acres. As a result, there is some question as to whether or not the turbidity limit would still apply and which of the builders would be responsible for meeting the turbidity limit. EPA solicits comments from permitting authorities on if, and how, the proposed turbidity limit applicability provisions should be structured and the regulatory language structured so that the project remains subject to the turbidity limit until the entire project is completed.

22. EPA solicits comments on the need for text in the rule language regarding proper operation and maintenance and chemical dosages of chemical treatment systems, or whether these requirements should be addressed through guidance.

23. EPA's proposed option includes an applicability provision tied to the RUSLE R-factor. However, certain areas of the U.S., such as parts of Idaho, have a low annual R-factor but can experience high erosivity during certain times of the year, such as when rain occurs on snow or partially frozen ground. Also, for some cold mountainous climates, most of the erosivity is attributable to snowfall, instead of rainfall. EPA solicits comments on how to address applicability of the turbidity standard in areas such as these, and whether the rule language should include specific requirements regarding calculation of an R-factor for these areas or whether these issues should be addressed through guidance issued by EPA and/or left to

the discretion of the permitting authority.

24. EPA solicits comments on the proper techniques for turbidity measurement in the field to demonstrate compliance with today's proposal. EPA has an approved analytical method for turbidity (EPA Method 180.1 Rev 2.0). However, EPA is not proposing that a specific analytical method be used to demonstrate compliance. EPA's intent with today's proposal is to allow turbidity measurements to be made in the field using properly calibrated portable turbidity meters, or a properly calibrated automated turbidity meter coupled with a data logger, which typically is a component of ATS. EPA solicits comments on whether EPA Method 180.1 Rev 2.0 is appropriate in this case, or whether a revised method or other guidance would be needed in order to reduce monitoring burden and allow for the use of equipment commonly available and in use by ATS operators.

25. EPA solicits comments on whether the effluent limit for turbidity should be a daily maximum value, as proposed today, or an instantaneous maximum based on continuous measurement. With a daily maximum, no individual measurements could be above the limit. With an instantaneous maximum, there could be a provision for brief exceedances of the limit. See 40 CFR 401.17 for an example of pH effluent limitations under continuous monitoring. EPA solicits comments on whether a similar approach should be applied for turbidity, and what specific excursion criteria would be appropriate.

26. EPA solicits comments on whether any of the proposed options for BAT, BPT, BCT or NSPS should be based on the total size of the project, the disturbed area of the project, the quantity of soil disturbed at any one time, or the amount of disturbed area draining to any particular location. EPA solicits comment on the 30 acre site size provision for Option 2.

27. EPA solicits comments on whether an approach based on passive treatment systems could be implemented as BAT, BCT, BPT or NSPS without specific numeric limits. EPA solicits comments on how permit authorities would implement and enforce such a standard. EPA specifically requests comment on action level or benchmark approaches, including what benchmark or action level should be used, and what measurement protocol should be used, and what measurement protocol should be established. EPA also solicits comment on how to account for soil conditions, storm events, and other

variables in setting an action level or benchmark.

28. EPA solicits comments on cases where discharges of stormwater from construction sites with low turbidity and TSS values to waters with high natural background concentrations of sediment may contribute to receiving stream channel instability and increase stream channel erosion. EPA solicits comments on whether the R-factor applicability provisions, which exempt most arid and semi-arid areas of the country, adequately address these concerns, or whether the guideline should incorporate specific provisions to allow permitting authorities flexibility in applying the turbidity limit to sites where receiving channel instability may be of concern.

C. Guidelines for Submission of Analytical Data

EPA requests that commenters to today's proposed rule submit analytical and flow data to supplement data collected by the Agency during the regulatory development process. To ensure that commenter data may be effectively evaluated by the Agency, EPA has developed the following guidelines for submission of data.

1. Types of Data Requested

EPA requests paired influent and effluent treatment data for systems capable of reducing the turbidity of stormwater runoff from construction sites. EPA prefers paired influent and effluent treatment data, but also solicits unpaired data as well.

For the systems treating C&D stormwater, EPA requests paired influent and effluent treatment data from BMPs and treatment systems. Submission of effluent data alone is acceptable, but the commenters should provide evidence that the influent concentrations contain treatable levels of the pollutants. EPA also prefers individual measurements, rather than averages, to better evaluate variability, but will consider averages if individual measurements are unavailable. If commenters sample their stormwater to respond to this proposal, EPA encourages them to sample both the influent and effluent to BMPs and treatment systems and provide the individual measured values.

EPA prefers that the data be submitted in an electronic format. In addition to providing the measurement of the pollutant in each sample, EPA requests that sites provide the detection limit (rather than specifying zero or "ND") if the pollutant is non-detected in the stormwater. Each measurement should be identified with a sample collection

date, the sampling point location, and the flow rate at that location. For each sample or pollutant, EPA requests that the chemical analytical method be identified.

In support of the treatment data, commenters should submit the following items if they are available: A process diagram of the treatment system that includes the sampling point locations; treatment chemical addition rates; laboratory reports; influent and effluent flow rates for each treatment unit during the sampling period; a brief discussion of the treatment technology sampled; and a list of C&D operations contributing to the sampled wastestream. If available, information on capital cost, annual (operation and maintenance) cost, and treatment capacity should be included for each treatment unit within the system.

2. Analytes Requested

EPA requests analytical data for any pollutant parameters that commenters believe are of concern in the C&D industry. Of particular interest are turbidity, TSS, and pH data. Commenters should document the method used for all data submissions. Submissions of analytical data should include any available documentation of QA/QC procedures; however, EPA will still consider data submitted without detailed QA/QC information. If commenters sample their stormwater to respond to this proposal, EPA encourages them to provide detailed documentation of the QA/QC checks for each sample.

List of Subjects in 40 CFR Part 450

Environmental protection, Construction industry, Land development, Erosion, Sediment, Stormwater, Water pollution control.

Dated: November 19, 2008.

Stephen L. Johnson,
Administrator.

For the reasons set out in the preamble, EPA proposes to amend title 40, chapter I of the Code of Federal Regulations to add a new part 450 as follows:

PART 450—CONSTRUCTION AND DEVELOPMENT POINT SOURCE CATEGORY

Subpart A—General Provisions

Sec.

450.10 Applicability.

450.11 General definitions.

Subpart B—Construction and Development Effluent Guidelines

450.21 Effluent limitations reflecting the best practicable technology currently available (BPT).

450.22 Effluent limitations reflecting the best available technology economically achievable (BAT).

450.23 Effluent limitations reflecting the best conventional pollutant control technology (BCT).

450.24 New source performance standards (NSPS).

Authority: 33 U.S.C. 1311, 1314, 1316, 1318, 1342, 1361 and 1370.

Subpart A—General Provisions

§ 450.10 Applicability.

This part applies to discharges associated with construction activity required to obtain NPDES permit coverage pursuant to 40 CFR 122.26(b)(14)(x) and (b)(15).

§ 450.11 General definitions.

The following definitions apply to this part:

(a) *Commencement of construction* means the initial removal of vegetation and disturbance of soils associated with clearing, grading, excavating, or other construction activities.

(b) *Construction activity* includes, but is not limited to, clearing, grading, excavation, and other site preparation work related to construction of residential buildings and non-residential buildings, and heavy construction (e.g., highways, streets, bridges, tunnels, pipelines, transmission lines and industrial non-building structures).

(c) *Minimize* means to reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practices.

(d) *New Source* means any source from which there will be a discharge associated with construction activity that will result in a building, structure, facility, or installation subject to new source performance standards elsewhere under subchapter N of this chapter.

(e) *Erosion* as used in this part means the process of carrying away soil particles by the action of water.

(f) *Sediment basin* means a structure designed to detain sediment laden stormwater long enough to allow sediment to settle in the basin and then discharge stormwater at a controlled rate through an engineered outlet device.

Subpart B—Construction and Development Effluent Guidelines

§ 450.21 Effluent limitations reflecting the best practicable technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any point source subject

to this subpart must achieve the following effluent limitations representing the application of the best practicable control technology currently available (BPT).

(a) *Erosion Controls*. During all phases of construction activity, provide and maintain effective erosion controls in accordance with established industry practices on all disturbed areas of the construction site to minimize the discharge of sediment and other pollutants. Erosion controls are considered effective when bare soil is uniformly and evenly covered with vegetation or other suitable materials, stormwater is controlled so that rills and gullies are not visible, sediment is not visible in runoff from these areas and channels and streambanks are not eroding. Disturbed areas must be stabilized using erosion controls immediately after any clearing, grading, excavating or other earth disturbing activities have permanently or temporarily ceased. Assessment of erosion potential and appropriate erosion controls must take into account the rainfall, topography, soil types, climate, and vegetation or other cover at each site. Erosion controls implemented at the site must, at a minimum be designed and installed to achieve the following:

(1) Stabilize disturbed soils immediately when earth disturbing work has temporarily or permanently ceased. Stabilization measures must be implemented immediately on any portion of the site whenever final grade is reached or when earth disturbing work has been stopped on that portion of the site and will not resume for a period exceeding 14 calendar days.

(2) Control stormwater volume and velocity within the site to minimize soil erosion.

(3) Minimize the amount of soil exposed for the duration of the construction activity as well as at any one time during the construction activity.

(4) Control stormwater discharges, including both peak flowrates and total stormwater volume, leaving the site to prevent channel and streambank erosion and erosion at outlets.

(5) Preserve topsoil and natural vegetation.

(6) Minimize soil compaction by construction equipment in areas that will not contain permanent structures or where compaction is not necessary for structural integrity. In disturbed areas that will not contain structures or where compaction is not necessary for structural integrity, utilize deep ripping and decompaction of soils and

incorporate organic matter to restore infiltrative capacity.

(7) Provide and maintain natural buffers around surface waters.

(8) Minimize the construction of stream crossings.

(9) Sequence/phase construction activities to minimize the extent and duration of exposed soils.

(10) Minimize disturbance of steep slopes.

(11) Implement erosion controls specifically designed to prevent soil erosion on slopes.

(12) Establish temporary or permanent vegetation, such as grass or sod, or use non-vegetative controls such as mulch, compost, geotextiles, rolled erosion control products, polymers or soil tackifiers to stabilize exposed soils.

(13) Divert stormwater that runs onto the site away from disturbed areas of the site.

(b) *Sediment Controls.* Provide and maintain effective sediment controls in accordance with established industry practice to minimize the discharge of sediment from the site. Effective sediment controls include a variety of practices that are designed to remove sediment within the range of particle sizes expected to be present on the site, taking into account rainfall, topography, soil types, climate and vegetation at each site and the proximity to storm drain inlets and receiving waters. Sediment controls must be installed, operated, and maintained in accordance with established industry practices to minimize the discharge of sediment and other pollutants from the site. Install appropriate sediment controls prior to the commencement of construction and maintain during all phases of construction activity. Effective sediment controls must include, at a minimum, the following:

(1) Establish and maintain perimeter control measures for any portion of the down-slope and side-slope perimeter where stormwater will be discharged from disturbed areas of the site. Perimeter controls include, but are not limited to, BMPs such as diversion dikes, storm drain inlet protection, filter berms, and silt fencing. Perimeter control measures along the down-slope perimeter of the site must be installed following the contours of the land. Discharge stormwater from perimeter controls through vegetated areas and functioning stream buffers.

(2) Control discharges from silt fences using a vegetated filter strip or vegetated buffer at least six feet in width.

(3) Minimize the length of slopes and install linear sediment controls along the toe, face and at the grade breaks of exposed and erodible slopes.

(4) Establish, use and maintain stabilized construction entrances and exits. Install, utilize and maintain wheel wash stations to remove sediment from construction equipment and vehicles leaving the site.

(5) Remove any sediment and other pollutants, including construction materials, from paved surfaces daily to minimize discharges from the site. Washing sediment and other pollutants off paved surfaces into storm drains is prohibited unless those storm drains discharge to a sediment basin or other sediment control on the site.

(6) Establish, use and maintain controls and practices to minimize the introduction of sediment and other pollutants to storm drain inlets.

(7) Control sediment and other pollutants from dewatering activities and obtain and comply with any state or local discharge standards or permits for dewatering activities. Discharges from dewatering activities are prohibited unless treated to minimize the discharge of pollutants and sediment within the range of particle sizes expected to be present on the site.

(8) For common drainage locations that serve an area with 10 or more acres disturbed at one time, install and maintain a sediment basin to control and treat the stormwater runoff. The permitting authority may allow alternative controls where alternative controls provide an equivalent or better level of pollutant reduction. The sediment basin must incorporate, at a minimum, the following requirements:

(i) Provide a water storage volume for the calculated volume of stormwater runoff from the local 2-year, 24-hour storm for the entire watershed area draining to the basin until final stabilization of the disturbed area. Alternatively, a sediment basin providing a water quality storage volume of 3,600 cubic feet per acre of total watershed area draining to the basin must be provided until final stabilization of the disturbed area. If water will be flowing onto the construction site from up-slope and into the basin, the calculation of sediment basin volume must also account for this volume.

(ii) In addition to the water storage volume, a sediment storage volume of at least an additional 1,000 cubic feet per acre of disturbed land area directed to the basin must be provided. If water will be flowing onto the construction site from up-slope and into the basin, the calculation of the sediment storage volume must also account for this volume.

(iii) The effective length of the basin must be at least four times the width of the basin.

(iv) Sediment basins must include and utilize an outlet device, such as a skimmer, designed to withdraw water from the surface of the water column. If a basin is to be used during freezing conditions which would interfere with the operation of an outlet device designed to withdraw water from the surface of the water column, then an alternative means of dewatering may be used only during periods of freezing conditions.

(v) Discharges from sediment basins must be regulated in a manner that maximizes the residence time of the water in the basin. The dewatering time must consider the range of soil particle sizes and the settling time for soil particles expected to be present on the construction site. The dewatering time for the water storage volume must be at least 72 hours, unless otherwise specified by the permitting authority. However, in no case shall the dewatering time be less than 24 hours. The design of the sediment basin must address factors such as the amount, frequency, intensity and duration of stormwater runoff, soil types, soil particle sizes, and other factors affecting pollutant removal performance.

(9) Direct stormwater discharges from sediment controls to seep berms and level spreaders or utilize spray or drip irrigation systems to distribute stormwater to vegetated areas and functioning stream buffers to increase sediment removal and to maximize infiltration.

(c) *Pollution Prevention Measures.* During all phases of construction activity, provide and maintain effective pollution prevention measures in accordance with established industry practice to control the discharge of pollutants from the site. Effective pollution prevention measures include a variety of recognized and accepted industry practices that minimize the discharge of pollutants from the site taking into account the specific circumstances at each site. Pollution prevention measures must be implemented to achieve, at a minimum, the following:

(1) Prohibit the discharge of construction wastes, trash, and sanitary waste in stormwater;

(2) Prohibit the discharge of wastewater from washout of concrete, stucco, paint, and cleanout of other construction materials;

(3) Prohibit the discharge of fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;

(4) Prohibit the discharge of pollutants resulting from the washing of equipment and vehicles where soaps or solvents are used;

(5) Prohibit the discharge of pollutants resulting from the washing of equipment and vehicles using only water to remove sediment, unless wash waters, such as water from wheel wash stations, are treated in a sediment basin or alternative controls that provide equivalent or better treatment;

(6) Implement measures to minimize the exposure of stormwater to building materials, landscape materials, fertilizers, pesticides, herbicides, detergents, and other liquid or dry products. Implement appropriate chemical spill prevention and response procedures. Any spills and leaks that do occur shall be immediately addressed in a manner that prevents the discharge of pollutants.

(7) Prevent stormwater runoff from contacting areas with uncured concrete to minimize changes in stormwater pH.

§ 450.22 Effluent limitations reflecting the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application

of the best available technology economically achievable (BAT):

(a) For construction activity located at a site with 10 percent or greater by mass of soils less than 2 microns in diameter (down to the graded and excavated level of the site), and that has an annual rainfall erosivity factor (R factor) of 50 or higher as defined by the Revised Universal Soil Loss Equation (for construction activity located in Alaska or a U.S. territory where the R factor applicable to the activity has not been calculated, the 30-year average total annual precipitation of 20 inches or more shall be used in place of the R factor):

(1) The effluent limitations specified in § 450.21 shall apply.

(2) Except as provided by paragraph (a)(3) of this section, for any construction activity of 30 or more acres, the discharge of stormwater shall not exceed the value listed in the following table:

Pollutant or pollutant property	Maximum for any time (NTU) ¹
Turbidity	13

¹ Nephelometric turbidity units.

(3) The requirements of paragraph (a)(2) of this section do not apply to the discharge of pollutants in the overflow

from the sediment basin or other storage impoundment whenever rainfall events, either chronic or catastrophic, cause an overflow of stormwater from a sediment basin or other impoundment designed, constructed and operated to contain runoff from a 2-year, 24-hour rainfall event.

(b) For any construction activity subject to this Subpart and not specified in paragraph (a) of this section, the effluent limitations are the same as those specified in § 450.21.

§ 450.23 Effluent limitations reflecting the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any point source subject to this subpart must achieve the following effluent limitations representing the application of the best conventional pollutant control technology (BCT): The effluent limitations are the same as those specified in § 450.21.

§ 450.24 New source performance standards (NSPS).

Any new source subject to this subpart must achieve new source performance standards (NSPS): The standards are the same as the limitations specified in § 450.22.

[FR Doc. E8-27848 Filed 11-26-08; 8:45 am]

BILLING CODE 6560-50-P



Federal Register

**Friday,
November 28, 2008**

Part III

Postal Service

39 CFR Part 111

**Pricing and Mailing Standards Changes
for Shipping Services; Change in Rates of
General Applicability for Competitive
Products; Final Rule and Notice**

POSTAL SERVICE**39 CFR Part 111****Pricing and Mailing Standards
Changes for Shipping Services****AGENCY:** Postal Service.TM**ACTION:** Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) to reflect changes to the prices and standards for the following Shipping Services:

- Express Mail®
- Priority Mail®
- Parcel Select®
- Parcel Return Service®

DATES: *Effective Date:* January 18, 2009.**FOR FURTHER INFORMATION CONTACT:** Bert Olsen at 202–268–7276 or Monica Grein at 202–268–8411.

SUPPLEMENTARY INFORMATION: On November 12, 2008, the Governors of the Postal Service established new prices and product features for Shipping Services. This **Federal Register** notice describes these price and product changes and the mailing standards to implement them.

Express Mail

On average, Express Mail retail prices will increase by approximately 5.7 percent. The commercial base prices will increase by approximately 3.7 percent and will be 5 percent lower than the retail price. Commercial volume rebates will be eliminated on January 18, 2009. Any rebate earned from January 1–17 will be credited to the qualifying mail owner's account at the end of the quarter. A new price category, commercial plus pricing, will be introduced and will be 14.5 percent lower than the retail price.

Express Mail commercial base prices availability will be expanded to customers who pay postage using Information Based Indicia (IBI) postage meters. Effective January 2010, to qualify for the commercial base prices, the IBI postage meter must be able to electronically provide transactional data by customer.

Commercial plus pricing will be available to new and existing customers whose account volume exceeds a

minimum threshold or who have a customer commitment agreement with the Postal Service, and who either use an Express Mail Corporate Account (EMCA), including Federal Agency Accounts, or are registered end-users of USPS approved PC-Postage® providers using qualifying shipping labels managed by the PC-Postage system used.

Priority Mail

On average, Priority Mail retail prices are increasing by approximately 4.7 percent. We will be introducing a new Priority Mail small flat-rate box, identified by the preprinted words “Small Flat-Rate Box,” enhancing customer choice, convenience, and ease of use. The small Priority Mail flat-rate box will be \$4.95 at retail, the same price as the flat-rate envelope.

Priority Mail commercial base prices will be expanded to customers who pay postage using Information Based Indicia (IBI) postage meters, in conjunction with an approved shipping label that includes a confirmation services barcode with a postal routing code. Effective January 2010, to qualify for the commercial base prices, the IBI meter must be able to electronically provide transactional data by customer.

A new price category, commercial plus pricing, is being introduced and will be lower than commercial base prices. Commercial plus pricing will be available to new and existing permit imprint customers whose account volume exceeds a minimum threshold or who have a customer commitment agreement with the Postal Service. Also, registered end-users of USPS approved PC-Postage products using qualifying shipping labels from the PC-Postage product used and whose account volume exceeds a minimum threshold will qualify for commercial plus pricing.

Retail prices will no longer be available to Priority Mail customers using permit imprint. Permit imprint customers will be required to use the commercial base prices and to conform to the commercial base price eligibility requirements. To allow for system enhancements, customers will have until May 2009 to comply with the commercial base price barcode requirements.

Parcel Select

The average price increase is: 4.7 percent for destination delivery unit; 6.8 percent for destination sectional center facility; and 9.1 percent for destination bulk mail center. There are no additional changes to the Parcel Select products.

Parcel Return Service

The return delivery unit price will not be increasing. The return bulk mail center price will increase by approximately 7.1 percent. There are no additional changes to the Parcel Return Service product.

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

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

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

PART 111—[AMENDED]

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

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

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

* * * * *

**100 Retail Letters, Cards, Flats, and
Parcels**

* * * * *

110 Express Mail**113 Prices and Eligibility****1.0 Express Mail Prices and Fees**

* * * * *

1.3 Prices

[Insert new price chart and revise footnotes of Exhibit 1.3 as follows:]

EXHIBIT 1.3—EXPRESS MAIL PRICES—RETAIL LETTERS, LARGE ENVELOPES, & PARCELS

Weight not over (pounds)	Zone ^{1 2 3}						
	L, 1, 2	3	4	5	6	7	8
0.5	13.05	15.20	18.50	19.80	20.10	20.90	21.20
1	15.00	19.80	23.60	24.20	24.70	25.05	25.15
2	16.30	20.90	25.95	26.55	27.05	27.25	27.65

EXHIBIT 1.3—EXPRESS MAIL PRICES—RETAIL LETTERS, LARGE ENVELOPES, & PARCELS—Continued

Weight not over (pounds)	Zone ^{1 2 3}						
	L, 1, 2	3	4	5	6	7	8
3	17.30	22.20	29.85	30.55	31.15	31.35	31.65
4	18.60	23.60	33.75	35.00	35.15	35.30	35.60
5	19.30	25.25	37.60	39.00	39.10	39.30	39.60
6	22.60	30.35	41.10	42.90	43.00	43.20	43.70
7	25.95	35.40	44.95	46.25	46.95	47.25	47.55
8	27.25	36.50	48.40	50.25	51.05	51.25	51.65
9	28.75	38.00	51.80	54.25	55.00	55.20	55.60
10	29.65	39.60	54.20	56.90	57.80	58.00	58.40
11	32.35	44.30	57.90	59.70	60.60	60.80	61.20
12	32.95	47.45	61.00	62.40	63.40	63.50	63.90
13	33.35	50.45	63.80	65.15	66.05	66.85	67.65
14	34.45	53.55	66.35	67.85	68.85	69.75	70.45
15	36.50	56.60	69.15	70.65	71.65	72.35	73.25
16	37.50	59.80	71.85	73.45	74.70	74.80	75.00
17	39.60	62.90	74.55	76.10	77.20	77.40	77.80
18	41.70	65.85	77.20	78.90	80.00	80.20	80.60
19	42.80	68.95	79.90	81.60	82.70	82.90	83.30
20	44.80	72.15	83.80	85.05	85.95	86.45	87.05
21	46.05	76.60	86.45	87.65	89.75	90.05	90.25
22	48.15	79.80	90.25	91.65	92.55	92.85	93.75
23	49.15	82.90	92.95	94.45	95.40	95.60	96.50
24	51.25	86.05	95.90	97.20	98.30	98.40	98.60
25	53.45	89.25	98.20	100.00	101.00	101.20	101.70
26	54.45	92.45	101.10	102.80	103.80	104.10	104.55
27	56.50	95.50	103.70	105.45	106.55	106.85	107.35
28	57.60	98.70	107.05	108.25	109.35	109.65	110.15
29	59.70	101.80	110.55	111.05	112.15	112.45	112.85
30	61.80	104.95	114.05	114.35	115.40	115.70	116.50
31	62.80	108.05	117.50	117.80	119.00	119.30	120.10
32	64.85	111.35	121.00	121.40	122.50	122.80	123.70
33	65.95	114.45	124.45	124.85	126.05	126.35	127.25
34	68.05	117.50	128.05	128.35	129.55	129.85	130.85
35	69.15	120.70	131.45	131.95	133.05	133.45	134.40
36	71.15	123.90	135.00	135.40	136.70	137.00	138.00
37	73.25	126.95	138.50	138.90	140.30	140.60	141.60
38	74.35	130.15	142.00	142.50	143.80	144.10	145.15
39	76.40	133.35	145.55	145.95	147.15	147.55	148.75
40	77.40	136.40	149.05	149.45	150.75	151.15	152.35
41	79.50	139.60	152.55	153.05	154.40	154.60	155.90
42	81.60	142.80	156.00	156.50	158.00	158.20	159.50
43	82.70	145.85	159.50	160.10	161.50	161.80	163.10
44	84.75	149.05	163.00	163.60	165.05	165.35	166.65
45	85.85	152.25	166.45	167.05	168.55	168.85	170.25
46	87.95	155.30	170.05	170.55	172.05	172.35	173.85
47	88.95	158.50	173.55	174.15	175.60	175.90	177.40
48	91.05	161.70	177.00	177.60	179.20	179.50	181.00
49	93.15	164.75	180.50	181.10	182.80	183.00	184.55
50	94.25	167.95	184.10	184.65	186.25	186.55	188.15
51	96.30	171.15	187.55	188.15	189.75	190.05	191.75
52	97.40	174.20	191.05	191.75	193.35	193.65	195.40
53	99.50	177.40	194.50	195.10	196.90	197.10	198.90
54	101.60	180.60	198.00	198.70	200.50	200.70	202.50
55	102.60	184.75	201.60	202.20	204.00	204.25	206.05
56	104.65	187.95	205.05	205.75	207.55	207.75	209.65
57	105.75	191.15	208.55	209.25	211.05	211.35	213.25
58	107.75	194.20	212.05	212.75	214.60	214.80	216.80
59	108.95	197.30	215.50	216.30	218.20	218.40	220.40
60	110.95	200.50	219.00	219.80	221.70	222.00	223.95
61	113.05	203.70	222.60	223.40	225.25	225.55	227.55
62	114.15	206.75	226.05	226.75	228.75	229.05	231.15
63	116.20	209.95	229.55	230.35	232.35	232.55	234.80
64	117.20	213.05	233.05	233.85	235.90	236.10	238.40
65	119.30	216.20	236.50	237.30	239.40	239.70	241.90
66	121.50	219.40	240.10	240.90	243.00	243.30	245.45
67	122.50	222.50	243.60	244.35	246.45	246.75	249.05
68	124.55	225.65	247.05	247.95	250.05	250.35	252.75
69	125.55	228.85	250.55	251.45	253.55	253.80	256.20
70	127.75	232.05	254.10	254.90	257.10	257.30	259.80

¹ For Sunday/holiday delivery, add \$12.50.² \$17.50 is charged for material sent in an Express Mail flat-rate envelope provided by the USPS regardless of weight or destination.

³ Commercial Prices: \$16.63 is charged for material sent in an Express Mail flat-rate envelope provided by the USPS regardless of weight or destination, when postage is paid through Click-N-Ship service at usps.com, or by registered end-users of PC Postage.

1.4 Flat-Rate Envelope

[Revise text of the first sentence of 1.4 as follows:]

Material mailed in the USPS-provided Express Mail flat-rate envelope is charged \$17.50, regardless of the actual

weight of the piece or its destination.

* * *

120 Priority Mail**123 Prices and Eligibility**

* * *

[Renumber current 1.2 through 1.9 as new 1.3 through 1.10 and insert new 1.2, Prices, as follows:]

1.2 Prices

[Insert new price chart and revise footnotes of Exhibit 1.2 as follows:]

EXHIBIT 1.2—PRIORITY MAIL PRICES—RETAIL LETTERS, LARGE ENVELOPES, & PARCELS

Weight not over (pounds)	Zone ^{1 2 3 4 5 6}						
	L, 1, 2	3	4	5	6	7	8
1	4.95	4.95	4.95	4.95	4.95	4.95	4.95
2	4.95	5.20	5.75	7.10	7.60	8.10	8.70
3	5.50	6.25	7.10	9.05	9.90	10.60	11.95
4	6.10	7.10	8.15	10.80	11.95	12.95	14.70
5	6.85	8.15	9.45	12.70	13.75	15.20	17.15
6	7.55	9.25	10.75	14.65	15.50	17.50	19.60
7	8.30	10.30	12.05	16.55	17.30	19.75	22.05
8	8.80	10.70	13.10	17.95	18.80	21.70	24.75
9	9.25	11.45	13.95	19.15	20.30	23.60	27.55
10	9.90	12.35	15.15	20.75	22.50	25.90	29.95
11	10.55	13.30	16.40	22.40	24.75	28.20	32.40
12	11.20	14.20	17.60	24.00	26.95	30.50	34.80
13	11.50	14.55	18.10	25.30	28.90	31.70	36.00
14	11.90	15.20	18.90	26.45	30.50	33.50	37.80
15	12.40	15.85	19.85	27.25	31.15	33.85	38.60
16	12.80	16.40	20.45	27.85	31.85	34.60	39.55
17	13.25	16.95	20.85	28.50	32.70	35.50	40.60
18	13.50	17.50	21.30	29.10	33.35	36.15	41.55
19	13.95	17.90	21.60	29.80	34.15	37.10	42.60
20	14.30	18.15	22.00	30.30	34.80	37.80	43.55
21	14.70	18.40	22.35	30.80	35.35	38.45	44.40
22	15.05	18.75	22.70	31.50	36.15	39.35	45.50
23	15.40	19.00	23.35	32.05	36.80	40.00	46.30
24	15.75	19.20	24.05	32.70	37.55	40.95	47.45
25	16.10	19.50	24.85	33.25	38.10	41.55	48.25
26	16.45	19.70	25.65	33.95	39.00	42.45	49.80
27	16.90	20.00	26.40	34.40	39.55	43.05	51.65
28	17.40	20.25	27.10	34.85	40.10	43.70	53.55
29	17.95	20.45	27.90	35.30	40.60	44.30	55.25
30	18.50	20.75	28.65	35.80	41.15	44.90	57.10
31	19.00	20.95	29.45	36.25	41.70	45.50	59.00
32	19.50	21.45	30.20	36.70	42.25	46.60	60.85
33	19.75	22.00	30.90	37.15	42.80	47.90	62.60
34	19.95	22.60	31.45	37.95	44.05	49.20	64.45
35	20.20	23.15	31.90	38.75	45.25	50.55	66.30
36	20.40	23.75	32.30	39.60	46.40	51.90	68.15
37	20.60	24.25	32.75	40.35	47.60	53.25	70.00
38	20.80	24.85	33.15	41.15	48.95	54.50	71.80
39	21.05	25.35	33.55	42.00	50.15	55.90	73.70
40	21.45	25.90	33.90	42.85	51.30	57.15	75.45
41	21.90	26.40	34.30	43.25	52.50	58.55	76.90
42	22.30	26.90	34.65	44.15	53.65	59.90	77.95
43	22.75	27.35	35.00	45.15	54.95	61.25	78.95
44	23.15	27.90	35.35	46.15	56.10	62.60	79.90
45	23.55	28.40	35.70	47.15	57.35	63.95	80.85
46	24.00	28.75	36.05	48.05	58.55	65.25	81.75
47	24.40	28.95	36.35	49.10	59.85	66.65	82.70
48	24.85	29.20	36.70	50.10	61.05	68.00	83.55
49	25.25	29.40	37.00	51.00	62.15	69.40	84.40
50	25.60	29.65	37.35	52.00	63.35	70.50	85.45
51	26.10	29.85	38.00	53.00	64.55	71.15	86.35
52	26.45	30.05	38.75	54.00	65.30	71.75	87.20
53	26.95	30.25	39.40	54.95	65.80	72.35	88.05
54	27.30	30.40	40.05	56.00	66.30	72.90	88.90
55	27.75	30.60	40.85	57.00	66.80	73.50	89.65
56	28.15	30.75	41.50	57.90	67.30	74.00	90.45
57	28.60	30.95	42.15	58.80	67.75	74.55	91.25

EXHIBIT 1.2—PRIORITY MAIL PRICES—RETAIL LETTERS, LARGE ENVELOPES, & PARCELS—Continued

Weight not over (pounds)	Zone 1 2 3 4 5 6						
	L, 1, 2	3	4	5	6	7	8
58	29.00	31.10	42.90	59.55	68.20	75.05	92.00
59	29.45	31.25	43.60	59.95	68.65	75.50	92.65
60	29.80	31.40	44.25	60.30	69.05	76.70	93.35
61	30.30	31.50	45.05	60.60	69.85	77.90	94.60
62	30.65	31.65	45.70	60.95	70.30	79.10	96.10
63	31.15	31.80	46.40	61.25	70.70	79.90	97.60
64	31.50	31.90	47.10	61.55	71.15	80.40	99.15
65	31.95	32.00	47.70	61.85	71.50	80.85	100.70
66	32.35	32.35	48.45	62.10	71.95	81.25	102.15
67	32.80	32.80	49.25	62.75	72.30	81.70	103.75
68	33.20	33.20	49.90	63.65	72.60	82.10	105.20
69	33.65	33.65	50.55	64.60	73.00	82.50	106.75
70	34.05	34.05	51.35	64.90	73.30	82.85	108.25

¹ Parcels addressed for delivery to zones 1–4 (including local) that weigh less than 20 pounds but measure more than 84 inches in combined length and girth (but not more than 108 inches) are charged the applicable price for a 20-pound parcel (balloon price).

² Parcels addressed for delivery to zones 5–8 that exceed 1 cubic foot (1,728 cubic inches) are charged based on the actual weight or the dimensional weight (as calculated in 123.1.3), whichever is greater.

³ For keys and ID devices that weigh:

- Up to 13 ounces, refer to retail First-Class Mail parcel prices.
- More than 13 ounces but not more than 1 pound, \$5.67.
- More than 1 pound but not more than 2 pounds, \$6.47.

⁴ \$4.95 is charged for matter sent in a Priority Mail flat-rate envelope or small flat-rate box provided by the USPS, regardless of weight or destination.

⁵ \$10.35 is charged for material sent in a Priority Mail regular flat-rate box provided by the USPS, regardless of weight or destination.

⁶ \$13.95 is charged for material sent in a Priority Mail large flat-rate box provided by the USPS, regardless of weight to domestic addresses, and \$11.95 for material sent in a Priority Mail large flat-rate box to APO/FPO destination addresses.

* * * * *

1.5 Flat-Rate Envelope and Boxes

* * * * *

1.5.1 Flat-Rate Envelope—Price and Eligibility

[Revise text of the first sentence by changing the price to \$4.95.]

1.5.2 Flat-Rate Boxes—Price and Eligibility

[Re-letter current items a through c as new b through d, add a new item a, and change prices in new items b through d of new 1.5.2 as follows:]

* * * Each USPS-produced Priority Mail flat-rate box, regardless of the actual weight of the piece or its destination, is charged:

- \$4.95 for material sent in Priority Mail small flat-rate boxes to domestic and APO/FPO addresses.
- \$10.35 for material sent in Priority Mail regular flat-rate boxes (FRB–1 or FRB–2) to domestic and APO/FPO addresses.
- \$11.95 for material sent in a Priority Mail large flat-rate box to APO/FPO addresses (see 703.2).
- \$13.95 for material sent in a Priority Mail large flat-rate box to domestic addresses.

1.6 Prices for Keys and Identification Devices

[Revise table by changing prices.]

