1–5–09 Monday
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4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, January 27, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1001, 1003, 1292

[Docket No. EOIR 160F; A.G. Order No. 3028–2008]

RIN 1125 AA59

Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule published Thursday, December 18, 2008 at 73 FR 76914, relating to the rules and procedures that govern the standards of representation and professional conduct for practitioners who appear before the Executive Office for Immigration Review (EOIR).

DATES: *Effective Date:* January 5, 2009.

FOR FURTHER INFORMATION CONTACT: John N. Blum, Acting General Counsel, Executive Office for Immigration Review, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone number (703) 305–0470 (not a toll free call).

SUPPLEMENTARY INFORMATION: The final rule that is the subject of these corrections amends Department of Justice regulations by amending the rules and procedures for imposing disciplinary sanctions against practitioners who engage in criminal, unethical, or unprofessional conduct, or in frivolous behavior in proceedings before EOIR. The final rule increases the number of grounds for discipline and improves the clarity and uniformity of the existing rules while incorporating miscellaneous technical and procedural changes.

Need for Correction

As published, the final rule contains a typographical error that may cause confusion and therefore is in need of clarification. The instruction for 8 CFR 1003.103 says in part that the first sentence of paragraph (a)(1) is revised. However the entire paragraph is revised. The first sentence is revised to reflect the technical correction in terminology from ''the Office of the General Counsel of EOIR'' to ''the EOIR disciplinary counsel,'' and to allow for immediate suspension of a practitioner who resigns from the highest court of any State, possession, territory, or Commonwealth of the United States, or the District of Columbia, or any Federal court, while a disciplinary investigation is pending. The paragraph is further revised to incorporate the technical correction in terminology from ''the Office of the General Counsel of the Service'' to ''DHS.''

Correction

For the reasons stated above, in the FR Doc. E8–30027, beginning on page 76914 in the **Federal Register** of Thursday, December 18, 2008, the following correction is made:

§ 1003.103 [Corrected]

On page 76923, in the third column, instruction 7a. is corrected to read as follows:

■ 7. Amend § 1003.103 by:
■ a. Revising paragraph (a)(1);
* * * * *

Dated: December 30, 2008.

Rosemary Hart,

Federal Register Liaison.

[FR Doc. E8–31302 Filed 1–2–09; 8:45 am]
BILLING CODE 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 11

[Docket No. FAA–199–6622; Amendment No. 11–55]

RIN 2120–AG95

Clarification for Submitting Petitions for Rulemaking or Exemption

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is making minor technical changes to the requirements for submitting a petition for rulemaking or exemption. In a final rule published in the **Federal Register** on December 5, 2007, the FAA inadvertently did not make conforming amendments to plain language requirements in the structure and content of the final rule. This technical amendment restructures or reorders the filing of petitions and incorporates a reference for additional filing guidance and instructions using the Federal Docket Management System (FDMS). These changes ensure general rulemaking procedures are clear, written in plain language, and better inform the public of administrative practices.

DATES: *Effective Dates:* This rule is effective January 5, 2009.

FOR FURTHER INFORMATION CONTACT: Katrina Holiday, Office of Rulemaking, ARM–202, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202–267–9680); facsimile: (202–267–5075); e-mail: *katrina.holiday@faa.gov*.

SUPPLEMENTARY INFORMATION: The FAA published in the **Federal Register** on December 5, 2007 (72 FR 68474) a document that amended the regulations for submitting petitions for rulemaking or exemption. This technical amendment—

(1) Incorporates a reference to available guidance and instructions that may ease the use of FDMS. This guidance is accessible via the Internet at *http://www.regulations.gov*, and additional instructions for petitions for rulemaking or exemption are also accessible via the Internet at *http://www.faa.gov/regulations*.

(2) Amends 14 CFR 11.63(a) and (b) by reordering these paragraphs by order of importance to address in paragraph (a) general submissions of petitions for rulemaking or exemption, and paragraph (b) specific petitions for rulemaking or exemption for relief from part 139 of this chapter.

Because these actions are merely administrative in nature, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) is unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 553(d) for

making this amendment effective upon publication.

List of Subjects in 14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 11 is amended as follows:

The Amendments

PART 11—GENERAL RULEMAKING PROCEDURES

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

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

■ 2. Revise § 11.63(a), (b), and (c) to read as follows:

§ 11.63 How and to whom do I submit my petition for rulemaking or petition for exemption?

(a) To submit a petition for rulemaking or exemption—

(1) By electronic submission, submit your petition for rulemaking or exemption to FAA through the Internet at *http://www.regulations.gov*, the Federal Docket Management System Web site. For additional instructions, you may visit *http://www.faa.gov/regulations*.

(2) By paper submission, send the original signed copy of your petition for rulemaking or exemption to this address: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(b) Submit a petition for rulemaking or exemption from part 139 of this chapter—

(1) To the appropriate FAA airport field office in whose area your airport is, or will be, established; and

(2) To the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 or by electronic submission to this Internet address: *http://www.regulations.gov*.

(c) The FAA may designate other means by which you can submit petitions in the future.

* * * * *

Issued in Washington, DC on December 30, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E8–31304 Filed 1–2–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30642; Amdt. No 3300]

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 January 5, 2009. 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 January 5, 2009.

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 December 12, 2008.

John M. Allen,

Deputy 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 15 Jan 2009

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Poughkeepsie, NY, Dutchess County, VOR/DME RNAV OR GPS RWY 6, Amdt 5A, CANCELLED
Rochester, NY, Greater Rochester Intl, ILS OR LOC RWY 4, ILS RWY 4 (CAT II), Amdt 19
Rochester, NY, Greater Rochester Intl, ILS OR LOC RWY 28, Amdt 30
Rochester, NY, Greater Rochester Intl, RNAV (GPS) RWY 4, Amdt 1
Rochester, NY, Greater Rochester Intl, RNAV (GPS) RWY 28, Amdt 1
Rochester, NY, Greater Rochester Intl, Takeoff Minimums and Obstacle DP, Amdt 6
Rochester, NY, Greater Rochester Intl, VOR RWY 4, Amdt 11
Rochester, NY, Greater Rochester Intl, VOR/DME RWY 4, Amdt 3
Cincinnati, OH, Cincinnati Muni Airport-Lunken Field, ILS OR LOC RWY 21L, Amdt 18
Cincinnati, OH, Cincinnati Muni Airport-Lunken Field, NDB RWY 21L, Amdt 16
Cincinnati, OH, Cincinnati Muni Airport-Lunken Field, RNAV (GPS) RWY 21L, Orig
Columbus, OH, Rickenbacker Intl, NDB RWY 5R, Amdt 1
Columbus, OH, Rickenbacker Intl, NDB RWY 23L, Amdt 1
Columbus, OH, Rickenbacker Intl, RNAV (GPS) RWY 5R, Orig
Columbus, OH, Rickenbacker Intl, RNAV (GPS) RWY 23L, Orig
Columbus, OH, Rickenbacker Intl, Takeoff Minimums and Obstacle DP, Orig
John Day, OR, Grant Co Rgnl/Ogilvie Field, GPS RWY 9, Orig-A, CANCELLED
John Day, OR, Grant Co Rgnl/Ogilvie Field, RNAV (GPS) Y RWY 9, Orig
John Day, OR, Grant Co Rgnl/Ogilvie Field, Takeoff Minimums and Obstacle DP, Amdt 1
Portland, OR, Portland Intl, Takeoff Minimums and Obstacle DP, Amdt 6
Butler, PA, Butler County/K W Scholter Fld, GPS RWY 26, Orig, CANCELLED
Butler, PA, Butler County/K W Scholter Fld, RNAV (GPS) RWY 26, Orig
Chester, SC, Chester Catawba Regional, NDB RWY 35, Amdt 1
Chester, SC, Chester Catawba Regional, Takeoff Minimums and Obstacle DP, Orig
Moncks Corner, SC, Berkeley County, NDB OR GPS RWY 5, Amdt 2A, CANCELLED
Moncks Corner, SC, Berkeley County, RNAV (GPS) RWY 5, Orig
Moncks Corner, SC, Berkeley County, RNAV (GPS) RWY 23, Orig
Moncks Corner, SC, Berkeley County, Takeoff Minimums and Obstacle DP, Orig
Belle Fourche, SD, Belle Fourche Muni, NDB OR GPS RWY 32, Orig, CANCELLED
Belle Fourche, SD, Belle Fourche Muni, RNAV (GPS) RWY 32, Orig
Belle Fourche, SD, Belle Fourche Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Brookings, SD, Brookings Rgnl, Takeoff Minimums and Obstacle DP, Orig
Rockwood, TN, Rockwood Muni, RNAV (GPS) RWY 22, Orig
Arlington, TX, Arlington Muni, RNAV (GPS) RWY 34, Amdt 1

Childress, TX, Childress Muni, Takeoff Minimums and Obstacle DP, Orig
Fort Hood/Killeen, TX, Robert Gray AAF, Takeoff Minimums and Obstacle DP, Amdt 1
Mount Pleasant, TX, Mount Pleasant Rgnl, RNAV (GPS) RWY 17, Amdt 1
Mount Pleasant, TX, Mount Pleasant Rgnl, RNAV (GPS) RWY 35, Amdt 1
Mount Pleasant, TX, Mount Pleasant Rgnl, Takeoff Minimums and Obstacle DP, Orig
Spokane, WA, Spokane Intl, RNAV (GPS) RWY 7, Amdt 1
Spokane, WA, Spokane Intl, RNAV (GPS) RWY 25, Amdt 2
Eau Claire, WI, Chippewa Valley Rgnl, VOR–A, Amdt 22
Sturgeon Bay, WI, Door County Cherryland, SDF RWY 2, Amdt 8

[FR Doc. E8–30648 Filed 1–2–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30643; Amdt. No. 3301]

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 January 5, 2009. 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 January 5, 2009.

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 an 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 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 December 12, 2008.

John M. Allen,

Deputy 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
11/25/08	NH	Whitefield	Mount Washington Regional	8/1169	LOC/NDB Rwy 10, Amdt 6.
11/25/08	KY	Hopkinsville	Hopkinsville—Christian County	8/1302	RNAV (GPS) Rwy 8, Orig.
11/25/08	GA	Canton	Cherokee County	8/1313	NDB Rwy 4, Amdt 3.
11/26/08	ID	Rexburg	Rexburg-Madison County	8/1387	RNAV (GPS) Rwy 35, Amdt 1.
11/26/08	ID	Idaho Falls	Idaho Falls Regional	8/1399	NDB Rwy 20, Amdt 10B.
11/26/08	ID	Idaho Falls	Idaho Falls Regional	8/1400	LOC BC Rwy 2, Amdt 6A.
11/26/08	ID	Idaho Falls	Idaho Falls Regional	8/1402	RNAV (GPS) Rwy 2, Orig.
11/26/08	WA	Everett	Snohomish County (Paine Fld)	8/1414	ILS OR LOC/DME Rwy 16R, Amdt 21.
12/1/08	NE	Omaha	Eppley Airfield	8/1614	ILS OR LOC/DME Rwy 14R, Amdt 4...ILS Rwy 14R (CAT II) Amdt 4...ILS Rwy 14R (CAT III) Amdt 4.
12/1/08	NE	Omaha	Eppley Airfield	8/1615	ILS OR LOC Rwy 32R, Orig–A...ILS Rwy 32R (CAT II) Orig–A...ILS Rwy 32R (CAT III) Orig–A.
12/1/08	NE	Omaha	Eppley Airfield	8/1617	ILS OR LOC/DME Rwy 14L, Amdt 1A.
12/1/08	MT	Colstrip	Colstrip	8/1682	GPS Rwy 6, Orig–A.
12/1/08	ND	Grand Forks	Grand Forks Intl	8/1686	RNAV (GPS) Rwy 17R, Orig.
12/1/08	ND	Grand Forks	Grand Forks Intl	8/1688	VOR Rwy 17R, Amdt 6.
12/1/08	WA	Ellensburg	Bowers Field	8/1689	VOR B, Amdt 3.
12/1/08	NE	Omaha	Eppley Airfield	8/1711	ILS OR LOC/DME Rwy 18, Amdt 8.
12/1/08	NE	Omaha	Eppley Airfield	8/1712	RNAV (GPS) Rwy 32R, Orig.
12/1/08	OH	Cleveland	Cleveland-Hopkins Intl	8/1768	ILS OR LOC Rwy 6R, Amdt 20.
12/7/08	CA	Arcata/Eureka	Arcata	8/2005	RNAV (GPS) Rwy 32, Orig.
12/7/08	CA	Arcata/Eureka	Arcata	8/2007	VOR/DME Rwy 1, Amdt 7B.
12/7/08	CA	Arcata/Eureka	Arcata	8/2011	ILS OR LOC/DME Rwy 32, Amdt 1C.
12/7/08	CA	Arcata/Eureka	Arcata	8/2012	ILS Rwy 32, Amdt 29B.
12/2/08	OR	Madras	Madras Municipal	8/2016	TAKEOFF MINIMUMS AND (OBSTACLE) DP, Orig.
12/2/08	OR	Madras	Madras Municipal	8/2020	RNAV (GPS) A, Orig.
12/2/08	NY	New York	Laguardia	8/2159	LDA–A, Amdt 2A.
12/2/08	VA	Norfolk	Chesapeake Regional	8/2247	RNAV (GPS) Rwy 5, Orig.
12/3/08	VA	Manassas	Manassas RGNL/Harry P David Fl	8/2248	RNAV (GPS) Rwy 16R, Orig–A.
12/5/08	CO	Longmont	Vance Brand	8/2637	VOR/DME–A, Amdt 1A.
12/5/08	CO	Longmont	Vance Brand	8/2638	RNAV (GPS) B, Orig–A.