Weight not over (pounds)	Price
1 pound	\$5.67
2 pounds	6.47

* * * * *

124 Postage Payment Methods

1.0 Basic Standards for Postage Payment

1.1 Payment Method

[Revise 1.1 by removing the reference to permit imprint and revising the text to read as follows:]

Priority Mail postage may be paid with postage stamps (see 604.1.0) or meter stamps (see 604.4.0).

* * * * *

[Remove 2.0, Postage Paid with Permit Imprint in its entirety.]

125 Mail Preparation

* * * * *

[Remove 3.0, Preparation for a Permit Imprint in its entirety.]

126 Deposit

1.0 Deposit

1.1 Pieces Weighing 13 Ounces or Less

[Remove last sentence of 1.1 in its entirety to remove reference to permit imprint.]

* * * * *

400 Commercial Parcels

* * * * *

410 Commercial Parcels Express Mail

413 Prices and Eligibility

[Revise heading of 1.0 as follows:]

1.0 Prices and Fees

* * * * *

1.3 Commercial Base Prices

[Revise introductory text of 1.3 by changing the percentage as follows:]

Express Mail commercial base prices are 5 percent below retail Express Mail prices (see Exhibit 413.1.3). These prices apply to:

* * * * *

[Revise item c and insert new item d as follows:]

c. Registered end-users of USPS approved PC-Postage providers when using a qualifying shipping label managed by the PC-Postage system used.

d. Customers who pay postage using Information Based Indicia (IBI) postage meters when using an Express Mail shipping label.

[Insert new Exhibit 1.3 as follows:]

EXHIBIT 1.3—EXPRESS MAIL COMMERCIAL BASE PRICES

Weight not over (pounds)	Zone ^{1 2}						
	L, 1, 2	3	4	5	6	7	8
0.5	12.40	14.44	17.58	18.81	19.10	19.86	20.14
1	14.25	18.81	22.42	22.99	23.47	23.80	23.89
2	15.49	19.86	24.65	25.22	25.70	25.89	26.27
3	16.44	21.09	28.36	29.02	29.59	29.78	30.07
4	17.67	22.42	32.06	33.25	33.39	33.54	33.82
5	18.34	23.99	35.72	37.05	37.15	37.34	37.62
6	21.47	28.83	39.05	40.76	40.85	41.04	41.52
7	24.65	33.63	42.70	43.94	44.60	44.89	45.17
8	25.89	34.68	45.98	47.74	48.50	48.69	49.07
9	27.31	36.10	49.21	51.54	52.25	52.44	52.82
10	28.17	37.62	51.49	54.06	54.91	55.10	55.48
11	30.73	42.09	55.01	56.72	57.57	57.76	58.14
12	31.30	45.08	57.95	59.28	60.23	60.33	60.71
13	31.68	47.93	60.61	61.89	62.75	63.51	64.27
14	32.73	50.87	63.03	64.46	65.41	66.26	66.93
15	34.68	53.77	65.69	67.12	68.07	68.73	69.59
16	35.63	56.81	68.26	69.78	70.97	71.06	71.25
17	37.62	59.76	70.82	72.30	73.34	73.53	73.91
18	39.62	62.56	73.34	74.96	76.00	76.19	76.57
19	40.66	65.50	75.91	77.52	78.57	78.76	79.14
20	42.56	68.54	79.61	80.80	81.65	82.13	82.70
21	43.75	72.77	82.13	83.27	85.26	85.55	85.74
22	45.74	75.81	85.74	87.07	87.92	88.21	89.06
23	46.69	78.76	88.30	89.73	90.63	90.82	91.68
24	48.69	81.75	91.11	92.34	93.39	93.48	93.67
25	50.78	84.79	93.29	95.00	95.95	96.14	96.62
26	51.73	87.83	96.05	97.66	98.61	98.90	99.32
27	53.68	90.73	98.52	100.18	101.22	101.51	101.98
28	54.72	93.77	101.70	102.84	103.88	104.17	104.64
29	56.72	96.71	105.02	105.50	106.54	106.83	107.21
30	58.71	99.70	108.35	108.63	109.63	109.92	110.68
31	59.66	102.65	111.63	111.91	113.05	113.34	114.10
32	61.61	105.78	114.95	115.33	116.38	116.66	117.52
33	62.65	108.73	118.23	118.61	119.75	120.03	120.89
34	64.65	111.63	121.65	121.93	123.07	123.36	124.31
35	65.69	114.67	124.88	125.35	126.40	126.78	127.68
36	67.59	117.71	128.25	128.63	129.87	130.15	131.10
37	69.59	120.60	131.58	131.96	133.29	133.57	134.52
38	70.63	123.64	134.90	135.38	136.61	136.90	137.89
39	72.58	126.68	138.27	138.65	139.79	140.17	141.31
40	73.53	129.58	141.60	141.98	143.21	143.59	144.73
41	75.53	132.62	144.92	145.40	146.68	146.87	148.11
42	77.52	135.66	148.20	148.68	150.10	150.29	151.53
43	78.57	138.56	151.53	152.10	153.43	153.71	154.95
44	80.51	141.60	154.85	155.42	156.80	157.08	158.32
45	81.56	144.64	158.13	158.70	160.12	160.41	161.74
46	83.55	147.54	161.55	162.02	163.45	163.73	165.16
47	84.50	150.58	164.87	165.44	166.82	167.11	168.53
48	86.50	153.62	168.15	168.72	170.24	170.53	171.95
49	88.49	156.51	171.48	172.05	173.66	173.85	175.32
50	89.54	159.55	174.90	175.42	176.94	177.22	178.74
51	91.49	162.59	178.17	178.74	180.26	180.55	182.16
52	92.53	165.49	181.50	182.16	183.68	183.97	185.63
53	94.53	168.53	184.78	185.35	187.06	187.25	188.96
54	96.52	171.57	188.10	188.77	190.48	190.67	192.38
55	97.47	175.51	191.52	192.09	193.80	194.04	195.75
56	99.42	178.55	194.80	195.46	197.17	197.36	199.17
57	100.46	181.59	198.12	198.79	200.50	200.78	202.59
58	102.36	184.49	201.45	202.11	203.87	204.06	205.96
59	103.50	187.44	204.73	205.49	207.29	207.48	209.38
60	105.40	190.48	208.05	208.81	210.62	210.90	212.75
61	107.40	193.52	211.47	212.23	213.99	214.27	216.17
62	108.44	196.41	214.75	215.41	217.31	217.60	219.59
63	110.39	199.45	218.07	218.83	220.73	220.92	223.06
64	111.34	202.40	221.40	222.16	224.11	224.30	226.48
65	113.34	205.39	224.68	225.44	227.43	227.72	229.81
66	115.43	208.43	228.10	228.86	230.85	231.14	233.18
67	116.38	211.38	231.42	232.13	234.13	234.41	236.60
68	118.32	214.37	234.70	235.55	237.55	237.83	240.11
69	119.27	217.41	238.02	238.88	240.87	241.11	243.39

EXHIBIT 1.3—EXPRESS MAIL COMMERCIAL BASE PRICES—Continued

Weight not over (pounds)	Zone ^{1 2}						
	L, 1, 2	3	4	5	6	7	8
70	121.36	220.45	241.40	242.16	244.25	244.44	246.81

¹ Express Mail Commercial Base prices apply to:

- Customers who use an Express Mail Corporate Account (EMCA), including Federal Agency Accounts.
- Click-N-Ship customers.
- Registered end-users of USPS approved PC Postage Providers when using a qualifying shipping label.
- Customers who pay postage using an Information Based Indicia (IBI) postage meter.

² \$16.63 is charged for material sent in an Express Mail flat-rate envelope regardless of weight or domestic destination. Only USPS-produced flat-rate envelopes are eligible for the flat-rate envelope price.

[Delete 1.5, Commercial Volume Rebates in its entirety, renumber current 1.4, Flat-Rate Envelope as new 1.5 and add a new 1.4 Commercial Plus Prices as follows:]

1.4 Commercial Plus Prices

Commercial plus prices are 14.5 percent below retail Express Mail prices (see Exhibit 413.1.4).

1.4.1 Existing Express Mail Customers

Commercial plus pricing is available to existing customers whose cumulative

account volume exceeds 6,000 pieces in the previous 4 quarters or who have a customer commitment agreement with the USPS (see 1.4.2) and who are:

a. Express Mail Corporate Account (EMCA) customers, including Federal Agency Accounts.

b. Registered end-users of USPS approved PC-Postage products when using a qualifying shipping label managed by the PC-Postage system used.

1.4.2 New Express Mail Customers

Commercial plus prices are available for new Express Mail customers who have a customer commitment agreement with the USPS. Shippers must contact their account manager or the manager, Sales and Communication, Expedited Shipping (see 608.8.0 for address) for additional information.

[Insert new Exhibit 1.4 and revise footnotes as follows:]

EXHIBIT 1.4—EXPRESS MAIL COMMERCIAL PLUS PRICES

Weight not over (pounds)	Zone ^{1 2}						
	L, 1, 2	3	4	5	6	7	8
0.5	11.16	13.00	15.82	16.93	17.19	17.87	18.13
1	12.83	16.93	20.18	20.69	21.12	21.42	21.50
2	13.94	17.87	22.19	22.70	23.13	23.30	23.64
3	14.79	18.98	25.52	26.12	26.63	26.80	27.06
4	15.90	20.18	28.86	29.93	30.05	30.18	30.44
5	16.50	21.59	32.15	33.35	33.43	33.60	33.86
6	19.32	25.95	35.14	36.68	36.77	36.94	37.36
7	22.19	30.27	38.43	39.54	40.14	40.40	40.66
8	23.30	31.21	41.38	42.96	43.65	43.82	44.16
9	24.58	32.49	44.29	46.38	47.03	47.20	47.54
10	25.35	33.86	46.34	48.65	49.42	49.59	49.93
11	27.66	37.88	49.50	51.04	51.81	51.98	52.33
12	28.17	40.57	52.16	53.35	54.21	54.29	54.63
13	28.51	43.13	54.55	55.70	56.47	57.16	57.84
14	29.45	45.79	56.73	58.01	58.87	59.64	60.23
15	31.21	48.39	59.12	60.41	61.26	61.86	62.63
16	32.06	51.13	61.43	62.80	63.87	63.95	64.13
17	33.86	53.78	63.74	65.07	66.01	66.18	66.52
18	35.65	56.30	66.01	67.46	68.40	68.57	68.91
19	36.59	58.95	68.31	69.77	70.71	70.88	71.22
20	38.30	61.69	71.65	72.72	73.49	73.91	74.43
21	39.37	65.49	73.91	74.94	76.74	76.99	77.16
22	41.17	68.23	77.16	78.36	79.13	79.39	80.16
23	42.02	70.88	79.47	80.75	81.57	81.74	82.51
24	43.82	73.57	81.99	83.11	84.05	84.13	84.30
25	45.70	76.31	83.96	85.50	86.36	86.53	86.95
26	46.55	79.04	86.44	87.89	88.75	89.01	89.39
27	48.31	81.65	88.66	90.16	91.10	91.36	91.78
28	49.25	84.39	91.53	92.55	93.49	93.75	94.18
29	51.04	87.04	94.52	94.95	95.89	96.14	96.49
30	52.84	89.73	97.51	97.77	98.67	98.92	99.61
31	53.69	92.38	100.46	100.72	101.75	102.00	102.69
32	55.45	95.20	103.46	103.80	104.74	104.99	105.76
33	56.39	97.85	106.40	106.75	107.77	108.03	108.80
34	58.18	100.46	109.48	109.74	110.77	111.02	111.88
35	59.12	103.20	112.39	112.82	113.76	114.10	114.91
36	60.83	105.93	115.43	115.77	116.88	117.14	117.99
37	62.63	108.54	118.42	118.76	119.96	120.21	121.07

EXHIBIT 1.4—EXPRESS MAIL COMMERCIAL PLUS PRICES—Continued

Weight not over (pounds)	Zone ^{1 2}						
	L, 1, 2	3	4	5	6	7	8
38	63.57	111.28	121.41	121.84	122.95	123.21	124.10
39	65.32	114.01	124.45	124.79	125.81	126.16	127.18
40	66.18	116.62	127.44	127.78	128.89	129.23	130.26
41	67.97	119.36	130.43	130.86	132.01	132.18	133.29
42	69.77	122.09	133.38	133.81	135.09	135.26	136.37
43	70.71	124.70	136.37	136.89	138.08	138.34	139.45
44	72.46	127.44	139.37	139.88	141.12	141.37	142.49
45	73.40	130.17	142.31	142.83	144.11	144.37	145.56
46	75.20	132.78	145.39	145.82	147.10	147.36	148.64
47	76.05	135.52	148.39	148.90	150.14	150.39	151.68
48	77.85	138.25	151.34	151.85	153.22	153.47	154.76
49	79.64	140.86	154.33	154.84	156.29	156.47	157.79
50	80.58	143.60	157.41	157.88	159.24	159.50	160.87
51	82.34	146.33	160.36	160.87	162.24	162.49	163.95
52	83.28	148.94	163.35	163.95	165.31	165.57	167.07
53	85.07	151.68	166.30	166.81	168.35	168.52	170.06
54	86.87	154.41	169.29	169.89	171.43	171.60	173.14
55	87.72	157.96	172.37	172.88	174.42	174.63	176.17
56	89.48	160.70	175.32	175.92	177.46	177.63	179.25
57	90.42	163.43	178.31	178.91	180.45	180.70	182.33
58	92.13	166.04	181.30	181.90	183.48	183.65	185.36
59	93.15	168.69	184.25	184.94	186.56	186.73	188.44
60	94.86	171.43	187.25	187.93	189.55	189.81	191.48
61	96.66	174.16	190.32	191.01	192.59	192.85	194.56
62	97.60	176.77	193.27	193.87	195.58	195.84	197.63
63	99.35	179.51	196.27	196.95	198.66	198.83	200.75
64	100.21	182.16	199.26	199.94	201.69	201.87	203.83
65	102.00	184.85	202.21	202.89	204.69	204.94	206.82
66	103.88	187.59	205.29	205.97	207.77	208.02	209.86
67	104.74	190.24	208.28	208.92	210.71	210.97	212.94
68	106.49	192.93	211.23	212.00	213.79	214.05	216.10
69	107.35	195.67	214.22	214.99	216.79	217.00	219.05
70	109.23	198.40	217.26	217.94	219.82	219.99	222.13

¹ Express Mail Commercial Plus prices apply to existing and new customers whose:

- Account volume exceeds a minimum threshold, or, has a customer commitment agreement with the USPS, and;
- Uses an Express Mail Corporate Account (EMCA), including Federal Agency Accounts; or,
- Is a registered end-user of USPS approved PC Postage products.

² \$14.96 is charged for material sent in an Express Mail flat-rate envelope regardless of weight or domestic destination. Only USPS-provided flat-rate envelopes are eligible for the flat-rate envelope price.

1.5 Flat-Rate Envelope

[Revise text of the first sentence by changing the price as follows:]

Material mailed in the USPS-provided Express Mail flat-rate envelope is charged \$16.63 (commercial base price) or \$14.96 (commercial plus price), regardless of the actual weight of the piece or its destination. * * *

* * * * *

1.9 Computing Postage

[Revise 1.9 by changing the percentage, adding reference to commercial plus price, and deleting the last sentence so that it reads as follows:]

For each addressed mailpiece, determine the retail price based on weight and zone. Then, multiply the retail price by 5 percent for commercial base pricing, and by 14.5 percent for commercial plus pricing to obtain the appropriate discount amount. Subtract the discount amount (without rounding

off) from the retail price and round off the result (see 604.7.1.3).

* * * * *

414 Postage Payment and Documentation

1.0 Basic Standards for Postage Payment

[Delete current paragraph in 1.0, and add 1.1, 1.1.1, and 1.1.2 to read as follows:]

1.1 Postage Payment Options

Federal agency and USPS official Express Mail may use the appropriate indicia, subject to 703.7.0, *Official Mail (Penalty)*. The mailer is responsible for proper payment of postage. Customers wishing to manifest Express Mail items may request authorization to use an Express Mail Manifesting System according to the procedures in 705.2.6.

1.1.1 Commercial Base Pricing

Commercial base Express Mail postage may be paid with:

a. An Express Mail Corporate Account (see 2.0), including Federal Agency Accounts.

b. Click-N-Ship.

c. Information Based Indicia (IBI) postage meter with an approved shipping label.

d. USPS approved PC-Postage products by registered end-users in conjunction with a qualifying shipping label managed by the PC-Postage system used.

1.1.2 Commercial Plus Pricing

Commercial plus Express Mail postage may be paid with an Express Mail Corporate Account (see 2.0), including Federal Agency accounts, or through USPS approved PC-Postage products by registered end-users in conjunction with a qualifying shipping label managed by the PC-Postage system used.

* * * * *

420 Commercial Parcels Priority Mail**1.2 Commercial Base Prices**

managed by the PC-Postage system used.

423 Prices and Eligibility

The commercial base prices are available for:

* * * * *

[Revise heading of 1.0 as follows:]

1.0 Prices and Fees

* * * * *

[Renumber current 1.2 through 1.7 as new 1.4 through 1.9, renumber current 1.1.1 as new 1.2, and add new 1.3 to read as follows:]

[Revise item b. and add new item e. as follows:]

* * * * *

b. Registered end-users of USPS approved PC-Postage products when using a qualifying shipping label

e. Customers who pay postage using Information Based Indicia (IBI) postage meters in conjunction with an approved shipping label that bears a confirmation services barcode with a postal routing code (see 708.5.0).

[Renumber and rename Exhibit 1.1 as Exhibit 1.2 Priority Mail Commercial Base Prices and insert new price chart and revise footnotes as follows:]

EXHIBIT 1.2—PRIORITY MAIL COMMERCIAL BASE PRICES

Weight not over (pounds)	Zone 1 2 3 4 5 6						
	L, 1, 2	3	4	5	6	7	8
1	4.80	4.80	4.80	4.80	4.80	4.80	4.80
2	4.80	4.99	5.37	6.67	7.18	7.69	8.30
3	5.08	5.81	6.64	8.15	9.35	10.07	11.41
4	5.64	6.60	7.62	9.78	11.29	12.29	14.03
5	6.33	7.58	8.55	11.56	12.98	14.43	16.37
6	6.98	8.60	9.84	13.34	14.64	16.62	18.71
7	7.68	9.58	11.14	15.23	16.34	18.76	21.04
8	8.14	9.95	12.24	16.70	17.76	20.61	23.63
9	8.37	10.64	13.04	18.00	19.18	22.41	26.30
10	9.05	11.49	14.16	19.50	21.26	24.59	28.59
11	9.76	12.37	15.33	21.05	23.38	26.78	30.93
12	10.36	13.20	16.45	22.56	25.45	28.96	33.22
13	10.64	13.53	16.92	23.78	27.30	30.11	34.36
14	11.01	14.14	17.67	24.86	28.82	31.81	36.08
15	11.47	14.74	18.55	25.61	29.43	32.14	36.85
16	11.84	15.26	19.12	26.17	30.08	32.86	37.76
17	12.25	15.77	19.49	26.78	30.89	33.72	38.75
18	12.49	16.27	19.91	27.35	31.51	34.33	39.66
19	12.90	16.65	20.20	28.01	32.26	35.23	40.66
20	13.23	16.87	20.57	28.47	32.88	35.90	41.58
21	13.60	17.11	20.89	28.94	33.40	36.51	42.38
22	13.92	17.43	21.22	29.60	34.14	37.37	43.44
23	14.24	17.67	21.82	30.12	34.76	37.99	44.20
24	14.57	17.86	22.48	30.73	35.47	38.89	45.30
25	14.89	18.13	23.23	31.25	35.99	39.45	46.06
26	15.21	18.32	23.97	31.91	36.84	40.31	47.53
27	15.63	18.60	24.68	32.33	37.36	40.88	49.31
28	16.10	18.82	25.33	32.76	37.88	41.50	51.12
29	16.61	19.01	26.09	33.18	38.35	42.07	52.74
30	17.11	19.30	26.78	33.64	38.87	42.64	54.50
31	17.58	19.48	27.53	34.07	39.39	43.21	56.31
32	18.04	19.94	28.24	34.49	39.92	44.25	58.09
33	18.27	20.46	28.88	34.92	40.44	45.48	59.75
34	18.45	21.01	29.39	35.66	41.62	46.72	61.52
35	18.68	21.52	29.81	36.42	42.75	48.00	63.29
36	18.87	22.08	30.19	37.22	43.83	49.28	65.06
37	19.05	22.54	30.62	37.92	44.97	50.57	66.82
38	19.24	23.10	30.99	38.67	46.25	51.75	68.53
39	19.47	23.58	31.36	39.47	47.38	53.09	70.36
40	19.84	24.08	31.69	40.27	48.46	54.27	72.02
41	20.25	24.54	32.06	40.64	49.60	55.60	73.41
42	20.63	25.02	32.39	41.49	50.68	56.89	74.41
43	21.04	25.43	32.72	42.43	51.91	58.16	75.37
44	21.41	25.95	33.05	43.37	52.99	59.44	76.27
45	21.78	26.41	33.38	44.31	54.18	60.73	77.17
46	22.19	26.73	33.70	45.15	55.31	61.96	78.04
47	22.57	26.91	33.98	46.15	56.54	63.29	78.94
48	22.98	27.15	34.31	47.08	57.67	64.57	79.76
49	23.36	27.34	34.59	47.92	58.71	65.91	80.56
50	23.67	27.57	34.91	48.87	59.85	66.95	81.57
51	24.14	27.76	35.52	49.81	60.98	67.56	82.43
52	24.46	27.94	36.22	50.74	61.69	68.14	83.24
53	24.92	28.13	36.83	51.64	62.16	68.71	84.06
54	25.25	28.26	37.44	52.63	62.63	69.23	84.86
55	25.67	28.46	38.19	53.56	63.10	69.80	85.58

EXHIBIT 1.2—PRIORITY MAIL COMMERCIAL BASE PRICES—Continued

Weight not over (pounds)	Zone 1 2 3 4 5 6						
	L, 1, 2	3	4	5	6	7	8
56	26.04	28.60	38.80	54.41	63.57	70.27	86.34
57	26.45	28.78	39.40	55.25	64.01	70.80	87.11
58	26.83	28.92	40.10	55.96	64.43	71.27	87.82
59	27.24	29.06	40.76	56.34	64.86	71.69	88.44
60	27.56	29.20	41.36	56.67	65.23	72.84	89.11
61	28.02	29.29	42.11	56.95	65.99	73.97	90.31
62	28.35	29.43	42.72	57.28	66.41	75.12	91.74
63	28.81	29.57	43.38	57.56	66.79	75.88	93.17
64	29.13	29.66	44.03	57.84	67.21	76.35	94.64
65	29.55	29.75	44.59	58.12	67.55	76.78	96.12
66	29.92	30.08	45.29	58.36	67.97	77.15	97.51
67	30.34	30.50	46.04	58.97	68.30	77.59	99.04
68	30.71	30.87	46.65	59.81	68.59	77.96	100.42
69	31.13	31.29	47.25	60.71	68.96	78.35	101.90
70	31.49	31.66	48.00	60.99	69.25	78.67	103.33

¹ Commercial base prices are available for postage paid through:

- Click-N-Ship.
- Registered end-users of USPS approved PC Postage products when using a qualifying shipping label.
- Information Based Indicia (IBI) postage meters (in conjunction with an approved shipping label that includes a confirmation services barcode with a postal routing code).
- Permit Imprint in conjunction with a Postal routing code.

² Parcels addressed for delivery to zones 1–4 (including local) that weigh less than 20 pounds but measure more than 84 inches in combined length and girth (but not more than 108 inches) are charged the applicable price for a 20-pound parcel (balloon price).

³ Parcels addressed for delivery to zones 5–8 that exceed 1 cubic foot (1,728 cubic inches) are charged based on the actual weight or the dimensional weight, whichever is greater.

⁴ \$4.80 is charged for matter sent in a Priority Mail flat-rate envelope, or small flat-rate box provided by the USPS, regardless of weight or domestic destination.

⁵ \$9.85 is charged for material sent in a Priority Mail regular flat-rate box provided by the USPS, regardless of weight or domestic destination.

⁶ \$13.50 is charged for material sent in a Priority Mail large flat-rate box provided by the USPS, regardless of weight to domestic addresses, and \$11.50 to APO/FPO destination addresses.

1.3 Commercial Plus Prices

1.3.1 Existing Priority Mail Customers

Commercial plus prices are available to existing Priority Mail customers:

a. Registered end-users of USPS approved PC-Postage products who qualify for commercial base prices and whose account volume exceeds 100,000 pieces in the previous calendar year or who have a customer commitment agreement with the USPS (see 1.3.2).

b. Permit imprint customers who qualify for commercial base prices and

whose account volume exceeds 100,000 pieces in the previous calendar year or who have a customer commitment agreement with the USPS (see 1.3.2).

c. Priority Mail Open and Distribute (PMOD) customers who qualify for commercial base prices and whose account volume exceeds 600 PMOD containers (see 705.16.5.1) in the previous calendar year or who have a customer commitment agreement with the USPS (see 1.3.2).

1.3.2 New Priority Mail Customers

Commercial plus prices are available for new Priority Mail customers who have a customer commitment agreement with the USPS. Shippers must contact their account manager or the manager, Sales and Communication, Expedited Shipping (see 608.8.0 for address) for additional information.

[Insert new Exhibit 1.3 Priority Mail Commercial Plus Prices.]

EXHIBIT 1.3—PRIORITY MAIL COMMERCIAL PLUS PRICES

Weight not over (pounds)	Zone 1 2 3 4 5 6						
	L, 1, 2	3	4	5	6	7	8
1	4.75	4.75	4.75	4.75	4.75	4.75	4.75
2	4.75	4.75	5.29	6.46	6.88	7.39	7.96
3	4.86	5.59	6.38	7.79	9.12	9.94	11.10
4	5.42	6.39	7.42	9.50	11.08	12.14	13.75
5	6.03	7.29	8.14	11.11	12.84	14.16	16.21
6	6.86	8.45	9.67	13.11	14.39	16.34	18.05
7	7.54	9.37	10.90	14.97	16.00	18.37	20.61
8	7.98	9.72	11.97	16.35	17.36	20.15	23.12
9	8.19	10.41	12.77	17.63	18.78	21.93	25.73
10	8.67	11.21	13.47	18.78	20.35	23.86	28.10
11	9.09	11.49	14.25	19.51	21.60	25.16	29.11
12	9.48	12.07	15.04	20.60	23.29	26.46	30.36
13	9.72	12.37	15.48	21.74	24.98	27.51	31.41
14	10.07	12.91	16.17	22.72	26.32	29.10	32.97
15	10.50	13.49	16.95	23.42	26.92	29.40	33.68
16	10.85	13.94	17.49	23.91	27.51	30.06	34.53
17	11.18	14.42	17.84	24.50	28.26	30.80	35.42

EXHIBIT 1.3—PRIORITY MAIL COMMERCIAL PLUS PRICES—Continued

Weight not over (pounds)	Zone ¹ 2 3 4 5 6						
	L, 1, 2	3	4	5	6	7	8
18	11.43	14.86	18.18	25.00	28.81	31.40	36.28
19	11.81	15.20	18.48	25.59	29.49	32.20	37.18
20	12.11	15.44	18.82	26.03	30.05	32.80	37.99
21	12.45	15.64	19.12	26.48	30.54	33.39	38.74
22	12.74	15.93	19.41	27.07	31.23	34.14	39.70
23	13.03	16.13	19.95	27.52	31.78	34.75	40.39
24	13.32	16.33	20.54	28.11	32.43	35.55	41.40
25	13.61	16.57	21.23	28.56	32.93	36.09	42.10
26	13.90	16.76	21.91	29.15	33.66	36.84	43.45
27	14.29	17.01	22.56	29.55	34.16	37.39	45.06
28	14.74	17.20	23.14	29.94	34.61	37.94	46.72
29	15.17	17.40	23.84	30.34	35.06	38.44	48.22
30	15.65	17.65	24.47	30.77	35.56	38.99	49.83
31	16.05	17.79	25.16	31.13	36.00	39.49	51.48
32	16.48	18.23	25.80	31.52	36.50	40.44	53.09
33	16.92	18.72	26.38	31.92	36.95	41.58	54.64
34	17.36	19.21	27.07	32.60	38.04	42.73	56.25
35	17.79	19.70	27.61	33.30	39.08	43.88	57.86
36	18.23	20.19	28.06	34.04	40.07	45.07	59.47
37	18.67	20.62	28.51	34.68	41.12	46.23	61.07
38	18.91	21.11	28.94	35.37	42.27	47.32	62.67
39	19.14	21.56	29.34	36.07	43.31	48.53	64.33
40	19.50	22.00	29.78	36.81	44.29	49.62	65.83
41	19.91	22.43	30.17	37.15	45.34	50.81	67.44
42	20.28	22.88	30.57	37.94	46.33	52.02	69.05
43	20.68	23.26	30.96	38.78	47.48	53.16	70.66
44	21.05	23.71	31.36	39.67	48.46	54.36	72.26
45	21.41	24.15	31.70	40.51	49.51	55.52	73.86
46	21.81	24.59	32.33	41.30	50.55	56.66	75.47
47	22.19	25.02	32.93	42.19	51.70	57.86	77.02
48	22.59	25.37	33.66	43.02	52.74	59.05	78.40
49	22.96	25.67	34.00	43.82	53.68	60.26	79.19
50	23.27	25.91	34.32	44.66	54.72	61.40	80.18
51	23.73	26.16	34.92	45.55	55.76	62.55	81.03
52	24.04	26.40	35.60	46.38	56.91	63.70	81.82
53	24.50	26.64	36.20	47.23	57.91	64.90	82.63
54	24.82	26.83	36.80	48.12	58.90	66.00	83.42
55	25.23	27.08	37.54	48.95	59.94	67.09	84.13
56	25.60	27.28	38.14	49.74	61.08	68.29	84.87
57	26.00	27.52	38.73	50.53	62.08	69.49	85.63
58	26.37	27.72	39.42	51.43	63.12	70.06	86.33
59	26.78	27.91	40.07	52.27	63.76	70.47	86.94
60	27.09	28.11	40.66	53.15	64.12	71.60	87.60
61	27.54	28.30	41.39	53.94	64.87	72.71	88.77
62	27.87	28.55	41.99	54.84	65.28	73.84	90.18
63	28.32	28.98	42.64	55.72	65.65	74.59	91.59
64	28.63	29.16	43.28	56.57	66.07	75.05	93.03
65	29.05	29.24	43.83	57.13	66.40	75.47	94.49
66	29.41	29.57	44.52	57.37	66.81	75.84	95.85
67	29.82	29.98	45.26	57.97	67.14	76.27	97.36
68	30.19	30.35	45.86	58.79	67.42	76.63	98.71
69	30.60	30.76	46.45	59.68	67.79	77.02	100.17
70	30.95	31.12	47.18	59.95	68.07	77.33	101.57

¹ Priority Mail Commercial Plus prices are available to the following new and existing customers that meet specific volume or customer agreement requirements:

- Registered end-users of USPS-approved PC Postage products.
- Permit imprint customers.
- Priority Mail Open and Distribute customers.

² Parcels addressed for delivery to zones 1–4 (including local) that weigh less than 20 pounds but measure more than 84 inches in combined length and girth (but not more than 108 inches) are charged the applicable price for a 20-pound parcel (balloon price).

³ Parcels addressed for delivery to zones 5–8 that exceed 1 cubic foot (1,728 cubic inches) are charged based on the actual weight or the dimensional weight, whichever is greater.

⁴ \$4.75 is charged for material sent in a Priority Mail flat-rate envelope or small flat-rate box regardless of weight or domestic destination. Only USPS-produced flat-rate envelopes are eligible for the flat-rate envelope price.

⁵ \$9.67 is charged for material sent in a Priority Mail regular flat-rate box provided by the USPS, regardless of weight or domestic destination.

⁶ \$13.27 is charged for material sent in a Priority Mail large flat-rate box provided by the USPS, regardless of weight to domestic addresses, and \$11.30 to APO/FPO destination addresses.

* * * * *

[In renumbered 1.6 make the following revisions:]

1.6 Flat-Rate Envelope and Boxes

1.6.1 Flat-Rate Envelopes—Price and Eligibility

[Revise text of the first sentence of renumbered 1.6.1 to change the prices as follows:]

Each USPS-produced Priority Mail flat-rate envelope is charged \$4.80, (commercial base price) or \$4.75 (commercial plus price) regardless of the actual weight of the piece or its destination. * * *

1.6.2 Flat-Rate Boxes—Price and Eligibility

[Revise text of renumbered 1.6.2 by changing the prices and re-lettering current items a through c as new b through d and add a new item a as follows:]

* * * Each USPS-produced Priority Mail flat-rate box, regardless of the actual weight of the piece or its destination, is charged:

a. \$4.80 (commercial base price) or \$4.75 (commercial plus price) for material sent in a Priority Mail small flat-rate box to domestic and APO/FPO addresses.

b. \$9.85 (commercial base price) or \$9.67 (commercial plus price) for material sent in a Priority Mail regular flat-rate box (FRB-1 or FRB-2) to domestic and APO/FPO addresses.

c. \$11.50 (commercial base price) or \$11.30 (commercial plus price) for material sent in a Priority Mail large flat-rate box to APO/FPO addresses (see 703.2).

d. \$13.50 (commercial base price) or \$13.27 (commercial plus price) for material sent in a Priority Mail large flat-rate box to domestic addresses.

* * * * *

424 Postage Payment and Documentation

1.0 Basic Standards for Postage Payment

1.1 Postage Payment Options

[Delete existing paragraph in 1.1 and add new 1.1.1 and new 1.1.2 as follows:]

1.1.1 Commercial Base Pricing

Commercial base Priority Mail postage may be paid with:

- Click-N-Ship.
- USPS approved PC-Postage products when registered end-users use a qualifying shipping label.
- Information Based Indicia (IBI) postage meter in conjunction with an

approved shipping label that bears a confirmation services barcode with a postal routing code (see 708.5.0).

d. Permit imprint with a postal routing barcode on the mailpiece (see 708.5.0). Flat-shaped mailpieces with permit imprints may bear a POSTNET or Intelligent Mail barcode (see 708.4.0) instead of the postal routing barcode.

1.1.2 Commercial Plus Pricing

Commercial plus Priority Mail postage may be paid with:

- USPS approved PC-Postage products when registered end-users use a qualifying shipping label.
- Permit imprint with a postal routing barcode on the mailpiece (see 708.5.0). Flat-shaped mailpieces with permit imprints may bear a POSTNET or Intelligent Mail barcode (see 708.4.0) instead of the postal routing barcode.

* * * * *

450 Parcel Select

453 Prices and Eligibility

1.0 Prices and Fees for Parcel Select

* * * * *

1.2 Parcel Select Destination Entry Prices

[Insert new price chart and revise footnotes of Exhibit 1.2 as follows:]

Machinable ^{1 2}							Nonmachinable ^{1 2}						
Weight not over (pounds)	DDU	DSCF	DBMC/ASF zone ³				DDU	DSCF		DBMC/ASF zone ⁵			
			Zones 1 & 2	Zone 3	Zone 4	Zone 5		5-Digit	3-Digit ⁴	Zones 1 & 2	Zone 3	Zone 4	Zone 5
1	\$1.54	\$2.16	\$2.74	\$3.23	\$3.65	\$4.68	\$1.54	\$2.16	\$2.98	\$4.95	\$5.44	\$5.86	\$6.89
2	1.61	2.40	3.08	3.95	4.75	5.56	1.61	2.40	3.22	5.29	6.16	6.96	7.77
3	1.68	2.62	3.42	4.69	5.81	6.48	1.68	2.62	3.44	5.63	6.90	8.02	8.69
4	1.73	2.81	3.73	5.35	6.66	7.26	1.73	2.81	3.63	5.94	7.56	8.87	9.47
5	1.79	2.99	4.01	5.98	7.29	8.02	1.79	2.99	3.81	6.22	8.19	9.50	10.23
6	1.84	3.17	4.30	6.56	7.80	8.69	1.84	3.17	3.99	6.51	8.77	10.01	10.90
7	1.90	3.34	4.56	7.12	8.30	9.36	1.90	3.34	4.16	6.77	9.33	10.51	11.57
8	1.94	3.52	4.83	7.65	8.74	9.96	1.94	3.52	4.34	7.04	9.86	10.95	12.17
9	1.99	3.66	5.05	8.10	9.15	10.45	1.99	3.66	4.48	7.26	10.31	11.36	12.66
10	2.03	3.79	5.28	8.58	10.14	10.95	2.03	3.79	4.61	7.49	10.79	12.35	13.16
11	2.12	4.02	5.62	9.26	10.69	11.58	2.12	4.02	4.84	7.83	11.47	12.90	13.79
12	2.20	4.22	5.95	9.86	11.08	12.02	2.20	4.22	5.04	8.16	12.07	13.29	14.23
13	2.27	4.43	6.25	10.40	11.45	12.44	2.27	4.43	5.25	8.46	12.61	13.66	14.65
14	2.35	4.62	6.57	10.90	11.84	12.82	2.35	4.62	5.44	8.78	13.11	14.05	15.03
15	2.42	4.83	6.84	11.35	12.17	13.17	2.42	4.83	5.65	9.05	13.56	14.38	15.38
16	2.48	5.03	7.14	11.68	12.48	13.53	2.48	5.03	5.85	9.35	13.89	14.69	15.74
17	2.55	5.22	7.42	11.98	12.82	13.84	2.55	5.22	6.04	9.63	14.19	15.03	16.05
18	2.61	5.39	7.66	12.26	13.10	14.14	2.61	5.39	6.21	9.87	14.47	15.31	16.35
19	2.67	5.57	7.93	12.56	13.38	14.43	2.67	5.57	6.39	10.14	14.77	15.59	16.64
20	2.74	5.74	8.17	12.85	13.63	14.68	2.74	5.74	6.56	10.38	15.06	15.84	16.89
21	2.79	5.89	8.42	13.11	13.88	14.94	2.79	5.89	6.71	10.63	15.32	16.09	17.15
22	2.84	6.06	8.66	13.37	14.15	15.17	2.84	6.06	6.88	10.87	15.58	16.36	17.38
23	2.89	6.24	8.91	13.65	14.42	15.42	2.89	6.24	7.06	11.12	15.86	16.63	17.63
24	2.94	6.40	9.14	13.90	14.68	15.63	2.94	6.40	7.22	11.35	16.11	16.89	17.84
25	3.00	6.53	9.35	14.14	14.92	15.86	3.00	6.53	7.35	11.56	16.35	17.13	18.07
26	3.04	6.65	9.54	14.37	15.18	16.03	3.04	6.65	7.47	11.75	16.58	17.39	18.24
27	3.08	6.83	9.78	14.63	15.42	16.22	3.08	6.83	7.65	11.99	16.84	17.63	18.43
28	3.13	6.96	9.96	14.87	15.64	16.43	3.13	6.96	7.78	12.17	17.08	17.85	18.64
29	3.18	7.10	10.17	15.10	15.88	16.68	3.18	7.10	7.92	12.38	17.31	18.09	18.89
30	3.22	7.21	10.35	15.31	16.09	16.90	3.22	7.21	8.03	12.56	17.52	18.30	19.11
31	3.25	7.35	10.55	15.50	16.31	17.14	3.25	7.35	8.17	12.76	17.71	18.52	19.35
32	3.29	7.47	10.72	15.73	16.53	17.34	3.29	7.47	8.29	12.93	17.94	18.74	19.55
33	3.33	7.59	10.91	15.92	16.72	17.56	3.33	7.59	8.41	13.12	18.13	18.93	19.77
34	3.36	7.73	11.10	16.05	16.93	17.77	3.36	7.73	8.55	13.31	18.26	19.14	19.98
35	3.41	7.83	11.23	16.24	17.13	17.97	3.41	7.83	8.65	13.44	18.45	19.34	20.18
36							3.44	7.94	8.76	13.63	18.58	19.52	20.38

Machinable ^{1 2}							Nonmachinable ^{1 2}						
Weight not over (pounds)	DDU	DSCF	DBMC/ASF zone ³				DDU	DSCF		DBMC/ASF zone ⁵			
			Zones 1 & 2	Zone 3	Zone 4	Zone 5		5-Digit	3-Digit ⁴	Zones 1 & 2	Zone 3	Zone 4	Zone 5
37							3.47	8.05	8.87	13.81	18.72	19.71	20.57
38							3.50	8.15	8.97	13.97	18.88	19.89	20.77
39							3.53	8.27	9.09	14.13	19.03	20.06	20.95
40							3.56	8.33	9.15	14.24	19.15	20.25	21.13
41							3.59	8.42	9.24	14.40	19.34	20.36	21.31
42							3.63	8.54	9.36	14.55	19.46	20.49	21.48
43							3.66	8.62	9.44	14.69	19.59	20.57	21.66
44							3.68	8.71	9.53	14.82	19.72	20.67	21.81
45							3.71	8.79	9.61	14.96	19.83	20.94	21.97
46							3.73	8.89	9.71	15.08	19.98	21.02	22.25
47							3.76	8.97	9.79	15.21	20.09	21.11	22.73
48							3.78	9.03	9.85	15.32	20.23	21.18	23.23
49							3.80	9.11	9.93	15.44	20.35	21.26	23.71
50							3.84	9.18	10.00	15.57	20.46	21.32	24.21
51							3.86	9.29	10.11	15.71	20.55	21.41	24.72
52							3.88	9.33	10.15	15.82	20.72	21.48	25.27
53							3.90	9.38	10.20	15.93	20.80	21.52	25.81
54							3.92	9.47	10.29	16.07	20.87	21.60	26.36
55							3.94	9.59	10.41	16.20	20.94	21.68	26.60
56							3.96	9.64	10.46	16.31	21.01	21.77	26.70
57							3.98	9.73	10.55	16.44	21.03	21.80	26.86
58							3.99	9.80	10.62	16.57	21.11	21.85	26.97
59							4.01	9.90	10.72	16.70	21.15	21.92	27.10
60							4.03	9.97	10.79	16.83	21.18	21.95	27.23
61							4.06	10.01	10.83	16.91	21.26	22.03	27.34
62							4.07	10.08	10.90	17.03	21.30	22.12	27.45
63							4.09	10.16	10.98	17.15	21.34	22.23	27.55
64							4.10	10.24	11.06	17.27	21.37	22.33	27.67
65							4.12	10.30	11.12	17.39	21.43	22.43	27.76
66							4.13	10.34	11.16	17.44	21.47	22.54	27.89
67							4.15	10.42	11.24	17.55	21.50	22.66	27.98
68							4.16	10.46	11.28	17.65	21.53	22.72	28.08
69							4.18	10.55	11.37	17.77	21.57	22.83	28.18
70							4.19	10.60	11.42	17.87	21.62	22.94	28.28
Oversized							7.33	16.04	16.04	25.23	35.62	48.25	50.15

For parcels over 35 pounds, use nonmachinable prices.

¹ Parcels that measure in combined length and girth:

—More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound prices (balloon price).

—More than 108 inches but not more than 130 inches, use oversized prices (regardless of weight).

² Regardless of weight, a parcel that meets any of the criteria in 401.2.3.2 must pay the nonmachinable prices.

³ Machinable parcels must be barcoded. Nonbarcoded machinable parcels are eligible only for retail Parcel Post Intra-BMC/ASF prices.

⁴ Prices include the \$0.82 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized prices or parcels sent with special handling.

⁵ Prices include the \$2.21 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized prices or parcels sent with special handling.

* * * * *

13.0 Parcel Return Service

500 Additional Services

* * * * *

507 Mailer Services

* * * * *

13.3 Prices

13.3.1 Parcel Return Service—Machinable

* * * * *

[Insert new price chart and revise footnotes of Exhibit 13.3.1 as follows.]

EXHIBIT 13.3.1—PARCEL RETURN SERVICE—RETURN BMC MACHINABLE

Weight not over (pounds)	RDU	RBMC zones 1 & 2	RBMC zone 3	RBMC zone 4	RBMC zone 5
1	1.62	2.54	2.68	2.76	2.98
2	1.69	3.43	3.48	3.59	3.89
3	1.76	4.17	4.22	4.35	4.76
4	1.82	4.65	4.90	5.03	5.56
5	1.88	5.10	5.49	5.66	6.31
6	1.94	5.51	6.04	6.20	6.98
7	1.99	5.85	6.52	6.72	7.61
8	2.04	6.53	6.99	7.19	8.19
9	2.09	6.88	7.41	7.67	8.72
10	2.13	7.17	7.86	8.41	9.22
11	2.22	7.35	8.23	8.80	9.67
12	2.31	7.58	8.60	9.18	10.11
13	2.39	7.79	8.93	9.54	10.52
14	2.46	7.97	9.23	9.94	10.89

EXHIBIT 13.3.1—PARCEL RETURN SERVICE—RETURN BMC MACHINABLE—Continued

Weight not over (pounds)	RDU	RBMC zones 1 & 2	RBMC zone 3	RBMC zone 4	RBMC zone 5
15	2.54	8.12	9.55	10.24	11.23
16	2.61	8.29	9.87	10.55	11.59
17	2.68	8.50	10.17	10.89	11.88
18	2.74	8.63	10.45	11.16	12.18
19	2.81	8.81	10.74	11.44	12.46
20	2.87	8.95	10.96	11.67	12.71
21	2.93	9.10	11.18	11.92	12.96
22	2.98	9.26	11.36	12.19	13.19
23	3.04	9.39	11.61	12.45	13.44
24	3.09	9.50	11.77	12.71	13.64
25	3.14	9.63	11.97	12.95	13.86
26	3.19	9.77	12.13	13.20	14.03
27	3.24	9.90	12.32	13.44	14.22
28	3.28	10.00	12.50	13.61	14.42
29	3.33	10.13	12.69	13.76	14.66
30	3.37	10.26	12.83	13.91	14.87
31	3.41	10.38	12.96	14.04	15.11
32	3.46	10.53	13.13	14.20	15.31
33	3.50	10.61	13.28	14.32	15.53
34	3.53	10.74	13.40	14.45	15.69
35	3.57	10.82	13.56	14.56	15.83

For parcels over 35 lbs., use nonmachinable prices. For books and other printed matter the maximum weight is 25 pounds.

Note: Parcels that measure in combined length and girth: *Balloon Price:* RBMC pieces more than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound prices. More than 108 inches but not more than 130 inches, use oversized prices (regardless of weight).

13.3.2 Parcel Return Service—Return BMC Nonmachinable

* * * * *

[Insert new price chart and revise footnotes of Exhibit 13.3.2 as follows:]

EXHIBIT 13.3.2—PARCEL RETURN SERVICE—RETURN BMC NONMACHINABLE

Weight not over (pounds)	RDU	RBMC ¹ zones 1 & 2	RBMC ¹ zone 3	RBMC ¹ zone 4	RBMC ¹ zone 5
1	1.62	4.75	4.89	4.97	5.19
2	1.69	5.64	5.69	5.80	6.10
3	1.76	6.38	6.43	6.56	6.97
4	1.82	6.86	7.11	7.24	7.77
5	1.88	7.31	7.70	7.87	8.52
6	1.94	7.72	8.25	8.41	9.19
7	1.99	8.06	8.73	8.93	9.82
8	2.04	8.74	9.20	9.40	10.40
9	2.09	9.09	9.62	9.88	10.93
10	2.13	9.38	10.07	10.62	11.43
11	2.22	9.56	10.44	11.01	11.88
12	2.31	9.79	10.81	11.39	12.32
13	2.39	10.00	11.14	11.75	12.73
14	2.46	10.18	11.44	12.15	13.10
15	2.54	10.33	11.76	12.45	13.44
16	2.61	10.50	12.08	12.76	13.80
17	2.68	10.71	12.38	13.10	14.09
18	2.74	10.84	12.66	13.37	14.39
19	2.81	11.02	12.95	13.65	14.67
20	2.87	11.16	13.17	13.88	14.92
21	2.93	11.31	13.39	14.13	15.17
22	2.98	11.47	13.57	14.40	15.40
23	3.04	11.60	13.82	14.66	15.65
24	3.09	11.71	13.98	14.92	15.85
25	3.14	11.84	14.18	15.16	16.07
26	3.19	11.98	14.34	15.41	16.24
27	3.24	12.11	14.53	15.65	16.43
28	3.28	12.21	14.71	15.82	16.63
29	3.33	12.34	14.90	15.97	16.87
30	3.37	12.47	15.04	16.12	17.08
31	3.41	12.59	15.17	16.25	17.32
32	3.46	12.74	15.34	16.41	17.52
33	3.50	12.82	15.49	16.53	17.74

EXHIBIT 13.3.2—PARCEL RETURN SERVICE—RETURN BMC NONMACHINABLE—Continued

Weight not over (pounds)	RDU	RBMC ¹ zones 1 & 2	RBMC ¹ zone 3	RBMC ¹ zone 4	RBMC ¹ zone 5
34	3.53	12.95	15.61	16.66	17.90
35	3.57	13.03	15.77	16.77	18.04
36	3.61	13.17	15.95	16.92	18.23
37	3.64	13.28	16.06	17.02	18.31
38	3.68	13.34	16.15	17.08	18.38
39	3.71	13.42	16.27	17.16	18.45
40	3.74	13.49	16.35	17.20	18.53
41	3.77	13.59	16.48	17.27	18.60
42	3.80	13.63	16.56	17.33	18.67
43	3.83	13.69	16.66	17.41	18.70
44	3.86	13.77	16.74	17.46	18.74
45	3.89	13.82	16.81	17.68	18.81
46	3.92	13.92	16.92	17.73	18.84
47	3.94	13.98	16.97	17.76	18.89
48	3.97	14.04	17.08	17.79	18.94
49	4.00	14.11	17.17	17.84	18.97
50	4.02	14.12	17.24	17.87	19.03
51	4.04	14.23	17.30	17.90	19.08
52	4.07	14.28	17.42	17.96	19.11
53	4.09	14.31	17.46	17.97	19.17
54	4.11	14.37	17.49	18.01	19.20
55	4.13	14.42	17.52	18.04	19.24
56	4.16	14.48	17.55	18.09	19.30
57	4.18	14.55	17.55	18.09	19.34
58	4.20	14.61	17.58	18.11	19.39
59	4.22	14.66	17.60	18.13	19.44
60	4.23	14.73	17.61	18.13	19.47
61	4.25	14.78	17.62	18.16	19.52
62	4.27	14.82	17.63	18.24	19.55
63	4.29	14.89	17.63	18.31	19.62
64	4.31	14.94	17.63	18.35	19.66
65	4.32	14.99	17.68	18.40	19.70
66	4.34	15.05	17.68	18.47	19.75
67	4.35	15.12	17.69	18.56	19.79
68	4.37	15.12	17.69	18.59	19.82
69	4.39	15.19	17.69	18.67	19.89
70	4.40	15.25	17.69	18.72	19.93
Oversized	7.68	32.45	33.00	34.00	35.51

¹ Nonmachinable prices include the \$2.21 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized prices. For parcels over 35 lbs., use nonmachinable prices. For books and other printed matter the maximum weight is 25 pounds.

Note: Parcels that measure in combined length and girth: *Balloon Price:* RBMC pieces more than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound prices. More than 108 inches but not more than 130 inches, use oversized prices (regardless of weight).

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

608 Postal Information and Resources

* * * * *

8.0 USPS Contact Information

8.1 Postal Service

[Add address of manager, Sales and Communication, Expedited Shipping to list in the appropriate place as follows:]

* * * * *

Sales and Communication, Expedited Shipping, US Postal Service, 475 L'Enfant Plz., SW., NB Ste. 4039, Washington, DC 20260-4000.

* * * * *

700 Special Standards

703 Nonprofit Standard Mail and Other Unique Eligibility

* * * * *

2.0 Overseas Military Mail

2.1 Basic Standards

* * * * *

2.1.2 APO/FPO Priority Mail Flat-Rate Boxes

[Revise text of 2.1.2 by changing the price for the large flat-rate box to \$11.95, changing the price for the regular flat-rate box to \$10.35, and adding a new fifth sentence as follows:]

* * * Articles mailed to an APO/FPO address in a small flat-rate box are charged \$4.95. * * *

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8-27576 Filed 11-26-08; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE**Change in Rates of General Applicability for Competitive Products****AGENCY:** Postal Service.TM**ACTION:** Notice of a change in rates of general applicability for competitive products.**SUMMARY:** This notice sets forth changes in rates of general applicability for competitive products.**DATES:** *Effective Date:* January 18, 2009.**FOR FURTHER INFORMATION CONTACT:** Daniel J. Foucheaux, Jr., 202-268-2989.**SUPPLEMENTARY INFORMATION:** On November 12, 2008, pursuant to their authority under 39 U.S.C. 3632, the Governors of the Postal Service established prices and classification changes for competitive products. The Governors' Decision and the record of proceedings in connection with such decision are reprinted below in accordance with § 3632(b)(2). Implementing regulations are published elsewhere in this issue.

Neva R. Watson,
Attorney, Legislative.

Decision of the Governors of the United States Postal Service on Changes in Rates and Classes of General Applicability for Competitive Products (Governors' Decision No. 08-19)

November 12, 2008.

Statement of Explanation and Justification

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices of general applicability for the Postal Service's shipping services (competitive products), and such changes in classifications as are necessary to define the new prices. The changes are described in the analysis provided by management in Attachment A and the prices and classification are shown in full in Attachment B. We have reviewed management's analysis and have evaluated the new prices and classification changes in accordance with 39 U.S.C. 3632-3633 and 39 CFR 3015.2. We approve the changes set forth in Attachment B, finding that they are appropriate, and are consistent with the regulatory criteria.

For Express Mail service, the overall increase is approximately 5.7 percent. In addition, the current Commercial Volume Incentives category, which provides quarterly rebates for commercial customers who mail

specified volumes, is replaced by a Commercial Plus category that provides lower prices, rather than rebates, for customers meeting specified volume levels. Lower prices for customers paying postage online and through authorized payment methods are continued, and the classification is extended to allow customers paying through use of qualifying metered systems to be eligible for these lower prices.

For Priority Mail service, the overall price increase is 3.9 percent. A Commercial Plus category, similar to the one for Express Mail service, is added to Priority Mail service to provide lower prices for customers who mail specified volumes. A small flat-rate box is also added as a new Priority Mail option, in addition to the current regular and large flat-rate boxes. Incentives for customers paying postage online and through authorized payment methods are maintained and are being extended to customers paying through qualifying metered systems.

For Parcel Select service, the overall average price increase is 5.9 percent. Prices are designed to encourage dropshipping at destination delivery units, which are the facilities closest to the delivery point of the parcels.

For Parcel Return Service, prices have an overall increase of 5.3 percent. Prices are designed to encourage pickup at return delivery units, which are the facilities closest to entry of the returned parcels.

For Global Express Guaranteed service, the average price increase is 11.2 percent. Price increases vary by country group and weight increment. A lower online price remains available as does a lower price for customers paying through an authorized PC postage vendor. This lower price is now extended to qualifying customers paying postage through information-based indicia postage meters. Even with the overall price increase, this service should remain competitive.

For Express Mail International service, prices will increase, on average, by 8.5 percent. Price increases vary by country group and weight increment. A lower online price remains available, as does a lower price for customers paying through an authorized PC postage vendor. This incentive will now be made available to qualifying customers paying through information-based indicia postage meters. Also, incentives will continue for customers who pay their postage through either permit imprint or an Express Mail Corporate Account and who use authorized mail preparation software. The country group

structure for this service is expanded from nine to ten country groups.

For Priority Mail International service, price increases, on average, are 8.5 percent. Different increases apply depending on the weight and country group. Prices are set to fit logically between Express Mail International and First-Class Mail International. Incentives to pay postage online or through an authorized PC postage vendor remain and will be extended to qualifying customers paying through information-based indicia postage meters. A lower price is maintained for customers who pay postage by permit imprint coupled with use of authorized mail preparation software. A small-size flat-rate box is also added as a new Priority Mail International shipping option. As with Express Mail International, the country group structure is expanded from nine to ten country groups.

For International Direct Sacks—M-Bags (Airmail M-Bags), prices rise about 8.0 percent. Prices remain weight-based and the country group structure is unchanged.

As described in Attachment A, these changes satisfy the statutory requirements. They should not result in the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)). Each competitive product should cover its attributable costs (39 U.S.C. 3633(a)(2)). They should allow competitive products as a whole to comply with 39 U.S.C. 3633(a)(3), which, as implemented by 39 CFR 3015.7(c), requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs.

Order

The changes in prices and classes set forth herein shall be effective at 12:01 a.m. on January 18, 2009. We direct the Secretary to have this decision published in the **Federal Register** in accordance with 39 U.S.C. 3632(b)(2). We also direct management to file with the Postal Regulatory Commission appropriate notice of these changes. By The Governors.

Alan C. Kessler,
Chairman.

Analysis of Competitive Products' Price and Classification Change**I. Express Mail**

Overall the Express Mail price change represents a 5.7 percent increase. This balances the need to increase profitability while positioning Express Mail for growth. Customers embraced last year's shift to industry-standard,

zone-based Express Mail pricing and the Postal Service benefited from its ability to charge a more market-driven price for Express Mail traveling more than 750 miles. The zoned Retail prices will be maintained this year with an average increase of 5.9 percent. The price for the Retail flat-rate envelope, almost half of all Express Mail volume, will increase by 6 percent to \$17.50.

The existing Commercial Base price category is maintained for customers who use online and other authorized postage payment methods. The methods were previously specified, but the classification language is generalized to allow the price category to be extended to customers who use qualifying metered postage payment methods. The Commercial Base prices discount off retail prices increases from 3 to 5 percent, resulting in an average price increase of 3.7 percent.

A new Commercial Plus price category will replace the current Volume Incentives category, under which customers mailing specified volumes were eligible for quarterly rebates. The Commercial Plus category will make it easier for merchants to pass their savings in shipping costs on to their customers, since they do not have to wait until the end of a quarter to receive the incentive. Providing this faster incentive should help increase Express Mail revenue. Commercial Plus pricing will be offered to customers who ship 6,000 Express Mail pieces annually. This should allow the Postal Service to provide attractive incentives to higher volume customers. The new Commercial Plus prices will reflect a roll-in of the rebate to the upfront price. All customers who qualify for the new Commercial Plus prices would have received the maximum rebate previously, so essentially these customers will have no price increase.

II. Priority Mail

Overall, Priority Mail prices will increase by 3.9 percent. There is no change to the basic structure of the published Retail prices or Commercial Base prices. A new small size flat-rate box will be added. Retail prices will increase 4.7 percent.

Commercial Base pricing will offer on average a 4.8 percent discount off retail prices for customers using online and other authorized postage payment methods; such methods will be extended to include qualifying metered postage payment methods.

A new price category, Commercial Plus, will be available to customers who ship more than 100,000 Priority Mail pieces or more than 600 Priority Mail Open and Distribute containers

annually. As with the similar Express Mail category, this new category will provide incentives for volume and revenue growth from higher volume customers. Commercial Plus prices are discounted on average 7 percent off Retail prices; this represents an average price increase of 1 percent from current Commercial Base prices.

III. Parcel Select

On average, Parcel Select prices will increase 5.9 percent. The average price increase for DDU entry is 4.7 percent, for DSCF 6.8 percent and for DBMC 9.1 percent. The higher than average price increase for DBMC parcels will increase DBMC margins and further encourage customers to bring packages to the DDU.

IV. Parcel Return Service

Parcel Return Service prices will have an overall price increase of 5.3 percent. RBMC prices will increase 7.1 percent, with no increase for RDU prices, which already provide healthy margins.

V. International Mail

In International shipping services, prices increase approximately 8.5 percent. Prices increase for Global Express Guaranteed (GXG), Express Mail International (EMI), Priority Mail International (PMI) and International Direct Sacks (M-Bags). The published discount program introduced in May 2008 for commercial package mailers will not change.

A. Global Express Guaranteed (GXG)

Global Express Guaranteed (GXG) provides reliable, high speed, date-certain service with a money-back delivery guarantee to more than 190 countries and is provided through an alliance with FedEx. Published GXG prices will increase 11.2 percent. The published online discount of 10 percent will continue for customers paying postage online or through authorized PC postage vendors, and will be extended to qualifying customers paying through information-based indicia postage meters. Price increases vary by country group and weight increments.

B. Express Mail International (EMI)

Express Mail International (EMI) provides reliable, high speed service to over 190 countries with a money-back delivery guarantee for selected countries. The published EMI prices increase an average of 8.5 percent. Price increases vary by country group and weight increments. In addition, due to increased costs, a separate rate group for Australia and New Zealand is added. Express Mail International (EMI) customers using Click-N-Ship or other

online applications as well as those paying through authorized PC postage vendors will continue to pay 8 percent less than retail prices and this incentive will be extended to qualifying customers paying through information-based indicia postage meters. Customers who pay postage by permit imprint and use authorized mail preparation software also will continue to pay 8 percent less than retail. Customers who pay postage through an Express Mail Corporate Account and who use authorized mail preparation software will continue to pay prices 8, 10 or 12 percent lower than retail, depending upon annual volume or postage.

C. Priority Mail International (PMI)

Priority Mail International (PMI) is a reliable, cost-effective way to send merchandise and documents to over 190 countries. PMI prices are lower than EMI and higher than First-Class Mail International (FCMI). The published price for PMI will increase 8.5 percent, on average. Price increases vary by country group and weight increments. In addition, due to increased costs, a separate rate group for Australia and New Zealand is added. Priority Mail International customers using Click-N-Ship or other online applications as well as those paying through authorized PC postage vendors will continue to get a discount of 5 percent and this incentive will be extended to qualifying customers paying through information-based indicia postage meters. Also, customers who pay postage by permit imprint and use authorized mail preparation software will continue to pay prices 5 percent less than retail.

The new small flat-rate box also will be available for international shipping, and will be priced at the same rate and meet the same size and content requirements as the Priority Mail International flat-rate envelope.

D. International Direct Sacks—M-Bags

International Direct Sacks—M-Bags (Air Mail M-Bags) are direct sacks of printed matter and non-dutiable merchandise sent to one addressee with weight-based prices. The Air Mail M-Bag prices will increase, on average, by 8.0 percent.

VI. Summary

As shown in the nonpublic annex, the price changes should enable each competitive product to cover its attributable costs (39 U.S.C. 3633(a)(2)) and should result in competitive products as a whole complying with 39 U.S.C. 3633(a)(3), which, as implemented by 39 CFR 3015.7(c), requires competitive products to

contribute a minimum of 5.5 percent to the Postal Service's institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise (39 U.S.C. 3633(a)(1)).

PART B—COMPETITIVE PRODUCTS

2000 Competitive Product List
 2001 Competitive Product Descriptions
 2100 DOMESTIC PRODUCTS
 2105 Express Mail
 2110 Priority Mail
 2115 Parcel Select
 2120 Parcel Return Service
 2125 Premium Forwarding Service
 2200 INTERNATIONAL PRODUCTS
 2205 Outbound International Expedited Services
 2210 Inbound Express Mail International (EMS)
 2215 Outbound Priority Mail International
 2220 Inbound Air Parcel Post
 2225 International Priority Airmail (IPA)
 2230 International Surface Airlift (ISAL)
 2235 International Direct Sacks—M—Bags
 2240 International Money Transfer Service
 2245 Inbound Surface Parcel Post (at non-UPU rates)
 2250 International Ancillary Services
 2250.1 International Certificate of Mailing
 2250.2 International Registered Mail
 2250.3 International Return Receipt
 2250.4 International Restricted Delivery
 2250.5 International Insurance
 2250.6 Custom Clearance and Delivery Fee

2300 NEGOTIATED SERVICE AGREEMENTS
 2305 Domestic
 2310 Outbound International
 2315 Inbound International
 2320 Inbound Direct Entry Contracts with Foreign Postal Administrations

2001 Competitive Product Descriptions

The product descriptions provided in this document include information necessary for maintaining the competitive product list pursuant to the Postal Accountability and Enhancement Act of 2006 (Pub. L. 109–435). For specific standards relating to postal products and services, including preparation and mailing requirements, please refer to the latest versions of the Domestic Mail Manual and the International Mail Manual, which are published and maintained by the United States Postal Service.

2100 DOMESTIC PRODUCTS

2105 Express Mail

2105.1 Description

a. Express Mail service provides a high speed, high reliability service. It is available from designated acceptance locations to designated postal facilities for delivery to the recipient, or,

optionally, pickup by the recipient. Drop-off, pick-up, and delivery times are specified by the Postal Service for particular locations and days of the week. Delivery is either overnight, on the second day, or on the second delivery day (the next delivery day following the second day), for particular locations and days of the week.

b. Any matter eligible for mailing may, at the option of the mailer, be mailed by Express Mail service.

c. Claims for refunds of postage for not meeting applicable standards must be filed within the period of time and under terms and conditions specified in the Domestic Mail Manual.

d. Express Mail pieces are sealed against postal inspection and shall not be opened except as authorized by law.

e. Express Mail pieces that are undeliverable-as-addressed are entitled to be forwarded or returned to the sender without additional charge.

f. Insurance, up to \$100.00, is included in Express Mail postage. Additional insurance (Express Mail Insurance) is available for an additional charge, depending on the value and nature of the item sent by Express Mail service.

2105.2 Size and Weight Limitations

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address, and other required elements on the address side			None.
Maximum	108 inches in combined length and girth			70 pounds.
Flat-Rate Envelope	Nominal Size: 9.5 x 12.5 inches			

2105.3 Minimum Volume Requirements

	Minimum volume requirements
Express Mail	None.

2105.4 Price Categories

- Retail
 - Zone/Weight – Prices are based on weight and zone
 - Flat-Rate Envelope – Provided or approved by the Postal Service
- ~~Commercial Base – Prices discounted off retail are available to customers who tender payment via an authorized online service, Express Mail Corporate Account, or specifically authorized third-party postage vendor. [Prices are available to customers who use specifically authorized postage payment methods. (Same definitions as Retail apply to price categories below.)]~~
 - ~~Zone/Weight – Discounted from retail prices~~
 - ~~Flat-Rate Envelope – Discounted from retail price~~
- ~~Commercial Volume Incentives – Quarterly rebates, in addition to the Commercial discounts, will be provided to customers using Express Mail Corporate Accounts or third-party postage vendors based on the customers' volume in the previous quarter.~~
- [Commercial Plus – Prices are available to customers who use specifically authorized postage payment methods and mail over 6,000 pieces annually. (Same definitions as Retail apply to price categories below.)]
 - Zone/Weight
 - Flat-Rate Envelope]

2105.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Pickup On Demand
- Ancillary Services (1505)
 - Address Correction Service (1505.1)
 - Collect On Delivery (1505.7)
 - Express Mail Insurance (1505.9)
- Return Receipt (1505.13)

2105.6 Prices

Retail Zone/Weight

Maximum weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
0.5	13.05	15.20	18.50	19.80	20.10	20.90	21.20
1	15.00	19.80	23.60	24.20	24.70	25.05	25.15
2	16.30	20.90	25.95	26.55	27.05	27.25	27.65
3	17.30	22.20	29.85	30.55	31.15	31.35	31.65
4	18.60	23.60	33.75	35.00	35.15	35.30	35.60
5	19.30	25.25	37.60	39.00	39.10	39.30	39.60
6	22.60	30.35	41.10	42.90	43.00	43.20	43.70
7	25.95	35.40	44.95	46.25	46.95	47.25	47.55
8	27.25	36.50	48.40	50.25	51.05	51.25	51.65
9	28.75	38.00	51.80	54.25	55.00	55.20	55.60
10	29.65	39.60	54.20	56.90	57.80	58.00	58.40
11	32.35	44.30	57.90	59.70	60.60	60.80	61.20
12	32.95	47.45	61.00	62.40	63.40	63.50	63.90
13	33.35	50.45	63.80	65.15	66.05	66.85	67.65
14	34.45	53.55	66.35	67.85	68.85	69.75	70.45
15	36.50	56.60	69.15	70.65	71.65	72.35	73.25
16	37.50	59.80	71.85	73.45	74.70	74.80	75.00
17	39.60	62.90	74.55	76.10	77.20	77.40	77.80
18	41.70	65.85	77.20	78.90	80.00	80.20	80.60
19	42.80	68.95	79.90	81.60	82.70	82.90	83.30
20	44.80	72.15	83.80	85.05	85.95	86.45	87.05
21	46.05	76.60	86.45	87.65	89.75	90.05	90.25
22	48.15	79.80	90.25	91.65	92.55	92.85	93.75
23	49.15	82.90	92.95	94.45	95.40	95.60	96.50
24	51.25	86.05	95.90	97.20	98.30	98.40	98.60
25	53.45	89.25	98.20	100.00	101.00	101.20	101.70
26	54.45	92.45	101.10	102.80	103.80	104.10	104.55
27	56.50	95.50	103.70	105.45	106.55	106.85	107.35
28	57.60	98.70	107.05	108.25	109.35	109.65	110.15
29	59.70	101.80	110.55	111.05	112.15	112.45	112.85
30	61.80	104.95	114.05	114.35	115.40	115.70	116.50
31	62.80	108.05	117.50	117.80	119.00	119.30	120.10

Maximum weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
32	64.85	111.35	121.00	121.40	122.50	122.80	123.70
33	65.95	114.45	124.45	124.85	126.05	126.35	127.25
34	68.05	117.50	128.05	128.35	129.55	129.85	130.85
35	69.15	120.70	131.45	131.95	133.05	133.45	134.40
36	71.15	123.90	135.00	135.40	136.70	137.00	138.00
37	73.25	126.95	138.50	138.90	140.30	140.60	141.60
38	74.35	130.15	142.00	142.50	143.80	144.10	145.15
39	76.40	133.35	145.55	145.95	147.15	147.55	148.75
40	77.40	136.40	149.05	149.45	150.75	151.15	152.35
41	79.50	139.60	152.55	153.05	154.40	154.60	155.90
42	81.60	142.80	156.00	156.50	158.00	158.20	159.50
43	82.70	145.85	159.50	160.10	161.50	161.80	163.10
44	84.75	149.05	163.00	163.60	165.05	165.35	166.65
45	85.85	152.25	166.45	167.05	168.55	168.85	170.25
46	87.95	155.30	170.05	170.55	172.05	172.35	173.85
47	88.95	158.50	173.55	174.15	175.60	175.90	177.40
48	91.05	161.70	177.00	177.60	179.20	179.50	181.00
49	93.15	164.75	180.50	181.10	182.80	183.00	184.55
50	94.25	167.95	184.10	184.65	186.25	186.55	188.15
51	96.30	171.15	187.55	188.15	189.75	190.05	191.75
52	97.40	174.20	191.05	191.75	193.35	193.65	195.40
53	99.50	177.40	194.50	195.10	196.90	197.10	198.90
54	101.60	180.60	198.00	198.70	200.50	200.70	202.50
55	102.60	184.75	201.60	202.20	204.00	204.25	206.05
56	104.65	187.95	205.05	205.75	207.55	207.75	209.65
57	105.75	191.15	208.55	209.25	211.05	211.35	213.25
58	107.75	194.20	212.05	212.75	214.60	214.80	216.80
59	108.95	197.30	215.50	216.30	218.20	218.40	220.40
60	110.95	200.50	219.00	219.80	221.70	222.00	223.95
61	113.05	203.70	222.60	223.40	225.25	225.55	227.55
62	114.15	206.75	226.05	226.75	228.75	229.05	231.15
63	116.20	209.95	229.55	230.35	232.35	232.55	234.80
64	117.20	213.05	233.05	233.85	235.90	236.10	238.40
65	119.30	216.20	236.50	237.30	239.40	239.70	241.90
66	121.50	219.40	240.10	240.90	243.00	243.30	245.45
67	122.50	222.50	243.60	244.35	246.45	246.75	249.05
68	124.55	225.65	247.05	247.95	250.05	250.35	252.75
69	125.55	228.85	250.55	251.45	253.55	253.80	256.20
70	127.75	232.05	254.10	254.90	257.10	257.30	259.80

Retail Flat-Rate Envelope

	(\$)
Retail Flat-Rate Envelope, per piece	17.50

Commercial [Base] Flat-Rate Envelope

	(\$)
Commercial [Base] Flat-Rate Envelope, per piece	16.63

[Commercial Plus Flat-Rate Envelope

	(\$)
Commercial Plus Flat-Rate Envelope, per piece	14.96]

Commercial Base [Zone/Weight]

[5] percent discount off the retail zone/weight prices

[Commercial Plus Zone/Weight

14.5 percent discount off the retail zone/weight prices]

Commercial Volume Incentives

Minimum Quarterly Volume	Quarterly Rebate (%)
125	2.0
438	4.5
938	7.0

Pickup On Demand

Add \$14.75 for each Pickup On Demand stop.