FDC date	State	City	Airport	FDC No.	Subject
12/5/08	OR	Medford	Rogue Valley Intl/Medford	8/2640	Takeoff Minimums and (Obstacle) DP, Amdt 8.
12/5/08	TX	Dallas	Dallas Executive	8/2716	ILS OR LOC Rwy 31, Amdt 8.
12/9/08	IL	Belleville	Scott AFB/Midamerica	8/3076	ILS OR LOC Rwy 14R, Orig–B.
12/10/08	NC	Maxton	Laurinburg-Maxton	8/3203	RNAV (GPS) Rwy 5, Orig.
12/10/08	NC	Maxton	Laurinburg-Maxton	8/3204	ILS Rwy 5, Amdt 1.
12/10/08	NC	Mooresville	Lake Norman Airpark	8/3271	RNAV (GPS) Rwy 14, Orig.
12/11/08	DC	Washington	Washington Dulles Intl	8/3289	RNAV (GPS) Y Rwy 19C, Amdt 3.
12/10/08	FL	Tallahassee	Tallahassee Regional	8/3356	VOR Rwy 18, Amdt 11.
12/10/08	FL	Tallahassee	Tallahassee Regional	8/3357	NDB Rwy 36, Amdt 20.
12/10/08	PA	Pittsburgh	Pittsburgh Intl	8/3421	RNAV (RNP) Z Rwy 32, Orig.
12/10/08	PA	Pittsburgh	Pittsburgh Intl	8/3422	RNAV (GPS) Y Rwy 32, Amdt 4.
12/10/08	PA	Pittsburgh	Pittsburgh Intl	8/3423	ILS OR LOC Rwy 32, Amdt 12.
12/9/08	IL	Belleville	Scott AFB/Midamerica	8/8135	This NOTAM Published In TL 08–26 Is Hereby Rescinded In It's Entirety. ILS OR LOC Rwy 14R, Orig–B.
11/14/08	LA	Natchitoches	Natchitoches RGNL	8/9331	This NOTAM Published In TL 09–01 Is Hereby Rescinded In It's Entirety. LOC Rwy 35, Amdt 3D.

[FR Doc. E8–30640 Filed 1–2–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 73 and 101

[Docket No. FDA–1998–P–0032] (formerly Docket No. 1998P–0724)

RIN 0910–AF12

Listing of Color Additives Exempt From Certification; Food, Drug, and Cosmetic Labeling: Cochineal Extract and Carmine Declaration

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising its requirements for cochineal extract and carmine by requiring their declaration by name on the label of all food and cosmetic products that contain these color additives. This final rule responds to reports of severe allergic reactions, including anaphylaxis, to cochineal extract-containing food and carmine-containing food and cosmetics and will allow consumers who are allergic to these color additives to identify and thus avoid products that contain these color additives. This action also responds to a citizen petition submitted by the Center for Science in the Public Interest (CSPI).

DATES: This regulation is effective January 5, 2011. All affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date shall fully comply, except as to any provisions that may be stayed by the filing of proper objections. Voluntary compliance with this final regulation, including making any required labeling changes, may begin immediately. Submit written or electronic objections and requests for hearing by February 4, 2009. See section IX of the **SUPPLEMENTARY INFORMATION** section of this document for information on filing of objections.

ADDRESSES: You may submit written or electronic objections and requests for a hearing on 21 CFR 73.100 and 73.2087, identified by Docket No. FDA–1998–P–0724 and RIN number 0910–AF12, by any of the following methods:

Electronic Submissions

Submit electronic objections in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of objections, FDA is no longer accepting objections submitted to the agency by e-mail. FDA encourages you to continue to submit electronic objections by using the Federal eRulemaking Portal, as described in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and docket number and Regulatory Information Number (RIN) for this rulemaking. All objections received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting objections, see the ''Objections'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or objections received, go to *http://www.regulations.gov* and insert the

docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mical Honigfort, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1278.

SUPPLEMENTARY INFORMATION:

I. Background

Cochineal extract is a color additive that is permitted for use in foods and drugs in the United States. The related color additive carmine is permitted for use in foods, drugs, and cosmetics. These certification-exempt color additives and conditions for their safe use are listed in §§ 73.100 (foods), 73.1100 (drugs), and 73.2087 (cosmetics) (21 CFR 73.100, 73.1100, and 73.2087, respectively). In the **Federal Register** of January 30, 2006 (71 FR 4839), FDA published a proposed rule to amend its requirements for cochineal extract and carmine by requiring their declaration on the label of all food and cosmetic products that contain these color additives. More specifically, for food products, FDA proposed to amend the color additive regulation (§ 73.100) that permits the use of cochineal extract or carmine in foods by adding new paragraph (d)(2) to require that all foods (including butter, cheese, and ice cream) that contain cochineal extract or carmine specifically declare the presence of the color additive by its respective common or usual name, ''cochineal extract'' or ''carmine,'' in the ingredient statement of the food label. Because § 101.22(k) (21 CFR 101.22(k)) allows any certification-exempt color additive to be declared with a general phrase, such as ''Artificial Color'' or ''Artificial Color Added,'' rather than by its specific common or usual name, FDA also proposed to amend § 101.22(k) to disallow generic declaration of color additives for which individual declaration is required by applicable regulations in part 73 (21 CFR part 73).

For cosmetic products, FDA proposed to amend the color additive regulation (§ 73.2087) permitting the use of carmine in cosmetics by adding new paragraph (d)(2) to require that cosmetics containing carmine that are not subject to the requirements of § 701.3 (21 CFR 701.3) specifically declare the presence of carmine prominently and conspicuously at least once in the labeling. This amendment will cover all cosmetic products, including those cosmetics that are manufactured and sold for use only by professionals (e.g., makeup used in photography studios and by makeup artists for television, movie, and theater actors/actresses, products intended for use only by professionals in beauty salons, and camouflage makeup dispensed by physicians and aestheticians to clients with skin conditions such as scarring) and those cosmetics that are gifts or free samples. FDA also proposed to include in § 73.2087, as an example, the following statement: ''Contains carmine as a color additive.''

As the agency indicated in the proposed rule, it plans to initiate a separate rulemaking to implement section 412 of the Food and Drug Administration Modernization Act (FDAMA), which amended the misbranding provisions of the Federal Food, Drug, and Cosmetic Act (the act) to require declaration of inactive ingredients for drugs. The FDAMA provisions have already been implemented for over-the-counter (OTC) drugs.[1]

FDA issued the proposed rule in response to reports of severe allergic reactions, including anaphylaxis, to cochineal extract and carmine-containing food and cosmetics. The proposed rule also was in response, in part, to a 1998 citizen petition from CSPI, which asked FDA to take action to protect consumers who are allergic to cochineal extract and carmine. FDA did not propose to adopt CSPI requests that the agency do the following things: (1) Require labeling of animal (insect) origin of cochineal extract and carmine, (2) undertake or require scientific reviews or studies, or (3) prohibit, if necessary, the use of cochineal extract and carmine entirely (71 FR 4839 at 4845). Interested persons were given until May 1, 2006, to comment on the proposed rule.

II. Summary of Comments and the Agency's Responses

FDA received a total of 159 responses (including 83 form letters), each containing one or more comments, to the proposed rule. Responses were received from industry, trade associations, consumer advocacy organizations, health care professionals, and consumers. A number of comments supported the proposed rule generally or supported certain portions of the proposed rule. Other comments objected to the proposed rule. Several comments raised issues that were outside the scope of the proposed rule and will not be discussed here. A summary of the relevant comments and the agency's responses to the comments follow.

(Comment) One comment requested that FDA not consider cochineal extract and carmine to be major allergens under the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA).

(Response) Cochineal extract and carmine are not considered to be ''major food allergens'' nor are they derived from one of the eight foods or food groups identified in FALCPA (i.e., milk, eggs, fish (e.g., bass, flounder, cod), Crustacean shellfish (e.g., crab, lobster, shrimp), tree nuts (e.g., almonds, walnuts, pecans), peanuts, wheat, and soybeans).

(Comment) One comment stated that cochineal extract and carmine are allergens and should be listed under the allergen information on food labels.

(Response) FDA disagrees. Cochineal extract and carmine are allergens for a small subset of the allergic population (71 FR 4839 at 4841 through 4843), but they are not ''major food allergens'' under FALCPA. However, because these additives are allergens, FDA is requiring that they be labeled by name in the ingredient list.

(Comment) One comment stated that carmine or cochineal extract could be present in food by virtue of having been an ingredient in a component of that food. The comment argued that when the color additive has no technical or functional effect in the food, carmine or cochineal extract is an incidental additive and should be exempt from labeling under § 101.100(a) (21 CFR 101.100(a)).

(Response) FDA disagrees. Cochineal extract and carmine are allergens for a small subset of the allergic population. Section 403(x) of the act (21 U.S.C. 343(x)) provides FDA the authority to establish labeling requirements through rulemaking for the disclosure of any food allergen (other than a major food allergen) that is found in a spice, flavoring, coloring, or incidental additive. Therefore, because this regulation requires that cochineal extract and carmine be declared on labels, these color additives are not exempt from labeling under § 101.100(a).

(Comment) Several comments stated that cochineal extract and carmine

[1] The provisions of FDAMA have already been implemented for OTC drugs. See 64 FR 13254 at 13263 (March 17, 1999). Note also that current 21 CFR 201.100(b)(5) requires the label of a prescription drug that is not for oral use (such as a topical or injectable drug) to bear the names of inactive ingredients, but permits certain color components to be designated as ''coloring'' rather than being specifically named.

should be banned. One comment argued that these color additives are not safe under 21 CFR 70.3(i) because the evidence did not establish with reasonable certainty that no harm would result from its intended use. Therefore, the comment stated, FDA is required by section 721(b)(8)(C) of the act (21 U.S.C. 379e(b)(8)(C)) to take into account the availability, if any, of other color additives suitable and safe for one or more of the uses allowed for cochineal extract and carmine. The comment also argued that the impact on the general population is no longer the test in the case of allergens because FALCPA was passed even though only a small percentage of the population then suffered from food allergies.

(Response) FDA disagrees. Cochineal extract and carmine have both been determined to be safe when used as specified by the color additive regulations in part 73 (see 71 FR 4839 at 4845). The comment did not submit any data demonstrating that this conclusion is incorrect. Therefore, FDA is not required to take into account the availability of alternative color additives as a justification for a ban. Section 721(b)(8)(C) applies when, with regard to the aggregate quantity of a color additive likely to be consumed in the diet or applied to the human body, FDA finds that the data fail to show that it would be safe or otherwise permissible to list a color additive for all proposed uses and at the levels of concentration proposed. Further, FALCPA applies only to the eight major food allergens and thus does not bear on the safety of cochineal extract or carmine, which are not major food allergens.

(Comment) One comment requested that FDA ban cochineal extract and carmine because doing so would protect those consumers who are not aware that they are allergic to these ingredients.

(Response) As discussed in the previous paragraphs, FDA has determined that these additives are safe when used as specified by the color additive regulations under part 73, and this comment did not submit any data demonstrating that this conclusion is incorrect. FDA has concluded that the labeling requirements established by this regulation will provide consumers adequate information that will enable them to avoid carmine and cochineal extract. While FDA recognizes that people who have not been diagnosed with an allergy to these color additives will not know to avoid these ingredients, as is the case with any allergen, this fact does not change our conclusion that these color additives are safe when used as specified by the color additive regulations under part 73. The labeling required by this regulation will help consumers and health professionals more quickly identify people with sensitivities to these color additives.

(Comment) Several comments requested that FDA not require labeling of cochineal extract and carmine by name in the ingredient list of foods. The comments argued that there is inadequate scientific support for finding sensitivity to cochineal extract and carmine.

(Response) FDA disagrees. Cochineal extract and carmine are allergens for a small subset of the allergic population. The adverse event reports and published studies clearly demonstrate that a person may become sensitized and reactive to cochineal extract and carmine from ingestion, inhalation, or topical exposure to the color additives. The data also show evidence of immunoglobulin E (IgE)-mediated allergic reactions to these color additives, including anaphylaxis or other serious health outcome (71 FR 4839 at 4843). The agency has therefore concluded that requiring label declaration for these color additives in foods is necessary so that sensitive individuals may avoid products containing these color additives.

(Comment) One comment expressed concern that focusing on a single color additive in a negative manner will confuse consumers and cause the industry to use artificial color additives that will adversely affect consumers.

(Response) FDA disagrees that the label declaration of these color additives would be confusing or intimidating to consumers or would portray these color additives distastefully. The comment did not provide information to support its position. The use of another listed color additive in accordance with the listing regulations would not adversely affect the public health because such color additives have been found to be safe.

(Comment) Several comments stated that the proposed labeling changes for cosmetics are unwarranted due to inadequate scientific evidence showing allergic sensitization or hypersensitivity reactions to these color additives in cosmetics. Other comments stated that the labeling changes would dilute the impact of truly necessary labeling statements or may cause consumers to avoid the product.

(Response) FDA disagrees that requiring the labeling of carmine on cosmetic products is unwarranted. Review of consumer adverse event data supports the comment's contention that these reports do not provide definitive proof of sensitization to carmine through the skin. However, there is clear evidence in FDA's Voluntary Cosmetics Registration Program database (discussed in 71 FR 4839 at 4843) that several carmine-sensitive individuals had used carmine-containing cosmetics previously and had noted or reported reproducible allergic-type reactions at the site where these products were applied. FDA believes that consumers should be alerted to the presence of carmine in all cosmetic products because of the allergenicity of the color additive. Labeling of carmine by name on most cosmetics has been a requirement for many years under § 701.3 and the agency has no evidence, nor was any submitted, demonstrating that consumers have been confused or have avoided these products because they were labeled as containing carmine.

(Comment) Several comments requested FDA to require disclosure that cochineal extract and carmine are ''insect (or animal) derived.'' Many of these comments stated that persons who wish to avoid consuming animal products need this information in order to avoid such products and that labeling cochineal extract and carmine by name is not sufficient.

(Response) FDA disagrees that declaring these color additives by name provides insufficient information to consumers who choose to avoid products containing these additives. The origins of cochineal extract and carmine are clearly described in the color additive regulations. If consumers desire to avoid products containing these color additives, they will be able to identify such products by reading the ingredient list.

(Comment) One comment, which urged FDA not to require that the color additives are insect-derived, stated that this information is ''not a material fact of the type that would be required to be declared on a label or in labeling'' under section 201(n) of the act (21 U.S.C. 321(n)).

(Response) FDA agrees that this information is not material under section 201(n) of the act. Section 201(n) of the act states that, in determining whether labeling is misleading, the law takes into account the extent to which the labeling fails to reveal facts material to consequences which may result from the use of the product as it is labeled or customarily used. The agency has required special labeling in cases where information is necessary to ensure that consumers are aware of special health risks associated with consumption of a particular product. Because the origin of these color additives has no bearing on consequences that may result from the

use of foods containing them, information regarding their origin is not considered ''material''; therefore, declaration on the label is not required.