Sunday/Holiday Delivery

Add \$12.50 for requesting Sunday or holiday delivery.

2110 Priority Mail

2110.1 Description

a. Priority Mail service provides expeditious handling and transportation.

b. Any matter eligible for mailing may, at the option of the mailer, be mailed by Priority Mail service for expeditious handling and transportation.

b. Matter containing personal information, partially or wholly handwritten or typewritten matter, or bills or statements of account must be mailed as Priority Mail pieces if they exceed the weight limit set by the Postal Service for First-Class Mail, unless mailed by Express Mail service, exempt

under title 39, United States Code, or are otherwise exempted by the Postal Service.

c. Priority Mail pieces are sealed against postal inspection and shall not be opened except as authorized by law.

d. Priority Mail pieces that are undeliverable-as-addressed are entitled to be forwarded or returned to the sender without additional charge.

2110.2 Size and Weight Limitations

	Length	Height	Thickness	Weight
Minimum	large enough to accommodate postage, address, and other required elements on the address side			none
Maximum	108 inches in combined length and girth			70 pounds
Flat-Rate Envelope	Nominal Size: 9.5 x 12.5 inches			
Flat-Rate Box	Nominal Sizes: [LARGE:] 12.25 x 12.25 x 6.0 inches [– approx. 1/2 cu. ft.] (Large) [REGULAR:] 11.875 x 3.375 x 13.625 inches (Regular) [or] 11 x 8.5 x 5.5 inches [– approx. 1/3 cu. ft.] (Regular) [SMALL: 8.625 x 5.375 x 1.625 inches – approx. 1/20 cu. ft.]			

2110.3 Minimum Volume Requirements

	Minimum volume requirements
Priority Mail	none.

2110.4

Price Categories

The following price categories are available for the product specified in this section:

- Retail
 - Zone/Weight – Prices are based on weight and zone.
 - Flat-Rate Box[es] – Provided or approved by the Postal Service.
 - Flat-Rate Envelope – Provided or approved by the Postal Service
 - Balloon Rate – Applies to parcels in zones local through 4. weighing less than 20 pounds and measuring between 84 and 108 inches in combined length and girth.
 - Dimensional Weight – Applies to parcels in zones 5 through 8 that exceed one cubic foot.
- Commercial Base – [Prices are available]Available to customers who use specifically authorized postage payment methods. (Same definitions as retail apply to price categories below.)
 - Zone/Weight
 - Flat-Rate Box[es]
 - Flat-Rate Envelope
 - Balloon Rate
 - Dimensional Weight
- [Commercial Plus – Prices are available to customers who use specifically authorized postage payment methods and whose annual volume exceeds 100,000 pieces or 600 open and distribute containers. (Same definitions as retail apply to price categories below.)
 - Zone/Weight
 - Flat-Rate Boxes
 - Flat-Rate Envelope
 - Balloon Rate
 - Dimensional Weight]

2110.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Pickup On Demand
- Ancillary Services (1505)
- Address Correction Service (1505.1)
- Business Reply Mail (1505.3)
- Certificate of Mailing (1505.6)
- Collect On Delivery (1505.7)
- Delivery Confirmation (1505.8)
- Insurance (1505.9)
- Merchandise Return (1505.10)
- Registered Mail (1505.12)
- Return Receipt (1505.13)
- Return Receipt for Merchandise (1505.14)
- Restricted Delivery (1505.15)
- Signature Confirmation (1505.17)
- Special Handling (1505.18)

2110.6 Prices

Retail Priority Mail Zone/Weight

Maximum weight (pounds)	Local, zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	4.95	4.95	4.95	4.95	4.95	4.95	4.95
2	4.95	5.20	5.75	7.10	7.60	8.10	8.70
3	5.50	6.25	7.10	9.05	9.90	10.60	11.95
4	6.10	7.10	8.15	10.80	11.95	12.95	14.70
5	6.85	8.15	9.45	12.70	13.75	15.20	17.15
6	7.55	9.25	10.75	14.65	15.50	17.50	19.60
7	8.30	10.30	12.05	16.55	17.30	19.75	22.05
8	8.80	10.70	13.10	17.95	18.80	21.70	24.75
9	9.25	11.45	13.95	19.15	20.30	23.60	27.55
10	9.90	12.35	15.15	20.75	22.50	25.90	29.95
11	10.55	13.30	16.40	22.40	24.75	28.20	32.40
12	11.20	14.20	17.60	24.00	26.95	30.50	34.80
13	11.50	14.55	18.10	25.30	28.90	31.70	36.00
14	11.90	15.20	18.90	26.45	30.50	33.50	37.80
15	12.40	15.85	19.85	27.25	31.15	33.85	38.60
16	12.80	16.40	20.45	27.85	31.85	34.60	39.55

Maximum weight (pounds)	Local, zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
17	13.25	16.95	20.85	28.50	32.70	35.50	40.60
18	13.50	17.50	21.30	29.10	33.35	36.15	41.55
19	13.95	17.90	21.60	29.80	34.15	37.10	42.60
20	14.30	18.15	22.00	30.30	34.80	37.80	43.55
21	14.70	18.40	22.35	30.80	35.35	38.45	44.40
22	15.05	18.75	22.70	31.50	36.15	39.35	45.50
23	15.40	19.00	23.35	32.05	36.80	40.00	46.30
24	15.75	19.20	24.05	32.70	37.55	40.95	47.45
25	16.10	19.50	24.85	33.25	38.10	41.55	48.25
26	16.45	19.70	25.65	33.95	39.00	42.45	49.80
27	16.90	20.00	26.40	34.40	39.55	43.05	51.65
28	17.40	20.25	27.10	34.85	40.10	43.70	53.55
29	17.95	20.45	27.90	35.30	40.60	44.30	55.25
30	18.50	20.75	28.65	35.80	41.15	44.90	57.10
31	19.00	20.95	29.45	36.25	41.70	45.50	59.00
32	19.50	21.45	30.20	36.70	42.25	46.60	60.85
33	19.75	22.00	30.90	37.15	42.80	47.90	62.60
34	19.95	22.60	31.45	37.95	44.05	49.20	64.45
35	20.20	23.15	31.90	38.75	45.25	50.55	66.30
36	20.40	23.75	32.30	39.60	46.40	51.90	68.15
37	20.60	24.25	32.75	40.35	47.60	53.25	70.00
38	20.80	24.85	33.15	41.15	48.95	54.50	71.80
39	21.05	25.35	33.55	42.00	50.15	55.90	73.70
40	21.45	25.90	33.90	42.85	51.30	57.15	75.45
41	21.90	26.40	34.30	43.25	52.50	58.55	76.90
42	22.30	26.90	34.65	44.15	53.65	59.90	77.95
43	22.75	27.35	35.00	45.15	54.95	61.25	78.95
44	23.15	27.90	35.35	46.15	56.10	62.60	79.90
45	23.55	28.40	35.70	47.15	57.35	63.95	80.85
46	24.00	28.75	36.05	48.05	58.55	65.25	81.75
47	24.40	28.95	36.35	49.10	59.85	66.65	82.70
48	24.85	29.20	36.70	50.10	61.05	68.00	83.55
49	25.25	29.40	37.00	51.00	62.15	69.40	84.40
50	25.60	29.65	37.35	52.00	63.35	70.50	85.45
51	26.10	29.85	38.00	53.00	64.55	71.15	86.35
52	26.45	30.05	38.75	54.00	65.30	71.75	87.20
53	26.95	30.25	39.40	54.95	65.80	72.35	88.05
54	27.30	30.40	40.05	56.00	66.30	72.90	88.90
55	27.75	30.60	40.85	57.00	66.80	73.50	89.65
56	28.15	30.75	41.50	57.90	67.30	74.00	90.45
57	28.60	30.95	42.15	58.80	67.75	74.55	91.25
58	29.00	31.10	42.90	59.55	68.20	75.05	92.00
59	29.45	31.25	43.60	59.95	68.65	75.50	92.65
60	29.80	31.40	44.25	60.30	69.05	76.70	93.35
61	30.30	31.50	45.05	60.60	69.85	77.90	94.60
62	30.65	31.65	45.70	60.95	70.30	79.10	96.10
63	31.15	31.80	46.40	61.25	70.70	79.90	97.60
64	31.50	31.90	47.10	61.55	71.15	80.40	99.15
65	31.95	32.00	47.70	61.85	71.50	80.85	100.70
66	32.35	32.35	48.45	62.10	71.95	81.25	102.15
67	32.80	32.80	49.25	62.75	72.30	81.70	103.75
68	33.20	33.20	49.90	63.65	72.60	82.10	105.20
69	33.65	33.65	50.55	64.60	73.00	82.50	106.75
70	34.05	34.05	51.35	64.90	73.30	82.85	108.25

Retail Pickup On Demand

Add \$14.75 for each Pickup On Demand stop.

Retail Flat-Rate Envelope

	(\$)
Retail Flat-Rate Envelope, per piece	4.95

Retail Flat-Rate Box

Size	Delivery to Domestic Address (\$)	Delivery to APO/FPO Address (\$)
[Small Flat-Rate Box]	4.95	4.95]
Regular Flat-Rate Box (volume of approx. 1/3 cubic foot)	10.35	10.35
Large Flat-Rate Box (volume of approx. 1/2 cubic foot)	13.95	11.95

Retail Balloon Rate

In Zones 1–4 (including local), parcels weighing less than 20 pounds but measuring more than 84 inches in combined length and girth (but not more than 108 inches) are charged the applicable price for a 20-pound parcel.

Retail Dimensional Weight

In Zones 5–8, parcels exceeding one cubic foot are priced at the actual

weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 194.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is

calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 194, and multiplying by an adjustment factor of 0.785.

Commercial [Base] Priority Mail Zone/Weight

Maximum weight (pounds)	Local, zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	4.80	4.80	4.80	4.80	4.80	4.80	4.80
2	4.80	4.99	5.37	6.67	7.18	7.69	8.30
3	5.08	5.81	6.64	8.15	9.35	10.07	11.41
4	5.64	6.60	7.62	9.78	11.29	12.29	14.03
5	6.33	7.58	8.55	11.56	12.98	14.43	16.37
6	6.98	8.60	9.84	13.34	14.64	16.62	18.71
7	7.68	9.58	11.14	15.23	16.34	18.76	21.04
8	8.14	9.95	12.24	16.70	17.76	20.61	23.63
9	8.37	10.64	13.04	18.00	19.18	22.41	26.30
10	9.05	11.49	14.16	19.50	21.26	24.59	28.59
11	9.76	12.37	15.33	21.05	23.38	26.78	30.93
12	10.36	13.20	16.45	22.56	25.45	28.96	33.22
13	10.64	13.53	16.92	23.78	27.30	30.11	34.36
14	11.01	14.14	17.67	24.86	28.82	31.81	36.08
15	11.47	14.74	18.55	25.61	29.43	32.14	36.85
16	11.84	15.26	19.12	26.17	30.08	32.86	37.76
17	12.25	15.77	19.49	26.78	30.89	33.72	38.75
18	12.49	16.27	19.91	27.35	31.51	34.33	39.66
19	12.90	16.65	20.20	28.01	32.26	35.23	40.66
20	13.23	16.87	20.57	28.47	32.88	35.90	41.58
21	13.60	17.11	20.89	28.94	33.40	36.51	42.38
22	13.92	17.43	21.22	29.60	34.14	37.37	43.44
23	14.24	17.67	21.82	30.12	34.76	37.99	44.20
24	14.57	17.86	22.48	30.73	35.47	38.89	45.30
25	14.89	18.13	23.23	31.25	35.99	39.45	46.06
26	15.21	18.32	23.97	31.91	36.84	40.31	47.53
27	15.63	18.60	24.68	32.33	37.36	40.88	49.31
28	16.10	18.82	25.33	32.76	37.88	41.50	51.12
29	16.61	19.01	26.09	33.18	38.35	42.07	52.74
30	17.11	19.30	26.78	33.64	38.87	42.64	54.50
31	17.58	19.48	27.53	34.07	39.39	43.21	56.31
32	18.04	19.94	28.24	34.49	39.92	44.25	58.09
33	18.27	20.46	28.88	34.92	40.44	45.48	59.75
34	18.45	21.01	29.39	35.66	41.62	46.72	61.52
35	18.68	21.52	29.81	36.42	42.75	48.00	63.29
36	18.87	22.08	30.19	37.22	43.83	49.28	65.06
37	19.05	22.54	30.62	37.92	44.97	50.57	66.82
38	19.24	23.10	30.99	38.67	46.25	51.75	68.53

Maximum weight (pounds)	Local, zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
39	19.47	23.58	31.36	39.47	47.38	53.09	70.36
40	19.84	24.08	31.69	40.27	48.46	54.27	72.02
41	20.25	24.54	32.06	40.64	49.60	55.60	73.41
42	20.63	25.02	32.39	41.49	50.68	56.89	74.41
43	21.04	25.43	32.72	42.43	51.91	58.16	75.37
44	21.41	25.95	33.05	43.37	52.99	59.44	76.27
45	21.78	26.41	33.38	44.31	54.18	60.73	77.17
46	22.19	26.73	33.70	45.15	55.31	61.96	78.04
47	22.57	26.91	33.98	46.15	56.54	63.29	78.94
48	22.98	27.15	34.31	47.08	57.67	64.57	79.76
49	23.36	27.34	34.59	47.92	58.71	65.91	80.56
50	23.67	27.57	34.91	48.87	59.85	66.95	81.57
51	24.14	27.76	35.52	49.81	60.98	67.56	82.43
52	24.46	27.94	36.22	50.74	61.69	68.14	83.24
53	24.92	28.13	36.83	51.64	62.16	68.71	84.06
54	25.25	28.26	37.44	52.63	62.63	69.23	84.86
55	25.67	28.46	38.19	53.56	63.10	69.80	85.58
56	26.04	28.60	38.80	54.41	63.57	70.27	86.34
57	26.45	28.78	39.40	55.25	64.01	70.80	87.11
58	26.83	28.92	40.10	55.96	64.43	71.27	87.82
59	27.24	29.06	40.76	56.34	64.86	71.69	88.44
60	27.56	29.20	41.36	56.67	65.23	72.84	89.11
61	28.02	29.29	42.11	56.95	65.99	73.97	90.31
62	28.35	29.43	42.72	57.28	66.41	75.12	91.74
63	28.81	29.57	43.38	57.56	66.79	75.88	93.17
64	29.13	29.66	44.03	57.84	67.21	76.35	94.64
65	29.55	29.75	44.59	58.12	67.55	76.78	96.12
66	29.92	30.08	45.29	58.36	67.97	77.15	97.51
67	30.34	30.50	46.04	58.97	68.30	77.59	99.04
68	30.71	30.87	46.65	59.81	68.59	77.96	100.42
69	31.13	31.29	47.25	60.71	68.96	78.35	101.90
70	31.49	31.66	48.00	60.99	69.25	78.67	103.33

Commercial Pickup On Demand

Add \$14.75 for each Pickup On Demand stop.

Commercial [Base] Flat-Rate Envelope

	(\$)
Commercial [Base] Flat-Rate Envelope, per piece	4.80

Commercial [Base] Flat-Rate Box

Size	Delivery to Domestic Address (\$)	Delivery to APO/FPO Address (\$)
[Small Flat-Rate Box	4.80	4.80]
Regular Flat-Rate Box (volume of approx. 1/3 cubic foot)	9.85	9.85
Large Flat-Rate Box (volume of approx. 1/2 cubic foot)	13.50	11.50

Commercial [Base] Balloon Rate

In Zones 1–4 (including local), parcels weighing less than 20 pounds but measuring more than 84 inches in combined length and girth (but not more

than 108 inches) are charged the applicable price for a 20-pound parcel.

Commercial [Base] Dimensional Weight

In Zones 5–8, parcels exceeding one cubic foot are priced at the actual

weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times

the height (inches) of the parcel, and dividing by 194.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is

calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel,

dividing by 194, and multiplying by an adjustment factor of 0.785.

[Commercial [Plus] Priority Mail Zone/Weight]

Maximum weight (pounds)	Local, zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	4.75	4.75	4.75	4.75	4.75	4.75	4.75
2	4.75	4.75	5.29	6.46	6.88	7.39	7.96
3	4.86	5.59	6.38	7.79	9.12	9.94	11.10
4	5.42	6.39	7.42	9.50	11.08	12.14	13.75
5	6.03	7.29	8.14	11.11	12.84	14.16	16.21
6	6.86	8.45	9.67	13.11	14.39	16.34	18.05
7	7.54	9.37	10.90	14.97	16.00	18.37	20.61
8	7.98	9.72	11.97	16.35	17.36	20.15	23.12
9	8.19	10.41	12.77	17.63	18.78	21.93	25.73
10	8.67	11.21	13.47	18.78	20.35	23.86	28.10
11	9.09	11.49	14.25	19.51	21.60	25.16	29.11
12	9.48	12.07	15.04	20.60	23.29	26.46	30.36
13	9.72	12.37	15.48	21.74	24.98	27.51	31.41
14	10.07	12.91	16.17	22.72	26.32	29.10	32.97
15	10.50	13.49	16.95	23.42	26.92	29.40	33.68
16	10.85	13.94	17.49	23.91	27.51	30.06	34.53
17	11.18	14.42	17.84	24.50	28.26	30.80	35.42
18	11.43	14.86	18.18	25.00	28.81	31.40	36.28
19	11.81	15.20	18.48	25.59	29.49	32.20	37.18
20	12.11	15.44	18.82	26.03	30.05	32.80	37.99
21	12.45	15.64	19.12	26.48	30.54	33.39	38.74
22	12.74	15.93	19.41	27.07	31.23	34.14	39.70
23	13.03	16.13	19.95	27.52	31.78	34.75	40.39
24	13.32	16.33	20.54	28.11	32.43	35.55	41.40
25	13.61	16.57	21.23	28.56	32.93	36.09	42.10
26	13.90	16.76	21.91	29.15	33.66	36.84	43.45
27	14.29	17.01	22.56	29.55	34.16	37.39	45.06
28	14.74	17.20	23.14	29.94	34.61	37.94	46.72
29	15.17	17.40	23.84	30.34	35.06	38.44	48.22
30	15.65	17.65	24.47	30.77	35.56	38.99	49.83
31	16.05	17.79	25.16	31.13	36.00	39.49	51.48
32	16.48	18.23	25.80	31.52	36.50	40.44	53.09
33	16.92	18.72	26.38	31.92	36.95	41.58	54.64
34	17.36	19.21	27.07	32.60	38.04	42.73	56.25
35	17.79	19.70	27.61	33.30	39.08	43.88	57.86
36	18.23	20.19	28.06	34.04	40.07	45.07	59.47
37	18.67	20.62	28.51	34.68	41.12	46.23	61.07
38	18.91	21.11	28.94	35.37	42.27	47.32	62.67
39	19.14	21.56	29.34	36.07	43.31	48.53	64.33
40	19.50	22.00	29.78	36.81	44.29	49.62	65.83
41	19.91	22.43	30.17	37.15	45.34	50.81	67.44
42	20.28	22.88	30.57	37.94	46.33	52.02	69.05
43	20.68	23.26	30.96	38.78	47.48	53.16	70.66
44	21.05	23.71	31.36	39.67	48.46	54.36	72.26
45	21.41	24.15	31.70	40.51	49.51	55.52	73.86
46	21.81	24.59	32.33	41.30	50.55	56.66	75.47
47	22.19	25.02	32.93	42.19	51.70	57.86	77.02
48	22.59	25.37	33.66	43.02	52.74	59.05	78.40
49	22.96	25.67	34.00	43.82	53.68	60.26	79.19
50	23.27	25.91	34.32	44.66	54.72	61.40	80.18
51	23.73	26.16	34.92	45.55	55.76	62.55	81.03
52	24.04	26.40	35.60	46.38	56.91	63.70	81.82
53	24.50	26.64	36.20	47.23	57.91	64.90	82.63
54	24.82	26.83	36.80	48.12	58.90	66.00	83.42
55	25.23	27.08	37.54	48.95	59.94	67.09	84.13
56	25.60	27.28	38.14	49.74	61.08	68.29	84.87
57	26.00	27.52	38.73	50.53	62.08	69.49	85.63
58	26.37	27.72	39.42	51.43	63.12	70.06	86.33
59	26.78	27.91	40.07	52.27	63.76	70.47	86.94
60	27.09	28.11	40.66	53.15	64.12	71.60	87.60
61	27.54	28.30	41.39	53.94	64.87	72.71	88.77
62	27.87	28.55	41.99	54.84	65.28	73.84	90.18
63	28.32	28.98	42.64	55.72	65.65	74.59	91.59
64	28.63	29.16	43.28	56.57	66.07	75.05	93.03
65	29.05	29.24	43.83	57.13	66.40	75.47	94.49

Maximum weight (pounds)	Local, zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
66	29.41	29.57	44.52	57.37	66.81	75.84	95.85
67	29.82	29.98	45.26	57.97	67.14	76.27	97.36
68	30.19	30.35	45.86	58.79	67.42	76.63	98.71
69	30.60	30.76	46.45	59.68	67.79	77.02	100.17
70	30.95	31.12	47.18	59.95	68.07	77.33	101.57

[Commercial Pickup On Demand]
[Add \$14.75 for each Pickup On
Demand stop.]

[Commercial Plus Flat-Rate Envelope

	(\$)
Commercial Plus Flat-Rate Envelope, per piece	4.75]

[Commercial Plus Flat-Rate Box

Size	Delivery to Domestic Address (\$)	Delivery to APO/FPO Address (\$)
Small Flat-Rate Box	4.75	4.75
Regular Flat-Rate Box (volume of approx. 1/3 cubic foot)	9.67	9.67
Large Flat-Rate Box (volume of approx. 1/2 cubic foot)	13.27	11.30]

[Commercial [Plus] Balloon Rate

In Zones 1–4 (including local), parcels weighing less than 20 pounds but measuring more than 84 inches in combined length and girth (but not more than 108 inches) are charged the applicable price for a 20-pound parcel.]

[Commercial [Plus] Dimensional Weight

In Zones 5–8, parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 194.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length

(inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 194, and multiplying by an adjustment factor of 0.785.]

2115 Parcel Select

2115.1 Description

a. Any mailable matter may be mailed as Parcel Select mail, except matter required to be mailed by First-Class Mail services or Priority Mail; and publications required to be entered as Periodicals mail.

b. Parcel Select mail is not sealed against postal inspection. Mailing of matter as such constitutes consent by the mailer to postal inspection of the contents, regardless of the physical closure.

c. Undeliverable-as-addressed Parcel Select pieces will be forwarded on request of the addressee or forwarded or

returned on request of the mailer, subject to the applicable Single-Piece Parcel Post price when forwarded or returned from one Post Office location to another. Pieces which combine Parcel Select matter with First-Class Mail or Standard Mail matter will be forwarded or returned if undeliverable-as-addressed, as specified in the Domestic Mail Manual.

d. An annual mailing permit fee is required for destination entered parcels to be paid at each office of mailing or office of verification by or for mailers of Parcel Select (1505.2). Payment of the fee allows the mailer to mail at any Parcel Select price.

e. Attachments and Enclosures. First-Class Mail or Standard Mail pieces may be attached to or enclosed in Parcel Select mail.

2115.2 Size and Weight Limitations

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address, and other required elements on the address side.			none.
Maximum	130 inches in combined length and girth.			70 pounds.

2115.3 Minimum Volume Requirements

	Minimum volume requirements
Parcel Select	50 pieces per mailing.

2115.4 Price Categories

- DDU—Entered at a designated destination delivery unit, or other equivalent facility.
 - Balloon Rate
 - Oversized
 - Loyalty Incentives—Rebates are available on qualified DDU volume to shippers who pay certain minimum levels of total Parcel Select postage and who exceed their previous year's total Parcel Select volume.
 - Growth Incentives—Rebates are available on qualified incremental DDU volume to shippers who qualify for loyalty incentives, and who maintain certain levels of Parcel Select volume growth rates.
 - DSCF—Entered at a designated destination processing and distribution center or facility, or other equivalent facility.
 - Machinable
 - Nonmachinable
 - Balloon Rate
 - Oversized
 - DBMC—Entered at a designated destination bulk mail center, auxiliary service facility, or other equivalent facility.
 - Machinable
 - Nonmachinable
 - Balloon Rate
 - Oversized
 - OBMC Presort—Entered at the origin bulk mail center.
 - Machinable (Barcoded)
 - Nonmachinable
 - Balloon Rate
 - Oversized
 - BMC Presort—Entered at a designated facility.
 - Machinable (Barcoded)
 - Nonmachinable
 - Balloon Rate
 - Oversized
 - Barcoded—Entered at a designated facility.
 - Inter-BMC

- Intra-BMC
- Balloon Rate

2115.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Pickup On Demand
- Ancillary Services (1505)
 - Address Correction Service (1505.1)
 - Certificate of Mailing (1505.6)
 - Collect On Delivery (1505.7)
 - Delivery Confirmation (1505.8)
 - Insurance (1505.9)
 - Return Receipt (1505.13)
 - Return Receipt for Merchandise (1505.14)
 - Restricted Delivery (1505.15)
 - Signature Confirmation (1505.17)
 - Special Handling (1505.18)

2115.6 Prices

DDU Entered

a. Machinable and Nonmachinable DDU

	Maximum weight (pounds)	DDU (\$)
1		1.54
2		1.61
3		1.68
4		1.73
5		1.79
6		1.84
7		1.90
8		1.94
9		1.99
10		2.03
11		2.12
12		2.20
13		2.27
14		2.35
15		2.42
16		2.48
17		2.55
18		2.61
19		2.67
20		2.74
21		2.79
22		2.84
23		2.89
24		2.94
25		3.00
26		3.04
27		3.08
28		3.13
29		3.18
30		3.22
31		3.25
32		3.29

	Maximum weight (pounds)	DDU (\$)
33		3.33
34		3.36
35		3.41
36		3.44
37		3.47
38		3.50
39		3.53
40		3.56
41		3.59
42		3.63
43		3.66
44		3.68
45		3.71
46		3.73
47		3.76
48		3.78
49		3.80
50		3.84
51		3.86
52		3.88
53		3.90
54		3.92
55		3.94
56		3.96
57		3.98
58		3.99
59		4.01
60		4.03
61		4.06
62		4.07
63		4.09
64		4.10
65		4.12
66		4.13
67		4.15
68		4.16
69		4.18
70		4.19
Oversized		7.33

b. Balloon Rate

Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.

c. Oversized Price

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length plus girth must pay the oversized price.

DSCF and DBMC Entered

a. Machinable DSCF and DBMC

	Maximum weight (pounds)	DSCF (\$)	DBMC zones 1 & 2 (\$)	DBMC zone 3 (\$)	DBMC zone 4 (\$)	DBMC zone 5 (\$)
1		2.16	2.74	3.23	3.65	4.68
2		2.40	3.08	3.95	4.75	5.56
3		2.62	3.42	4.69	5.81	6.48
4		2.81	3.73	5.35	6.66	7.26
5		2.99	4.01	5.98	7.29	8.02
6		3.17	4.30	6.56	7.80	8.69

Maximum weight (pounds)	DSCF (\$)	DBMC zones 1 & 2 (\$)	DBMC zone 3 (\$)	DBMC zone 4 (\$)	DBMC zone 5 (\$)
7	3.34	4.56	7.12	8.30	9.36
8	3.52	4.83	7.65	8.74	9.96
9	3.66	5.05	8.10	9.15	10.45
10	3.79	5.28	8.58	10.14	10.95
11	4.02	5.62	9.26	10.69	11.58
12	4.22	5.95	9.86	11.08	12.02
13	4.43	6.25	10.40	11.45	12.44
14	4.62	6.57	10.90	11.84	12.82
15	4.83	6.84	11.35	12.17	13.17
16	5.03	7.14	11.68	12.48	13.53
17	5.22	7.42	11.98	12.82	13.84
18	5.39	7.66	12.26	13.10	14.14
19	5.57	7.93	12.56	13.38	14.43
20	5.74	8.17	12.85	13.63	14.68
21	5.89	8.42	13.11	13.88	14.94
22	6.06	8.66	13.37	14.15	15.17
23	6.24	8.91	13.65	14.42	15.42
24	6.40	9.14	13.90	14.68	15.63
25	6.53	9.35	14.14	14.92	15.86
26	6.65	9.54	14.37	15.18	16.03
27	6.83	9.78	14.63	15.42	16.22
28	6.96	9.96	14.87	15.64	16.43
29	7.10	10.17	15.10	15.88	16.68
30	7.21	10.35	15.31	16.09	16.90
31	7.35	10.55	15.50	16.31	17.14
32	7.47	10.72	15.73	16.53	17.34
33	7.59	10.91	15.92	16.72	17.56
34	7.73	11.10	16.05	16.93	17.77
35	7.83	11.23	16.24	17.13	17.97

For DSCF and DBMC pieces over 35 pounds, use Nonmachinable prices.

b. Balloon Rate

Pieces exceeding 84 inches in length and girth combined (but not more than

108 inches) and weighing less than 20 pounds are subject to a price equal to

that for a 20-pound parcel for the zone to which the parcel is addressed.

b. Nonmachinable DSCF and DBMC

Maximum weight (pounds)	DSCF 5-digit (\$)	DSCF 3-digit (\$)	DBMC zones 1 & 2 (\$)	DBMC zone 3 (\$)	DBMC zone 4 (\$)	DBMC zone 5 (\$)
1	2.16	2.98	4.95	5.44	5.86	6.89
2	2.40	3.22	5.29	6.16	6.96	7.77
3	2.62	3.44	5.63	6.90	8.02	8.69
4	2.81	3.63	5.94	7.56	8.87	9.47
5	2.99	3.81	6.22	8.19	9.50	10.23
6	3.17	3.99	6.51	8.77	10.01	10.90
7	3.34	4.16	6.77	9.33	10.51	11.57
8	3.52	4.34	7.04	9.86	10.95	12.17
9	3.66	4.48	7.26	10.31	11.36	12.66
10	3.79	4.61	7.49	10.79	12.35	13.16
11	4.02	4.84	7.83	11.47	12.90	13.79
12	4.22	5.04	8.16	12.07	13.29	14.23
13	4.43	5.25	8.46	12.61	13.66	14.65
14	4.62	5.44	8.78	13.11	14.05	15.03
15	4.83	5.65	9.05	13.56	14.38	15.38
16	5.03	5.85	9.35	13.89	14.69	15.74
17	5.22	6.04	9.63	14.19	15.03	16.05
18	5.39	6.21	9.87	14.47	15.31	16.35
19	5.57	6.39	10.14	14.77	15.59	16.64
20	5.74	6.56	10.38	15.06	15.84	16.89
21	5.89	6.71	10.63	15.32	16.09	17.15
22	6.06	6.88	10.87	15.58	16.36	17.38
23	6.24	7.06	11.12	15.86	16.63	17.63
24	6.40	7.22	11.35	16.11	16.89	17.84
25	6.53	7.35	11.56	16.35	17.13	18.07
26	6.65	7.47	11.75	16.58	17.39	18.24
27	6.83	7.65	11.99	16.84	17.63	18.43
28	6.96	7.78	12.17	17.08	17.85	18.64

Maximum weight (pounds)	DSCF 5-digit (\$)	DSCF 3-digit (\$)	DBMC zones 1 & 2 (\$)	DBMC zone 3 (\$)	DBMC zone 4 (\$)	DBMC zone 5 (\$)
29	7.10	7.92	12.38	17.31	18.09	18.89
30	7.21	8.03	12.56	17.52	18.30	19.11
31	7.35	8.17	12.76	17.71	18.52	19.35
32	7.47	8.29	12.93	17.94	18.74	19.55
33	7.59	8.41	13.12	18.13	18.93	19.77
34	7.73	8.55	13.31	18.26	19.14	19.98
35	7.83	8.65	13.44	18.45	19.34	20.18
36	7.94	8.76	13.63	18.58	19.52	20.38
37	8.05	8.87	13.81	18.72	19.71	20.57
38	8.15	8.97	13.97	18.88	19.89	20.77
39	8.27	9.09	14.13	19.03	20.06	20.95
40	8.33	9.15	14.24	19.15	20.25	21.13
41	8.42	9.24	14.40	19.34	20.36	21.31
42	8.54	9.36	14.55	19.46	20.49	21.48
43	8.62	9.44	14.69	19.59	20.57	21.66
44	8.71	9.53	14.82	19.72	20.67	21.81
45	8.79	9.61	14.96	19.83	20.94	21.97
46	8.89	9.71	15.08	19.98	21.02	22.25
47	8.97	9.79	15.21	20.09	21.11	22.73
48	9.03	9.85	15.32	20.23	21.18	23.23
49	9.11	9.93	15.44	20.35	21.26	23.71
50	9.18	10.00	15.57	20.46	21.32	24.21
51	9.29	10.11	15.71	20.55	21.41	24.72
52	9.33	10.15	15.82	20.72	21.48	25.27
53	9.38	10.20	15.93	20.80	21.52	25.81
54	9.47	10.29	16.07	20.87	21.60	26.36
55	9.59	10.41	16.20	20.94	21.68	26.60
56	9.64	10.46	16.31	21.01	21.77	26.70
57	9.73	10.55	16.44	21.03	21.80	26.86
58	9.80	10.62	16.57	21.11	21.85	26.97
59	9.90	10.72	16.70	21.15	21.92	27.10
60	9.97	10.79	16.83	21.18	21.95	27.23
61	10.01	10.83	16.91	21.26	22.03	27.34
62	10.08	10.90	17.03	21.30	22.12	27.45
63	10.16	10.98	17.15	21.34	22.23	27.55
64	10.24	11.06	17.27	21.37	22.33	27.67
65	10.30	11.12	17.39	21.43	22.43	27.76
66	10.34	11.16	17.44	21.47	22.54	27.89
67	10.42	11.24	17.55	21.50	22.66	27.98
68	10.46	11.28	17.65	21.53	22.72	28.08
69	10.55	11.37	17.77	21.57	22.83	28.18
70	10.60	11.42	17.87	21.62	22.94	28.28
Oversized	16.04	16.04	25.23	35.62	48.25	50.15

c. Balloon Rate

Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to

that for a 20-pound parcel for the zone to which the parcel is addressed.

d. Oversized Price

Regardless of weight, any piece that measures more than 108 inches (but not

more than 130 inches) in combined length plus girth must pay the oversized price.

e. Loyalty Incentives

Annual total Parcel Select postage	\$5M	\$25M	\$50M	\$100M	\$300M	\$500M
Rebate on qualified DDU volume	0.25%	0.50%	0.75%	1.00%	1.25%	1.50%

f. Growth Incentives

Total Parcel Select postage to qualify	\$5M	\$25M	\$50M	\$100M	\$300M	\$500M
Total Parcel Select annual growth rate	Rebate on qualified incremental DDU volume.					
>10%	2%	4%	6%	8%	10%	10%
>20%	4%	6%	8%	10%	12%	12%
>30%	6%	8%	10%	12%	14%	14%

OBMC Presort Entered

a. Machinable OBMC Presort (Barcoded)

Maximum weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	3.10	3.10	3.10	3.10	3.10	3.10	3.10
2	3.10	3.40	3.90	4.49	4.68	4.90	5.22
3	3.60	4.25	5.15	5.49	5.77	6.07	6.67
4	4.30	5.30	6.10	6.43	6.78	7.17	7.93
5	4.95	6.25	6.92	7.31	7.74	8.22	9.13
6	5.55	7.15	7.70	8.16	8.66	9.21	10.27
7	6.10	7.89	8.44	8.97	9.53	10.15	11.36
8	6.55	8.25	9.16	9.74	10.37	11.06	12.40
9	6.95	8.61	9.85	10.49	11.18	11.94	13.41
10	7.35	9.75	10.51	11.21	11.95	12.78	14.38
11	7.70	10.15	11.15	11.90	12.71	13.59	15.31
12	8.05	10.45	11.77	12.57	13.43	14.38	16.22
13	8.45	10.72	12.37	13.22	14.14	15.14	17.10
14	8.66	11.06	12.96	13.85	14.82	15.88	17.95
15	8.84	11.34	13.52	14.47	15.48	16.60	18.77
16	8.99	11.61	14.07	15.06	16.13	17.30	19.58
17	9.18	11.84	14.61	15.64	16.76	17.98	20.36
18	9.32	12.09	15.13	16.21	17.37	18.65	21.12
19	9.51	12.34	15.64	16.76	17.97	19.29	21.87
20	9.64	12.57	16.14	17.30	18.55	19.92	22.59
21	9.80	12.81	16.63	17.82	19.12	20.54	23.30
22	9.93	12.99	17.02	18.34	19.67	21.14	23.99
23	10.08	13.25	17.35	18.84	20.22	21.73	24.67
24	10.19	13.44	17.62	19.33	20.75	22.31	25.33
25	10.34	13.63	17.92	19.81	21.27	22.87	25.98
26	10.45	13.82	18.19	20.28	21.78	23.42	26.62
27	10.62	14.01	18.44	20.74	22.28	23.96	27.24
28	10.71	14.20	18.73	21.19	22.77	24.49	27.85
29	10.85	14.39	18.99	21.64	23.25	25.01	28.45
30	10.96	14.54	19.22	22.07	23.72	25.52	29.03
31	11.10	14.71	19.46	22.50	24.18	26.02	29.61
32	11.19	14.88	19.70	22.92	24.62	26.52	30.17
33	11.30	15.05	19.94	23.33	25.05	27.00	30.73
34	11.43	15.16	20.12	23.73	25.47	27.47	31.27
35	11.54	15.35	20.35	24.13	25.88	27.94	31.81

For OBMC Presort pieces over 35 pounds, use Nonmachinable prices.

b. Machinable OBMC Presort
(Nonbarcoded)

The machinable OBMC Presort prices include a \$0.03 barcode discount. Add \$0.03 if the mailpiece is not barcoded.

c. Balloon Rate

Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to

that for a 20-pound parcel for the zone to which the parcel is addressed.

c. Nonmachinable OBMC Presort

Maximum weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	6.83	6.83	6.83	6.83	6.83	6.83	6.83
2	6.83	7.13	7.63	8.22	8.41	8.63	8.95
3	7.33	7.98	8.88	9.22	9.50	9.80	10.40
4	8.03	9.03	9.83	10.16	10.51	10.90	11.66
5	8.68	9.98	10.65	11.04	11.47	11.95	12.86
6	9.28	10.88	11.43	11.89	12.39	12.94	14.00
7	9.83	11.62	12.17	12.70	13.26	13.88	15.09
8	10.28	11.98	12.89	13.47	14.10	14.79	16.13
9	10.68	12.34	13.58	14.22	14.91	15.67	17.14
10	11.08	13.48	14.24	14.94	15.68	16.51	18.11
11	11.43	13.88	14.88	15.63	16.44	17.32	19.04
12	11.78	14.18	15.50	16.30	17.16	18.11	19.95
13	12.18	14.45	16.10	16.95	17.87	18.87	20.83
14	12.39	14.79	16.69	17.58	18.55	19.61	21.68
15	12.57	15.07	17.25	18.20	19.21	20.33	22.50
16	12.72	15.34	17.80	18.79	19.86	21.03	23.31
17	12.91	15.57	18.34	19.37	20.49	21.71	24.09
18	13.05	15.82	18.86	19.94	21.10	22.38	24.85

Maximum weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
19	13.24	16.07	19.37	20.49	21.70	23.02	25.60
20	13.37	16.30	19.87	21.03	22.28	23.65	26.32
21	13.53	16.54	20.36	21.55	22.85	24.27	27.03
22	13.66	16.72	20.75	22.07	23.40	24.87	27.72
23	13.81	16.98	21.08	22.57	23.95	25.46	28.40
24	13.92	17.17	21.35	23.06	24.48	26.04	29.06
25	14.07	17.36	21.65	23.54	25.00	26.60	29.71
26	14.18	17.55	21.92	24.01	25.51	27.15	30.35
27	14.35	17.74	22.17	24.47	26.01	27.69	30.97
28	14.44	17.93	22.46	24.92	26.50	28.22	31.58
29	14.58	18.12	22.72	25.37	26.98	28.74	32.18
30	14.69	18.27	22.95	25.80	27.45	29.25	32.76
31	14.83	18.44	23.19	26.23	27.91	29.75	33.34
32	14.92	18.61	23.43	26.65	28.35	30.25	33.90
33	15.03	18.78	23.67	27.06	28.78	30.73	34.46
34	15.16	18.89	23.85	27.46	29.20	31.20	35.00
35	15.27	19.08	24.08	27.86	29.61	31.67	35.54
36	15.37	19.22	24.32	28.25	30.01	32.12	36.06
37	15.47	19.35	24.48	28.63	30.40	32.57	36.58
38	15.57	19.53	24.67	29.01	30.79	33.01	37.09
39	15.69	19.63	24.86	29.38	31.18	33.45	37.59
40	15.79	19.80	25.07	29.74	31.56	33.88	38.08
41	15.92	19.94	25.23	30.10	31.93	34.30	38.56
42	16.01	20.06	25.41	30.45	32.30	34.71	39.04
43	16.07	20.19	25.60	30.80	32.67	35.12	39.51
44	16.18	20.29	25.75	31.14	33.03	35.52	39.97
45	16.28	20.44	25.93	31.48	33.38	35.92	40.42
46	16.37	20.56	26.11	31.81	33.72	36.30	40.87
47	16.49	20.70	26.25	32.14	34.07	36.69	41.31
48	16.57	20.81	26.43	32.46	34.42	37.07	41.75
49	16.63	20.94	26.57	32.78	34.74	37.44	42.17
50	16.72	21.03	26.69	33.09	35.08	37.81	42.60
51	16.84	21.17	26.87	33.40	35.41	38.17	43.01
52	16.91	21.28	27.01	33.71	35.73	38.52	43.42
53	17.03	21.37	27.10	34.01	36.05	38.88	43.83
54	17.09	21.52	27.28	34.30	36.36	39.22	44.23
55	17.17	21.56	27.42	34.49	36.67	39.57	44.62
56	17.27	21.73	27.54	34.66	36.98	39.90	45.01
57	17.36	21.82	27.68	34.80	37.28	40.24	45.39
58	17.43	21.92	27.80	34.95	37.59	40.57	45.77
59	17.52	22.02	27.94	35.09	37.89	40.89	46.14
60	17.61	22.11	28.08	35.23	38.18	41.21	46.51
61	17.73	22.25	28.18	35.36	38.48	41.53	46.88
62	17.80	22.32	28.31	35.50	38.76	41.84	47.24
63	17.85	22.44	28.43	35.62	39.04	42.15	47.59
64	17.93	22.50	28.53	35.75	39.32	42.45	47.94
65	18.01	22.62	28.66	35.88	39.60	42.76	48.29
66	18.12	22.72	28.75	35.99	39.89	43.05	48.63
67	18.21	22.82	28.88	36.12	40.16	43.35	48.97
68	18.26	22.91	29.01	36.23	40.43	43.64	49.30
69	18.33	22.97	29.11	36.35	40.70	43.92	49.63
70	18.44	23.10	29.22	36.45	40.96	44.21	49.96
Oversized	53.42	58.46	61.81	73.88	87.82	93.41	119.46

d. Balloon Rate

Pieces exceeding 84 inches in length and girth combined and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for

the zone to which the parcel is addressed.

e. Oversized Price

Regardless of weight, any piece that measures more than 108 inches (but not

more than 130 inches) in combined length plus girth must pay the oversized price.

BMC Presort Entered

a. Machinable BMC Presort (Barcoded)

Maximum weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	4.20	4.20	4.20	4.20	4.20	4.20	4.20
2	4.20	4.50	5.00	5.59	5.78	6.00	6.32
3	4.70	5.35	6.25	6.59	6.87	7.17	7.77

Maximum weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
4	5.40	6.40	7.20	7.53	7.88	8.27	9.03
5	6.05	7.35	8.02	8.41	8.84	9.32	10.23
6	6.65	8.25	8.80	9.26	9.76	10.31	11.37
7	7.20	8.99	9.54	10.07	10.63	11.25	12.46
8	7.65	9.35	10.26	10.84	11.47	12.16	13.50
9	8.05	9.71	10.95	11.59	12.28	13.04	14.51
10	8.45	10.85	11.61	12.31	13.05	13.88	15.48
11	8.80	11.25	12.25	13.00	13.81	14.69	16.41
12	9.15	11.55	12.87	13.67	14.53	15.48	17.32
13	9.55	11.82	13.47	14.32	15.24	16.24	18.20
14	9.76	12.16	14.06	14.95	15.92	16.98	19.05
15	9.94	12.44	14.62	15.57	16.58	17.70	19.87
16	10.09	12.71	15.17	16.16	17.23	18.40	20.68
17	10.28	12.94	15.71	16.74	17.86	19.08	21.46
18	10.42	13.19	16.23	17.31	18.47	19.75	22.22
19	10.61	13.44	16.74	17.86	19.07	20.39	22.97
20	10.74	13.67	17.24	18.40	19.65	21.02	23.69
21	10.90	13.91	17.73	18.92	20.22	21.64	24.40
22	11.03	14.09	18.12	19.44	20.77	22.24	25.09
23	11.18	14.35	18.45	19.94	21.32	22.83	25.77
24	11.29	14.54	18.72	20.43	21.85	23.41	26.43
25	11.44	14.73	19.02	20.91	22.37	23.97	27.08
26	11.55	14.92	19.29	21.38	22.88	24.52	27.72
27	11.72	15.11	19.54	21.84	23.38	25.06	28.34
28	11.81	15.30	19.83	22.29	23.87	25.59	28.95
29	11.95	15.49	20.09	22.74	24.35	26.11	29.55
30	12.06	15.64	20.32	23.17	24.82	26.62	30.13
31	12.20	15.81	20.56	23.60	25.28	27.12	30.71
32	12.29	15.98	20.80	24.02	25.72	27.62	31.27
33	12.40	16.15	21.04	24.43	26.15	28.10	31.83
34	12.53	16.26	21.22	24.83	26.57	28.57	32.37
35	12.64	16.45	21.45	25.23	26.98	29.04	32.91

For BMC Presort pieces over 35 pounds, use Nonmachinable prices.

b. Machinable BMC Presort
(Nonbarcoded)

The machinable BMC Presort prices include a \$0.03 barcode discount. Add \$0.03 if the mailpiece is not barcoded.

c. Balloon Rate

Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to

that for a 20-pound parcel for the zone to which the parcel is addressed.

c. Nonmachinable BMC Presort

Maximum weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	7.93	7.93	7.93	7.93	7.93	7.93	7.93
2	7.93	8.23	8.73	9.32	9.51	9.73	10.05
3	8.43	9.08	9.98	10.32	10.60	10.90	11.50
4	9.13	10.13	10.93	11.26	11.61	12.00	12.76
5	9.78	11.08	11.75	12.14	12.57	13.05	13.96
6	10.38	11.98	12.53	12.99	13.49	14.04	15.10
7	10.93	12.72	13.27	13.80	14.36	14.98	16.19
8	11.38	13.08	13.99	14.57	15.20	15.89	17.23
9	11.78	13.44	14.68	15.32	16.01	16.77	18.24
10	12.18	14.58	15.34	16.04	16.78	17.61	19.21
11	12.53	14.98	15.98	16.73	17.54	18.42	20.14
12	12.88	15.28	16.60	17.40	18.26	19.21	21.05
13	13.28	15.55	17.20	18.05	18.97	19.97	21.93
14	13.49	15.89	17.79	18.68	19.65	20.71	22.78
15	13.67	16.17	18.35	19.30	20.31	21.43	23.60
16	13.82	16.44	18.90	19.89	20.96	22.13	24.41
17	14.01	16.67	19.44	20.47	21.59	22.81	25.19
18	14.15	16.92	19.96	21.04	22.20	23.48	25.95
19	14.34	17.17	20.47	21.59	22.80	24.12	26.70
20	14.47	17.40	20.97	22.13	23.38	24.75	27.42
21	14.63	17.64	21.46	22.65	23.95	25.37	28.13
22	14.76	17.82	21.85	23.17	24.50	25.97	28.82
23	14.91	18.08	22.18	23.67	25.05	26.56	29.50
24	15.02	18.27	22.45	24.16	25.58	27.14	30.16

Maximum weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
25	15.17	18.46	22.75	24.64	26.10	27.70	30.81
26	15.28	18.65	23.02	25.11	26.61	28.25	31.45
27	15.45	18.84	23.27	25.57	27.11	28.79	32.07
28	15.54	19.03	23.56	26.02	27.60	29.32	32.68
29	15.68	19.22	23.82	26.47	28.08	29.84	33.28
30	15.79	19.37	24.05	26.90	28.55	30.35	33.86
31	15.93	19.54	24.29	27.33	29.01	30.85	34.44
32	16.02	19.71	24.53	27.75	29.45	31.35	35.00
33	16.13	19.88	24.77	28.16	29.88	31.83	35.56
34	16.26	19.99	24.95	28.56	30.30	32.30	36.10
35	16.37	20.18	25.18	28.96	30.71	32.77	36.64
36	16.47	20.32	25.42	29.35	31.11	33.22	37.16
37	16.57	20.45	25.58	29.73	31.50	33.67	37.68
38	16.67	20.63	25.77	30.11	31.89	34.11	38.19
39	16.79	20.73	25.96	30.48	32.28	34.55	38.69
40	16.89	20.90	26.17	30.84	32.66	34.98	39.18
41	17.02	21.04	26.33	31.20	33.03	35.40	39.66
42	17.11	21.16	26.51	31.55	33.40	35.81	40.14
43	17.17	21.29	26.70	31.90	33.77	36.22	40.61
44	17.28	21.39	26.85	32.24	34.13	36.62	41.07
45	17.38	21.54	27.03	32.58	34.48	37.02	41.52
46	17.47	21.66	27.21	32.91	34.82	37.40	41.97
47	17.59	21.80	27.35	33.24	35.17	37.79	42.41
48	17.67	21.91	27.53	33.56	35.52	38.17	42.85
49	17.73	22.04	27.67	33.88	35.84	38.54	43.27
50	17.82	22.13	27.79	34.19	36.18	38.91	43.70
51	17.94	22.27	27.97	34.50	36.51	39.27	44.11
52	18.01	22.38	28.11	34.81	36.83	39.62	44.52
53	18.13	22.47	28.20	35.11	37.15	39.98	44.93
54	18.19	22.62	28.38	35.40	37.46	40.32	45.33
55	18.27	22.66	28.52	35.59	37.77	40.67	45.72
56	18.37	22.83	28.64	35.76	38.08	41.00	46.11
57	18.46	22.92	28.78	35.90	38.38	41.34	46.49
58	18.53	23.02	28.90	36.05	38.69	41.67	46.87
59	18.62	23.12	29.04	36.19	38.99	41.99	47.24
60	18.71	23.21	29.18	36.33	39.28	42.31	47.61
61	18.83	23.35	29.28	36.46	39.58	42.63	47.98
62	18.90	23.42	29.41	36.60	39.86	42.94	48.34
63	18.95	23.54	29.53	36.72	40.14	43.25	48.69
64	19.03	23.60	29.63	36.85	40.42	43.55	49.04
65	19.11	23.72	29.76	36.98	40.70	43.86	49.39
66	19.22	23.82	29.85	37.09	40.99	44.15	49.73
67	19.31	23.92	29.98	37.22	41.26	44.45	50.07
68	19.36	24.01	30.11	37.33	41.53	44.74	50.40
69	19.43	24.07	30.21	37.45	41.80	45.02	50.73
70	19.54	24.20	30.32	37.55	42.06	45.31	51.06
Oversized	54.52	59.56	62.91	74.98	88.92	94.51	120.56

d. Balloon Rate

Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to

that for a 20-pound parcel for the zone to which the parcel is addressed.

e. Oversized Price

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined

length plus girth must pay the oversized price.

Barcoded Inter-BMC and Intra-BMC Entered

a. Barcoded Inter-BMC

Maximum weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
1	4.52	4.52	4.52	4.52	4.52	4.52	4.52
2	4.52	4.82	5.32	5.91	6.10	6.32	6.64
3	5.02	5.67	6.57	6.91	7.19	7.49	8.09
4	5.72	6.72	7.52	7.85	8.20	8.59	9.35
5	6.37	7.67	8.34	8.73	9.16	9.64	10.55
6	6.97	8.57	9.12	9.58	10.08	10.63	11.69
7	7.52	9.31	9.86	10.39	10.95	11.57	12.78
8	7.97	9.67	10.58	11.16	11.79	12.48	13.82
9	8.37	10.03	11.27	11.91	12.60	13.36	14.83

Maximum weight (pounds)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)	Zone 6 (\$)	Zone 7 (\$)	Zone 8 (\$)
10	8.77	11.17	11.93	12.63	13.37	14.20	15.80
11	9.12	11.57	12.57	13.32	14.13	15.01	16.73
12	9.47	11.87	13.19	13.99	14.85	15.80	17.64
13	9.87	12.14	13.79	14.64	15.56	16.56	18.52
14	10.08	12.48	14.38	15.27	16.24	17.30	19.37
15	10.26	12.76	14.94	15.89	16.90	18.02	20.19
16	10.41	13.03	15.49	16.48	17.55	18.72	21.00
17	10.60	13.26	16.03	17.06	18.18	19.40	21.78
18	10.74	13.51	16.55	17.63	18.79	20.07	22.54
19	10.93	13.76	17.06	18.18	19.39	20.71	23.29
20	11.06	13.99	17.56	18.72	19.97	21.34	24.01
21	11.22	14.23	18.05	19.24	20.54	21.96	24.72
22	11.35	14.41	18.44	19.76	21.09	22.56	25.41
23	11.50	14.67	18.77	20.26	21.64	23.15	26.09
24	11.61	14.86	19.04	20.75	22.17	23.73	26.75
25	11.76	15.05	19.34	21.23	22.69	24.29	27.40
26	11.87	15.24	19.61	21.70	23.20	24.84	28.04
27	12.04	15.43	19.86	22.16	23.70	25.38	28.66
28	12.13	15.62	20.15	22.61	24.19	25.91	29.27
29	12.27	15.81	20.41	23.06	24.67	26.43	29.87
30	12.38	15.96	20.64	23.49	25.14	26.94	30.45
31	12.52	16.13	20.88	23.92	25.60	27.44	31.03
32	12.61	16.30	21.12	24.34	26.04	27.94	31.59
33	12.72	16.47	21.36	24.75	26.47	28.42	32.15
34	12.85	16.58	21.54	25.15	26.89	28.89	32.69
35	12.96	16.77	21.77	25.55	27.30	29.36	33.23

b. Balloon Rate

Pieces exceeding 84 inches in length
and girth combined (but not more than

108 inches) and weighing less than 20
pounds are subject to a price equal to

that for a 20-pound parcel for the zone
to which the parcel is addressed.

c. Barcoded Intra-BMC

Maximum weight (pounds)	Local zones (\$)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)
1	3.64	3.99	4.02	4.11	4.30
2	4.08	4.47	4.77	4.86	5.13
3	4.48	4.97	5.45	5.57	5.94
4	4.85	5.67	6.08	6.20	6.68
5	5.18	6.26	6.62	6.77	7.37
6	5.48	6.64	7.12	7.27	7.98
7	5.71	7.00	7.57	7.74	8.57
8	5.90	7.58	8.00	8.18	9.10
9	6.10	7.90	8.39	8.62	9.59
10	6.29	8.24	8.81	9.31	10.05
11	6.46	8.53	9.15	9.67	10.47
12	6.64	8.84	9.49	10.02	10.87
13	6.81	9.04	9.79	10.35	11.25
14	6.97	9.21	10.07	10.71	11.59
15	7.12	9.38	10.36	11.00	11.91
16	7.28	9.54	10.66	11.28	12.23
17	7.42	9.74	10.93	11.59	12.51
18	7.56	9.88	11.19	11.84	12.78
19	7.69	10.04	11.46	12.10	13.04
20	7.84	10.21	11.72	12.32	13.27
21	7.96	10.33	11.96	12.55	13.50
22	8.09	10.50	12.20	12.79	13.71
23	8.22	10.61	12.45	13.03	13.94
24	8.35	10.76	12.68	13.27	14.13
25	8.47	10.88	12.90	13.49	14.33
26	8.58	11.03	13.11	13.72	14.49
27	8.70	11.15	13.34	13.94	14.66
28	8.81	11.26	13.56	14.14	14.85
29	8.93	11.39	13.77	14.35	15.07
30	9.05	11.51	13.96	14.54	15.27
31	9.15	11.63	14.14	14.74	15.49
32	9.23	11.75	14.35	14.94	15.67
33	9.35	11.86	14.52	15.11	15.87
34	9.42	11.97	14.64	15.30	16.06

Maximum weight (pounds)	Local zones (\$)	Zones 1 & 2 (\$)	Zone 3 (\$)	Zone 4 (\$)	Zone 5 (\$)
35	9.50	12.07	14.81	15.48	16.24

d. Balloon Rate

Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.

2120 Parcel Return Service

2120.1 Description

a. Parcel Return Service mail consists of returned merchandise meeting preparation and entry requirements, which is retrieved in bulk at designated facilities, with postage paid by the addressee.

b. Any mailable matter may be mailed as Parcel Return Service mail, except matter required to be mailed by First-

Class Mail or Priority Mail services; and publications required to be entered as Periodicals mail.

c. Parcel Return Service mail is not sealed against postal inspection. Mailing of matter as such constitutes consent by the mailer to postal inspection of the contents, regardless of the physical closure.

d. Undeliverable-as-addressed Parcel Return Service pieces will be forwarded on request of the addressee or forwarded or returned on request of the mailer, subject to the applicable Single-Piece Parcel Post price when forwarded or returned from one Post Office location to another. Pieces which combine Parcel Return Service matter with First-Class Mail or Standard Mail matter will be

forwarded or returned if undeliverable-as-addressed, as specified in the Domestic Mail Manual.

e. Payment of an annual mailing permit fee and an account maintenance fee are required for Parcel Return Service (1505.2).

f. Attachments and Enclosures. First-Class Mail or Standard Mail pieces may be attached to or enclosed in Parcel Return Service mail. Additional postage may be required. Parcel Return Service mail may have limited written additions placed on the wrapper, on a tag or label attached to the outside of the parcel, or inside the parcel, either loose or attached to the article.

2120.2 Size and Weight Limitations

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address, and other required elements on the address side. 130 inches in combined length and girth.			None.
Maximum				70 pounds.

2120.3 Minimum Volume Requirements

	Minimum volume requirements
Parcel Return Service	None.

2120.4 Price Categories

• RBMC (Contains merchandise and is retrieved in bulk at a bulk mail center, or other equivalent facility.)

- Machinable
- Nonmachinable
- Balloon Rate
- Oversized
- RDU (Contains merchandise and is retrieved in bulk at a designated destination delivery unit, or other equivalent facility.)

- Machinable
- Nonmachinable
- Oversized

2120.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Ancillary Services (1505)
 - Certificate of Mailing (1505.6)

2120.6 Prices

RBMC Entered

a. Machinable RBMC

Maximum weight (pounds)	RBMC zones 1 & 2 (\$)	RBMC zone 3 (\$)	RBMC zone 4 (\$)	RBMC zone 5 (\$)
1	2.54	2.68	2.76	2.98
2	3.43	3.48	3.59	3.89
3	4.17	4.22	4.35	4.76
4	4.65	4.90	5.03	5.56
5	5.10	5.49	5.66	6.31
6	5.51	6.04	6.20	6.98
7	5.85	6.52	6.72	7.61
8	6.53	6.99	7.19	8.19
9	6.88	7.41	7.67	8.72
10	7.17	7.86	8.41	9.22
11	7.35	8.23	8.80	9.67
12	7.58	8.60	9.18	10.11
13	7.79	8.93	9.54	10.52
14	7.97	9.23	9.94	10.89
15	8.12	9.55	10.24	11.23
16	8.29	9.87	10.55	11.59
17	8.50	10.17	10.89	11.88
18	8.63	10.45	11.16	12.18
19	8.81	10.74	11.44	12.46

Maximum weight (pounds)	RBMC zones 1 & 2 (\$)	RBMC zone 3 (\$)	RBMC zone 4 (\$)	RBMC zone 5 (\$)
20	8.95	10.96	11.67	12.71
21	9.10	11.18	11.92	12.96
22	9.26	11.36	12.19	13.19
23	9.39	11.61	12.45	13.44
24	9.50	11.77	12.71	13.64
25	9.63	11.97	12.95	13.86
26	9.77	12.13	13.20	14.03
27	9.90	12.32	13.44	14.22
28	10.00	12.50	13.61	14.42
29	10.13	12.69	13.76	14.66
30	10.26	12.83	13.91	14.87
31	10.38	12.96	14.04	15.11
32	10.53	13.13	14.20	15.31
33	10.61	13.28	14.32	15.53
34	10.74	13.40	14.45	15.69
35	10.82	13.56	14.56	15.83

b. Nonmachinable RBMC

Maximum weight (pounds)	RBMC zones 1 & 2 (\$)	RBMC zone 3 (\$)	RBMC zone 4 (\$)	RBMC zone 5 (\$)
1	4.75	4.89	4.97	5.19
2	5.64	5.69	5.80	6.10
3	6.38	6.43	6.56	6.97
4	6.86	7.11	7.24	7.77
5	7.31	7.70	7.87	8.52
6	7.72	8.25	8.41	9.19
7	8.06	8.73	8.93	9.82
8	8.74	9.20	9.40	10.40
9	9.09	9.62	9.88	10.93
10	9.38	10.07	10.62	11.43
11	9.56	10.44	11.01	11.88
12	9.79	10.81	11.39	12.32
13	10.00	11.14	11.75	12.73
14	10.18	11.44	12.15	13.10
15	10.33	11.76	12.45	13.44
16	10.50	12.08	12.76	13.80
17	10.71	12.38	13.10	14.09
18	10.84	12.66	13.37	14.39
19	11.02	12.95	13.65	14.67
20	11.16	13.17	13.88	14.92
21	11.31	13.39	14.13	15.17
22	11.47	13.57	14.40	15.40
23	11.60	13.82	14.66	15.65
24	11.71	13.98	14.92	15.85
25	11.84	14.18	15.16	16.07
26	11.98	14.34	15.41	16.24
27	12.11	14.53	15.65	16.43
28	12.21	14.71	15.82	16.63
29	12.34	14.90	15.97	16.87
30	12.47	15.04	16.12	17.08
31	12.59	15.17	16.25	17.32
32	12.74	15.34	16.41	17.52
33	12.82	15.49	16.53	17.74
34	12.95	15.61	16.66	17.90
35	13.03	15.77	16.77	18.04
36	13.17	15.95	16.92	18.23
37	13.28	16.06	17.02	18.31
38	13.34	16.15	17.08	18.38
39	13.42	16.27	17.16	18.45
40	13.49	16.35	17.20	18.53
41	13.59	16.48	17.27	18.60
42	13.63	16.56	17.33	18.67
43	13.69	16.66	17.41	18.70
44	13.77	16.74	17.46	18.74
45	13.82	16.81	17.68	18.81
46	13.92	16.92	17.73	18.84

Maximum weight (pounds)	RBMC zones 1 & 2 (\$)	RBMC zone 3 (\$)	RBMC zone 4 (\$)	RBMC zone 5 (\$)
47	13.98	16.97	17.76	18.89
48	14.04	17.08	17.79	18.94
49	14.11	17.17	17.84	18.97
50	14.12	17.24	17.87	19.03
51	14.23	17.30	17.90	19.08
52	14.28	17.42	17.96	19.11
53	14.31	17.46	17.97	19.17
54	14.37	17.49	18.01	19.20
55	14.42	17.52	18.04	19.24
56	14.48	17.55	18.09	19.30
57	14.55	17.55	18.09	19.34
58	14.61	17.58	18.11	19.39
59	14.66	17.60	18.13	19.44
60	14.73	17.61	18.13	19.47
61	14.78	17.62	18.16	19.52
62	14.82	17.63	18.24	19.55
63	14.89	17.63	18.31	19.62
64	14.94	17.63	18.35	19.66
65	14.99	17.68	18.40	19.70
66	15.05	17.68	18.47	19.75
67	15.12	17.69	18.56	19.79
68	15.12	17.69	18.59	19.82
69	15.19	17.69	18.67	19.89
70	15.25	17.69	18.72	19.93
Oversized	32.45	33.00	34.00	35.51

c. Balloon Rate

RBMC entered pieces exceeding 84 inches in length and girth combined, but not more than 108 inches, and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.

d. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length plus girth must pay the oversized price.

RDU Entered

a. Machinable RDU and Nonmachinable RDU to 35 pounds

Maximum weight (pounds)	RDU (\$)
1	1.62
2	1.69
3	1.76
4	1.82
5	1.88
6	1.94
7	1.99
8	2.04
9	2.09
10	2.13
11	2.22
12	2.31
13	2.39
14	2.46
15	2.54
16	2.61
17	2.68
18	2.74

Maximum weight (pounds)	RDU (\$)
19	2.81
20	2.87
21	2.93
22	2.98
23	3.04
24	3.09
25	3.14
26	3.19
27	3.24
28	3.28
29	3.33
30	3.37
31	3.41
32	3.46
33	3.50
34	3.53
35	3.57

b. Nonmachinable RDU above 35 pounds

Maximum weight (pounds)	RDU (\$)
36	3.61
37	3.64
38	3.68
39	3.71
40	3.74
41	3.77
42	3.80
43	3.83
44	3.86
45	3.89
46	3.92
47	3.94
48	3.97
49	4.00
50	4.02
51	4.04

Maximum weight (pounds)	RDU (\$)
52	4.07
53	4.09
54	4.11
55	4.13
56	4.16
57	4.18
58	4.20
59	4.22
60	4.23
61	4.25
62	4.27
63	4.29
64	4.31
65	4.32
66	4.34
67	4.35
68	4.37
69	4.39
70	4.40
Oversized	7.68

c. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length plus girth must pay the oversized price.

2125 Premium Forwarding Service

2125.1 Description

a. Premium Forwarding Service provides residential delivery customers, and certain post office box customers, the option to receive substantially all mail addressed to a primary address instead at a temporary address by means of a weekly Priority Mail shipment.

Parcels that are too large for the weekly shipment, mail pieces that require a scan upon delivery or arrive postage due at the office serving the customer's primary address, and certain Priority Mail pieces may be rerouted as specified in the Domestic Mail Manual. Rerouted Express Mail, First-Class Mail, and Priority Mail pieces incur no additional reshipping charges. Rerouted Standard Mail and Package Service pieces may be rerouted postage due.

b. Mail sent to a primary address for which an addressee has activated Premium Forwarding Service is not treated as undeliverable-as-addressed.

c. Premium Forwarding Service is available for a period of at least two weeks and not more than twelve months. Customers may not use Premium Forwarding Service simultaneously with temporary or permanent forwarding orders. Premium Forwarding Service is not available to customers whose primary address consists of a size three, four or five post office box, subject to exceptions allowed by the Postal Service, or a centralized delivery point.

2125.2 Prices

	(\$)
Enrollment	10.00
Weekly Reshipment	11.95

2200 INTERNATIONAL PRODUCTS

2205 Outbound International Expedited Services

2205.1 Description

Outbound International Expedited Services (Global Express Guaranteed and Express Mail International) provide expedited service to designated outbound international destinations according to requirements specified in the International Mail Manual.

Global Express Guaranteed

a. Global Express Guaranteed (GXG) service offers a postage-refund guarantee for day-certain delivery from select post offices to select foreign destinations.

b. Documents and general correspondence, including matter containing personal information, partially or wholly hand-written or typewritten matter, or bills or statements of account (non-dutiable items) and non-documents (all dutiable items including merchandise) may be shipped using Global Express Guaranteed service.

c. Document reconstruction and non-document insurance for loss or damage up to \$100.00 per shipment are included at no additional charge. Additional insurance may be purchased for document and non-document shipments.

d. Only Global Express Guaranteed items that contain documents are sealed against postal inspection and shall not be opened except as authorized by law.

e. Discounts for online preparation and payment or for use of an authorized PC postage vendor [or for qualifying

customers who pay postage using information-based indicia (IBI) postage meters] may apply.

Express Mail International

a. Express Mail International (EMI) offers transit times that can be longer than for Global Express Guaranteed. Express Mail International with guarantee service provides a postage-refund guarantee for date-certain delivery to a limited number of foreign destinations.

b. Any item not prohibited in international mail may be sent using Express Mail International, including matter containing personal information, partially or wholly hand-written or typewritten matter, or bills or statements of account.

c. Document reconstruction and merchandise insurance up to \$100.00 is included in the price of postage. Additional merchandise insurance may be purchased at the time of mailing. Additional document reconstruction insurance may not be purchased.

d. Express Mail International is sealed against postal inspection and shall not be opened except as authorized by law.

e. Discounts for Express Mail Corporate Accounts, permit imprint accounts, online preparation and payment, or for use of an authorized PC postage vendor [or for qualifying customers who pay postage using information-based indicia (IBI) postage meters] may apply.

2205.2 Size and Weight Limitations

Global Express Guaranteed

	Length	Height	Thickness	Weight
Minimum	Must be able to hold the shipping label with pouch (7 inches by 12 inches) and postage.			None.
Maximum	46 inches	35 inches	46 inches	70 pounds.
	108 inches in combined length and girth.			

Express Mail International ¹

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address, and other required elements on the address side.			
Maximum	36 inches.			
	79 inches in combined length and girth.			
Flat-Rate Envelope	Nominal Size: 9.5 × 12.5 inches.			

Notes:

¹ Country-specific restrictions may apply as specified in the International Mail Manual.

2205.3 Minimum Volume Requirements

	Minimum volume requirements
Global Express Guaranteed.	None.
Express Mail International	None.