(Comment) FDA received several comments about the effective date for the final rule. A few comments recommended that it be sooner than proposed, and several comments suggested that FDA use the current uniform effective date, January 1, 2010. Another comment favored using the current uniform effective date for food, but only if it provided at least 2 years for compliance. One comment requested that the effective date be 36 months after the date that the final rule is published.

(Response) FDA is adopting the proposed effective date of 24 months after date of publication for compliance with the final rule. Many manufacturers may have significant inventories of labels. Some manufacturers may incur costs, including those related to loss and disposal of obsolete packaging inventories, product in obsolete packages, and new printing plates, which would be passed on to consumers. For the reasons discussed in section IV.C.3 of this document, the agency has concluded that 24 months will minimize these labeling costs and, at the same time, avoid unnecessarily delaying the benefits of this final rule to the public health.

Although the effective date of the final rule is some time away, FDA encourages manufacturers to have new labels printed that are in compliance with these final rules so they may be used as soon as current inventories are exhausted to ensure a smooth and timely changeover. The agency will not object to voluntary compliance immediately upon publication of the final rule.

Given the absence of convincing evidence or information submitted in response to the proposed rule, FDA is adopting the proposed rule, without change, to require that all food and cosmetic products disclose the presence of cochineal extract and carmine by name.

III. Legal Authority

The legal authority for the regulations prescribing the safe use of color additives in foods, drugs, and cosmetics comes from section 721(b) of the act. Under section 721(b) of the act, FDA has the authority to prescribe conditions, including labeling requirements, under which a color additive may be safely used. Products containing color additives that are not used in compliance with the color additive regulations are adulterated under sections 402(c) (foods), 501(a)(4) (drugs), or 601(e) (cosmetics) of the act (21 U.S.C. 342(c), 351(a)(4), and 361(e), respectively). FDA has concluded that cochineal extract and carmine may cause potentially severe allergic responses in humans. Thus, the agency has determined that label information about the presence of these color additives in all foods and cosmetics is necessary to ensure their safe use. We note that, with respect to OTC drugs, declaration of inactive ingredients is already required under 21 CFR 201.66(c)(8), and FDA plans to initiate rulemaking to implement the FDAMA provisions that require declaration of inactive ingredients for drugs, including prescription drugs.

Additional legal authority for requiring disclosure of a coloring that is, or that bears or contains, a food allergen comes from section 403(x) of the act. Under that section, a coloring determined by regulation to be, or to bear or contain, a food allergen must be disclosed in a manner specified by regulation.

Finally, the provisions of section 701(e) of the act (21 U.S.C. 371(e)) apply to the issuance, amendment, or repeal of any regulation listing a color additive or the certification of a color additive for foods, drugs, and cosmetics, subject to the provisions of section 721(b)(5)(C) of the act. Under section 721(d) of the act, the provisions of section 701(e) of the act apply to §§ 73.100 and 73.2087. Section 701(e) of the act directs the Secretary of Health and Human Services to initiate through proposed rulemaking the issuance, amendment, or repeal of such regulation that is based on a petition of any interested persons showing reasonable grounds. Any person who is adversely affected by the final rule may file within 30 days of the issuance of the final rule, objections with FDA, specifying with particularity the provision of the final rule deemed objectionable, stating the grounds for the objections, and requesting a public hearing upon such objections.

IV. Analysis of Economic Impacts

A. Final Regulatory Impact Analysis

FDA has examined the impacts of the final rule amending 21 CFR 101.22, which is not subject to formal rulemaking, under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). The amendments to part 73 that are subject to formal rulemaking are exempt from review under 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 agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. We find that this final rule may have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $130 million, using the most current (2007) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

B. Need for Regulation

We did not receive any comments on the discussion of the need for this regulation in our analysis of the proposed rule (71 FR 4839 at 4846).

C. Regulatory Options

We considered the following regulatory options in the analysis of the proposed rule: (1) Take no action; (2) take the proposed action; (3) take the proposed action, but make the effective date later; (4) take the proposed action, but make the effective date sooner; and (5) ban cochineal extract and carmine.

The comments on the proposed rule suggested a number of other regulatory options. We add those options as follows: (6) Take the proposed action, but also require labeling of the origin of cochineal extract and carmine and (7) take the proposed action, but do not change the labeling requirements for cosmetics.

1. Option One: Take No Action

We did not receive any comments on this option.

2. Option Two: Take the Proposed Action.

a. *Costs*

(Comment) One comment suggested we set the effective date to be the next uniform compliance date for labeling regulations.

(Response) Setting the effective date to be the next uniform compliance date for labeling regulations would result in firms having between 12 months and 36 months to make the proposed labeling changes, depending on the date of the publication of the final rule. In the analysis of the proposed rule, we found that changing the effective date from 24 months to 12 months decreased net benefits. We also found that we had insufficient information to determine if changing the effective date from 24 months to 36 months would increase or decrease net benefits. Therefore, we cannot determine the effect on net benefits of changing the effective date from 24 months to the next uniform compliance date for labeling regulations.

b. *Benefits*

(Comment) Some comments noted that some consumers might prefer not to consume food containing cochineal extract or carmine even if they are not allergic to those color additives. These comments specified various groups of consumers who might wish to avoid these color additives for non-health reasons, including vegetarians, Jews, Muslims, and Jains. One comment suggested there was some controversy about the acceptability of consuming these color additives within the kosher Jewish community. Other comments were from individuals who did not belong to any of these groups but who simply preferred not to consume food containing these color additives.

(Response) In the analysis of the proposed rule, we did not account for the value of the proposed labeling changes for consumers who wish to avoid cochineal extract and carmine for non-health reasons. A significant number of consumers belong to the groups identified in the comments as potentially wishing to avoid cochineal extract and carmine for non-health reasons. Therefore, the value of labeling cochineal extract and carmine for these consumers represents a potentially significant addition to the benefits we estimated in the analysis of the proposed rule.

A recent nationwide poll concluded that 2.3 percent of adults in the United States over the age of 18 were vegetarians in 2006 (Ref. 1). This poll defined a vegetarian as someone who never eats meat, chicken, or fish. In 2005, there were 215,246,449 consumers over the age of 18 living in the United States, excluding those living in institutions, college dormitories, and other group quarters (Ref. 2). The population in 2006 was larger than in 2005, and some adults living in group quarters are probably vegetarian. Therefore, the poll we cited previously in this paragraph suggests there were probably at least 4,950,668 vegetarians over the age of 18 living in the United States in 2006. One study estimated that 5,764,000 Jews; 4,745,200 Muslims; and 7,700 Jains lived in the United States in 2005 (Ref. 3). We do not know how many Jews, Muslims, or Jains are also vegetarians. Therefore, we assume that the rate of vegetarianism in these groups is similar to that in the general population, or 2.3 percent. We also do not know how many consumers in the specified groups also wish to avoid cochineal extract and carmine for health reasons. However, few consumers in the general population are sensitive to these color additives. Therefore, we assume that only a very small percentage of consumers in these groups also wish to avoid these color additives for health reasons. Adding these numbers after subtracting 2.3 percent from each of the religious groups to avoid double counting with vegetarians, we estimate that up to approximately 15 million adult consumers in the United States may wish to avoid cochineal extract and carmine because they are vegetarian or for religious reasons. However, these comments did not provide information establishing that these groups actually have policies in place to encourage their members to avoid these substances, nor did they provide information establishing that every member of these groups follows such policies, if they exist. Therefore, the full range of the number of adults who wish to avoid these substances because they are vegetarian or for religious reasons is 0 to 15 million. In addition, some consumers who are not vegetarian and who do not belong to any of the specified religious groups may also wish to avoid cochineal extract and carmine for non-health reasons. However, we do not have sufficient information to estimate the potential number of such consumers.

We do not know how much these consumers would be willing to pay for the proposed labeling changes. However, any benefit accruing to these consumers would recur annually and, given the number of consumers involved, would probably represent significant additional benefits beyond the quantified benefits involving people who wish to avoid cochineal extract and carmine for health reasons.

(Comment) One comment said that we made an error in our analysis of the proposed rule. According to this comment, we said there were 14 adverse events over a 10-year period, and we assumed that only one percent of adverse events are reported. The comment said that this implies an estimate of 140 adverse events per year, but we estimated only 31 adverse events per year.

(Response) In our discussion of Option Two in the analysis of the proposed rule, we identified three adverse events over an approximately 10-year period that involved products containing carmine or cochineal extract in which those color additives did not or probably did not appear on the ingredient list. We based our benefit estimate on these three cases because the proposed labeling changes could only eliminate cases in which cochineal extract or carmine did not already appear on the product label, and the other 11 cases either did not contain information on how the product that caused the reaction was labeled or involved products that were labeled as containing carmine or cochineal extract. We applied a reporting rate of 1 percent to this figure to obtain our estimate of 31 adverse events per year.

We addressed the remaining 11 adverse events, which involved products that probably already listed carmine or cochineal extract on the product label, in our discussion of Option Five in the analysis of the proposed rule. We noted that it would be easier for consumers or health care personnel to identify carmine or cochineal extract as the potential cause of an adverse event in these cases than in cases in which these color additives did not appear on the product label. Therefore, we assumed a reporting rate of 10 percent for those cases.

(Comment) One comment said we did not explain why we assumed that only 1 percent of adverse events are reported rather than assuming that 0.1 percent or 10 percent of adverse events are reported.

(Response) In the analysis of the proposed rule, we cited studies that found adverse event reporting rates for various products and reporting systems ranging from less than 1 percent to 10 percent. Estimating the reporting rate for any particular product, adverse event, and reporting system is difficult because many factors can affect adverse event reporting rates, including the severity of the adverse event, whether the adverse event is unusual or unexpected, the amount of media attention the cause of the adverse event has received, and the details of the reporting system involved. We discussed our bases for assuming an adverse event reporting rate of 1 percent for products in which cochineal extract

and carmine do not appear on the label. The comment did not provide sufficient information for us to revise that assumption.

(Comment) One comment was from an organization that said it had received reports that 32 people had suffered adverse events caused by products containing carmine or cochineal extract between August 1998 and April 2006. The comment noted that applying a 1 percent reporting rate to this number of adverse events results in an estimate of approximately 400 adverse events per year.

(Response) As we discussed elsewhere in this section, we estimated the number of adverse events reported annually based on the number of adverse events involving products containing carmine or cochineal extract in which those color additives did not or probably did not appear on the label. This comment does not indicate whether any of the adverse event reports it received involved products that contained carmine or cochineal extract and did not or probably did not declare those color additives on product labels. Based on these considerations, we have not revised our analysis to reflect the information provided in this comment.

(Comment) Some comments noted that labeling would not prevent allergic reactions that a consumer experiences before he or she identifies carmine or cochineal extract as the cause of the allergic reaction. Some comments were from people who said it had taken them up to 10 years to identify cochineal extract or carmine as the cause of their allergic reactions.

(Response) In the analysis of the proposed rule, we acknowledged that the proposed labeling changes would not prevent adverse events involving people who do not yet know that they are sensitive to these color additives. We do not have an estimate of how many people are allergic to these color additives but are not aware of it. To reflect this, we assumed that the proposed labeling changes would eliminate between 10 percent and 90 percent of the adverse events. These comments did not provide sufficient information for us to revise this estimate.

c. *Distributive Impacts*

(Comment) One comment argued that the proposed labeling changes could reduce demand for cochineal extract and carmine. This comment noted that a drop in the demand for these color additives would reduce the incomes of people who produce and collect cochineal. The comment said that 20,000 families in the poorest rural zones of Peru depend exclusively on the production and collection of cochineal for their livelihood.

(Response) We discussed potential distributive impacts in the analysis of the proposed rule under Option Five, which involved banning cochineal extract and carmine. However, we did not discuss distributive impacts in the context of Option Two. The proposed labeling changes may have some effect on the demand for cochineal extract and carmine. However, any distributive impacts generated by the proposed labeling changes would be significantly smaller than those generated by a ban because consumers who wish to avoid products containing cochineal extract and carmine probably represent only a small fraction of the total number of consumers of such products. Therefore, we have revised our discussion of the impacts of this option to add the potential for a small distributive impact on producers of cochineal extract and carmine.

d. *Summary*

The revised estimated costs and benefits of this option are the same as the original estimated costs and benefits of this option in the analysis of the proposed rule except for the following changes. We revised our earlier health benefit estimate of $1 million to $26 million to include the value of the proposed labeling changes for consumers who wish to avoid cochineal extract and carmine for non-health reasons. We do not have sufficient information to estimate this benefit, but it may be significant based on the number of consumers that might be involved and the fact that any benefit would recur annually. In addition, we revised the analysis of this option in the proposed rule to include potential distributive effects on producers of cochineal extract and carmine due to a possible decline in the demand for those color additives. These distributive effects would probably be small because relatively few consumers probably wish to avoid these substances.

We have not revised the estimate of the costs that we presented in the analysis of the proposed rule, which consisted of relabeling costs of $0 million to $3 million plus some small but permanently recurring costs associated with the loss of otherwise free label space. Therefore, we estimate total net benefits of -$2 million to $26 million, plus the recurring benefit to consumers who wish to avoid carmine or cochineal extract for non-health reasons, minus the recurring costs associated with the loss of otherwise free label space.

3. Option Three: Take the Proposed Action, but Make the Effective Date Later

(Comment) One comment suggested we make the effective date 36 months after publication of the final rule because this would avoid problems caused by a large number of firms trying to change their labels within 24 months.

(Response) In the analysis of the proposed rule, we discussed the option of setting the effective date at 36 months after publication of the final rule. We noted that this would reduce costs to a range of $0 million to some amount less than $3 million. The high end of this range would be lower than the high end of the range that we estimated for the proposed effective date of 24 months after publication of the final rule, which was $3 million.

In the analysis of the proposed rule, we also noted that setting the effective date at 36 months after publication of the final rule would eliminate the $0 million to $2 million in health benefits that would have occurred in months 24 to 36 under Option Two, which would make total quantified benefits approximately $1 million to $24 million. Reducing the recurring annual stream of benefits that led to the estimated present value of $1 million by the small amount per year that rounds to $0 million did not change the overall estimated value of this stream of recurring benefits, which remained $1 million after rounding. However, reducing the recurring stream of annual benefits that led to the estimated present value of $26 million by $2 million in months 24 to 36 reduced the overall estimated value of this stream of recurring benefits from $26 million to $24 million. We said that we were unable to make any conclusions about the effect on net benefits of choosing this option rather than Option Two because of the overlapping changes in quantified costs and benefits. The revisions to the benefits that we discussed under Option Two also apply to this option. Therefore, we now estimate that the benefits that would have occurred in months 24 to 36 under Option Two are $0 million to $2 million plus the recurring benefits to consumers who wish to avoid cochineal extract and carmine for non-health reasons. Therefore, total net benefits would be -$2 million to $24 million, plus the recurring benefits to consumers who wish to avoid cochineal extract and carmine for non-health reasons, minus the recurring costs associated with the loss of otherwise free label space. This range overlaps with the range that we estimated for Option Two, so we are

again unable to draw any conclusion about whether this option would generate greater net benefits than Option Two.

4. Option Four: Take the Proposed Action, but Make the Effective Date Sooner

The revisions to the benefits that we discussed under Option Two also apply to this option. In the analysis of the proposed rule, we discussed the option of setting the effective date at 12 months after publication of the final rule rather than the proposed 24 months after publication of the final rule. We estimated that this option would increase costs relative to Option Two by $3 million to $52 million, which means that the total cost of this option relative to the baseline would be $3 million to $55 million. We also estimated that this option would increase benefits relative to Option Two by $0 million to $2 million, which means that the total benefits of this option relative to the baseline would be $1 million to $28 million. Under the revisions to the benefits that we discussed under Option Two, we now estimate that the total benefits of this option would be $1 million to $28 million plus the recurring benefits to consumers who wish to avoid cochineal extract and carmine for non-health reasons. Therefore, we now estimate net benefits of -$54 million to $25 million plus the recurring benefits to consumers who wish to avoid cochineal extract and carmine for non-health reasons minus the recurring costs associated with the loss of otherwise free label space. This range overlaps with the range that we estimated for Option Two. Therefore, we are unable to determine if the net benefits of this option would be greater than those of Option Two.

5. Option Five: Ban Carmine or Cochineal Extract

In the analysis of the proposed rule, we estimated that the costs of banning cochineal extract and carmine would be $3 million to $1,390 million and that the total value of the resulting annual stream of health benefits would be $9 million to $36 million. The revisions to the benefits that we discussed under Option Two also apply to this option. Our revised estimate of the benefits of this option is $9 million to $36 million plus the recurring benefits to consumers who wish to avoid cochineal extract and carmine for non-health reasons. Therefore, we estimate net benefits of -$1,381 million to $33 million plus the recurring benefits to consumers who wish to avoid cochineal extract and carmine for non-health reasons minus the recurring costs associated with the loss of otherwise free label space. This range overlaps with the range that we estimated for Option Two. Therefore, we are unable to determine if the net benefits of this option would be greater than those of Option Two.

(Comment) One comment said that we ignored the availability of potential alternative color additives. Another comment argued that firms would have difficulty using alternative synthetic color additives to reproduce the colors produced by cochineal extract and carmine.

(Response) We addressed the potential use of alternatives in the analysis of the proposed rule. The comments did not provide information that would allow us to revise that analysis.

(Comment) One comment argued that we overestimated the cost of reformulating products that would result from banning the use of cochineal extract and carmine. This conclusion was based on two factors: (1) The modest number of foods that contain carmine or cochineal extract and (2) the assertion that some foods already contain alternative color additives.

(Response) The analysis of the proposed rule addressed the fact that only a modest number of foods contain carmine or cochineal extract. In addition, the model we used to estimate reformulation costs addressed the potential use of alternatives. Therefore, we have not revised our analysis in response to this comment.

(Comment) Some comments argued that no color additives currently on the market are acceptable replacements for carmine or cochineal extract.

(Response) In the analysis of the proposed rule, we noted that potential substitute color additives have technical and functional characteristics that differ from those of cochineal extract and carmine. The comment did not provide information establishing that there are no acceptable substitutes after considering changes in product formulation that address differences in technical and functional characteristics.

(Comment) One comment suggested that alternative synthetic color additives might have genotoxic, teratogenic, or carcinogenic properties.

(Response) In the analysis of the proposed rule, we did not address potential genotoxic, teratogenic, or carcinogenic properties of alternative color additives. Adverse health effects generated by alternative color additives would represent a cost of banning cochineal extract and carmine. However, listed color additives are safe when used for their intended purposes.

6. Option Six: Take the Proposed Action, but Also Require Labeling of the Origin of Cochineal Extract and Carmine

(Comment) A number of comments suggested that we take the proposed action but also require labeling indicating that cochineal extract and carmine are derived from insects or, more broadly, from animals. One comment argued that consumers who want to avoid eating ingredients derived from animals, including insects, would not think to look up the source of cochineal extract and carmine.

(Response) This option would generate the same costs and benefits as Option Two plus some additional costs and benefits. This option would result in additional costs because it would require a more complicated type of label change than the change in the ingredient list that we discussed under Option Two. In addition, this option would generate additional loss of otherwise free label space beyond the amount that we discussed under Option Two.

This option would result in additional benefits because consumers who are interested in avoiding ingredients derived from insects or animals would have all the information they need to accomplish their objective on the product label, so they would not need to learn that cochineal extract and carmine are derived from insects. Learning that cochineal extract and carmine come from insects is a one-time cost for individuals. However, some people would enter the pool of people trying to avoid ingredients derived from insects or animals every year, so these learning costs would be an annual cost. Education costs would probably be relatively low because one can get information on ingredients derived from animals from a variety of sources such as books or Web sites dealing with vegetarianism, health, and religious eating restrictions. We do not have sufficient information to estimate the number of people who might wish to avoid carmine and cochineal extract for various reasons, nor do we know how much it would cost them to learn that cochineal extract and carmine are derived from insects. Therefore, we cannot estimate the net benefits of this option or determine if this option would generate greater net benefits than Option Two.

7. Option Seven: Take the Proposed Action, but Do Not Change the Labeling Requirements for Cosmetics

(Comment) One comment said that we lacked support for our claim that cosmetics containing carmine have

caused adverse reactions. This comment also discussed some studies that ostensibly showed that cosmetics containing this color additive do not cause allergic reactions. Another comment was from a manufacturer of cosmetics that contain carmine that said it had never received a documented adverse event report involving this color additive in these cosmetics in 40 years of selling these products in various countries. One comment suggested we take the proposed action with respect to food but not cosmetics.

(Response) The estimated cost of taking the proposed action but not changing the labeling requirements for cosmetics is approximately $0 million to $3 million, which is the same as the cost we estimated for Option Two, plus the recurring costs associated with the loss of otherwise free label space. This option would also generate the same benefits as Option Two. The cost of changing cosmetic labels did not contribute significantly to the total estimated cost of changing labels in Option Two in the analysis of the proposed rule.

None of the three adverse events involving products that contained carmine or cochineal extract but did not list those substances on the product label, which we used to estimate benefits for Option Two, involved cosmetics. However, some small number of adverse events involving unlabeled carmine in cosmetics probably occur because some consumers have reported having adverse reactions to cosmetic products containing carmine and some cosmetic products containing carmine do not list those substances on the product label. We do not have sufficient information to estimate the number of such cases. Therefore, we cannot estimate the net benefits of this option or determine if this option would generate greater net benefits than Option Two.

8. Summary

In table 1 of this document, we summarize the quantified costs and benefits and compare the estimates from our analyses of the proposed and final rules. We discuss the nonquantified costs and benefits after table 1.

TABLE 1.

Option	Final Rule Cost (millions of dollars)	Final Rule Benefit (millions of dollars)	Proposed Rule Cost (millions of dollars)	Proposed Rule Benefit (millions of dollars)
Option One: Take No Action	Baseline	Baseline	Baseline	Baseline
Option Two: Take the Proposed Action as Revised in This Final Rule	$0 to $3	$1 to $26	$0 to $3	$1 to $26
Option Three: Take the Proposed Action, but Make the Effective Date Later	$0 to < $3	$1 to $24	$0 to < $3	$1 to $24
Option Four: Take the Proposed Action, but Make the Effective Date Sooner	$3 to $55	$1 to $28	$3 to $55	$1 to $28
Option Five: Ban Carmine or Cochineal Extract	$3 to $1,390	$9 to $36	$3 to $1,390	$9 to $36
Option Six: Take the Proposed Action, but Also Require Labeling of the Origin of Cochineal Extract and Carmine	$0 to $3	$1 to $26	Not applicable (NA)	NA
Option Seven: Take the Proposed Action, but Do Not Change the Labeling Requirements for Cosmetics	$0 to $3	$1 to $26	NA	NA

In addition to quantified costs and benefits, we also have nonquantified costs and benefits. One nonquantified benefit, which we discussed in the analysis of the proposed rule, is the value of the various potential regulatory alternatives that consumers who are sensitive to cochineal extract and carmine gain from being able to consume some foods and use some cosmetics that they might currently avoid because these consumers are uncertain as to whether the products contain these substances. This benefit occurs under Options Two through Seven. It is greatest under Option Five (Ban Carmine or Cochineal Extract). Among the options that involve labeling, this benefit is somewhat smaller under Option Seven than under the other relevant options because Option Seven does not apply to cosmetics. Another nonquantified benefit, which we have introduced in this analysis of the final rule, is the value to consumers who wish to avoid cochineal extract and carmine for non-health reasons. This benefit occurs under Options Two through Seven. It is greatest under Option Five (Ban Carmine or Cochineal Extract). Among the options that involve labeling, this benefit is also somewhat greater under Option Six because this option requires declaration of information on the origin of these substances and somewhat smaller under Option Seven because this option does not apply to cosmetics. The one nonquantified cost is a small but permanently recurring cost from the loss of otherwise free label space. This nonquantified cost occurs under Options Two through Four and Six through Seven. This cost is somewhat greater under Option Six because this option requires additional information to be declared and somewhat less under Option Seven because this option does not apply to cosmetics.

D. Small Entity Analysis

We have examined the economic implications of this final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. We find that this final rule may have a significant economic impact on a substantial

number of small entities. The discussion in this section of the final rule, as well as data and analysis contained in this rule's regulatory impact analysis, constitutes our final regulatory flexibility analysis in compliance with section 604 of the Regulatory Flexibility Act.

The Regulatory Flexibility Act requires that we present a succinct statement of a rule's objectives. As stated previously in this analysis and unchanged from the proposed rule, the intent of this rule is to enable individuals with sensitivities to cochineal extract and carmine to avoid products containing these color additives, as well as to enable consumers and healthcare professionals to more quickly identify sensitivities to these additives.

The Small Business Administration (SBA) publishes definitions of small businesses by North American Industry Classification System (NAICS) code. We presented a list of relevant NAICS codes in the preliminary regulatory impact analysis (71 FR 4839 at 4847). For most of the relevant NAICS codes, SBA defines a small business as a business with 500 or fewer employees. The exceptions are NAICS codes 311821 and 312140, for which the cutoff is 750 employees, and 311422, for which the cutoff is 1,000 employees. We used the 1997 Economic Census to check the number of firms that would be classified as small businesses under the SBA definitions. We found that virtually all (98 percent) of the firms in the relevant NAICS code categories are small businesses according to the SBA definitions.

Total costs potentially incurred by small businesses will be virtually equal to the social costs estimated in the initial and final regulatory impact analyses because the vast majority of the affected firms discussed in the cost benefit analysis are small businesses. These costs may or may not be borne by small businesses because firms may be able to pass on some or all of these costs to consumers in the form of higher prices, depending on market conditions. If the total costs accruing to small businesses are proportional to the number of affected food and cosmetic firms that are small businesses, and if these firms are unable to pass on any costs to consumers, then we estimate that the one-time costs accruing to small businesses from taking the proposed action would be $0 million to $3 million, plus some small but permanently recurring costs associated with the loss of otherwise free label space. We described these costs and our method for estimating these costs in the initial and final regulatory impact analyses.

All of the regulatory alternatives that we discussed in the initial regulatory impact analysis would change the potential impact of this rule on small businesses. Taking no action (Option One) would eliminate all potential impacts on small businesses. However, it would also eliminate all potential benefits of this rule. Taking the proposed action but increasing the compliance period from 24 months to 36 months (Option Three) would reduce the potential impact on small businesses to between $0 million and some amount less than $3 million, plus some small but permanently recurring costs associated with the loss of otherwise free label space. However, as we discussed in the initial regulatory impact analysis, extending the compliance period from 24 months to 36 months would also reduce benefits by the amount that would otherwise have been generated in the first 12 months. Taking the proposed action but decreasing the compliance period from 24 months to 12 months (Option Four) would substantially increase the potential impact on small businesses to between $3 million and $55 million, plus some small but permanently recurring costs associated with the loss of otherwise free label space. Banning carmine and cochineal extract (Option Five) would significantly increase the potential costs for small food and cosmetic firms to between $3 million and $1,390 million. In addition, a ban would also generate significant distributive effects on small businesses that manufacture, import, or process these color additives and do not also handle substitutes. These distributive effects would also be considered costs from the perspective of the affected small businesses. Other firms, including small firms, would benefit from these distributive effects. However, we are unable to consider positive effects on small businesses for purposes of this analysis.

We did not receive any comments that require us to revise the discussion of the five options that we discussed in the analysis of the proposed rule other than those comments that we have already discussed in the final regulatory impact analysis. However, we must address the additional options suggested in the comments. Taking the proposed action but also requiring labeling of the origin of cochineal extract and carmine (Option Six) would increase costs for small entities relative to Option Two because it would require a more complicated type of label change than the change in the ingredient list that we discussed under Option Two. Therefore, the range of costs for this option would be greater than the $0 to $3 million that we estimated for Option Two. In addition, this option would generate additional loss of otherwise free label space beyond the amount that we discussed under Option Two. We do not have sufficient information to determine how much this option would increase costs for small entities relative to Option Two. Taking the proposed action but not changing the labeling requirements for cosmetics (Option Seven) would eliminate costs that would accrue to small cosmetic firms under Option Two. However, costs accruing to cosmetic firms did not contribute significantly to the estimated total costs of Option Two. Therefore, our estimate of the costs of this option rounds to $0 million to $3 million plus the recurring costs associated with the loss of otherwise free label space, which is the same as the costs we estimated for Option Two. This option would also eliminate all benefits associated with applying this rule to small cosmetic firms.

V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.''