2205.4 Price Categories

The following price categories are available for the product specified in this section:

Global Express Guaranteed

- Price Groups 1–8
- Online Incentives

Available for customers who prepare and pay for Global Express Guaranteed shipments online at usps.com or by using an authorized PC Postage vendor [or qualifying customers who pay postage using by using information-based indicia (IBI) postage meters.] To be eligible for discounts for purchasing Global Express Guaranteed online, customers must register via the Global Express Guaranteed Web site at usps.com. The discount applies only to the postage portion of Global Express Guaranteed rates.

Express Mail International

- Flat-Rate Envelope
 - Canada and Mexico
 - All Other Countries
- Retail
 - Price Groups 1–9[10]
- Online Incentives

Available for customers who prepare and pay for Express Mail International shipments online at usps.com or by using an authorized PC Postage vendor [or qualifying customers who pay postage by using information-based indicia (IBI) postage meters.] The discount applies only to the postage portion of Express Mail International rates.

- Permit Imprint Incentives

Available for customers who pay for postage by permit imprint and use approved software for mail preparation and Customs-related functions. The discount applies only to the postage portion of the Express Mail international prices.

- Express Mail Corporate Account Incentives

Available for customers who pay for postage through an Express Mail corporate account (EMCA) or through the federal agency payment system and use approved software for mail

preparation and Customs-related functions. The discounts apply only to the postage portion of Express Mail International prices.

2205.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Pickup On Demand
- International Ancillary Services (2250)
 - International Return Receipt (2250.3)
 - International Insurance (2250.5)

2205.6 Prices

Global Express Guaranteed

The price for Global Express Guaranteed service is based on the actual weight or the dimensional weight of the item, whichever is greater except for Postal Service-supplied Global Express Guaranteed envelopes where the postage is based on the actual weight. See the International Mail Manual for the calculation of dimensional weight.

Global Express Guaranteed:

Weight not over (lb.)	Price groups							
	1	2	3	4	5	6	7	8
0.5	\$31.95	\$32.95	\$41.95	\$89.95	\$41.95	\$43.95	\$41.95	\$60.95
1	50.00	54.00	59.00	106.00	67.00	68.00	54.00	76.00
2	54.75	61.25	68.25	124.00	75.50	77.50	62.00	94.50
3	59.50	68.50	77.50	142.00	84.00	87.00	70.00	113.00
4	64.25	75.75	86.75	160.00	92.50	96.50	78.00	131.50
5	69.00	83.00	96.00	178.00	101.00	106.00	86.00	150.00
6	72.75	90.25	105.25	196.00	109.50	115.50	94.00	168.50
7	76.50	97.50	114.50	214.00	118.00	125.00	102.00	187.00
8	80.25	104.75	123.75	232.00	126.50	134.50	110.00	205.50
9	84.00	112.00	133.00	250.00	135.00	144.00	118.00	224.00
10	87.75	119.25	142.25	268.00	143.50	153.50	126.00	242.50
11	91.50	123.50	147.50	282.00	150.00	162.00	132.00	255.00
12	95.25	127.75	152.75	296.00	156.50	170.50	138.00	267.50
13	99.00	132.00	158.00	310.00	163.00	179.00	144.00	280.00
14	102.75	136.25	163.25	324.00	169.50	187.50	150.00	292.50
15	106.50	140.50	168.50	338.00	176.00	196.00	156.00	305.00
16	110.25	144.75	173.75	352.00	182.50	204.50	162.00	317.50
17	114.00	149.00	179.00	366.00	189.00	213.00	168.00	330.00
18	117.75	153.25	184.25	380.00	195.50	221.50	174.00	342.50
19	121.50	157.50	189.50	394.00	202.00	230.00	180.00	355.00
20	125.25	161.75	194.75	408.00	208.50	238.50	186.00	367.50
21	129.00	166.00	200.00	422.00	215.00	247.00	192.00	380.00
22	132.75	170.25	205.25	436.00	221.50	255.50	198.00	392.50
23	136.50	174.50	210.50	450.00	228.00	263.00	204.00	405.00
24	140.25	178.75	215.75	464.00	234.50	270.50	210.00	417.50
25	144.00	183.00	221.00	478.00	241.00	278.00	216.00	430.00
26	147.75	186.50	226.25	492.00	247.50	285.50	222.00	442.50
27	151.50	190.00	231.50	506.00	254.00	293.00	228.00	455.00
28	155.25	193.50	236.75	520.00	260.50	300.50	234.00	467.50
29	159.00	197.00	242.00	534.00	267.00	308.00	240.00	480.00
30	162.75	200.50	247.25	548.00	273.50	315.50	246.00	492.50
31	166.50	204.00	252.50	562.00	280.00	323.00	252.00	505.00
32	170.25	207.50	257.75	576.00	286.50	330.50	258.00	517.50
33	174.00	211.00	263.00	590.00	293.00	338.00	264.00	530.00
34	177.75	214.50	268.25	604.00	299.50	345.50	270.00	542.50
35	181.50	218.00	273.50	618.00	306.00	353.00	276.00	555.00

Weight not over (lb.)	Price groups							
	1	2	3	4	5	6	7	8
36	185.25	221.50	278.75	632.00	312.50	360.50	282.00	567.50
37	189.00	225.00	284.00	646.00	319.00	368.00	288.00	580.00
38	192.75	228.50	289.25	660.00	325.50	375.50	294.00	592.50
39	196.50	232.00	294.50	674.00	332.00	383.00	300.00	605.00
40	200.25	235.50	299.75	688.00	338.50	390.50	306.00	617.50
41	204.00	239.00	305.00	698.00	345.00	398.00	312.00	627.00
42	207.75	242.50	310.25	708.00	351.50	405.50	318.00	636.50
43	211.50	246.00	315.50	718.00	358.00	413.00	324.00	646.00
44	215.25	249.50	320.75	728.00	364.50	420.50	330.00	655.50
45	219.00	253.00	326.00	738.00	371.00	428.00	336.00	665.00
46	222.75	256.50	331.25	748.00	377.50	435.50	342.00	674.50
47	225.50	260.00	336.50	758.00	384.00	443.00	348.00	684.00
48	228.25	263.50	341.75	768.00	390.50	450.50	354.00	693.50
49	231.00	267.00	347.00	778.00	397.00	458.00	360.00	703.00
50	233.75	270.50	352.25	788.00	403.50	465.50	366.00	712.50
51	236.50	273.25	357.50	798.00	410.00	473.00	372.00	722.00
52	239.25	276.00	362.75	808.00	416.50	480.50	378.00	731.50
53	242.00	278.75	368.00	818.00	423.00	488.00	384.00	741.00
54	244.75	281.50	373.25	828.00	429.50	495.50	390.00	750.50
55	247.50	284.25	378.50	838.00	436.00	503.00	396.00	760.00
56	250.25	287.00	383.75	848.00	442.50	510.50	402.00	769.50
57	253.00	289.75	389.00	858.00	449.00	518.00	408.00	779.00
58	255.75	292.50	394.25	868.00	455.50	525.50	414.00	788.50
59	258.50	295.25	399.50	878.00	462.00	533.00	420.00	798.00
60	261.25	298.00	404.75	888.00	468.50	540.50	426.00	807.50
61	264.00	300.75	410.00	898.00	475.00	548.00	432.00	817.00
62	266.75	303.50	415.25	908.00	480.50	555.50	438.00	826.50
63	269.50	306.25	420.50	918.00	486.00	563.00	444.00	836.00
64	272.25	309.00	425.75	928.00	491.50	570.50	450.00	845.50
65	275.00	311.75	431.00	938.00	497.00	578.00	456.00	855.00
66	277.75	314.50	436.25	948.00	502.50	585.50	462.00	864.50
67	280.50	317.25	441.50	958.00	508.00	593.00	468.00	874.00
68	283.25	320.00	446.75	968.00	513.50	600.50	474.00	883.50
69	286.00	322.75	452.00	978.00	519.00	608.00	480.00	893.00
70	288.75	325.50	457.25	988.00	524.50	615.50	486.00	902.50

*Express Mail International**Express Mail International: Flat-Rate
Envelope*

Maximum weight (ounces)	Country price group									
	1 (\$)	2 (\$)	3 (\$)	4 (\$)	5 (\$)	6 (\$)	7 (\$)	8 (\$)	9 (\$)	10 (\$)
Flat-Rate Envelope	25.95	25.95	27.95	27.95	27.95	27.95	27.95	27.95	27.95	27.95

Express Mail International: Retail

Weight not over (lb.)	Price groups									
	1	2	3	4	5	6	7	8	9	10
0.5	\$25.95	\$25.95	\$27.95	\$27.95	\$27.95	\$27.95	\$27.95	\$27.95	\$27.95	\$27.95
1	30.00	29.50	31.50	31.50	32.50	31.50	34.00	33.50	32.50	32.50
2	33.50	33.25	36.25	35.75	37.00	35.75	38.75	38.50	37.00	37.75
3	37.00	37.00	41.00	40.00	41.50	40.00	43.50	43.50	41.50	43.00
4	40.50	40.75	45.75	44.25	46.00	44.25	48.25	48.50	46.00	48.25
5	44.00	44.50	50.50	48.50	50.50	48.50	53.00	53.50	50.50	54.00
6	47.25	48.25	55.25	52.25	54.75	53.75	58.25	58.50	55.75	59.75
7	50.50	52.00	60.00	56.00	59.00	59.00	63.50	63.50	61.00	65.50
8	53.75	55.75	64.75	59.75	63.25	64.25	68.75	68.50	66.25	71.25
9	57.00	59.50	69.50	63.50	67.50	69.50	74.00	73.50	71.50	77.00
10	60.25	63.25	74.25	67.25	71.75	74.75	79.25	78.50	76.75	82.75
11	63.75	66.00	79.50	71.50	76.00	80.50	85.00	84.25	82.00	88.50
12	67.25	68.75	84.75	75.75	80.25	86.25	90.75	90.00	87.25	94.25
13	70.75	71.50	90.00	80.00	84.50	92.00	96.50	95.75	92.50	100.00
14	74.25	74.25	95.25	84.25	88.75	97.75	102.25	101.50	97.75	105.75
15	77.75	77.00	100.50	88.50	93.00	103.50	108.00	107.25	103.00	111.50

Weight not over (lb.)	Price groups									
	1	2	3	4	5	6	7	8	9	10
16	81.25	79.75	106.25	92.75	97.25	109.25	113.75	113.00	108.25	117.75
17	84.75	82.50	112.00	97.00	101.50	115.00	119.50	118.75	113.50	124.00
18	88.25	85.25	117.75	101.25	105.75	120.75	125.25	124.50	118.75	130.25
19	91.75	88.00	123.50	105.50	110.00	126.50	131.00	130.25	124.00	136.50
20	95.25	90.75	129.25	109.75	114.25	132.25	136.75	136.00	129.25	142.75
21	98.75	93.50	135.00	114.00	118.50	138.00	142.50	141.75	134.50	149.00
22	102.25	96.25	140.75	118.25	122.75	143.75	148.25	147.50	139.75	155.25
23	105.75	99.00	146.50	122.50	127.00	149.50	154.00	153.25	145.00	161.50
24	109.25	101.75	152.25	126.75	131.25	155.25	159.75	159.00	150.25	167.75
25	112.75	104.50	158.00	131.00	135.50	161.00	165.50	164.75	155.50	174.00
26	116.25	107.25	163.75	135.25	139.75	166.75	171.25	170.50	160.75	180.25
27	119.75	110.00	169.50	139.50	144.00	172.50	177.00	176.25	166.00	186.50
28	123.25	112.75	175.25	143.75	148.25	178.25	182.75	182.00	171.25	192.75
29	126.75	115.50	181.00	148.00	152.50	184.00	188.50	187.75	176.50	199.00
30	130.25	118.25	186.75	152.25	156.75	189.75	194.25	193.50	181.75	205.25
31	133.75	121.00	192.50	156.50	161.00	195.50	200.00	199.25	187.00	211.50
32	137.25	123.75	198.25	160.75	165.25	201.25	205.75	205.00	192.25	217.75
33	140.75	126.50	204.00	165.00	169.50	207.00	211.50	210.75	197.50	224.00
34	144.25	129.25	209.75	169.25	173.75	212.75	217.25	216.50	202.75	230.25
35	147.75	132.00	215.50	173.50	178.00	218.50	223.00	222.25	208.00	236.50
36	151.25	134.75	221.25	177.75	182.25	224.25	228.75	228.00	213.25	242.75
37	154.75	137.50	227.00	182.00	186.50	230.00	234.50	233.75	218.50	249.00
38	158.25	140.25	232.75	186.25	190.75	235.75	240.25	239.50	223.75	255.25
39	161.75	143.00	238.50	190.50	195.00	241.50	246.00	245.25	229.00	261.50
40	165.25	145.75	244.25	194.75	199.25	247.25	251.75	251.00	234.25	267.75
41	168.75	148.50	250.00	199.00	203.50	252.50	257.50	256.75	239.50	274.00
42	172.25	151.25	255.75	203.25	207.75	257.75	263.25	262.50	244.75	280.25
43	175.75	154.00	261.50	207.50	212.00	263.00	269.00	268.25	250.00	286.50
44	179.25	156.75	267.25	211.75	216.25	268.25	274.75	274.00	255.25	292.75
45	182.75	.....	273.00	216.00	220.50	273.50	280.50	279.75	260.50	299.00
46	186.25	.....	278.75	220.25	224.75	278.75	286.25	285.50	265.75	305.25
47	189.75	.....	284.50	224.50	229.00	284.00	292.00	291.25	271.00	311.50
48	193.25	.....	290.25	228.75	233.25	289.25	297.75	297.00	276.25	317.75
49	196.75	.....	296.00	233.00	237.50	294.50	303.50	302.75	281.50	324.00
50	200.25	.....	301.75	237.25	241.75	299.75	309.25	308.50	286.75	330.25
51	203.75	.....	307.50	241.50	246.00	305.00	315.00	314.25	292.00	336.50
52	207.25	.....	313.25	245.75	250.25	310.25	320.75	320.00	297.25	342.75
53	210.75	.....	319.00	250.00	254.50	315.50	326.50	325.75	302.50	349.00
54	214.25	.....	324.75	254.25	258.75	320.75	332.25	331.50	307.75	355.25
55	217.75	.....	330.50	258.50	263.00	326.00	338.00	337.25	313.00	361.50
56	221.25	.....	336.25	262.75	267.25	331.25	343.75	343.00	318.25	367.75
57	224.75	.....	342.00	267.00	271.50	336.50	349.50	348.75	323.50	374.00
58	228.25	.....	347.75	271.25	275.75	341.75	355.25	354.50	328.75	380.25
59	231.75	.....	353.50	275.50	280.00	347.00	361.00	360.25	334.00	386.50
60	235.25	.....	359.25	279.75	284.25	352.25	366.75	366.00	339.25	392.75
61	238.75	.....	365.00	284.00	288.50	357.50	372.50	371.75	344.50	399.00
62	242.25	.....	370.75	288.25	292.75	362.75	378.25	377.50	349.75	405.25
63	245.75	.....	376.50	292.50	297.00	368.00	384.00	383.25	355.00	411.50
64	249.25	.....	382.25	296.75	301.25	373.25	389.75	389.00	360.25	417.75
65	252.75	.....	388.00	301.00	305.50	378.50	395.50	394.75	365.50	424.00
66	256.25	.....	393.75	305.25	309.75	383.75	401.25	400.50	370.75	430.25
67	.....	399.50	309.50	314.00	389.00	407.00	406.25	376.00	.....	.....
68	.....	405.25	313.75	318.25	394.25	412.75	412.00	381.25	.....	.....
69	.....	411.00	318.00	322.50	399.50	418.50	417.75	386.50	.....	.....
70	.....	416.75	322.25	326.75	404.75	424.25	423.50	391.75	.....	.....

Pickup On Demand

Add \$14.75 for each Pickup On Demand stop.

Global Express Guaranteed Online Price Incentives

A discount of 10 percent will be applied to Global Express Guaranteed prices.

Express Mail International Online Price Incentives

A discount of 8 percent will be applied to Express Mail International prices.

Express Mail International Permit Imprint Incentives

A discount of 8 percent will be applied to Express Mail International prices.

Express Mail International Corporate Account Incentives

A discount of 8 percent will be applied to Express Mail International prices. An annualized minimum volume of 1,000 pieces or an annualized minimum postage of \$20,000.00 will result in a 10 percent discount, and an annualized minimum volume of 3,000 pieces or an annualized minimum postage of \$60,000.00 will result in a 12 percent discount.

2210 Inbound Express Mail International (EMS)**2210.1 Description**

a. Inbound Express Mail International is a reliable, high-speed service, available from most countries.

b. Inbound Express Mail International may contain matter with personal information, partially or wholly handwritten or typewritten matter, or bills or statements of account.

c. Inbound Express Mail International is sealed against inspection.

2210.2 Size and Weight Limitations

	Length	Height	Thickness	Weight
Minimum	None	None	None	See Note 1.
Maximum	36 inches. 108 inches in combined length and girth.			

Notes

¹Country-specific restrictions may apply as specified by the originating country.

2210.3 Minimum Volume Requirements

	Minimum volume requirements
Inbound Express Mail International.	None.

2210.4 Price Categories

The following price categories are available for the product specified in this section:

- Bilateral/Multilateral Agreements
- Bilateral Express Mail Service (EMS)

The Postal Service has standard EMS bilateral agreements with a large number of countries for service standards, tracking, and tracing concerning delivery of both inbound and outbound international express mail items. Each destination administration can set its charge once a year by notifying their partners either directly no later than August 1 or via the UPU International Bureau no later than August 31 of the year prior to the effective date.

- EMS Cooperative Pay for Performance

The EMS Cooperative Pay-for-Performance plan has been implemented with certain countries. The EMS Pay-for-Performance Plan links payment for delivery of EMS items to the quality of service performed. Charges are not covered; rather, total payments between countries account for service quality.

- Kahala Posts Group

The Postal Service entered into an agreement with certain postal administrations to work together to improve international postal services,

particularly EMS, packages and logistic services under the name Kahala Posts Group. This agreement does not cover charges. Inbound Express Mail International With Postage Refund Guarantee, provided under the Group's Strategic Services Agreement, is comparable to regular Express Mail International with the exception that postage refunds may be provided if date-certain delivery is not made. This service is available to and from a limited number of countries as specified in the International Mail Manual.

- E Parcel Group

This agreement provides for service standards, tracking, tracing, and charges for delivery of outbound and inbound air parcels and EMS destined to and originating in certain European countries.

- China Post

The Postal Service has a bilateral agreement with China Post which sets inbound and outbound charges for EMS and discusses improved service opportunities.

2210.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- International Ancillary Services (2250)
 - Inbound International Return Receipt (2250.3)
 - Customs Clearance and Delivery Fee (2250.6)

2210.6 Prices

Imbalance charges are set by bilateral and multilateral agreements. Unless covered by a negotiated agreement, indemnity is paid by the country of

origin to the sender and it is not reciprocal.

2215 Outbound Priority Mail International**2215.1 Description**

a. Outbound Priority Mail International may be mailed as a Priority Mail International Flat-Rate Envelope, a Priority Mail International Flat-Rate Box, or a Priority Mail International parcel.

b. All items that may be sent as First-Class Mail International, including written correspondence having the nature of current and personal correspondence, may be sent in a Priority Mail International Flat-Rate Envelope [or Small Flat-Rate Box].

c. Only the Priority Mail International Flat-Rate Envelope [and Small Flat-Rate Box are] is sealed against postal inspection and shall not be opened except as authorized by law.

d. Priority Mail International [Large and Regular] Flat-Rate Boxes and the Priority Mail International parcel services are designed for the carriage of outbound international postal parcels. Written correspondence having the nature of current and personal correspondence is not permitted. Indemnity for ordinary, uninsured parcels is included in the price of postage based on the weight of the item. The indemnity amount is determined by Article RC 148.2.1 of the Parcel Post Regulations.

e. Discounts for online preparation and payment, for use of an authorized PC postage vendor [or for qualifying customers who pay postage using information-based indicia (IBI) postage meters] or for [use of] permit imprint accounts may apply.

2215.2 Size and Weight Limitations^{1,2}

	Length	Height	Thickness	Weight
Minimum	5.5 inches	none	3.5 inch	None
Maximum — Parcels	42 inches			70 pounds
	79 inches in combined length and girth			
Maximum — Circular Parcels	42 inches			70 pounds
	girth measured along diameter of 64 inches			
— Flat-Rate Envelope	Nominal Size: 9.5 x 12.5 inches			4 pounds
— Flat-Rate Box	Nominal Sizes:			
	[LARGE:] 12.25 x 12.25 x 6.0 inches ~~(Large)~~			20 pounds
	[REGULAR:] 11.875 x 3.375 x 13.625 inches ~~(Regular)~~ [or] 11 x 8.5 x 5.5 inches ~~(Regular)~~			20 pounds
	[SMALL:] 8.625 x 5.375 x 1.625 inches]			[4 pounds]

Notes

1. Weight and other exceptional size limits based on shape and destination country restrictions may apply.
2. Items must be large enough to accommodate postage, address, and other required elements on the address side.

2215.3 Minimum Volume Requirements

	Minimum volume requirements
Outbound Priority Mail International.	None.

2215.4 Price Categories

The following price categories are available for the product specified in this section:

- Priority Mail International Flat-Rate Envelope
 - Canada and Mexico
 - All other countries
- Priority Mail International Flat-Rate Boxes
 - Canada and Mexico
 - All other countries
- Priority Mail International Parcels

Subject to the provisions of the Universal Postal Union Convention,

Ordinary, uninsured Priority Mail International Parcels include indemnity coverage in the postage prices. Indemnity is limited to the lesser of the actual value of the contents or the maximum indemnity based on weight.

- Price Groups 19 [10]
- Online Incentives

Available to customers who conduct Priority Mail International transactions online at usps.com or through an authorized PC Postage vendor [or for qualifying customers who pay postage using information-based indicia (IBI) postage meters]. The discount applies only to the postage portion of Priority Mail International rates.

- Permit Imprint Incentives

Available to customers who pay for postage by permit imprint and use approved software for mail preparation and Customs-related functions.

2215.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Pickup On Demand
- International Ancillary Services (2250)
 - International Certificate of Mailing (2250.1)
 - International Registered Mail (2250.2)
 - International Return Receipt (2250.3)
 - International Restricted Delivery (2250.4)
 - International Insurance (2250.5)

2215.7 Prices

Priority Mail International Flat-Rate Envelope

Flat-Rate Envelopes are provided by the Postal Service.

	Country price group									
	1 (\$)	2 (\$)	3 (\$)	4 (\$)	5 (\$)	6 (\$)	7 (\$)	8 (\$)	9 (\$)	10 (\$)
Flat-Rate Envelope	10.95	10.95	12.95	12.95	12.95	12.95	12.95	12.95	12.95	12.95

Priority Mail International Flat-Rate Boxes

Flat-Rate Boxes are provided by the Postal Service.

	Country price group									
	1 (\$)	2 (\$)	3 (\$)	4 (\$)	5 (\$)	6 (\$)	7 (\$)	8 (\$)	9 (\$)	10 (\$)
Small Flat-Rate Box	10.95	10.95	12.95	12.95	12.95	12.95	12.95	12.95	12.95	12.95
Regular Flat-Rate Box	25.95	25.95	41.95	41.95	41.95	41.95	41.95	41.95	41.95	41.95
Large Flat-Rate Box	32.95	32.95	53.95	53.95	53.95	53.95	53.95	53.95	53.95	53.95

Priority Mail International: 1 Parcels

Weight not over (lb.)	Price groups									
	1	2	3	4	5	6	7	8	9	10
1	\$19.00	\$19.00	\$25.00	\$23.50	\$26.50	\$25.00	\$24.00	\$23.00	\$23.00	\$26.50
2	20.75	22.75	29.25	27.25	29.75	29.25	28.50	27.25	26.75	31.35
3	22.50	26.50	33.50	31.00	33.00	33.50	33.00	31.50	30.50	36.20
4	24.25	30.25	37.75	34.75	36.25	37.75	37.50	35.75	34.25	41.05
5	26.00	34.00	42.00	38.50	39.50	42.00	42.00	40.00	38.00	45.90
6	27.75	36.75	45.75	42.25	42.50	47.25	46.50	44.25	40.75	51.05
7	29.50	39.50	49.50	46.00	45.50	52.50	51.00	48.50	43.50	56.20
8	31.25	42.25	53.25	49.75	48.50	57.75	55.50	52.75	46.25	61.35
9	33.00	45.00	57.00	53.50	51.50	63.00	60.00	57.00	49.00	66.50
10	34.75	47.75	60.75	57.25	54.50	68.25	64.50	61.25	51.75	71.65
11	36.50	50.00	64.50	61.00	57.50	73.50	69.50	66.00	55.50	76.80
12	38.25	52.25	68.25	64.75	60.50	78.75	74.50	70.75	59.25	81.95
13	40.00	54.50	72.00	68.50	63.50	84.00	79.50	75.50	63.00	87.10
14	41.75	56.75	75.75	72.25	66.50	89.25	84.50	80.25	66.75	92.25
15	43.50	59.00	79.50	76.00	69.50	94.50	89.50	85.00	70.50	97.40
16	45.25	61.25	83.25	79.75	72.50	99.75	94.50	89.75	74.25	102.55
17	47.00	63.50	87.00	83.50	75.50	105.00	99.50	94.50	78.00	107.70
18	48.75	65.75	90.75	87.25	78.50	110.25	104.50	99.25	81.75	112.85
19	50.50	68.00	94.50	91.00	81.50	115.50	109.50	104.00	85.50	118.00
20	52.25	70.25	98.25	94.75	84.50	120.75	114.50	108.75	89.25	123.15
21	54.00	72.50	102.00	98.50	87.50	126.00	119.50	113.50	93.00	128.30
22	55.75	74.75	105.75	102.25	90.50	131.25	124.50	118.25	96.75	133.45
23	57.50	77.00	109.50	106.00	93.50	136.50	129.50	123.00	100.50	138.60
24	59.25	79.25	113.25	109.75	96.50	141.75	134.50	127.75	104.25	143.75
25	61.00	81.50	117.00	113.50	99.50	147.00	139.50	132.50	108.00	148.90
26	62.75	83.75	120.75	117.25	102.50	152.25	144.50	137.25	111.75	154.05
27	64.50	86.00	124.50	121.00	105.50	157.50	149.50	142.00	115.50	159.20
28	66.25	88.25	128.25	124.75	108.50	162.75	154.50	146.75	119.25	164.35
29	68.00	90.50	132.00	128.50	111.50	168.00	159.50	151.50	123.00	169.50
30	69.75	92.75	135.75	132.25	114.50	173.25	164.50	156.25	126.75	174.65
31	71.50	95.00	139.50	136.00	117.50	178.50	169.50	161.00	130.50	179.80
32	73.25	97.25	143.25	139.75	120.50	183.75	174.50	165.75	134.25	184.95
33	75.00	99.50	147.00	143.50	123.50	189.00	179.50	170.50	138.00	190.10
34	76.75	101.75	150.75	147.25	126.50	194.25	184.50	175.25	141.75	195.25
35	78.50	104.00	154.50	151.00	129.50	199.50	189.50	180.00	145.50	200.40
36	80.25	106.25	158.25	154.75	132.50	204.75	194.50	184.75	149.25	205.55
37	82.00	108.50	162.00	158.50	135.50	210.00	199.50	189.50	153.00	210.70
38	83.75	110.75	165.75	162.25	138.50	215.25	204.50	194.25	156.75	215.85
39	85.50	113.00	169.50	166.00	141.50	220.50	209.50	199.00	160.50	221.00
40	87.25	115.25	173.25	169.75	144.50	225.75	214.50	203.75	164.25	226.15
41	89.00	117.50	177.00	173.50	147.50	231.00	219.50	208.50	168.00	231.30
42	90.75	119.75	180.75	177.25	150.50	236.25	224.50	213.25	171.75	236.45
43	92.50	122.00	184.50	181.00	153.50	241.50	229.50	218.00	175.50	241.60
44	94.25	124.25	188.25	184.75	156.50	246.75	234.50	222.75	179.25	246.75
45	96.00	.....	192.00	188.50	159.50	252.00	239.50	227.50	183.00	251.90
46	97.75	.....	195.75	192.25	162.50	257.25	244.50	232.25	186.75	257.05

Weight not over (lb.)	Price groups									
	1	2	3	4	5	6	7	8	9	10
47	99.50	.....	199.50	196.00	165.50	262.50	249.50	237.00	190.50	262.20
48	101.25	.....	203.25	199.75	168.50	267.75	254.50	241.75	194.25	267.35
49	103.00	.....	207.00	203.50	171.50	273.00	259.50	246.50	198.00	272.50
50	104.75	.....	210.75	207.25	174.50	278.25	264.50	251.25	201.75	277.65
51	106.50	.....	214.50	211.00	177.50	283.50	269.50	256.00	205.50	282.80
52	108.25	.....	218.25	214.75	180.50	288.75	274.50	260.75	209.25	287.95
53	110.00	.....	222.00	218.50	183.50	294.00	279.50	265.50	213.00	293.10
54	111.75	.....	225.75	222.25	186.50	299.25	284.50	270.25	216.75	298.25
55	113.50	.....	229.50	226.00	189.50	304.50	289.50	275.00	220.50	303.40
56	115.25	.....	233.25	229.75	192.50	309.75	294.50	279.75	224.25	308.55
57	117.00	.....	237.00	233.50	195.50	315.00	299.50	284.50	228.00	313.70
58	118.75	.....	240.75	237.25	198.50	320.25	304.50	289.25	231.75	318.85
59	120.50	.....	244.50	241.00	201.50	325.50	309.50	294.00	235.50	324.00
60	122.25	.....	248.25	244.75	204.50	330.75	314.50	298.75	239.25	329.15
61	124.00	.....	252.00	248.50	207.50	336.00	319.50	303.50	243.00	334.30
62	125.75	.....	255.75	252.25	210.50	341.25	324.50	308.25	246.75	339.45
63	127.50	.....	259.50	256.00	213.50	346.50	329.50	313.00	250.50	344.60
64	129.25	.....	263.25	259.75	216.50	351.75	334.50	317.75	254.25	349.75
65	131.00	.....	267.00	263.50	219.50	357.00	339.50	322.50	258.00	354.90
66	132.75	.....	270.75	267.25	222.50	362.25	344.50	327.25	261.75	360.05
67 .....	.....	.....	274.50	271.00	225.50	367.50	349.50	332.00	265.50	.....
68 .....	.....	.....	278.25	274.75	228.50	372.75	354.50	336.75	269.25	.....
69 .....	.....	.....	282.00	278.50	231.50	378.00	359.50	341.50	273.00	.....
70 .....	.....	.....	285.75	282.25	234.50	383.25	364.50	346.25	276.75	.....

Pickup On Demand

Add \$14.75 for each Pickup On Demand stop.

Online Incentives

A discount of 5 percent will be applied to Priority Mail International prices.

Permit Imprint Incentives

A discount of 5 percent will be applied to Priority Mail International prices.

2220 Inbound Air Parcel Post**2220.1 Description**

a. Inbound International Air Parcel Post service is designed for the carriage of postal parcels.

b. Written correspondence having the nature of current and personal correspondence is not permitted in Inbound International Air Parcel Post.

c. Inbound International Air Parcel Post service is not sealed against inspection.

d. Single-Piece inbound air parcel post is subject to the provisions of the

Universal Postal Union Convention and the Parcel Post Regulations. Inbound air parcel post may also be covered under bilateral or multilateral agreements.

e. Unless otherwise specified, reciprocal indemnity based on the weight of the parcel is included. Limits of indemnity based on weight correspond to the outbound limitations for Priority Mail International specified in the International Mail Manual.

2220.2 Size and Weight Limitations

	Length	Height	Thickness	Weight
Minimum	5.5 inches	None	3.5 inch	None.
Maximum	42 inches			70 pounds.
	79 inches in combined length and girth. For circular parcels: a length plus diameter of 64 inches.			

2220.3 Minimum volume requirements

	Minimum volume requirements
Inbound Air Parcel Post	None.

2220.4 Price Categories

The following price categories are available for the product specified in this section:

- UPU—Inward Land Rates

Payment for processing inbound single-piece air parcel post is made under UPU inward land rates. See

Universal Postal Union International Bureau Circulars.

- Bilateral/Multilateral Agreements
 - E Parcel Group

This agreement provides for service standards, tracking, tracing, and charges for delivery of outbound and inbound air parcels and EMS destined to and originating in certain European countries.

- Canada Post Bilateral Agreement

This agreement governs the exchange of air and surface parcel post mail between the U.S. and Canada. In particular, the agreement provides charges for delivery of outbound and inbound air and surface parcel post.

2220.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Inbound International Ancillary Services (2250)
 - Inbound International Return Receipt (2250.3)
 - Inbound International Insurance (2250.5)
 - Customs Clearance and Delivery Fee (2250.6)

2220.6 Prices

Foreign postal administrations pay the Postal Service for the delivery of inbound mail. The amount paid is set by the Universal Postal Union, known as inward land rates. Prices may also be set by bilateral or multilateral agreements.

2225 International Priority Airmail (IPA)

2225.1 Description

a. International Priority Airmail is a bulk international airmail service for mailing First-Class Mail International items.

b. International Priority Airmail may include matter containing personal information, partially or wholly handwritten or typewritten matter, or bills or statements of account.

c. Priority Mail International items, either ordinary or insured, may not be mailed using International Priority Airmail.

d. International Priority Airmail is sealed against postal inspection and shall not be opened except as authorized by law.

e. Most prices for international postage are segmented into Price Groups with multiple destination countries

represented in each Price Group. To identify what Price Group a destination country is in, refer to Country Price Group List for International Mail (4000). The number of Price Groups that exist depends on the category of mail. A particular destination country may fall into different Price Groups for different categories of mail.

2225.2 Size and Weight Limitations

Mailpiece Requirements (mailpieces contained within M-Bags are subject to the separate International Direct Sacks—M-Bag (2515) requirements)

a. Letters

	Length	Height	Thickness	Weight
Minimum	5.5 inches	3.5 inches	0.007 inch	None.
Maximum	11.5 inches	6.125 inches	0.25 inch	3.5 ounces.

b. Postcards

	Length	Height	Thickness	Weight
Minimum	5.5 inches	3.5 inches	0.007 inch	None.
Maximum	6 inches	4.25 inches	0.016 inch	Not applicable.

c. Large Envelopes (Flats)

	Length	Height	Thickness	Weight
Minimum ¹	11.5 inches	6.125 inches	0.25 inch	None.
Maximum	15 inches	12 inches	0.75 inch	4 pounds.

Notes:

¹Only one minimum dimension must be met.

d. Packages (Small Packets)

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address, and other required elements on the address side.			None.
Maximum	24 inches Length plus height plus thickness of 36 inches.			4 pounds.

e. Rolls

	Length	Length plus twice the diameter	Weight
Minimum	4 inches	6.75 inches	None.
Maximum	36 inches	42 inches	4 pounds.

2225.3 Minimum Volume Requirements

	Minimum volume requirements
Presort	11 pounds of presorted mail to a single rate group.

	Minimum volume requirements
Worldwide Nonpresort.	11 pounds in the total mailing.
M-Bag	None.