Section 403A of the act (21 U.S.C. 343–1) is an express preemption provision. Section 403A(a) of the act provides that: ''* * * no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce—* * * (2) any requirement for the labeling of food of the type required by section * * * 403(x) that is not identical to the requirement of such section * * *.'' This final rule, among other things, amends the existing labeling regulations on cochineal extract and carmine by requiring their declaration by name on the label of all food products that contain these color additives. Although this rule has a preemptive effect in that it precludes States from issuing any food labeling requirements for cochineal extract and carmine that are not identical to those required by this final rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act. Section 403A(a)(2) of

the act displaces both State legislative requirements and State common law duties (*Riegel* v. *Medtronic*, 128 S. Ct. 999 (2008)). In addition, as with any Federal requirement, if a State law requirement makes compliance with both Federal law and State law impossible, or would frustrate Federal objectives, the State requirement would be preempted. See *Geier* v. *American Honda Co.*, 529 U.S. 861 (2000); *English* v. *General Electric Co.*, 496 U.S. 72, 79 (1990); *Florida Lime & Avocado Growers, Inc.*, 373 U.S. 132, 142–43 (1963); *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941).

The preemptive effects are the result of existing law set forth in the statute as interpreted in decisions of the United States Supreme Court. FDA, therefore, has not sought separate comment on the preemptive effect of this action because it is not seeking independently to preempt State law beyond the effects of section 403A(a)(2) of the act or existing case law.

VI. Paperwork Reduction Act of 1995

This final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The labeling requirements in this final rule cross-reference labeling requirements in other regulations; therefore, FDA is not estimating the burden of this final rule separately. The burden hours for 21 CFR 70.25 cross-referenced in §§ 73.100(d)(1) and 73.2087(c)(1) have been estimated and approved under OMB Control Number 0910–0016. The burden hours for 21 CFR 101.4 cross-referenced in § 73.100(d)(2) have been estimated and approved under OMB Control Number 0910–0381. The burden hours for § 701.3 cross-referenced in § 73.2087(c)(2) have been estimated and approved under OMB Control Number 0910–0599.

VII. Analysis of Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (71 FR 4839). No new information or comments have been received that would affect the agency's previous determination that this action has no significant impact on the human environment and that neither an environmental assessment nor an environmental impact statement is required.

VIII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Stahler, Charles. How Many Adults are Vegetarian? Vegetarian Journal. 2006. Issue 4.

2. U.S. Census Bureau. 2005 American Community Survey.

3. The 2005 Annual Megacensus of Religions. (2007). Britannica Book of the Year, 2006.

IX. Objections

This rule is effective as shown in the **DATES** section of this document; except as to any provisions that may be stayed by the filing of proper objections. Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) written or electronic objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects

21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 73 and 101 are amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

■ 1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Section 73.100 is amended by revising paragraph (d) to read as follows:

§ 73.100 Cochineal extract; carmine.

* * * * *

(d) *Labeling requirements.* (1) The label of the color additives and any mixtures intended solely or in part for coloring purposes prepared therefrom shall conform to the requirements of § 70.25 of this chapter.

(2) The label of food products intended for human use, including butter, cheese, and ice cream, that contain cochineal extract or carmine shall specifically declare the presence of the color additive by listing its respective common or usual name, ''cochineal extract'' or ''carmine,'' in the statement of ingredients in accordance with § 101.4 of this chapter.

* * * * *

■ 3. Section 73.2087 is amended by revising paragraph (c) to read as follows:

§ 73.2087 Carmine.

* * * * *

(c) *Labeling.* (1) The color additive and any mixture prepared therefrom intended solely or in part for coloring purposes shall bear, in addition to any information required by law, labeling in accordance with the provisions of § 70.25 of this chapter.

(2) Cosmetics containing carmine that are not subject to the requirements of § 701.3 of this chapter shall specifically declare the presence of carmine prominently and conspicuously at least once in the labeling. For example: ''Contains carmine as a color additive.''

* * * * *

PART 101—FOOD LABELING

■ 4. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

■ 5. Section 101.22 is amended by revising paragraph (k)(2) to read as follows:

§ 101.22 Foods; labeling of spices, flavorings, colorings and chemical preservatives.

* * * * *

(k) * * *

(2) Color additives not subject to certification and not otherwise required by applicable regulations in part 73 of this chapter to be declared by their respective common or usual names may be declared as ''Artificial Color,'' ''Artificial Color Added,'' or ''Color Added'' (or by an equally informative term that makes clear that a color additive has been used in the food). Alternatively, such color additives may be declared as ''Colored with _____'' or ''_____ color,'' the blank to be filled in with the name of the color additive listed in the applicable regulation in part 73 of this chapter.

* * * * *

Dated: December 24, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–31253 Filed 1–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–028–FOR; Docket ID No. OSM–2008–0018]

Montana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Montana regulatory program (the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Montana proposed revisions to its statute as discussed in **SUPPLEMENTARY INFORMATION**, II. Proposed Amendment, to clarify ambiguities and improve operational efficiency.

DATES: *Effective Date:* January 5, 2009.

FOR FURTHER INFORMATION CONTACT: Casper Field Office Director Jeffrey Fleischman, Telephone: 307/261–6550, Internet address: *JFleischman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions at 926.15, 926.16, and 926.30.

II. Submission of the Proposed Amendment

By letter dated July 7, 2008, Montana sent us an amendment to its program (Administrative Record No. MT–025–01, under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment for changes made at its own initiative. The provisions of the Montana Strip and Underground Mine Reclamation Act that Montana proposed to revise are within MCA 82–4–232, Area mining required—bond—alternative plan.

We announced receipt of the proposed amendment in the August 26, 2008, **Federal Register** 73 FR 50265. In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. MT–25–05). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on September 25, 2008. We received comments from one Federal agency.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Minor Revisions to Montana's Statute

Montana proposed minor wording changes to the following previously-approved Montana Strip and Underground Mine Reclamation Act:

MCA 82–4–232(3) and (4). Area mining required—bond—alternative plan.

Because these changes are minor, we find that they will not make Montana's statute less stringent than SMCRA.

B. Revisions to Montana's Statute That Have the Same Meaning as the Corresponding Provisions of SMCRA

Montana proposed revisions to its statute at MCA 82–4–232(6)(l) requiring detailed written findings when reclamation is not approved. The revised language is similar and corresponds to section 519(d) of SMCRA; and therefore, we approve it.

C. Revision to Montana's Statute That Is Not the Same as SMCRA

Montana statute at MCA 82–4–232(5)(k). Requirement to release performance bonds.

MCA at 82–4–232(k)(5) states that the Department may release the bond in whole or in part if it is satisfied the reclamation covered by the bond or portion of the bond has been accomplished as required by this part according to the following schedule:

Montana proposes to replace the existing term ''may'' in its statute with the more definitive term ''shall.'' The language in both SMCRA at Section 519 and the Federal regulations at 30 CFR 800.40(c) use the phrase ''the regulatory authority may release all or part of the bond * * *.'' (Emphasis added). Montana's proposed statutory change does not alter its existing requirements that all required reclamation must be completed prior to the release of the bond, the public must have been provided with the opportunity to request a hearing to contest the pending release, and the performance bond is released either in whole or in part only when the entire process is completed. With the use of the term ''shall'', Montana provides the operator conducting the required reclamation with clear assurance that bond will be released once all the requirements are met including the appropriate request by the operator. The added assurance that bond release will occur is also important to financial institutions providing funds for the reclamation bond. Surety bonds have become more difficult to obtain. Montana's proposed use of the term ''shall'' clarifies the terms of the bond. We have, in the past, approved the use of the term ''shall'' rather than ''may'' with respect to a State's decision to release all or part of a reclamation bond. For the reasons discussed above, we are approving Montana's proposed change to MCA 82–4–232(k)(5) to require bond release with use of the term ''shall'' in place of the term ''may''.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment but did not receive any (Administrative Record No. MT–25–03).

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program (Administrative Record Document ID No. MT–25–03). One comment letter was received.

The Rocky Mountain Regional Office of the U.S. Bureau of Indian Affairs replied in an August 1, 2008, letter (Administrative Record No. MT–25–04). It states that the proposed changes appear to be very beneficial to the program's mission and that ''we have no reason to object to the revision being approved.''

Environmental Protection Agency (EPA) Concurrence and Comments

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

On July 21, 2008, we asked for concurrence on the amendment (Administrative Record Document ID No. MT–25–03). EPA did not respond to our request.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On July 21, 2008, we requested comments on Montana's amendment (Administrative Record Document ID No. MT–25–03), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve Montana's July 7, 2008, amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 926, which codify decisions concerning the Montana 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 demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

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. The rule does not involve or affect Indian Tribes in any way.

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 CFR 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) *et seq.*).

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. 3501 *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), of 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.

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 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 25, 2008.

Allen D. Klein,

Regional Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR 926 is amended as set forth below:

PART 926—MONTANA

■ 1. The authority citation for part 926 continues to read as follows:

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

■ 2. Section 926.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 926.15 Approval of Montana's regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* * *
July 7, 2008	January 5, 2009	Montana Strip and Underground Mine Reclamation Act 82–4–232(3) and (4), 82–4–232 (5)(k), 82–4–232(5)(l).

[FR Doc. E8–31275 Filed 1–2–09; 8:45 am]

BILLING CODE 4310–05–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–13 and CP2009–17; Order No. 158]

New Competitive Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently filed Postal Service request to add Express Mail & Priority Mail Contract 3 to the Competitive Product List. The Postal Service has also filed one related contract. This notice addresses procedural steps associated with these filings.

DATES: Comments due January 5, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 19, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Express Mail & Priority Mail Contract 3 to the Competitive Product List.[1] The Postal Service asserts that the Express Mail & Priority Mail Contract 3 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2009–13. The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–17.

Request. The Request incorporates (1) A redacted version of the Governors' Decision authorizing the new product; (2) a redacted version of the contract; (3) requested changes in the Mail Classification Schedule product list; (4) a statement of supporting justification as required by 39 CFR 3020.32; and (5) certification of compliance with 39 U.S.C. 3633(a).[2] Substantively, the Request seeks to add Express Mail & Priority Mail Contract 3 to the Competitive Product List. *Id.* at 1–2.

In the statement of supporting justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment D. Thus, Ms. Parks contends there will be no issue of subsidization of competitive products

[1] Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 3 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, December 19, 2008 (Request).

[2] Attachment A to the Request consists of the redacted Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Express Mail and Priority Mail Services (Governors' Decision No. 08–23). The Governors' Decision includes an attachment which provides an analysis of the proposed Express Mail and Priority Mail Contract 3 and certification of the Governors' vote. Attachment B is the redacted version of the contract. Attachment C shows the requested changes to the Mail Classification Schedule product list. Attachment D provides a statement of supporting justification for the Request. Attachment E provides the certification of compliance with 39 U.S.C. 3633(a).

by market dominant products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Express Mail & Priority Mail Contract 3 is included with the Request. The contract is for 3 years and is to be effective 1 day after the Commission provides all necessary regulatory approvals. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a) and 39 CFR 3015.7(c). *See id.*, Attachment A and Attachment E. It notes that actual performance under this contract could vary from estimates, but concludes that the contract will remain profitable. *Id.*, Attachment A.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Express Mail & Priority Mail Contract 3, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2–3.

II. Notice of Filings

The Commission establishes Docket Nos. MC2009–13 and CP2009–17 for consideration of the Request pertaining to the proposed Express Mail & Priority Mail Contract 3 product and the related contract, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this order; however, future filings should be made in the specific docket in which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR part 3020 subpart B. Comments are due no later than January 5, 2009. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

It is Ordered:

1. The Commission establishes Docket Nos. MC2009–13 and CP2009–17 for consideration of the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than January 5, 2008.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

Dated: December 23, 2008.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–31252 Filed 1–2–09; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[Docket No. USCG–2007–0039]

RIN 1625–AB23

2008 Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Final Rule.

SUMMARY: The Coast Guard is revising and finalizing the March 2008 interim rule, which updated rates for pilotage service on the Great Lakes by increasing rates an average of 8.17% over the last ratemaking that was completed in September 2007. In response to new contract provisions and to public comments on our rulemaking, this final rule increases rates an additional 9.95%, for a total average increase of 18.92% since 2007.

DATES: This final rule is effective February 4, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2007–0039 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this final rule, please call Mr. Paul Wasserman, Chief, Great Lakes Pilotage Branch, Commandant (CG–54122), U.S. Coast Guard, at 202–372–1535, by fax 202–372–1929, or e-mail *Paul.M.Wasserman@uscg.mil.* For questions on viewing or submitting material to the docket, call Renee V. Wright, Chief, Dockets, Department of Transportation, telephone 202–493–0402.

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I. Abbreviations

AMOU American Maritime Officer union
GLPAC Great Lakes Pilotage Advisory Committee
MISLE Coast Guard Marine Inspection, Safety, and Law Enforcement
MOA Memorandum of Agreement
NAICS North American Industry Classification System
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget

II. Background

The Great Lakes Pilotage Act of 1960, codified in Title 46, Chapter 93, of the United States Code (U.S.C.), requires foreign-flag vessels and U.S.-flag vessels in foreign trade to use Federal Great Lakes registered pilots while transiting the St. Lawrence Seaway and the Great Lakes system. 46 U.S.C. 9302, 9308. The Coast Guard is responsible for administering this pilotage program, which includes setting rates for pilotage service. 46 U.S.C. 9303.

The Coast Guard pilotage regulations require annual reviews of pilotage rates and the creation of a new rate at least once every five years, or sooner, if annual reviews show a need. 46 CFR part 404. 46 U.S.C. 9303(f) requires these reviews and, where deemed appropriate, that adjustments be established by March 1 of every shipping season.

To assist in calculating pilotage rates, the three Great Lakes pilots' associations are required to submit to the Coast Guard annual financial statements prepared by certified public accounting firms. In addition, every fifth year, in connection with the full ratemaking, the

Coast Guard contracts with an independent accounting firm to conduct audits of the accounts and records of the pilotage associations and to submit financial reports relevant to the ratemaking process. In those years when a full ratemaking is conducted, the Coast Guard generates the pilotage rates using Appendix A to 46 CFR Part 404. Between the five-year full ratemaking intervals, the Coast Guard annually reviews the pilotage rates using Appendix C to 46 CFR Part 404, and adjusts rates as appropriate.

The last full Appendix A ratemaking used 2002 data and was published in the **Federal Register** on April 3, 2006 (71 FR 16501). A 2007 Appendix C ratemaking was completed on September 18, 2007 (72 FR 53158). An Appendix C review of rates for the 2008 season showed a need for further adjustment. That adjustment was the subject of a notice of proposed rulemaking (NPRM; 73 FR 6085, Feb. 1, 2008) proposing a rate increase averaging 8.17% across all three districts. The NPRM also proposed to clarify the duty of pilots and pilot associations to cooperate with lawful authority. On March 21, 2008, we published an interim rule (73 FR 15092) making the 8.17% increase effective immediately and requesting additional comments. In addition to the public comments received on the NPRM, we invited comments on the interim rule.

III. Discussion of Comments

The Coast Guard received six comments in response to the NPRM and one on the interim rule. Two comments on the NPRM were received from legal representatives of the pilots' associations; one comment on the NPRM and one on the interim rule were received from the Shipping Federation of Canada; two comments on the NPRM were received from the St. Lawrence Seaway Pilots' Association; and one comment on the NPRM was received from the American Pilots' Association. In the interim rule, we summarized points made by commenters on the NPRM, but deferred full discussion for the final rule.

All the NPRM and interim rule commenters made points about the larger context within which our annual rate rulemaking takes place. Collectively, these comments indicated a desire for a comprehensive review of Coast Guard ratemaking procedures, to take into account:

- Determination of bridge hours, particularly in light of Rear Admiral J. Timothy Riker's bridge hour standards report;
- The pilots' contention that we should base our calculations on a 284 day navigation season instead of a nine month season;
- Industry interest in pilot efficiency standards against which ratemaking adjustments can be measured; and
- Alignment of U.S. and Canadian Great Lakes pilotage rates.

We note these comments which are outside the scope of this rulemaking and are actively considering ways to bring about the desired comprehensive review. Your ideas on how best to conduct a comprehensive review are welcome at any time; they may be addressed to Mr. Paul Wasserman whose contact information appears in the **FOR FURTHER INFORMATION CONTACT** section of this preamble. The Coast Guard is advised on Great Lakes pilotage matters by the Great Lakes Pilotage Advisory Committee (GLPAC), to which suggestions also may be sent. To send suggestions, or for further information on GLPAC, contact Mr. John Bobb at (202) 372–1532 or at *John.K.Bobb@USCG.mil.*

The commenter on our interim rule asked for a full ratemaking pursuant to 46 CFR 404.1(b). We are honoring that request and have already begun the next full Appendix A ratemaking. As previously noted, our last Appendix A ratemaking used 2002 data and was completed in 2006. We are now auditing 2007 pilot financial data for the next Appendix A ratemaking. Meanwhile, we are also preparing for the 2009 annual Appendix C review.

One commenter on the NPRM stated the Coast Guard proposed an increase without any demonstration of its need. We disagree and observe that the NPRM and interim rule both provided detailed information to show how we applied the 46 CFR Part 404, Appendix C ratemaking methodology.

One commenter on the NPRM asked us to post, on the public docket, the pilot association financial statements and American Maritime Officer union (AMOU) contracts relied upon in this ratemaking. We have honored this request and the documents may be viewed on the docket as described in the **ADDRESSES** section of this preamble.

As we discussed in the interim rule, several commenters on the NPRM opposed our proposal to clarify the duty of pilots and pilot associations to cooperate with lawful authority, saying the proposal needed further justification. We removed the proposed language in the interim rule. Given the apparent public interest in this subject, we have decided it cannot be treated properly in the context of annual ratemakings that need to be completed quickly. If we return to this subject in the future, we will fully justify our position and provide ample opportunity for public comment.

Two commenters on the NPRM pointed out that the 49.5 monthly multiplier we proposed and used for the interim rule failed to reflect the two separate sets of AMOU contracts in use, which in the NPRM were referred to as Agreements A and B. We agree and our final rule uses a 54.5 multiplier for Agreement A contracts and a 49.5 multiplier for Agreement B contracts.

One commenter on the NPRM pointed out that, under both sets of Agreements A and B, a 4.57% increase in the daily wage rate and health insurance contributions took effect August 1, 2008. We agree and have revised the final rule to reflect that change.

Two commenters on the NPRM said that we overstated bridge hour projections for Areas 2, 4, and 5, thereby underestimating the rates needed to permit pilots to make target pilot compensation. They pointed out that the NPRM (and subsequently the interim rule) stated that bridge hours would remain the same as they had been in 2007 and that, therefore, we should make projections for 2008 based on the actual 2007 bridge hours. We agree and have reduced the hour projections for Areas 2, 4, and 5 to the actual bridge hours for 2007. The Area 2 reduction would ordinarily result in a reduction to four pilots, but experience has demonstrated the need for at least five pilots in that area.

Data has shown that as a fifth U.S. pilot begins working in Area 2, vessel delays due to awaiting a pilot completing a mandatory rest between assignments have decreased from 78 hours during the 2007 navigation season to five total hours during the 2008 navigation season. Whereas when there were only four pilots servicing vessels on Lake Ontario in 2005 & 2006 there were 300 hours and 340 hours of delay to vessels respectively. There have also been 17 pilot resignations in Area 2 over the past 13 years. A significant pilot attrition problem exists in Area 2. This is attributed to pilots continually having to return to work immediately after completing a mandatory minimum rest period. Since putting on a fifth pilot in Area 2, there has not been one resignation in the last 2.5 years.

The additional pilot is necessary both to ensure adequate pilotage service and to ensure that the 1977 U.S.-Canadian Memorandum of Agreement's (MOA's) 50–50 U.S.-Canadian traffic sharing provision can be met. The Canadian pilots cover Area 2 with a total of six

pilots as opposed to 5 U.S. pilots covering the same area. In 2007 50% of the U.S. piloted vessels transiting Area 2 go straight through the district, pilot boat to pilot boat. Because of distances and normal speeds attained by vessels the trip between Cape Vincent and Port Weller will typically last no more than two six hour period charges. Similarly, in Area 4 58% of U.S. piloted vessel transits going straight through District 2 are charged three or more period charges. Therefore, there is less revenue generated in Area 2 than in Area 4.

It should also be noted that the rate increase in Area 2 now very closely matches the current Canadian rates for the first time in many years. Due to these factors we are refraining from reducing the number of pilots on which our calculations are based for Area 2. However, we have reduced by one the number of pilots on which our calculations are based for Areas 4 and 5, because the District 2 Pilots' Association has routinely operated with an average of one less pilot than is authorized under the rate and for the last season and a half with two fewer pilots than authorized. Accordingly, a reduction of one pilot per area reflects actual practice.

IV. Discussion of the Final Rule

A. Pilotage Rate Changes Summarized

This final rule adjusts pilotage rates in accordance with Appendix C of 46 CFR part 404, by increasing rates an average 18.92% over the 2007 final rule. The increase in Areas 1, 6, 7, and 8 is attributable to AMOU contract increases that took effect between August 1, 2006, and August 1, 2008, an adjustment to the AMOU contract monthly multiplier in the Agreement A contracts, and the use of an updated consumer price index. The increases in Areas 2, 4, and 5 reflect the changes referred to above and also the public comments discussed in Part III of this preamble. We are also making an across-the-board increase, equal to 18.92% above the 2007 rate, for service interruptions, delays, and cancellations, and for boarding or discharging pilots at non-normal locations. The new rates are comparable to Canadian rates that took effect January 1, 2008. Table 1 summarizes the rate changes since 2007.

TABLE 1—SUMMARY OF RATE CHANGES SINCE 2007

	2008 IR/ 2008 NPRM percent increase over 2007 FR	2008 FR percent increase over 2008 IR/ 2008 NPRM	Total 2008 FR percent increase over 2007 FR	2008 FR percent increase from 2008 IR/ 2008 NPRM	Total 2008 FR percent increase from 2007 FR
	Increases effective before August 1, 2008			Increase effective after August 2, 2008	
Area 1	7.78	2.09	10.03	6.65	14.94
Area 2*	8.41	44.18	56.30	50.88	63.57
Area 4*	8.50	−5.44	2.61	−1.03	7.39
Area 5	7.98	9.79	18.55	14.72	23.88
Area 6	8.37	1.92	10.45	6.65	15.58
Area 7	7.83	2.09	10.08	6.66	15.01
Area 8	8.31	1.92	10.38	6.64	15.50
Average Rate Change	8.17	5.15	13.72	9.95	18.92

*Note: Area 3 is omitted, being entirely in Canadian waters and not under U.S. jurisdiction.

B. Calculating the Rate Adjustment

The Appendix C to Part 404 ratemaking calculation involves eight steps:

Step 1: Calculate the total economic costs for the base period (*i.e.* pilot compensation expense plus all other recognized expenses plus the return element).

Step 2: Calculate the ''expense multiplier,'' the ratio of other expenses and the return element to pilot compensation for the base period;

Step 3: Calculate an annual ''projection of target pilot compensation'' using the same procedures found in Step 2 of Appendix A;

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2;

Step 5: Adjust the result in Step 4, as required, for inflation or deflation;

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs;

Step 7: Divide prospective unit costs in Step 6 by the base period unit costs in Step 1; and

Step 8: Adjust the base period rates by the percentage changes in unit cost in Step 7.

The base data used to calculate each of the eight steps comes from the 2007 final rule. The Coast Guard also used the most recent union contracts between the AMOU and vessel owners and operators on the Great Lakes to determine target pilot compensation. Bridge hour projections for the 2008 season have been obtained from historical data, pilots, and industry. Bridge hours are the number of hours a pilot is aboard a vessel providing pilotage service. All documents and records used in this rate calculation have been placed in the public docket for this rulemaking and are available for review at the addresses listed under **ADDRESSES.**

Some values may not total exactly due to format rounding for presentation in charts and explanations in this section. The rounding does not affect the integrity or truncate the real value of all calculations in the ratemaking methodology described below.

Step 1: Calculate the total economic cost for the base period. In this step, for each Area, we add the total cost of target pilot compensation, all other recognized expenses, and the return element (net income plus interest). We subtract the return element from the base operating expense to show the component parts comprising total economic cost used in this calculation. These two expenses are eventually recombined as total operating expenses and subsequently added to base pilot compensation to yield the total economic cost. The subtraction and addition of the return element is for illustrative purposes only. It does not change total expenses and, therefore, does not affect the total economic cost calculation. The sum of all expenses and the return element are added together and divided by total bridge hours for each area to arrive at the base cost per bridge hour. Tables 2 through 4 summarize the Step 1 calculations:

TABLE 2—TOTAL ECONOMIC COST FOR BASE PERIOD, DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Base operating expense (less base return element)	$431,313	$436,283	$867,596
Base target pilot compensation	+$1,368,253	+$825,760	+$2,194,013
Base return element	+$8,802	+$13,493	+$22,295
Subtotal	=$1,808,368	=$1,275,536	=$3,083,904
Base bridge hours	÷5,661	÷7,993	÷13,654
Base cost per bridge hour	=$319.44	=$159.58	=$225.86

TABLE 3—TOTAL ECONOMIC COST FOR BASE PERIOD, DISTRICT TWO

	Area 4 Lake Erie	Area 5 South-east Shoal to Port Huron, MI	Total District Two
Base operating expense	$499,328	$737,052	$1,236,380
Base target pilot compensation	+$825,760	+$1,596,295	+$2,422,055
Base return element	+$26,280	+$30,711	+$56,991
Subtotal	=$1,351,368	=$2,364,058	=$3,715,426
Base bridge hours	÷8,490	÷6,395	÷14,885
Base cost per bridge hour	=$159.17	=$369.67	=$249.61

TABLE 4—TOTAL ECONOMIC COST FOR BASE PERIOD, DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Base operating expense	$810,612	$319,193	$511,262	$1,641,067
Base target pilot compensation	+$1,651,520	+$912,168	+$1,156,064	+$3,719,752
Base return element	+$33,776	+$9,872	+$15,812	+$59,460
Subtotal	=$2,495,908	=$1,241,233	=$1,683,138	=$5,420,279
Base bridge hours	÷18,000	÷3,863	÷11,390	÷33,253
Base cost per bridge hour	=$138.66	=$321.50	=$147.77	=$163.00

Step 2. Calculate the expense multiplier. In this step, for each Area, we add the base operating expense and the base return element. Then, we divide the sum by the base target pilot compensation to get the expense multiplier for each Area. The expense multiplier expresses, in percentage form, the relationship pilot compensation bears to all other expenses. Tables 5 through 7 show the Step 2 calculations.

TABLE 5—EXPENSE MULTIPLIER, DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Base operating expense	$431,313	$436,283	$867,596
Base return element	+$8,802	+$13,493	+$22,295
Subtotal	=$440,115	=$449,776	=$889,891
Base target pilot compensation	÷$1,368,253	÷$825,760	÷$2,194,013
Expense multiplier	=.32166	=.54468	=.40560

TABLE 6—EXPENSE MULTIPLIER, DISTRICT TWO

	Area 4 Lake Erie	Area 5 South-east Shoal to Port Huron, MI	Total District Two
Base operating expense	$499,328	$737,052	$1,236,380
Base return element	+$26,280	+$30,711	+$56,991
Subtotal	=$525,608	=$767,763	=$1,293,371
Base target pilot compensation	÷$825,760	÷$1,596,295	÷$2,422,055

TABLE 6—EXPENSE MULTIPLIER, DISTRICT TWO—Continued

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Expense multiplier	=.63651	=.48097	=.53400

TABLE 7—EXPENSE MULTIPLIER, DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Base operating expense	$810,612	$319,193	$511,262	$1,641,067
Base return element	+$33,776	+$9,872	+$15,812	+$59,460
Subtotal	=$844,388	=$329,065	=$527,074	=$1,701,247
Base target pilot compensation	÷$1,651,520	÷$912,168	÷$1,156,064	÷$3,719,752
Expense multiplier	=.51128	=.36075	=.45592	=.45716

Step 3. Calculate annual projection of target pilot compensation. In this step, which duplicates Step 2 from Appendix A, we determine the new target rate of compensation and the new number of pilots needed in each pilotage Area, to determine the new target of pilot compensation for each Area.

(a) Determine new target rate of compensation. Target pilot compensation for pilots is based on the average annual compensation of first mates and masters on U.S. Great Lakes vessels. Compensation includes wages and benefits. For pilots in undesignated waters, we approximate the first mates' compensation, and, in designated waters, we approximate the masters' compensation (first mates' wages multiplied by 150% plus benefits). To determine first mates' and masters' average annual compensation, we use data from the most recent AMOU contracts with the U.S. companies engaged in Great Lakes shipping. Where different AMOU agreements apply to different companies, we apportion the compensation provided by each agreement according to the percentage of tonnage represented by companies under each agreement.