2225.4 Price Categories

The following price categories are available for the product specified in this section:

International Priority Airmail

- Presort Mail (Full Service and ISC Drop Shipment)
 - Price Groups 1–9

- Worldwide Nonpresort Mail (Full Service and ISC Drop Shipment)
 - Worldwide

International Priority Airmail M-Bag (Full Service and ISC Drop Shipment)

- Price Groups 1–9

2225.5 Optional Features

The following additional postal services may be available in conjunction

with the product specified in this section:

- International Ancillary Services (2250)
 - International Certificate of Mailing (2250.1)

2225.6 Prices

International Priority Airmail

The price is determined by adding the applicable per-piece price to the

applicable per-pound price. The per-piece price applies to each mailpiece regardless of weight. The per-pound price applies to the net weight (gross weight of the sack minus the tare weight of the sack) of the mail for the specific rate group.

a. Presort Mail (Full Service and ISC Drop Shipment)

i. Per Piece

	Price group								
	1 (\$)	2 (\$)	3 (\$)	4 (\$)	5 (\$)	6 (\$)	7 (\$)	8 (\$)	9 (\$)
Full Service	0.40	0.15	0.40	0.41	0.15	0.15	0.15	0.12	0.31
ISC Drop Shipment	0.40	0.15	0.40	0.41	0.15	0.15	0.15	0.12	0.31

ii. Per Pound

	Price group								
	1 (\$)	2 (\$)	3 (\$)	4 (\$)	5 (\$)	6 (\$)	7 (\$)	8 (\$)	9 (\$)
Full Service	5.44	6.10	7.50	7.70	6.50	5.80	7.50	8.00	8.25
ISC Drop Shipment	4.44	5.10	6.50	6.70	5.50	4.80	6.50	7.00	7.25

- b. Worldwide Nonpresort Mail (Full Service and ISC Drop Shipment)

i. Per Piece

	(\$)
Full Service	0.36
ISC Drop Shipment	0.36

ii. Per Pound

	(\$)
Full Service	8.50
ISC Drop Shipment	7.50

International Priority Airmail M-Bag

The price is based on the applicable per-pound price. The per-pound price

applies to the net weight (gross weight of the sack minus the tare weight of the sack) of the mail for the specific rate group.

a. International Priority Airmail M-Bag (Full Service)

Maximum weight (pounds)	Price group								
	1 (\$)	2 (\$)	3 (\$)	4 (\$)	5 (\$)	6 (\$)	7 (\$)	8 (\$)	9 (\$)
11	23.10	29.70	39.60	56.65	48.40	46.20	54.45	53.35	61.60
For each additional pound or fraction thereof	2.10	2.70	3.60	5.15	4.40	4.20	4.95	4.85	5.60

- b. International Priority Airmail M-Bag (ISC Drop Shipment)

Maximum weight (pounds)	Price group								
	1 (\$)	2 (\$)	3 (\$)	4 (\$)	5 (\$)	6 (\$)	7 (\$)	8 (\$)	9 (\$)
5	19.30	25.00	30.85	44.50	38.75	38.65	44.80	42.50	47.75
6	19.75	25.60	31.85	46.25	39.90	39.45	45.95	43.85	49.60
7	20.20	26.20	32.85	48.00	41.05	40.25	47.10	45.20	51.45
8	20.65	26.80	33.85	49.75	42.20	41.05	48.25	46.55	53.30
9	21.10	27.40	34.85	51.50	43.35	41.85	49.40	47.90	55.15
10	21.55	28.00	35.85	53.25	44.50	42.65	50.55	49.25	57.00
11	22.00	28.60	36.85	55.00	45.65	43.45	51.70	50.60	58.85
For each additional pound or fraction thereof	2.00	2.60	3.35	5.00	4.15	3.95	4.70	4.60	5.35

2230 International Surface Airlift (ISAL)**2230.1 Description**

a. International Surface Airlift is an international bulk mailing service for mailing First-Class Mail International items. International Surface Airlift shipments are flown to the foreign destinations and entered into that country's surface or nonpriority mail system for delivery.

b. International Surface Airlift may include matter containing personal

information, partially or wholly handwritten or typewritten matter, or bills or statements of account.

c. International Surface Airlift is not sealed against postal inspection. Mailing of matter by International Surface Airlift constitutes consent by the mailer to postal inspection of the contents, regardless of the physical closure.

d. Most prices for international postage are segmented into Price Groups with multiple destination countries represented in each Price Group. To identify what Price Group a destination

country is in, refer to Country Price Group List for International Mail (4000). The number of Price Groups that exist depends on the category of mail. A particular destination country may fall into different Price Groups for different categories of mail.

2230.2 Size and Weight Limitations

Mailpiece Requirements (mailpieces contained within M-Bags are subject to the separate International Direct Sacks—M-Bag (2515) requirements)

a. Letters

	Length	Height	Thickness	Weight
Minimum	5.5 inches	3.5 inches	0.007 inch	None.
Maximum	11.5 inches	6.125 inches	0.25 inch	3.5 ounces.

Notes

1. Packages of letter-size pieces of mail should be no thicker than

approximately a handful of mail (4" to 6"). A package or packet is defined as 10 or more pieces of mail to the same

country separation or 1 pound or more regardless of the number of pieces.

b. Postcards

	Length	Height	Thickness	Weight
Minimum	5.5 inches	3.5 inches	0.007 inch	None.
Maximum	6 inches	4.25 inches	0.016 inch	not applicable.

c. Large Envelopes (Flats) ¹

	Length	Height	Thickness	Weight
Minimum ²	11.5 inches	6.125 inches	0.25 inch	None.
Maximum	15 inches	12 inches	0.75 inches	4 pounds.

Notes:

¹ Packages of flat-size mail may be thicker than 6", but weigh no more than 11 pounds. A package or packet is defined as 10 or more pieces of mail to the same country separation or 1 pound or more regardless of the number of pieces.

² Only one minimum dimension must be met.

d. Packages (Small Packets)

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address, and other required elements on the address side.	.....	.....	None.
Maximum	24 inches .....	.....	.....	4 pounds.
	Length plus height plus thickness of 36 inches.			

e. Rolls

	Length	Length plus twice the diameter	Weight
Minimum	4 inches	6.75 inches	None.
Maximum	36 inches	42 inches	4 pounds.

2230.3 Minimum Volume Requirements

	Minimum volume requirements
Full Service and ISC Drop Shipment.	50 pounds per mailing.

2230.4 Price Categories

The following price categories are available for the product specified in this section:

- International Surface Air Lift (Full Service and ISC Drop Shipment)
 - Price Groups 1–9
- International Surface Air Lift M-Bags (Full Service and ISC Drop Shipment)
 - Price Groups 1–9

2230.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- None

2230.6 Prices*International Surface Air Lift (Full Service and ISC Drop Shipment)*

The price is determined by adding the applicable per-piece price to the applicable per-pound price. The per-piece price applies to each mailpiece regardless of weight. The per-pound price applies to the net weight (gross weight of the sack minus the tare weight of the sack) of the mail for the specific rate group.

a. Per Piece

	Price group								
	1 (\$)	2 (\$)	3 (\$)	4 (\$)	5 (\$)	6 (\$)	7 (\$)	8 (\$)	9 (\$)
Full Service	0.41	0.15	0.43	0.44	0.15	0.15	0.15	0.12	0.30
ISC Drop Shipment	0.41	0.15	0.43	0.44	0.15	0.15	0.15	0.12	0.30

b. Per Pound

	Price group								
	1 (\$)	2 (\$)	3 (\$)	4 (\$)	5 (\$)	6 (\$)	7 (\$)	8 (\$)	9 (\$)
Full Service	3.61	5.15	4.45	4.46	5.45	5.55	5.45	6.60	4.48
ISC Drop Shipment	2.61	4.15	3.45	3.46	4.45	4.55	4.45	5.60	3.48

International Surface Air Lift M-Bags

The price is based on the applicable per-pound price. The per-pound price

applies to the net weight (gross weight of the sack minus the tare weight of the sack) of the mail for the specific rate group.

a. International Surface Air Lift M-Bags (Full Service)

Maximum weight (pounds)	Price group								
	1 (\$)	2 (\$)	3 (\$)	4 (\$)	5 (\$)	6 (\$)	7 (\$)	8 (\$)	9 (\$)
11	17.60	18.70	22.00	30.80	25.85	25.85	28.60	35.75	33.00
For each additional pound or fraction thereof	1.60	1.70	2.00	2.80	2.35	2.35	2.60	3.25	3.00

b. International Surface Air Lift M-Bag ISC (ISC Drop Shipment)

Maximum weight (pounds)	Price group								
	1 (\$)	2 (\$)	3 (\$)	4 (\$)	5 (\$)	6 (\$)	7 (\$)	8 (\$)	9 (\$)
5	15.90	14.30	11.45	16.25	12.90	14.40	12.05	16.20	18.25
6	16.00	14.85	12.75	18.40	14.60	15.85	14.35	19.00	20.25
7	16.10	15.40	14.05	20.55	16.30	17.30	16.65	21.80	22.25
8	16.20	15.95	15.35	22.70	18.00	18.75	18.95	24.60	24.25
9	16.30	16.50	16.65	24.85	19.70	20.20	21.25	27.40	26.25
10	16.40	17.05	17.95	27.00	21.40	21.65	23.55	30.20	28.25
11	16.50	17.60	19.25	29.15	23.10	23.10	25.85	33.00	30.25
For each additional pound or fraction thereof	1.50	1.60	1.75	2.65	2.10	2.10	2.35	3.00	2.75

2235 International Direct Sacks—M-Bags**2235.1 Description**

a. International Direct Sacks—M-Bags are direct sacks containing printed matter to a single addressee. Printed

matter is defined as paper on which words, letters, characters, figures, images, or any combination thereof, not having the character of a bill or statement of account, or of actual or personal correspondence, have been

reproduced by any process other than handwriting or typewriting.

b. M-Bags are available for both outbound and inbound international mail.

- Outbound International Direct Sacks—M-Bags are direct sacks of

printed matter of domestic origin mailed to a single foreign addressee.

- Inbound air and surface

International Direct Sacks—M-Bags are direct sacks of printed matter of foreign origin mailed to a single domestic addressee.

c. M-Bags may include articles of merchandise related to the enclosed printed matter as specified in the International Mail Manual (outbound)

or the Universal Postal Convention (inbound).

d. M-Bags are not sealed against postal inspection. Mailing of matter by such service constitutes consent by the mailer to postal inspection of the contents, regardless of the physical closure.

e. Most prices for international postage are segmented into Price Groups with multiple destination countries

represented in each Price Group. To identify what Price Group a destination country is in, refer to Country Price Group List for International Mail (4000). The number of Price Groups that exist depends on the category of mail. A particular destination country may fall into different Price Groups for different categories of mail.

2235.2 Size and Weight Limitations

	Length	Height	Thickness	Weight
Minimum .....	.....	.....	.....	None.
Maximum Outbound	No defined size limits as long as articles being sent can be enclosed in the mailbag as specified in the International Mail Manual.			66 pounds. ¹
Maximum Inbound	No defined size limits as long as articles being sent can be enclosed in the mailbag as specified in the UPU Convention.			66 pounds. ¹

Notes:

¹ Includes the tare weight of the sack.

2235.3 Minimum Volume Requirements

	Minimum volume requirements
Outbound	None.
Inbound	None.

2235.4 Price Categories

The following price categories are available for the product specified in this section:

Outbound International Direct Sacks—M-Bags Price Categories

- M-Bags
- Price Groups 1–9

Inbound International Direct Sacks—M-Bags Price Categories

As established by the originating foreign country conforming to Universal Postal Convention requirements.

2235.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

Optional Features for Outbound International Direct Sacks—M-Bags

- International Ancillary Services (2250)
- International Certificate of Mailing (2250.1)

Optional Features for Inbound International Direct Sacks—M-Bags

- None

2235.6 Prices

Outbound International Direct Sacks—M-Bags

The price is based on the applicable per-pound price. The per-pound price applies to the net weight (gross weight of the sack minus the tare weight of the sack) of the mail for the specific rate group.

AIRMAIL M-BAG PRICES ¹

Price group	Weight not over 11 lbs.	Additional per lb.
1	\$26.95	\$2.45
2	28.60	2.60
3	55.00	5.00
4	46.20	4.20
5	35.75	3.25
6	56.10	5.10
7	46.75	4.25
8	46.75	4.25
9	44.00	4.00

¹ Same as Price Groups 1–9 for Single-Piece First-Class Mail International (SPFCMI).

Inbound International Direct Sacks—M-Bags

Payment is made in accordance with Part III of the Universal Postal Convention and associated UPU Letter Post Regulations. This information is available at www.upu.int.

2240 International Money Transfer Service

2240.1 Description

Outbound and Inbound International Money Transfer services are available.

Outbound International Money Transfer

Outbound International Money Transfer service enables customers to make payments or transfer funds to

individuals or firms in foreign destinations. This product includes both hardcopy money orders and electronic money transfers, which may be offered in cooperation with foreign postal administrations, commercial banks and money-transfer operators. The amount for a single international postal money order or electronic money transfer may be limited as specified in the International Mail Manual. Additional restrictions on the quantity and dollar value of international money transfers imposed by law, the destination country, or under requirements prescribed by the Postal Service may apply.

Inbound International Money Transfer Services

Inbound International Money Transfer services consist of two categories—paper money orders governed by the Universal Postal Convention and those governed by agreements with foreign postal administrations.

2240.2 Price Categories

The following price categories are available for the product specified in this section:

Outbound Price Categories

- International Money Orders
- This applies to hardcopy money orders. A receipt of purchase is provided at no additional cost. The Postal Service will replace money orders that are spoiled or incorrectly prepared, regardless of who caused the error, without charge if replaced on the date originally issued. If a replacement money order is issued after the date of original issue because the original was spoiled or incorrectly prepared, the applicable money order fee may be collected from the customer. Inquiries

or claims may be filed by the purchaser, payee, or endorsee. * * *

- Electronic Money Transfers

The service includes a receipt with the confirmation number, exchange rate, amount of foreign currency, and fee paid for this service. This service is available at select USPS retail outlets. There are no additional charges when the transferred funds are retrieved in the destination country.

Inbound Price Categories

- UPU

Payment is made in accordance with Article 8, RF 801 of the Manual of the Postal Payment Services. This information is available at www.upu.int.

- Postal Payment Services Agreements

Currently, the USPS has a number of International Money Order agreements for both outbound and inbound paper money orders.

2240.3 Prices

Outbound Prices

a. Outbound International Money Order

	(\$)
Per International Money Order	3.85

b. Outbound Electronic Money Transfer

	Transfer amount		
	Minimum amount (\$)	Maximum amount (\$)	Per transfer (\$)
Electronic Money Transfer	0.00	750.00	10.00
	750.01	1,500.00	15.00
	1,500.01	2,000.00	20.00
Refund	0.00	2,000.00	25.00
Change of Recipient	0.00	2,000.00	10.00

Inbound Prices

Foreign postal administrations pay the Postal Service for the delivery of inbound Money Transfer Service. The amount paid is set by the Universal Postal Union. Prices may also be set by bilateral or multilateral agreements.

2245 Inbound Surface Parcel Post (at non-UPU rates)

2245.1 Description

a. Inbound Surface Parcel Post (at non-UPU rates) is subject to the provisions of negotiated agreements.

b. Documents having the character of current and personal correspondence generally are prohibited in Inbound Surface Parcel Post.

c. Inbound Surface Parcel Post is not sealed against inspection.

d. Ordinary Inbound surface parcels may weigh up to 70 pounds and include reciprocal indemnity based on the weight of the parcel. Limits of indemnity based on weight correspond to the outbound limitations for Priority Mail International as specified in the International Mail Manual.

2245.2 Size and Weight Limitations

	Length	Height	Thickness	Weight
Minimum	5.5 inches	None	3.5 inch	None. 70 pounds.
Maximum	42 inches			
	79 inches in combined length and girth.			
	For circular parcels: a length plus diameter of 64 inches.			

2245.3 Minimum Volume Requirements

	Minimum volume requirements
Inbound Surface Parcel Post (at non-UPU rates).	None.

2245.4 Price Categories

The following price categories are available for the product specified in this section:

- Bilateral/Multilateral Agreements
 - Canada Post Bilateral Agreement

This agreement governs the exchange of air and surface parcel post mail between the U.S. and Canada. In particular, the agreement provides

charges for delivery of outbound and inbound air and surface parcel post.

2245.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- International Ancillary Services (2250)
 - Inbound International Return Receipt (2250.3)
 - Inbound International Insurance (2250.5)
 - Customs Clearance and Delivery Fee (2250.6)

2245.6 Prices

Prices set by bilateral or multilateral agreements.

2250 International Ancillary Services

2250.1 International Certificate of Mailing

2250.1.1 Description

a. International Certificate of Mailing service furnishes evidence that mail has been presented to the Postal Service for mailing.

b. International Certificate of Mailing is available for Priority Mail International Flat-Rate Envelopes [and Small Flat-Rate Boxes], Priority Mail International parcels purchased without insurance, International Priority Airlift, and International Direct Sacks—M-Bags.

2250.1.2 Prices

Individual Pieces Prices

	(\$)
Original certificate of mailing for listed pieces of ordinary Priority Mail International parcels	1.10
Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece)	0.40
Each additional copy of original certificate of mailing or firm mailing bills (each copy)	1.10

Multiple Pieces Prices

Identical pieces of ordinary Single-Piece First-Class Mail International paid with regular stamps, precanceled stamps, or meter stamps are subject to the following fees:

	(\$)
Up to 1,000 pieces (one certificate for total number)	6.00
Each additional 1,000 pieces or fraction	0.70
Duplicate copy	1.10

2250.2 International Registered Mail

2250.2.1 Description

a. International Registered Mail service provides additional protection and security in dispatch and conveyance in the United States for items mailed in a Priority Mail Flat-Rate Envelope [or Small Flat-Rate Box]. In destination countries registered mail items are handled in accordance with the internal procedures of the destination country.

b. Registered items may weigh up to 4 pounds.

c. For each registered item a mailing receipt is issued by the office of mailing and a record of delivery is maintained at the office of destination.

d. Regardless of the declared value of a registered item, the maximum amount of indemnity payable for loss, damage, or rifling is limited to the amount set by the Universal Postal Union in Article RL 155.4 of the Letter Post Regulations.

e. International Registered Mail service is subject to both U.S. Postal Service requirements and the prohibitions and restrictions of the destination country.

2250.2.2 Prices

	(\$)
Per Piece	10.80

2250.3 International Return Receipt

2250.3.1 Description

Outbound International Return Receipt

a. Outbound International Return Receipt service provides evidence to the mailer that an article has been received at the delivery address. It must be purchased at the time of mailing. The return receipt, which is attached to the article mailed, is signed at the point of delivery and is returned to the sender.

b. Outbound International Return Receipt service is subject to availability in the destination country for registered Priority Mail Flat-Rate Envelopes [and Small Flat-Rate Boxes], insured parcels, and Express Mail International.

Inbound International Return Receipt

a. Inbound International Return Receipt service provides evidence to the mailer that an article has been received at the delivery address. A return receipt is signed at the point of delivery and is returned to the sender.

b. Inbound International return receipt service is available for insured parcels.

2250.3.2 Prices

Outbound International Return Receipt

	(\$)
Per Piece	2.20

Inbound International Return Receipt

No additional payment.

2250.4 International Restricted Delivery

2250.4.1 Description

a. International Restricted Delivery service limits who may receive an item as determined by the internal requirements of the destination country.

b. International Restricted Delivery service is available only at the time of mailing for registered Priority Mail International Flat-Rate Envelopes [and Small Flat-Rate Boxes] accompanied by a return receipt, subject to availability in the destination country.

2250.4.2 Prices

	(\$)
Per Piece	4.30

2250.5 International Insurance

2250.5.1 Description

Outbound International Insurance

a. Optional outbound insurance may be purchased to protect against loss, damage, or rifling for Priority Mail International parcels and Priority Mail International [Large and Regular] Flat-Rate Boxes. When additional insurance is purchased for uninsured Priority Mail International parcels, it replaces the indemnity coverage.

b. Optional additional merchandise insurance may be purchased to protect against loss, damage, or rifling for Express Mail International and Global Express Guaranteed.

Inbound International Insurance

a. Inbound International Insurance is available for inbound air parcels from countries which offer the service on a reciprocal basis. Indemnity limits vary by country as specified in the International Mail Manual. The maximum insurance limit available to the United States is \$5,000.00.

2250.5.2 Price Categories

The following price categories are available for the product specified in this section:

Outbound Price Categories

- Priority Mail International Insurance

Available for Priority Mail International parcels and Priority Mail International [Large and Regular] Flat-Rate Boxes.

- Express Mail International Merchandise Insurance

Available for Express Mail International merchandise.

- Global Express Guaranteed Insurance

Available for Global Express Guaranteed items that contain merchandise or documents.

2250.5.3 Prices

Outbound International Insurance

a. Priority Mail International Insurance.

Indemnity limit not over (\$)	Canada (\$)	All other countries (\$)
50	1.70	2.45
100	2.15	3.35
200	2.60	4.30
300	4.60	5.25

Indemnity limit not over (\$)	Canada (\$)	All other countries (\$)
400	5.55	6.20
500	6.50	7.15
600	7.45	8.10
675	8.40	9.05
700	N/A	9.05
Over 700	N/A	9.05 plus 0.95 for each 100.00 or fraction thereof over 700.00. Maximum indemnity varies by country.

b. Express Mail International
Merchandise Insurance.

	(\$)		(\$)	(\$)
Amount of coverage:				
	0.01	To	100.00	0.00
	100.01	To	200.00	0.75
	200.01	To	500.00	2.10
	500.01	To	1,000.00	3.45
	1,000.01	To	1,500.00	4.80
	1,500.01	To	2,000.00	6.15
	2,000.01	To	2,500.00	7.50
	2,500.01	To	3,000.00	8.85
	3,000.01	To	3,500.00	10.20
	3,500.01	To	4,000.00	11.55
	4,000.01	To	4,500.00	12.90
	4,500.01	To	5,000.00	14.25

c. Global Express Guaranteed
Insurance.

	(\$)		(\$)	(\$)
Amount of coverage:				
	0.01	To	100.00	0.00
	100.01	To	200.00	1.00
	200.01	To	300.00	2.00
	300.01	To	400.00	3.00
	400.01	To	500.00	4.00

For document reconstruction insurance or non-document insurance coverage above 500.00, add 1.00 per

100.00 or fraction thereof, up to a maximum of 2,499.00 per shipment. Maximum indemnity varies by country.

Inbound International Insurance

Inbound International Insurance

	Up to		2,499.00	24.00

Payment is made in accordance with Part III of the Universal Postal Convention, associated UPU Parcel Post Regulations. This information is available at www.upu.int. Other charges may be set under negotiated agreements.

2250.6 Custom Clearance and Delivery Fee

2250.6.1 Description

The Postal Service collects a fee on each inbound package on which customs duty or Internal Revenue tax is collected.

2250.6.2 Prices

	(\$)
Per Dutiable Item	5.35

PART D—Country Price Lists for International Mail

4000 Country Price Lists for International Mail

Country	Market dominant	Competitive			IPA & ISAL ⁵
	SPFCMI ¹	International Ex- pedited Services		Inter- nation- al pack- ages	
		GXG ²	EMI ³	PMI ⁴	
A					
Afghanistan	6	6	.....	6	8
Albania	4	4	4	4	5
Algeria	8	4	8	8	8
Andorra	5	5	5	5	3
Angola	7	4	7	7	8
Anguilla	9	7	9	9	6
Antigua & Barbuda	9	7	.....	9	6
Argentina	9	8	9	9	6
Armenia	4	4	4	4	8
Aruba	9	7	9	9	6
Ascension	7	.....	.....	.....	5
Australia	3	6	[10]	[10]	9
Austria	5	5	5	5	3
Azerbaijan	4	4	4	4	8
B					
Bahamas	9	7	9	9	6
Bahrain	8	6	8	8	8
Bangladesh	6	6	6	6	8
Barbados	9	7	9	9	6
Belarus	4	4	4	4	5
Belgium	5	3	5	5	3
Belize	9	8	9	9	6
Benin	7	4	7	7	8
Bermuda	9	7	9	9	6
Bhutan	6	6	6	6	8
Bolivia	9	8	9	9	6
Bosnia-Herzegovina	4	4	4	4	5
Botswana	7	4	7	7	8
Brazil	9	8	9	9	6
British Virgin Islands	9	7	.....	9	6
Brunei Darussalam	6	4	6	6	7
Bulgaria	4	4	4	4	5
Burkina Faso	7	4	7	7	8
Burma (Myanmar)	6	.....	.....	6	8
Burundi	7	4	7	7	8
C					
Cambodia	6	8	6	6	7
Cameroon	7	4	7	7	8
Canada	1	1	1	1	1
Cape Verde	7	4	7	7	8
Cayman Islands	9	7	9	9	6
Central African Republic	7	.....	7	7	8
Chad	7	4	7	7	8
Chile	9	8	9	9	6
China	3	6	3	3	7
Colombia	9	8	9	9	6
Comoros	7	.....	.....	7	8
Congo, Democratic Republic of the	7	4	7	7	8
Congo, Republic of the	7	4	7	7	8
Costa Rica	9	8	9	9	6
Cote d'Ivoire (Ivory Coast)	7	4	7	7	8
Croatia	4	4	4	4	5
Cuba	9	.....	.....	.....	6
Cyprus	4	6	4	4	8
Czech Republic	4	4	4	4	5
D					
Denmark	5	5	5	5	3
Djibouti	7	4	7	7	8
Dominica	9	7	9	9	6

Country	Market dominant	Competitive			IPA & ISAL ⁵
	SPFCMI ¹	International Ex- pedited Services		Inter- national pack- ages	
		GXG ²	EMI ³	PMI ⁴	
Dominican Republic	9	7	9	9	6
E					
Ecuador	9	8	9	9	6
Egypt	8	6	8	8	8
El Salvador	9	8	9	9	6
Equatorial Guinea	7	.....	7	7	8
Eritrea	7	4	7	7	8
Estonia	4	4	4	4	5
Ethiopia	8	4	8	8	8
F					
Falkland Islands	9	.....	.....	.....	6
Faroe Islands	5	5	5	5	5
Fiji	6	8	6	6	7
Finland	5	5	5	5	3
France	5	3	5	5	3
French Guiana	9	8	9	9	6
French Polynesia	6	4	6	6	7
G					
Gabon	7	4	7	7	8
Gambia	7	4	.....	7	8
Georgia, Republic of	4	4	4	4	8
Germany	5	3	5	5	3
Ghana	7	4	7	7	8
Gibraltar	5	4	.....	5	3
Great Britain and Northern Ireland	5	3	5	5	3
Greece	5	5	5	5	3
Greenland	5	5	.....	5	3
Grenada	9	7	9	9	6
Guadeloupe	9	7	9	9	6
Guatemala	9	8	9	9	6
Guinea	7	4	7	7	8
Guinea-Bissau	7	.....	7	7	8
Guyana	9	8	9	9	6
H					
Haiti	9	7	9	9	6
Honduras	9	8	9	9	6
Hong Kong	3	3	3	3	7
Hungary	4	4	4	4	5
I					
Iceland	5	5	5	5	3
India	6	6	6	6	8
Indonesia	6	6	6	6	7
Iran	8	.....	.....	8	8
Iraq	8	6	8	8	8
Ireland (Eire)	5	3	5	5	3
Israel	8	6	8	8	3
Italy	5	3	5	5	3
J					
Jamaica	9	7	9	9	6
Japan	3	3	3	3	4
Jordan	8	6	8	8	8
K					
Kazakhstan	6	4	6	6	8
Kenya	7	4	7	7	8

Country	Market dominant	Competitive			IPA & ISAL ⁵
	SPFCMI ¹	International Expedited Services		International packages	
		GXG ²	EMI ³	PMI ⁴	
Kiribati	6	.....	.....	6	7
Korea, Democratic People's Republic of (North)	6	.....	.....	.....	7
Korea, Republic of (South)	3	6	3	3	7
Kuwait	8	6	8	8	8
Kyrgyzstan	6	4	6	6	5

L

Laos	6	8	6	6	7
Latvia	4	4	4	4	5
Lebanon	8	6	.....	8	8
Lesotho	7	4	7	7	8
Liberia	7	4	7	7	8
Libya	8	.....	.....	8	8
Liechtenstein	5	5	5	5	3
Lithuania	4	4	4	4	5
Luxembourg	5	3	5	5	3

M

Macao	6	3	6	6	5
Macedonia, Republic of	4	4	4	4	5
Madagascar	7	4	7	7	8
Malawi	7	4	7	7	8
Malaysia	6	6	6	6	7
Maldives	6	6	6	6	8
Mali	7	4	7	7	8
Malta	5	5	5	5	8
Martinique	9	7	9	9	6
Mauritania	7	4	7	7	8
Mauritius	7	4	7	7	8
Mexico	2	2	2	2	2
Moldova	4	4	4	4	8
Mongolia	6	4	6	6	7
Montserrat	9	7	.....	9	6
Morocco	8	4	8	8	8
Mozambique	7	4	7	7	8

N

Namibia	7	4	7	7	8
Nauru	6	.....	6	6	7
Nepal	6	6	6	6	7
Netherlands	5	3	5	5	3
Netherlands Antilles	9	7	9	9	6
New Caledonia	6	8	6	6	7
New Zealand	6	6	[10]	[10]	4
Nicaragua	9	8	9	9	6
Niger	7	4	7	7	8
Nigeria	7	4	7	7	8
Norway	5	5	5	5	3

O

Oman	8	6	8	8	8

P

Pakistan	6	6	6	6	8
Panama	9	8	9	9	6
Papua New Guinea	6	8	6	6	7
Paraguay	9	8	9	9	6
Peru	9	8	9	9	6
Philippines	6	6	6	6	7
Pitcairn Island	6	.....	.....	6	7
Poland	4	4	4	4	5
Portugal	5	5	5	5	3

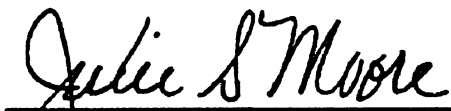
Country	Market dominant	Competitive			IPA & ISAL ⁵
	SPFCMI ¹	International Ex- pedited Services		Inter- national pack- ages	
		GXG ²	EMI ³	PMI ⁴	
Q					
Qatar	8	6	8	8	8
R					
Reunion	9	4	.....	9	8
Romania	4	4	4	4	5
Russia	4	4	4	4	5
Rwanda	7	4	7	7	8
S					
St. Christopher (St. Kitts) & Nevis	9	7	9	9	6
Saint Helena	7	.....	.....	7	8
Saint Lucia	9	7	9	9	6
Saint Pierre & Miquelon	4	.....	.....	4	6
Saint Vincent & Grenadines	9	7	9	9	6
San Marino	5	3	5	5	3
Sao Tome & Principe	7	.....	.....	7	5
Saudi Arabia	8	4	8	8	8
Senegal	7	4	7	7	8
Serbia-Montenegro (Yugoslavia)	5	4	5	5	5
Seychelles	7	4	7	7	8
Sierra Leone	7	.....	7	7	8
Singapore	6	3	6	6	7
Slovak Republic (Slovakia)	5	4	5	5	5
Slovenia	5	4	5	5	5
Solomon Islands	6	.....	6	6	7
Somalia .....	.....	.....	.....	.....	8
South Africa	7	4	7	7	8
Spain	5	5	5	5	3
Sri Lanka	6	6	6	6	8
Sudan	7	.....	7	7	8
Suriname	9	8	.....	9	6
Swaziland	7	4	7	7	8
Sweden	5	5	5	5	3
Switzerland	5	5	5	5	3
Syrian Arab Republic (Syria)	8	.....	8	8	8
T					
Taiwan	6	3	6	6	7
Tajikistan	6	.....	6	6	8
Tanzania	7	4	7	7	8
Thailand	6	6	6	6	7
Togo	7	4	7	7	8
Tonga	6	.....	.....	6	7
Trinidad & Tobago	9	7	9	9	6
Tristan da Cunha	7	.....	.....	7	8
Tunisia	8	4	8	8	8
Turkey	4	6	4	4	5
Turkmenistan	6	.....	6	6	5
Turks & Caicos Islands	9	7	9	9	6
Tuvalu	6	.....	.....	6	7
U					
Uganda	7	4	7	7	8
Ukraine	4	4	4	4	8
United Arab Emirates	8	6	8	8	8
Uruguay	9	8	9	9	6
Uzbekistan	6	4	6	6	8
V					
Vanuatu	6	8	6	6	7
Vatican City	5	3	5	5	3
Venezuela	9	8	9	9	6

Country	Market dominant	Competitive			IPA & ISAL ⁵
	SPFCMI ¹	International Expedited Services		International packages	
		GXG ²	EMI ³	PMI ⁴	
Vietnam	6	6	6	6	7
W					
Wallis & Futuna Islands	6	4	.....	6	7
Western Samoa	6	.....	6	6	7
Y					
Yemen	8	6	8	8	8
Z					
Zambia	7	4	7	7	8
Zimbabwe	7	4	7	7	8

Notes.¹ SPFCMI = Single-Piece First-Class Mail International. The same country price groups also apply to International Direct Sacks—M-Bags.² GXG = Global Express Guaranteed.³ EMI = Express Mail International.⁴ PMI = Priority Mail International.⁵ IPA = International Priority Airlift; ISAL = International Surface Airlift. ISAL service not available to all countries. See Individual Country Listings for availability.

CERTIFICATION OF GOVERNORS' VOTE IN THE GOVERNORS' DECISION NO. 08-19

I hereby certify that the Governors voted on adopting Governors' Decision No. 08-19, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision. The vote was 9 to 0 in favor.



Julie S. Moore
Secretary of the Board of Governors

Date: 11/13/08



Federal Register

**Friday,
November 28, 2008**

Part IV

The President

Proclamation 8323—To Provide for Duty-free Treatment Under the Earned Import Allowance Program, And for Other Purposes

**Memorandum of November 25, 2008—
Provision of Marine War Risk Insurance
Coverage**

Presidential Documents

Title 3—**Proclamation 8323 of November 25, 2008****The President****To Provide for Duty-free Treatment Under the Earned Import Allowance Program, And for Other Purposes****By the President of the United States of America****A Proclamation**

1. Section 404 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the “CAFTA-DR Act”), as added by section 2 of Public Law 110–436, 122 Stat. 4976, provides for preferential tariff treatment of eligible apparel articles wholly assembled in an eligible country and imported directly from an eligible country, if such articles are accompanied by an earned import allowance certificate issued under a program established by the Secretary of Commerce.

2. Section 404(e)(1) of the CAFTA-DR Act, as amended, provides that the program providing this preferential treatment shall be in effect for the 10-year period beginning on the date on which the President certifies to the appropriate congressional committees that sections A, B, C, and D of the Annex to Presidential Proclamation 8213 of December 20, 2007, have taken effect.

3. On August 7, 2008, the United States Trade Representative (USTR) published a notice in the *Federal Register* (73 *FR* 46057) announcing that August 15, 2008, would be the effective date for sections A, B, C, and D of the Annex to Presidential Proclamation 8213.

4. I have determined, and hereby certify, that the provisions of Proclamation 8213 referenced in section 404(e)(1) of the CAFTA-DR Act, as amended, have taken effect.

5. Section 6002 of the Africa Investment Incentive Act of 2006 (division D, title VI of Public Law 109–432) (the “2006 Act”) amended section 112(c) of the African Growth and Opportunity Act (AGOA) (19 U.S.C. 3721(c)) to modify the preferential tariff treatment accorded to designated lesser developed beneficiary sub-Saharan African countries.

6. Pursuant to section 6002 of the 2006 Act, in Proclamation 8114 of March 19, 2007, I proclaimed modifications to the Harmonized Tariff Schedule of the United States (HTS) to provide the tariff treatment authorized by the 2006 Act. The HTS provisions proclaimed in Proclamation 8114 were modified by Proclamation 8157 of June 28, 2007, and Proclamation 8240 of April 17, 2008, to provide the tariff treatment authorized by the 2006 Act.

7. Section 3 of Public Law 110–436 amends section 112(c) of the AGOA to modify the tariff treatment applicable to lesser developed beneficiary sub-Saharan African countries, and to provide that Mauritius is to be treated as a lesser developed beneficiary sub-Saharan African country for purposes of the AGOA.