Our research for the 2007 ratemaking showed six companies operating under contract with the AMOU. Three of the six operated under one set of agreements and the other three operated under modified agreements. Since the 2007 ratemaking, one of the six companies has gone out of business, and a second no longer operates under an AMOU contract.

On August 16, 2007, the Coast Guard received two new sets of agreements that updated wage and benefit information for the four companies now operating under AMOU contracts. The agreements involved a 5% wage rate increase effective August 1, 2006, a 3% increase effective August 1, 2007, and a 4% increase effective August 1, 2008. Under one set of agreements (''Agreement A''), the daily wage rate increased from $226.95 to $245.46 effective until July 31, 2008, and to $255.28 effective August 1, 2008. Similarly, under the other set of agreements (''Agreement B''), the daily wage rate was raised from $279.55 to $302.33 effective until July 31, 2008, and to $314.42 effective August 1, 2008.

To calculate monthly wages, we apply Agreement A and Agreement B monthly multipliers of 54.5 and 49.5, respectively, to the daily rate. The 54.5 multiplier represents 30.5 average working days, 15.5 vacation days, 1.5 additional days of pay per holiday per month, 4 days for four weekends, and 3 bonus days. The 49.5 multiplier represents 30.5 average working days, 16 vacation days, and 3 bonus days.

To calculate average annual compensation, we multiply monthly figures by nine months, the length of the Great Lakes shipping season.

Table 8 shows new wage calculations based on Agreements A and B.

TABLE 8—WAGES

Monthly component	Pilots on undesignated waters	Pilots on designated waters (undesignated × 150%)
AGREEMENT A:		
$255.28 daily rate × 54.5 days	$13,913	$20,869
AGREEMENT A:		
Monthly total × 9 months = total wages	125,214	187,821
AGREEMENT B:		
$314.42 daily rate × 49.5 days	15,564	23,346
AGREEMENT B:		
Monthly total × 9 months = total wages	140,076	210,113

Benefits under Agreements A and B include a health contribution rate of $73.36 per man-day and a pension plan contribution rate of $33.35 per man-day under Agreement A, and $43.55 per man-day under Agreement B. The AMOU 401K employer matching rate remained at 5% of the wage rate. A clerical contribution included in the 2003 contracts was eliminated under both contracts. The multiplier used to calculate monthly benefits under Agreements A and B is 45.5 days.

TABLE 9—BENEFITS

Monthly component	Pilots on undesignated waters	Pilots on designated waters
AGREEMENT A:		
Employer contribution, 401(K) plan (Monthly Wages × 5%)	$695.63	$1,043.45
Pension = $33.35 × 45.5 days	$1,517.43	$1,517.43
Health = $73.36 × 45.5 days	$3,337.88	$3,337.88
AGREEMENT B:		
Employer contribution, 401(K) plan (Monthly Wages × 5%)	$778.20	$1,167.30
Pension = $43.55 × 45.5 days	$1,981.53	$1,981.53
Health = $73.36 × 45.5 days	$3,337.88	$3,337.88
AGREEMENT A:		
Monthly total benefits	= $5,550.94	= $5,898.76
AGREEMENT A:		
Monthly total benefits × 9 months	= $49,958	= $53,089
AGREEMENT B:		
Monthly total benefits	= $6.097.60	= $6,486.70
AGREEMENT B:		
Monthly total benefits × 9 months	= $54,878	= $58,380

Table 10 totals the wages and benefits under each agreement.

TABLE 10—TOTAL WAGES AND BENEFITS UNDER EACH AGREEMENT

	Pilots on undesignated waters	Pilots on designated waters
AGREEMENT A: Wages	$125,214	$187,821
AGREEMENT A: Benefits	+$49,958	+53,089
AGREEMENT A: Total	= $175,173	= $240,913
AGREEMENT B: Wages	$140,076	$210,113
AGREEMENT B: Benefits	+$54,878	+$58,380
AGREEMENT B: Total	= $194,954	= $268,494

Table 11 shows that, for the four U.S. Great Lakes shipping companies currently operating under AMOU contracts, approximately 29% of their total deadweight tonnage belongs to companies operating under Agreement A, and approximately 71% belongs to companies operating under Agreement B.

TABLE 11—DEADWEIGHT TONNAGE BY AMOU AGREEMENT

Company	Agreement A	Agreement B
American Steamship Company		664,215.
Mittal Steel USA, Inc.		96,544.
HMC Ship Management	12,656.	
Key Lakes, Inc.	303,145.	
Total tonnage, each agreement	315,801	760,759.
Percent tonnage, each agreement	315,801 ÷ 1,076,560 = 29.3343%.	760,759 ÷ 1,076,560 = 70.6657%.

Table 12 applies the percentage of tonnage represented by each agreement to the wages and benefits provided by each agreement, to determine the projected target rate of compensation on a tonnage-weighted basis.

TABLE 12—PROJECTED TARGET RATE OF COMPENSATION

	Undesignated waters	Designated waters
AGREEMENT A:		
Total wages and benefits × percent tonnage	$175,173 × 29.3343% = $51,386.	$240,910 × 29.3343% = $70,669.
AGREEMENT B:		
Total wages and benefits × percent tonnage	$194,954 × 70.6657% = $137,766.	$268,494 × 70.6657% = $189,733.
Total weighted average wages and benefits = projected target rate of compensation.	$51,386 + $137,766 = $189,152.	$70,669 + $189,733 = $260,402.

(b) Determine number of pilots needed. Subject to adjustment by the Director of Great Lakes Pilotage to ensure uninterrupted service, we determine the number of pilots needed in each Area by dividing each Area's projected bridge hours, either by 1,000 (designated waters) or by 1,800 (undesignated waters).

Based on historical data, information provided by pilots and industry, and the comments received in response to the NPRM and interim rule, the number of bridge hours in Areas 1, 6, 7, and 8 remains unchanged from the NPRM and interim rule, and, as previously discussed, we are reducing the projected bridge hours in Areas 2, 4, and 5 and reducing by one each the number of pilots authorized for Areas 4 and 5.

Table 13 shows the projected bridge hours needed for each Area, and the total number of pilots needed after dividing those figures either by 1,000 or 1,800 and rounding up to the next whole pilot:

TABLE 13—NUMBER OF PILOTS NEEDED

Pilotage area	Projected 2008 bridge hours	Divided by 1,000 (designated waters) or 1,800 (undesignated waters)	Pilots needed (total = 42)
Area 1	5,661	1,000	6
Area 2	5,650	1,800	*5
Area 4	7,320	1,800	4
Area 5	5,097	1,000	6
Area 6	18,000	1,800	10
Area 7	3,863	1,000	4
Area 8	11,390	1,800	7

*Calculation = 4 pilots; maintaining at 5 pilots to ensure adequate service; see discussion in Part III.

(c) Determine the projected target pilot compensation for each Area. The projection of new total target pilot compensation is determined separately for each pilotage area by multiplying the number of pilots needed in each area by the projected target rate of compensation for pilots working in that area. Table 14 shows this calculation.

TABLE 14—PROJECTED TARGET PILOT COMPENSATION

Pilotage area	Pilots needed (Total = 42)	Multiplied by target rate of compensation	Projected target pilot compensation
Area 1	6	× $260,402	$1,562,413
Area 2	5	× 189,152	945,760
Total, District One	11	.....	2,508,173
Area 4	4	× 189,152	756,608
Area 5	6	× 260,402	1,562,413
Total, District Two	10	.....	2,319,021
Area 6	10	× 189,152	1,891,520
Area 7	4	× 260,402	1,041,609
Area 8	7	× 189,152	1,324,064
Total, District Three	21	.....	4,257,193

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2. This step yields a projected increase in operating costs necessary to support the increased projected pilot compensation. Table 15 shows this calculation.

TABLE 15—PROJECTED PILOT COMPENSATION, MULTIPLIED BY THE EXPENSE MULTIPLIER EQUALS PROJECTED OPERATING EXPENSE

Pilotage area	Projected target pilot compensation	Multiplied by expense multiplier	Projected operating expense
Area 1	$1,562,413	× .32166	= $502,569
Area 2	945,760	× .54468	= 515,138
Total, District One	2,508,173	× .40560	= 1,017,314
Area 4	756,608	× .63651	= 481,592
Area 5	1,562,413	× .48097	= 751,467
Total, District Two	2,319,021	× .53400	= 1,238,351
Area 6	1,891,520	× .51128	= 967,095

TABLE 15—PROJECTED PILOT COMPENSATION, MULTIPLIED BY THE EXPENSE MULTIPLIER EQUALS PROJECTED OPERATING EXPENSE—Continued

Pilotage area	Projected target pilot compensation	Multiplied by expense multiplier	Projected operating expense
Area 7	1,041,609	× .36075	= 375,761
Area 8	1,324,064	× .45592	= 603,669
Total, District Three	4,257,193	× .45716	= 1,946,224

Step 5: Adjust the result in Step 4, as required, for inflation or deflation, and calculate projected total economic cost. Based on data from the U.S. Department of Labor's Bureau of Labor Statistics, we have multiplied the results in Step 4 by a 1.027 inflation factor, reflecting an average inflation rate of 2.7% in ''Midwest Economy—Consumer Prices'' between 2006 and 2007, the latest years for which data are available. Table 16 shows this calculation and the projected total economic cost.

TABLE 16—PROJECTED OPERATING EXPENSE, ADJUSTED FOR INFLATION, AND ADDED TO PROJECTED TARGET PILOT COMPENSATION EQUALS PROJECTED TOTAL ECONOMIC COST

Pilotage area	A. Projected operating expense	B. Increase, multiplied by inflation factor (= A × 1.027)	C. Projected Target Pilot Compensation	D. Projected Total Economic Cost (= B+C)
Area 1	$502,568.82	$516,138.18	$1,562,412.77	$2,078,550.94
Area 2	515,137.75	529,046.47	945,760.00	1,474,806.47
Total, District One	1,017,314.10	1,044,781.59	2,508,172.77	3,552,954.35
Area 4	481,591.77	494,594.74	756,608.00	1,251,202.74
Area 5	751,466.81	771,756.41	1,562,412.77	2,334,169.18
Total, District Two	1,238,350.99	1,271,786.47	2,319,020.77	3,590,807.23
Area 6	967,095.03	993,206.60	1,891,520.00	2,884,726.60
Area 7	375,760.72	385,906.26	1,041,608.51	1,427,514.77
Area 8	603,668.75	619,967.81	1,324,064.00	1,944,031.81
Total, District Three	1,946,224	1,998,772.10	4,257,192.51	6,255,964.61

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs. Table 17 shows this calculation.

TABLE 17—PROSPECTIVE (TOTAL) UNIT COSTS

Pilotage area	A. Projected total economic cost	B. Projected 2008 bridge hours	Prospective (total) unit costs (A divided by B)
Area 1	$2,078,550.94	5,661	$367.17
Area 2	1,474,806.47	5,650	261.03
Total, District One	3,552,954.35	11,311	314.11
Area 4	1,251,202.74	7,320	170.93
Area 5	2,334,169.18	5,097	457.95
Total, District Two	3,590,807.23	12,417	289.18
Area 6	2,884,726.60	18,000	160.26
Area 7	1,427,514.77	3,863	369.54
Area 8	1,944,031.81	11,390	170.68
Total, District Three	6,255,964.61	33,253	188.13

Step 7: Divide prospective unit costs (total unit costs) in Step 6 by the unit cost in Step 1. Table 18 shows this calculation, which expresses the percentage change between the total unit costs and the base unit costs. The results for each Area are identical with the percentage increases listed in Table 1.

TABLE 18—PERCENTAGE CHANGE, PROSPECTIVE VS. BASE PERIOD UNIT COSTS

Pilotage area	A. Prospective unit costs	B. Base period unit costs	C. Percentage change from base (A divided by B; result expressed as percentage)
Area 1	$367.17	$319.44	14.94
Area 2	261.03	159.58	63.57
Total, District One	314.11	225.86	39.08
Area 4	170.93	159.17	7.39
Area 5	457.95	369.67	23.88
Total, District Two	289.18	249.61	15.85
Area 6	160.26	138.66	15.58
Area 7	369.54	321.50	15.01
Area 8	170.68	147.77	15.50
Total, District Three	188.13	163.00	15.42

Step 8: Adjust the base period rates by the percentage change in unit costs in Step 7. The base period rates are the rates set by the 2007 Final Rule. Table 19 shows this calculation.

TABLE 19—BASE PERIOD RATES ADJUSTED BY PERCENTAGE CHANGE IN UNIT COSTS[1]

Pilotage area	A. Base period rate	B. Percentage change in unit costs (multiplying factor)	C. Increase in base rate (A × B%)	D. Adjusted rate (A + C, rounded to nearest cent)
Area 1		14.94 (1.1494)		
—Basic pilotage	$13/km, $23/mi		$1.94/km, $3.44/mi	$14.94/km, $26.44/mi
—Each lock transited	288		43.03	331.03
—Harbor movage	943		140.89	1,083.89
—Minimum basic rate, St. Lawrence River	629		93.98	722.98
—Maximum rate, through trip	2,761		412.51	3,173.51
Area 2		63.57 (1.6357)		
—6-hr. period	477		303.23	780.23
—Docking or undocking	455		289.24	744.24
Area 4		7.39 (1.0739)		
—6 hr. period	641		47.35	688.35
—Docking or undocking	494		36.49	530.49
—Any point on Niagara River below Black Rock Lock	1,261		93.15	1,354.15
Area 5 between any point on or in		23.88 (1.2388)		
—Toledo or any point on Lake Erie W. of Southeast Shoal	1,004		239.75	1,243.75
—Toledo or any point on Lake Erie W. of Southeast Shoal & Southeast Shoal	1,699		405.72	2,104.72
—Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit River	2,206		526.79	2,732.79
—Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit Pilot Boat	1,699		405.72	2,104.72
—Port Huron Change Point & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	2,959		706.60	3,665.60
—Port Huron Change Point & Toledo or any point on Lake Erie W. of Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	3,428		818.60	4,246.60
—Port Huron Change Point & Detroit River	2,223		530.85	2,753.85
—Port Huron Change Point & Detroit Pilot Boat	1,729		412.88	2,141.88
—Port Huron Change Point & St. Clair River	1,229		293.48	1,522.48
—St. Clair River	1,004		239.75	1,243.75

TABLE 19—BASE PERIOD RATES ADJUSTED BY PERCENTAGE CHANGE IN UNIT COSTS[1]—Continued

Pilotage area	A. Base period rate	B. Percentage change in unit costs (multiplying factor)	C. Increase in base rate (A × B%)	D. Adjusted rate (A + C, rounded to nearest cent)
—St. Clair River & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	2,959		706.60	3,665.60
—St. Clair River & Detroit River/Detroit Pilot Boat	2,223		530.85	2,753.85
—Detroit, Windsor, or Detroit River	1,004		239.75	1,243.75
—Detroit, Windsor, or Detroit River & Southeast Shoal	1,699		405.72	2,104.72
—Detroit, Windsor, or Detroit River & Toledo or any point on Lake Erie W. of Southeast Shoal	2,206		526.79	2,732.79
—Detroit, Windsor, or Detroit River & St. Clair River	2,223		530.85	2,753.85
—Detroit Pilot Boat & Southeast Shoal	1,229		293.48	1,522.48
—Detroit Pilot Boat & Toledo or any point on Lake Erie W. of Southeast Shoal	1,699		405.72	2,104.72
—Detroit Pilot Boat & St. Clair River	2,223		530.85	2,753.85
Area 6		15.58 (1.1558)		
—6 hr. period	479		74.62	553.62
—Docking or undocking	455		70.88	525.88
Area 7 between any point on or in		15.01 (1.1501)		
—Gros Cap & De Tour	1,718		257.83	1,975.83
—Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & De Tour	1,718		257.83	1,975.83
—Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & Gros Cap	647		97.10	744.10
—Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & De Tour	1,440		216.11	1,656.11
—Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & Gros Cap	647		97.10	744.10
—Sault Ste. Marie, MI & De Tour	1,440		216.11	1,656.11
—Sault Ste. Marie, MI & Gros Cap	647		97.10	744.10
—Harbor movage	647		97.10	744.10
Area 8		15.50 (1.1550)		
—6 hr. period	464		71.92	535.92
—Docking or undocking	441		68.36	509.36

[1] Rates for ''Cancellation, delay or interruption in rendering services (§ 401.420)'' and ''Basic Rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (§ 401.428)'' are not reflected in this table, but have been increased by 18.92% across all areas.