8. Accordingly, in order to reflect the amendments to section 112(c) of the AGOA, I have determined that it is appropriate to modify the HTS to reflect the tariff treatment provided to lesser developed beneficiary sub-Saharan African countries and to provide that Mauritius is to be treated as a lesser developed beneficiary sub-Saharan African country for purposes of the AGOA.

9. Section 203(e)(1)(A)(i) of the Andean Trade Preference Act, as amended (ATPA) (19 U.S.C. 3202(e)(1)(A)(i)), authorizes the President to withdraw or suspend the designation of any country as a beneficiary country for purposes of the ATPA if, after such designation, the President determines that as a result of changed circumstances such country should be barred from designation as a beneficiary country.

10. Section 3103 of the Andean Trade Promotion and Drug Eradication Act (Title XXXI of the Trade Act of 2002, Public Law 107–210) (ATPDEA) amended section 203(e)(1) of the ATPA (19 U.S.C. 3202(e)(1)) by adding a new subparagraph (B)(i) authorizing the President to withdraw or suspend the designation of any country as a beneficiary country for purposes of the ATPDEA if, after such designation, the President determines that, as a result of changed circumstances, the performance of such country is not satisfactory under the eligibility criteria set forth in section 204(b)(6)(B) of the ATPA, as amended (19 U.S.C. 3203(b)(6)(B)).

11. Section 203(e)(2)(A) of the ATPA, as amended (19 U.S.C. 3202(e)(2)(A)) requires the President to publish notice of the action he proposes to take at least 30 days before taking action under section 203(e)(1) (19 U.S.C. 3202(e)(1)).

12. On October 1, 2008, the USTR, at my direction, published a notice in the *Federal Register* (73 FR 57158) announcing that I proposed to suspend the designation of Bolivia as a beneficiary country for purposes of the ATPA and the ATPDEA based on Bolivia's failure to satisfy the eligibility criteria set forth in section 203(d)(11) and section 204(b)(6)(B)(v) of the ATPA, as amended (19 U.S.C. 3202(d)(11), 3203(b)(6)(B)(v)).

13. I have determined that Bolivia no longer satisfies the eligibility criterion in section 203(d)(11) of the ATPA, as amended. Therefore, pursuant to section 203(e)(1)(A)(i) of the ATPA, I have determined that, as a result of this changed circumstance, Bolivia's designation as an ATPA beneficiary country should be suspended.

14. I have determined that Bolivia is no longer performing satisfactorily under the eligibility criterion in section 204(b)(6)(B)(v) of the ATPA, as amended. Therefore, pursuant to section 203(e)(1)(B)(i) of the ATPA, I have determined that, as a result of this changed circumstance, Bolivia's designation as an ATPDEA beneficiary country should be suspended.

15. Presidential Proclamation 6641 of December 15, 1993, implemented the North American Free Trade Agreement (NAFTA) with respect to the United States and, pursuant to the North American Free Trade Agreement Implementation Act (Public Law 103–182) (the “NAFTA Implementation Act”), incorporated in the HTS the tariff modifications and rules of origin necessary or appropriate to carry out the NAFTA.

16. Section 202 of the NAFTA Implementation Act (19 U.S.C. 3332) provides rules for determining whether goods imported into the United States originate in the territory of a NAFTA country and thus are eligible for the tariff and other treatment contemplated under the NAFTA. Section 202(q) of the NAFTA Implementation Act (19 U.S.C. 3332(q)) authorizes the President to proclaim, as a part of the HTS, the rules of origin set out in the NAFTA, and to proclaim modifications to such previously proclaimed rules of origin, subject to the consultation and layover requirements of section 103(a) of the NAFTA Implementation Act (19 U.S.C. 3313(a)).

17. The United States and Canada have agreed to modify certain NAFTA rules of origin and to apply the modified rules to their bilateral trade. It is therefore necessary to modify the NAFTA rules of origin set out in Proclamation 6641.

18. Section 1230 of the Tax Relief and Health Care Act of 2006 (Public Law 109–432) temporarily modified the rate of duty on triphenyl phosphine. Modifications to the HTS are necessary to provide the intended tariff treatment.

19. Presidential Proclamation 7011 of June 30, 1997, implemented the World Trade Organization Ministerial Declaration on Trade in Information Technology Products for the United States. Annex 1 to that proclamation failed to include certain products. Technical corrections and conforming changes to the HTS are necessary to provide the intended tariff treatment for those products.

20. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483) (the “1974 Act”), authorizes the President to embody in the HTS the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including section 404 of the CAFTA-DR Act, as amended, section 104 of the AGOA, section 202 of the NAFTA Implementation Act, section 203 of the ATPA, as amended, section 604 of the 1974 Act, and section 301 of title 3, United States Code, do proclaim that:

(1) In order to provide the tariff treatment for eligible articles provided for in section 404 of the CAFTA-DR Act, as added by Public Law 110–436, the HTS is modified as set forth in Annex A to this proclamation.

(2) In order to reflect changes to the tariff treatment for certain apparel products under the AGOA, U.S. note 5 to subchapter XIX of chapter 98 of the HTS, subheadings 9819.15.10 through 9819.15.42, inclusive, and the superior text thereto are deleted from the HTS, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after October 31, 2008.

(3) For purposes of section 112(c) of the AGOA, as amended, Mauritius is included as a lesser developed beneficiary sub-Saharan African country effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after October 31, 2008.

(4) The designation of Bolivia as a beneficiary country for purposes of the ATPA and ATPDEA is suspended effective on December 15, 2008. Accordingly, effective on that date, general note 11(a) to the HTS is modified by deleting “Bolivia” from the list of ATPA beneficiary countries. Further, general note 11(d) to the HTS is modified by deleting “Bolivia” from the list of ATPDEA beneficiary countries. In addition, U.S. note 1 to subchapter XXII of chapter 98 of the HTS is modified by removing “Bolivia” from the list of ATPDEA beneficiary countries.

(5) In order to modify the rules of origin under the NAFTA, general note 12 to the HTS is modified as set forth in Annex B to this proclamation.

(6) (a) The modifications to the HTS set forth in Annex A to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date set forth in Annex A.

(b) The modifications to the HTS set forth in Annex B to this proclamation shall enter into effect on the date that the USTR announces in a notice published in the *Federal Register* that Canada has completed its applicable domestic procedures to give effect to corresponding modifications to be applied to goods of the United States and shall be effective with respect to goods of Canada entered, or withdrawn from warehouse for consumption, on or after the date indicated in the notice.

(7) In order to provide the intended tariff treatment to triphenyl phosphine and to correct the error identified in paragraph 19, the HTS is modified as provided in Annex C to this proclamation.

(8) The modifications to the HTS made in Annex C to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date set out in that Annex.

(9) The USTR shall notify the Congress of this proclamation and my certification as provided in section 404(e) of the CAFTA-DR Act, as amended.

(10) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of November, 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.

A handwritten signature in black ink, appearing to be "GWB", written in a cursive style.

ANNEX A

**TO MODIFY THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES
REGARDING CERTAIN IMPORTED APPAREL ARTICLES**

Effective with respect to goods of a party to the Dominican Republic-Central America-United States Free Trade Agreement ("DR-CAFTA") as defined in general note 29(a) to the Harmonized Tariff Schedule of the United States ("HTS") which are entered, or withdrawn from warehouse for consumption, on or after December 1, 2008, Chapter XXII of chapter 98 of the HTS is hereby modified as follows:

1. The following new U.S. note is inserted in numerical sequence in such subchapter:

"27. Earned import allowance program.

- (a) For purposes of heading 9822.06.05, eligible apparel articles wholly assembled in and imported directly from the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabric or yarns from which the articles are made, if such apparel articles are accompanied by an earned import allowance certificate that reflect the amount of credits equal to the total square meter equivalents (SMEs) of fabric in such apparel articles, in accordance with the earned import allowance program established by the Secretary of Commerce. For purposes of determining the quantity of SMEs under this note, the conversion factors listed in "Correlation: U.S. Textile and Apparel Industry Category System with the Harmonized Tariff Schedule of the United States of America, 2008," or its successor publications, of the United States Department of Commerce shall apply.
- (b) For purposes of subdivision (a) of this note, the term "eligible apparel articles" means the following articles classified in chapter 62 of the tariff schedule (and meeting the requirements of the rules relating to chapter 62 of the tariff schedule contained in general note 29(n) of such schedule) of cotton (but not of denim): trousers, bib and brace overalls, breeches and shorts, skirts and divided skirts and pants."

2. The following new subheading is inserted in numerical sequence in such subchapter, with the material inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty 1 General", respectively:

"9822.06.05	: Eligible apparel articles of chapter 62 assembled in	:	:
	: the Dominican Republic and imported directly therefrom, :	:	:
	: under the terms of U.S. note 27 to this subchapter.....	: Free"	:

ANNEX B**TO MODIFY CERTAIN RULES OF ORIGIN FOR PURPOSES OF
THE NORTH AMERICAN FREE TRADE AGREEMENT**

Effective with respect to goods originating in the territory of Canada, under the terms of general note 12 to the Harmonized Tariff Schedule of the United States ("HTS"), that are entered, or withdrawn from warehouse for consumption, on or after the date announced by the United States Trade Representative and published in the *Federal Register*, subdivision (t) of such general note is hereby modified as follows:

1. The Note immediately above tariff classification rule ("TCR") 1 for chapter 58 is modified to read as follows:

"Note: The following TCRs 1 and 1A apply only to goods of Canada under the terms of this note."

2. TCR 1 is modified by striking "warp" and inserting in lieu thereof "woven-warp", and by striking "5515" and inserting in lieu thereof "5516".

3. The following new TCR is inserted immediately below TCR 1:

"1A. A change to subheading 5801.36 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, headings 5501 through 5502, subheadings 5503.10 through 5503.20 or 5503.40 through 5503.90 or headings 5504 through 5516."

ANNEX C

(A) Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after July 1, 1997, subheading 9030.90.64 is modified by deleting "9030.82" and inserting in lieu thereof "9030.40 or 9030.82" and by renumbering it as 9030.90.66.

(B) Conforming changes, effective on July 1, 1997:

1. Tariff classification rule 70 for chapter 90, as set forth in general note 12(t) is modified by deleting "9030.90.64" and by inserting in lieu thereof "9030.90.66".

2. General note 25(m)(9) and (152) are each modified by deleting "9030.90.64" and by inserting in lieu thereof "9030.90.66".

3. General Note 25(m)(152) is modified by deleting "9030.82" in the description opposite 9030.90.64 and replacing it with "9030.40 or 9030.82"

(C) Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 4, 2007, heading 9902.23.23 is modified by deleting "2931.00.90" and inserting in lieu thereof "2931.00.60".

Presidential Documents

Title 3—

Memorandum of November 25, 2008

The President

Provision of Marine War Risk Insurance Coverage

**Memorandum for the Secretary of State[,] the Secretary of Transportation
[and] the Director of the Office of Management And Budget**

By virtue of the authority vested in me by the Constitution and laws of the United States, including 3 U.S.C. 301 and 46 U.S.C. chapter 539, I hereby approve the provision by the Secretary of Transportation of insurance or reinsurance of vessels (including cargo and crew) against loss or damage from war risks in the manner and to the extent provided in chapter 539 of title 46, United States Code, for trade in the Black Sea, whenever, after consultation with the Secretary of State, it appears to the Secretary of Transportation that such insurance adequate for the needs of the water-borne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do insurance business in a State of the United States. To the extent individual policies involve an exposure in excess of the amounts available in the War Risk Revolving Fund, such policies may be issued only after consultation with the Office of Management and Budget. This approval to provide insurance or reinsurance is effective for 90 days, except that existing policies shall remain in force pursuant to the terms of these policies. I hereby delegate to the Secretary of Transportation, in consultation with the Secretary of State, the authority vested in me by 46 U.S.C. 53902 and 53905.

The Secretary of Transportation is directed to bring the approval to the immediate attention of all U.S.-flag vessel operators and to arrange for its publication in the *Federal Register*.



THE WHITE HOUSE,
WASHINGTON, November 25, 2008.

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Friday, November 28, 2008

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

65241-65494.....	3
65495-65714.....	4
65715-65966.....	5
65967-66142.....	6
66143-66486.....	7
66487-66712.....	10
66713-67098.....	12
67099-67358.....	13
67359-67710.....	14
67711-68288.....	17
68289-69518.....	18
69519-70238.....	19
70239-70582.....	20
70583-70856.....	21
70857-71520.....	24
71521-71908.....	25
71909-72302.....	26
72303-72686.....	28

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

8313.....	65491
8314.....	65493
8315.....	65961
8316.....	65963
8317.....	65965
8318.....	66713
8319.....	69519
8320.....	70857
8321.....	70859
8322.....	72301
8323.....	72677

Executive Orders:

9397 (amended by 13478).....	70239
13477.....	65967
13478.....	70241
13479.....	70241

Administrative Orders:

Notices:

Notice of November 10, 2008.....	67097
Notice of November 10, 2008.....	67357

Memorandums:

Memorandum of October 31, 2008.....	68289
Memorandum of November 25, 2008.....	72685

Presidential

Determinations:

No. 2009-7 of November 14, 2008.....	70583

Proposed Rules:

337.....	70915

5 CFR

294.....	66143
300.....	66157
359.....	66143
362.....	66143
451.....	66143
530.....	66143
531.....	66143
532.....	65495, 66143, 66487
534.....	66143
536.....	66143
550.....	66143
591.....	65241, 66143
630.....	65496, 66143
731.....	66489
831.....	66143
842.....	66143

Proposed Rules:

357.....	70915

6 CFR

5.....	68291, 71521

Proposed Rules:

Ch. I.....	65783

5.....	67422, 71563

7 CFR

51.....	70585
248.....	65246
402.....	70861
407.....	70861
457.....	70861
610.....	71521
915.....	66715
981.....	66719
1205.....	69521
1427.....	65715
1465.....	70245
1735.....	65724
1776.....	68293
1980.....	65503
3560.....	65505

Proposed Rules:

305.....	66200
319.....	66200, 66807
340.....	66563
920.....	69588
1735.....	65783
1776.....	68364
3022.....	70915
5001.....	70542

8 CFR

204.....	72276
214.....	72276
217.....	67711
231.....	68295
299.....	72276

9 CFR

93.....	70256
94.....	65255

10 CFR

72.....	70587
611.....	66721

Proposed Rules:

37.....	69590
50.....	66000, 68364, 71564
51.....	72370
72.....	70607

12 CFR

19.....	66493
201.....	65967
204.....	65506, 67713
229.....	70590
233.....	69382
370.....	66160, 72244
585.....	65257
701.....	71909
705.....	71909

Proposed Rules:

Ch. VI.....	65567
327.....	67423
619.....	70921

620.....70921
 621.....70921
 701.....71948
 705.....71948
 1231.....67424

13 CFR

120.....67099

14 CFR

23.....65968, 66163, 72303
 25.....65968, 70257, 71913
 29.....65968
 33.....65968
 35.....65968
 39.....65507, 65509, 65511,
 65972, 65975, 65977, 65979,
 66497, 66512, 66737, 66738,
 66740, 66743, 66745, 66747,
 67359, 67361, 67363, 67368,
 67372, 67374, 67376, 67379,
 67383, 67714, 67716, 67718,
 67720, 67722, 68313, 70261,
 70263, 70265, 70267, 70866,
 71526, 71528, 71530, 71532,
 71534, 71537, 71539, 71541,
 72310, 72314, 72316, 72320,
 72323, 72326
 71.....66514, 66515, 68316,
 68317, 68318, 68319, 70270,
 70271, 70272, 70273, 71917,
 71918
 73.....67102
 91.....69526
 93.....66516, 66517
 97.....66517, 67726, 67728,
 72330, 72332
 105.....69526
 254.....70591
 383.....70592

Proposed Rules:

25.....66205, 70285
 33.....70926
 39.....67110, 67112, 67427,
 67429, 67433, 67813, 67815,
 67817, 67820, 70608, 71949,
 71951, 71952, 71955, 71957,
 71959, 71961, 71963, 72370
 71.....66207, 67823, 67824,
 70287, 71569, 71965, 71966
 121.....66205, 67115
 125.....67115
 129.....66205
 135.....67115

15 CFR

736.....68321
 740.....65258, 68321
 742.....68321
 744.....68321
 748.....68321
 752.....68321
 760.....68321
 772.....65258, 68321
 774.....65258
 922.....70488

16 CFR

1101.....72334
 1110.....68328
 1420.....67385
 1500.....67730, 71545

Proposed Rules:

Ch. II.....71570
 255.....72374

17 CFR

12.....70274
 190.....65514
 200.....69531
 232.....65516
 270.....65516, 71919

Proposed Rules:

1.....67435
 4.....71968
 38.....67435
 210.....70816
 229.....70816
 230.....70816
 240.....70816
 244.....70816
 249.....70816

18 CFR

35.....65526
 40.....67387

Proposed Rules:

40.....71971, 71977
 284.....72395

19 CFR

4.....71730
 12.....71730
 18.....71730
 101.....71730
 102.....66171
 103.....71730
 113.....71730
 122.....68295, 71730
 123.....71730
 141.....71730
 143.....71730
 149.....71730
 178.....71730
 192.....71730

20 CFR

404.....65541, 66520
 416.....65541, 66520

Proposed Rules:

404.....66563, 66564
 405.....66563
 416.....66563, 66564

21 CFR

1.....66294
 2.....69532
 17.....66750
 101.....66754
 520.....70276
 530.....71923
 601.....68332
 884.....66522

Proposed Rules:

17.....66811
 1310.....66815

23 CFR

634.....70593

Proposed Rules:

620.....67117
 635.....67117
 636.....67117
 650.....68365
 710.....67117

24 CFR

5.....72336
 15.....72204
 91.....72336
 203.....68204

880.....72336
 882.....72336
 883.....72336
 884.....72336
 886.....72336
 891.....72336
 903.....72336
 960.....72336
 982.....72336
 983.....72336
 3500.....68204

Proposed Rules:

901.....70928
 902.....70928
 907.....70928

25 CFR

15.....67256
 18.....67256
 179.....67256

26 CFR

1.....65981, 65982, 66539,
 67387, 67388, 71545
 301.....72345
 602.....65982
 702.....67103

Proposed Rules:

1.....66001, 66568, 70288,
 70289, 70929, 72398

28 CFR

0.....69552
 14.....70276, 70277, 70278
 549.....70278

Proposed Rules:

58.....67435

29 CFR

825.....67934
 4022.....67389
 4041.....68333
 4042.....68333
 4044.....67389

30 CFR

56.....66171
 57.....66171
 71.....66171
 203.....69490
 260.....69490
 700.....67576
 724.....67576
 773.....67576
 785.....67576
 816.....67576
 817.....67576
 845.....67576
 846.....67576
 870.....67576
 872.....67576
 873.....67576
 874.....67576
 875.....67576
 876.....67576
 879.....67576
 880.....67576
 882.....67576
 884.....67576
 885.....67576
 886.....67576
 887.....67576
 916.....72346
 931.....68339

Proposed Rules:

926.....66569

31 CFR

132.....69382
 359.....65543
 560.....66541
 800.....70702

Proposed Rules:

Ch. X.....66414
 103.....65567, 65568, 65569,
 66414
 538.....67825
 560.....67825

32 CFR

199.....71545
 578.....66754

33 CFR

117.....66542, 66543, 68345,
 70281, 70867, 70868, 71554,
 71555
 165.....65544, 65982, 67104,
 70868, 70871, 71555, 71923

Proposed Rules:

117.....66001, 66571, 71983
 165.....67444

34 CFR

200.....72352
 222.....70570

Proposed Rules:

5.....71986
 385.....71572

36 CFR

7.....67739
 13.....67390
 223.....65546
 261.....65984

Proposed Rules:

7.....65784, 69591
 1192.....69592

37 CFR

1.....66754, 67750
 2.....67759
 3.....67759
 6.....67759
 7.....67759
 11.....67750
 41.....70282
 201.....66173
 255.....66173

38 CFR

1.....65258
 3.....65726
 4.....66543, 69554
 9.....71926
 17.....65260, 65552
 20.....65726
 21.....65260

Proposed Rules:

3.....65280
 17.....65282, 71999
 51.....72399
 58.....72399

39 CFR

111.....72616
 3020.....67350, 67393, 67708,
 68345, 71557, 71935

Proposed Rules:

3001.....67455

40 CFR

3.....70596

9.....70418	42 CFR	64.....67419, 70905	574.....72358
49.....67107	3.....70732	73.....66198, 66199, 66559,	585.....66786
50.....66964, 70597	405.....69726	66560, 67419, 67420, 67421,	1244.....66802
51.....66964, 70597	409.....69726	70282, 70283, 71560, 71561	1520.....72130
52.....66182, 66554, 66555,	410.....68502, 69726	76.....69567	1580.....72130
66759, 67776, 70873, 70881,	411.....69726	90.....67794	Proposed Rules:
70883	413.....69726	Proposed Rules:	225.....72440
53.....66964	414.....69726	51.....66585, 66821	605.....68375
55.....65269	415.....69726	54.....66821	661.....70950
58.....66964	416.....68502	61.....66821	1515.....71590
59.....66184	419.....68502	69.....66821	1520.....71590
75.....65554	422.....67406	73.....66002, 66210, 66588,	1522.....71590
80.....71560, 71940	423.....67406, 69726, 70598	66589, 66830, 67828	1540.....71590
81.....66759	424.....69726	48 CFR	1542.....71590
112.....71941	433.....70886	Ch. 1.....67064, 67093, 67650,	1544.....71590
122.....70418	440.....66187	67705	1550.....71590
131.....65735, 67396	447.....71828	2.....67064, 67651, 72242	
147.....65556	457.....71828	3.....67064	50 CFR
180.....65739, 66775, 66780,	485.....69726	9.....67064	20.....65274, 65926, 70914
67397, 67400, 69554, 69559,	486.....69726	22.....67651	21.....65926, 70914
71944, 72352	489.....69726	42.....67064	222.....65277, 66803
260.....70598	43 CFR	52.....67064, 67651, 72242	223.....65277, 66803, 68348,
261.....70598	4.....67256	201.....70906	72210
355.....65452	11.....65274	202.....70906	226.....72210
370.....65452	30.....67256	211.....70907	229.....67801, 67803
412.....70418	404.....67778	212.....70910	300.....67805
721.....65743	3900.....69414	213.....70906	600.....67805, 67809
Proposed Rules:	3910.....69414	215.....70906, 70910	622.....67809, 68355
52.....66209, 67825, 67827,	3920.....69414	216.....70912	635.....68361
68369, 69593, 70929, 70930,	3930.....69414	245.....70907	648.....67811, 70600, 71561,
72001	44 CFR	247.....70910	71945, 71946
55.....65804	64.....65775, 67414	252.....70907, 70910, 70913	660.....68362
59.....66209	65.....65777, 67416, 69564	Proposed Rules:	665.....70600, 70603
63.....66694, 70289	67.....65778	2.....68373	679.....66561, 66805, 67809,
81.....67821	206.....70894	4.....68373	69586, 69587, 70605, 71946,
82.....72421	207.....70894	12.....68373	71947
112.....72016	Proposed Rules:	39.....68373	697.....67805
131.....67455	67.....65811, 66574, 67463,	52.....68373	Proposed Rules:
141.....67456	69595, 70944	49 CFR	17.....66003, 66831, 71788
143.....67456	45 CFR	40.....70283	226.....65283, 70290
144.....70610	1602.....67791	172.....72182	622.....68390
146.....70610	47 CFR	174.....72182	635.....68361
228.....71575	25.....70897	209.....72194	648.....67829
271.....70931, 71583		385.....65565, 69567	679.....71592
450.....72562		395.....65565, 69567	680.....71598
41 CFR		571.....66786, 72357	
61-250.....65766			

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 28, 2008**COMMERCE DEPARTMENT
National Oceanic and
Atmospheric Administration**

Endangered and Threatened Species; Conservation of Threatened Elkhorn and Staghorn Corals; published 10-29-08

**CONSUMER PRODUCT
SAFETY COMMISSION**

Information Disclosure Under Section 6(b) of the Consumer Product Safety Act; published 11-28-08

EDUCATION DEPARTMENT

Title I— Improving the Academic Achievement of the Disadvantaged; published 10-29-08

Title I - Improving the Academic Achievement of the Disadvantaged; Correction; published 11-28-08

**ENVIRONMENTAL
PROTECTION AGENCY**

Diflufenzuron; Pesticide Tolerances for Emergency Exemptions; published 11-28-08

**HEALTH AND HUMAN
SERVICES DEPARTMENT
Food and Drug
Administration**

Toll-Free Number for Reporting Adverse Events on Labeling for Human Drug Products; published 10-28-08

**HOMELAND SECURITY
DEPARTMENT
Coast Guard**

Safety Zone: BWRC Annual Thanksgiving Regatta; Lake Moolvalya, Parker, AZ; published 10-9-08

Safety Zone: Fireworks Display, Potomac River, National Harbor, MD; published 11-24-08

**INTERIOR DEPARTMENT
Surface Mining Reclamation
and Enforcement Office**

Kansas Regulatory Program; published 11-28-08

**TRANSPORTATION
DEPARTMENT
Federal Aviation
Administration**

Airworthiness Directives:

Bombardier Model CL 600 2B19 (Regional Jet Series 100 & 440) Airplanes; published 10-24-08

General Electric Company CF6-80C2 Series and CF6-80E1 Series Turbofan Engines; published 10-24-08

Maryland Air Industries, Inc., Model Fairchild F-27 and FH 227 Series Airplanes; published 10-24-08

Security Related Considerations in the Design and Operation of Transport Category Airplanes; published 10-28-08

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments; published 11-28-08

**TREASURY DEPARTMENT
Internal Revenue Service**

Classification of Certain Foreign Entities; published 11-28-08

**TREASURY DEPARTMENT
Alcohol and Tobacco Tax
and Trade Bureau**

Establishment of the Leona Valley Viticultural Area (2007R-281P); published 10-29-08

**COMMENTS DUE NEXT
WEEK****AGRICULTURE
DEPARTMENT****Farm Service Agency**

Maximum Interest Rates on Guaranteed Farm Loans; comments due by 12-1-08; published 9-30-08 [FR E8-22871]

**AGRICULTURE
DEPARTMENT****Rural Utilities Service**

General Policies, Types of Loans, Loan Requirements-Telecommunications; comments due by 12-5-08; published 11-5-08 [FR E8-26318]

Telecommunications; General Policies, Types of Loans, Loan Requirements; comments due by 12-5-08; published 11-5-08 [FR E8-26317]

**COMMERCE DEPARTMENT
Industry and Security
Bureau**

De Minimis U.S. Content in Foreign Made Items; comments due by 12-1-08; published 10-1-08 [FR E8-23142]

COMMERCE DEPARTMENT**National Oceanic and
Atmospheric Administration**

Endangered and Threatened Species:

Proposed Endangered Status for the Gulf of Maine Distinct Population Segment of Atlantic Salmon; comments due by 12-2-08; published 9-3-08 [FR E8-20412]

Proposed Endangered Status for the Gulf of Maine Distinct Population Segment of Atlantic Salmon, etc.; comments due by 12-2-08; published 10-21-08 [FR E8-25076]

Fisheries of the Exclusive Economic Zone Off Alaska:

Northern Rockfish in the Gulf of Alaska; comments due by 12-3-08; published 11-21-08 [FR E8-27743]

Trawl Gear in the Gulf of Alaska; comments due by 12-4-08; published 11-19-08 [FR E8-27480]

Listing Endangered and Threatened Wildlife and Designating Critical Habitat:

90-day Finding for a Petition to Revise the Critical Habitat Designation for the Hawaiian Monk Seal; comments due by 12-2-08; published 10-3-08 [FR E8-23467]

COMMERCE DEPARTMENT**National
Telecommunications and
Information Administration**

E-911 Grant Program; comments due by 12-2-08; published 10-3-08 [FR E8-23266]

DEFENSE DEPARTMENT**Army Department**

Army National Cemeteries; comments due by 12-1-08; published 10-1-08 [FR E8-22925]

**ENVIRONMENTAL
PROTECTION AGENCY**

Approval and Promulgation of Air Quality Implementation Plans:

West Virginia; Revised Motor Vehicle Emission Budgets for the Parkersburg 8-Hour Ozone Maintenance Area; comments due by 12-1-08; published 10-30-08 [FR E8-25660]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—

Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

National Emission Standards:

Halogenated Solvent Cleaning; comments due by 12-4-08; published 10-20-08 [FR E8-24013]

Outer Continental Shelf Air Regulations Consistency Update for North Carolina; comments due by 12-5-08; published 11-5-08 [FR E8-26360]

Proposed Time-Limited Pesticide Tolerances:

Chlorantraniliprole; comments due by 12-1-08; published 10-1-08 [FR E8-22946]

Requirements for Transboundary Shipments of Wastes Between OECD Countries, Requirements for Export Shipments of Spent Lead-Acid Batteries, etc.; comments due by 12-5-08; published 10-6-08 [FR E8-22536]

Significant New Use Rules on Certain Chemical Substances; comments due by 12-5-08; published 11-5-08 [FR E8-26409]

**FEDERAL
COMMUNICATIONS
COMMISSION**

Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers; Petition for Rulemaking; comments due by 12-2-08; published 10-23-08 [FR E8-25058]

Petition for Rulemaking to Impose a Spectrum Aggregation Limit on All Commercial Terrestrial Wireless Spectrum Below 2.3 GHz; comments due by 12-2-08; published 10-23-08 [FR E8-25056]

Radio Broadcasting Services: Beatty and Goldfield, NV; comments due by 12-1-08; published 10-23-08 [FR E8-25347]

Crandon, WI; comments due by 12-1-08; published 10-23-08 [FR E8-25323]

Crowell, Knox City, Quanah, and Rule, TX; comments due by 12-1-08; published 10-23-08 [FR E8-25321]

Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz

Band; comments due by 12-2-08; published 10-3-08 [FR E8-23045]

GENERAL SERVICES ADMINISTRATION

General Services Acquisition Regulation:

GSAR Case 2008G506; Rewrite of GSAR Part 515, Contracting by Negotiation; comments due by 12-2-08; published 10-3-08 [FR E8-22745]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Disease Control and Prevention

Medical Examination of Aliens; Revisions to Medical Screening Process; comments due by 12-5-08; published 10-6-08 [FR E8-23485]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Label Requirement for Food that has Been Refused Admission into the United States; comments due by 12-2-08; published 9-18-08 [FR E8-21813]

HOMELAND SECURITY DEPARTMENT

U.S. Customs and Border Protection

Uniform Rules of Origin for Imported Merchandise; comments due by 12-1-08; published 10-30-08 [FR E8-25731]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge Operation Regulations:

Intracoastal Waterway (ICW) Beach Thorofare, Atlantic City, NJ; comments due by 12-5-08; published 10-6-08 [FR E8-23604]

Security Zones:

Coast Guard Base San Juan, San Juan Harbor, PR; comments due by 12-1-08; published 9-30-08 [FR E8-22890]

HOMELAND SECURITY DEPARTMENT

Federal Emergency Management Agency

Proposed Flood Elevation Determinations; comments due by 12-2-08; published 9-3-08 [FR E8-20304]

HOMELAND SECURITY DEPARTMENT

Privacy Act of 1974:

Implementation of Exemptions; U.S.

Immigration and Customs Enforcement Trade Transparency Analysis and Research (TTAR) System of Records; comments due by 12-1-08; published 10-31-08 [FR E8-25972]

Implementation of Exemptions; United States Coast Guard Courts Martial Records; comments due by 12-1-08; published 10-31-08 [FR E8-25966]

INTERIOR DEPARTMENT Land Management Bureau

Visitor Services; comments due by 12-2-08; published 10-3-08 [FR E8-23258]

INTERIOR DEPARTMENT Fish and Wildlife Service

Endangered and Threatened Species:

Proposed Endangered Status for the Gulf of Maine Distinct Population Segment of Atlantic Salmon; comments due by 12-2-08; published 9-3-08 [FR E8-20412]

Endangered and Threatened Wildlife and Plants:

90-Day Finding on a Petition to Remove the California, Oregon, and Washington Population of the Marbled Murrelet (*Brachyramphus marmoratus*) from the List of; comments due by 12-1-08; published 10-2-08 [FR E8-22735]

LIBRARY OF CONGRESS Copyright Office, Library of Congress

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies; comments due by 12-2-08; published 10-6-08 [FR E8-23576]

NATIONAL CREDIT UNION ADMINISTRATION

Regulatory Flexibility Regarding Ownership of Fixed Assets; comments due by 12-1-08; published 10-1-08 [FR E8-23039]

PERSONNEL MANAGEMENT OFFICE

Prevailing Rate Systems; Abolishment of Santa Clara, California, as a Nonappropriated Fund Federal Wage System Wage Area; comments due by 12-4-08; published 11-4-08 [FR E8-26274]

POSTAL REGULATORY COMMISSION

Periodic Reporting Rules; comments due by 12-1-08;

published 11-14-08 [FR E8-27055]

Periodic Reporting Rules:

Availability of Rulemaking Petition; comments due by 12-5-08; published 12-1-08 [FR E8-28396]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

BAE Systems (Operations) Limited Model BAE 146 and Avro 146 RJ Airplanes; comments due by 12-1-08; published 10-31-08 [FR E8-25999]

Boeing Model 727-100 and 727-200 Series Airplanes; comments due by 12-1-08; published 10-17-08 [FR E8-24763]

Boeing Model 737-300, -400, and -500 Series Airplanes; comments due by 12-1-08; published 10-1-08 [FR E8-22755]

Boeing Model 747 100, 747 100B, 747 100B SUD, 747 200B, 747 200C, 747 200F, 747 300, 747SR, and 747SP Series Airplanes; comments due by 12-1-08; published 10-16-08 [FR E8-24542]

Fokker F.28 Mark 0070 and 0100 Airplanes; comments due by 12-1-08; published 10-30-08 [FR E8-25890]

Thielert Aircraft Engines GmbH (TAE) Model TAE 125-02-99 Reciprocating Engines; comments due by 12-4-08; published 11-4-08 [FR E8-25892]

Turbomeca Arriel 2B and 2B1 Turboshaft Engines; comments due by 12-1-08; published 10-30-08 [FR E8-25887]

Modification of Class E Airspace; Culpeper, VA; Removal of Class E Airspace; Pelham Lake, VA; comments due by 12-1-08; published 10-15-08 [FR E8-22467]

Proposed Revision of Class E Airspace:

Ketchikan, AK; comments due by 12-1-08; published 10-17-08 [FR E8-24688]

Toksook Bay, AK; comments due by 12-1-08; published 10-17-08 [FR E8-24687]

Proposed Revocation of Class E Airspace:

Metlakatla, AK; comments due by 12-1-08; published 10-17-08 [FR E8-24689]

TRANSPORTATION DEPARTMENT

Federal Transit Administration

Bus Testing; Phase-In of Brake Performance and Emissions Testing, and Program Updates; comments due by 12-1-08; published 9-30-08 [FR E8-22913]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

E-911 Grant Program; comments due by 12-2-08; published 10-3-08 [FR E8-23266]

Federal Motor Vehicle Safety Standards:

Motorcycle Helmets; comments due by 12-1-08; published 10-2-08 [FR E8-23187]

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials:

Enhanced Enforcement Authority Procedures; comments due by 12-1-08; published 10-2-08 [FR E8-23248]

TREASURY DEPARTMENT

Uniform Rules of Origin for Imported Merchandise; comments due by 12-1-08; published 10-30-08 [FR E8-25731]

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. 6867/P.L. 110-449

Unemployment Compensation
Extension Act of 2008 (Nov.
21, 2008; 122 Stat. 5014)

Last List October 24, 2008

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