V. Regulatory Evaluation

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

The Coast Guard is required to conduct an annual review of pilotage rates on the Great Lakes and, if necessary, adjust these rates to align compensation levels between Great Lakes pilots and industry. (*See* Part I of this preamble for a detailed explanation of the legal authority and requirements for the Coast Guard to conduct an annual review and provide possible adjustments of pilotage rates on the Great Lakes.) Based on our review, we are adjusting the pilotage rates for the 2008 shipping season to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment.

The Coast Guard is revising and finalizing the March 2008 interim rule for pilotage service on the Great Lakes by increasing the rate by an average of 18.92% across all three pilotage districts over the last ratemaking that was completed in September 2007. A Notice of Proposed Rulemaking was published on February 1, 2008 proposing an average 8.17% increase over the 2007 Final Rule rates. An Interim Rule was published on March 17, 2008 putting the 8.17% increase into effect prior to the 2008 navigation season. In response to new AMOU contract provisions and public comments on our rulemaking, this final rule increases rates an additional average 9.95%, for a total average increase of 18.92% since 2007. Since percentages are not additive, the summation of 8.17% and 9.95% do not yield 18.92% (*see* Table 1 for a specific area percentage). This increase is the result of changes made in response to industry and public comments on the ratemaking process as well as an increase in compensation and benefits under the AMOU contract that went into effect August 1, 2008.

These adjustments to Great Lakes pilotage rates meet the requirements set forth in 46 CFR part 404 for similar compensation levels between Great

Lakes pilots and industry. They also include adjustments for inflation and changes in association expenses to maintain these compensation levels.

The increase in pilotage rates will be an additional cost for shippers to transit the Great Lakes system. This rule will result in a distributional effect that transfers payments (income) from vessel owners and operators to the Great Lakes' pilot associations through Coast Guard regulated pilotage rates.

The shippers affected by these rate adjustments are those owners and operators of domestic vessels operating on register (employed in the foreign trade) and owners and operators of foreign vessels on a route within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. It is the Coast Guard's interpretation that the statute applies only to commercial vessels and not to recreational vessels.

Owners and operators of other vessels that are not affected by this rule, such as recreational boats and vessels only operating within the Great Lakes system, may elect to purchase pilotage services. However, this election is voluntary and does not affect the Coast Guard's calculation of the rate increase and is not a part of our estimated national cost to shippers.

We updated our estimates of affected vessels for the rule by using recent vessel characteristics, documentation, and arrival data. We used 2006–2007 vessel arrival data from the Coast Guard's Marine Inspection, Safety, and Law Enforcement (MISLE) system to estimate the average annual number of vessels affected by the rate adjustment to be 208 vessels that journey into the Great Lakes system. These vessels entered the Great Lakes by transiting through or in part of at least one of the three pilotage Districts before leaving the Great Lakes system. These vessels often make more than one distinct stop, docking, loading, and unloading at facilities in Great Lakes ports. Of the total trips for the 208 vessels, there were approximately 923 annual U.S. port arrivals before the vessels left the Great Lakes system, based on 2006–2007 vessel data from MISLE.

The cost of the rate adjustment to shippers is estimated from the district pilotage revenues. These revenues represent the direct and indirect costs that shippers must pay for pilotage services. The Coast Guard sets rates so that revenues equal the estimated cost of pilotage.

We estimate the cost of the revised rate adjustment in this rule to be the difference between the total economic costs based on the 2007 rate adjustment and the total projected economic cost in this final rule. Table 20 compares projected economic costs in 2007 and costs of the rule to industry by district.

TABLE 20—RATE ADJUSTMENT FACTORS AND ADDITIONAL COST OF THIS FINAL RULE (COSTS ARE IN $U.S.)

District	District One	District Two	District Three	Total [1]
Total Economic Cost in 2007 (Base Period)	3,083,904	3,715,426	5,420,279	12,219,609
Final Rate Adjustment [2]	1.1521	0.9665	1.1542	1.0965
Total Projected Economic Cost in 2008	3,552,949	3,590,802	6,255,945	13,399,696
Additional Revenue Required or Cost of this Rulemaking [3]	469,045	−124,624	835,666	1,180,087

[1] Some values may not total due to rounding.
[2] See steps 5 and 7 of the ''Calculating the Rate Adjustment'' section of this final rule for the 'Final Rate Adjustment' and the 'Total Projected Economic Cost in 2008'.
[3] Additional revenue or cost of this rule = 'Total Projected Economic Cost in 2008' − 'Total Projected Economic Cost in 2007'.

After applying the revised rate in this final rule, the resulting difference between the economic cost in 2007 and the projected economic cost in 2008 is the annual cost to shippers from this rule. This figure is equivalent to the total additional payments that shippers make for pilotage services from the 2008 rate adjustments.

The annual cost of the revised rate adjustment in this final rule to shippers is approximately $1.2 million (non-discounted). The annual cost of the additional 9.95% rate adjustment to shippers in this final rule is approximately $183,607 (non-discounted). To calculate an exact cost per vessel is difficult because of the variation in vessel types, routes, port arrivals, commodity carriage, time of season, conditions during navigation, and preferences for the extent of pilotage services on designated and undesignated portions of the Great Lakes system. Some owners and operators will pay more and some will pay less depending on the distance and port arrivals of their vessels' trips. However, the annual cost reported above does capture all of the additional cost the shippers face as a result of the rate adjustment in this rule.

In addition to the annual reviews and possible partial rate adjustments, the Coast Guard is required to determine and, if necessary, perform a full adjustment of Great Lakes pilotage rates at a minimum of once every five years. Due to the frequency of the full rate adjustments, we estimated the total cost to shippers of the rate adjustments in this final rule over a five-year period instead of a ten-year period. The total five-year (2008–2012) present value cost estimate of this final rule to shippers is $5.2 million discounted at a seven percent discount rate and $5.6 million discounted at a three percent discount rate. For the calculation of the total five-year present value cost estimate, we chose not to discount first-year costs and instead began discounting in the second year, because industry will incur costs from this rule during the 2008 Great Lakes shipping season.

A. Small Entities

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

Entities affected by this rule are classified under the North American Industry Classification System (NAICS) code subsector 483—Water Transportation, which includes one or all of the following 6-digit NAICS codes for freight transportation: 483111—Deep Sea Freight Transportation, 483113—Coastal and Great Lakes Freight Transportation, and 483211—Inland Water Freight Transportation. According to the Small Business Administration's definition, a U.S. company with these NAICS codes and employing less than 500 employees is considered a small entity.

For the final rule, we reviewed recent company size and ownership data from 2006–2007 Coast Guard MISLE data and business revenue and size data provided by Reference USA and Dunn and Bradstreet. We were able to gather revenue and size data or link the entities to large shipping conglomerates for 22 of the 24 affected entities in the United States. We found that large, mostly foreign-owned, shipping conglomerates or their subsidiaries owned or operated all vessels engaged in foreign trade on the Great Lakes. We assume that new industry entrants will be comparable in ownership and size to these shippers.

There are three U.S. entities affected by the final rule that will receive the additional revenues from the rate adjustment. These are the three pilot associations that are the only entities providing pilotage services within the Great Lakes districts. Two of the associations operate as partnerships and one operates as a corporation. These associations are classified with the same NAICS industry classification and small entity size standards described above, but they have far fewer than 500 employees: Approximately 65 total employees combined. However, they are not adversely impacted with the additional costs of the rate adjustments, but instead receive the additional revenue benefits for operating expenses and pilot compensation.

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

B. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email Mr. Paul Wasserman whose contact information appears under **FOR FURTHER INFORMATION CONTACT** at the beginning of this preamble. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against any small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rule does not change the burden in the collection currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

D. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism because there are no similar State regulations, and the States do not have the authority to regulate and adjust rates for pilotage services in the Great Lakes system.

E. Unfunded Mandates Reform Act

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

F. Taking of Private Property

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

G. Civil Justice Reform

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

H. Protection of Children

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

I. Indian Tribal Governments

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

J. Energy Effects

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

K. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

L. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969

(NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a) of the Instruction, from further environmental documentation. Paragraph 34(a) pertains to minor regulatory changes that are editorial or procedural in nature. This rule adjusts rates in accordance with applicable statutory and regulatory mandates. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

V. Words of Issuance and Proposed Regulatory Text

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR Part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 401.405, revise paragraphs (a) and (b) to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	$14.94 per Kilometer or $26.44 per mile[1].
Each Lock Transited	$331[1].
Harbor Movage	$1084[1].

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $723, and the maximum basic rate for a through trip is $3,174.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six-Hour Period	$780
Docking or Undocking	744

■ 3. In § 401.407 revise paragraphs (a) and (b) to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six-Hour Period	$688	$688
Docking or Undocking	531	531
Any Point on the Niagara River below the Black Rock Lock	N/A	1,354

(b) Area 5 (Designated Waters):

Any point on or in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$2,105	$1,244	$2,733	$2,105	N/A
Port Huron Change Point	[1] 3,665	[1] 4,247	2,753	2,142	$1,522
St. Clair River	[1] 3,665	N/A	2,753	2,753	1,244
Detroit or Windsor Or the Detroit River	2,105	2,732	1,244	N/A	2,753
Detroit Pilot Boat	1,522	2,105	N/A	N/A	2,753

[1] When pilots are not changed at the Detroit Pilot Boat.

■ 4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior, and the St. Mary's River.

* * * * *

(a) Area 6 (Undesignated Waters):

Service	Lakes Huron and Michigan
Six-Hour Period	$554
Docking or Undocking	526

(b) Area 7 (Designated Waters):

Area	De tour	Gros cap	Any harbor
Gros Cap	$1,976	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie Ontario	1,976	$744	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	1,656	744	N/A
Sault Ste. Marie, MI	1,656	744	N/A
Harbor Movage	N/A	N/A	$744

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six-Hour Period	$536
Docking or Undocking	509

§ 401.420 [Amended]

■ 5. In § 401.420—
■ a. In paragraph (a), remove the number ''$93'' and add, in its place, the number ''$102''; and remove the number ''$1,459'' and add, in its place, the number ''$1,604''.
■ b. In paragraph (b), remove the number ''$93'' and add, in its place, the number ''$102''; and remove the number ''$1,459'' and add, in its place, the number ''$1,604''.
■ c. In paragraph (c)(1), remove the number ''$552'' and add, in its place, the number ''$606''.
■ d. In paragraph (c)(3), remove the number ''$93'' and add, in its place, the number ''$102''; and remove the number ''$1,459'' and add, in its place, the number ''$1,604''.

§ 401.428 [Amended]

■ 6. In § 401.428, remove the number ''$562'' and add, in its place, the number ''$618''.

Dated: December 23, 2008.

Brian M. Salerno,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Stewardship.

[FR Doc. E8–31341 Filed 1–2–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071030625–7696–02]

RIN 0648–XM32

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring commercial summer flounder quota to the Commonwealth of Virginia from its 2008 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective December 30, 2008 through December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Management Specialist, (978) 281–9244, FAX (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in§ 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 4,777 lb (2,167 kg) of its 2008 commercial quota to Virginia to cover the summer flounder landings of two North Carolina vessels granted safe harbor in Virginia due to mechanical issues that occurred on the vessels between December 15 and December 16, 2008. The Regional Administrator has determined that the criteria set forth in§ 648.100(d)(3) have been met. The revised quotas for calendar year 2008 are: North Carolina, 2,525,702 lb (1,145,639 kg); and Virginia, 2,019,988 lb (916,251 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 30, 2008.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–31317 Filed 12–30–08; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XM48

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2009 Gulf of Alaska Pollock and Pacific cod Total Allowable Catch Amounts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2009 total allowable catch (TAC) amounts for the Gulf of Alaska (GOA) pollock and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified. This action will ensure the GOA pollock and Pacific cod TACs do not exceed the appropriate amounts based on the best available scientific information for pollock and Pacific cod in the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska Management Area (FMP).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 5, 2009, until the effective date of the final 2009 and 2010 harvest specifications for GOA groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 20, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XM48, by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.

• Mail: P.O. Box 21668, Juneau, AK 99802.

• Fax: (907) 586–7557.

• Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov*

without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the FMP prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 and 2009 harvest specifications for groundfish in the GOA (73 FR 10562, February 27, 2008) set the 2009 pollock TAC at 78,170 mt and the 2009 Pacific cod TAC at 50,269 metric tons (mt) in the GOA. In December 2008, the Council recommended a 2009 pollock TAC of 49,900 mt for the GOA, which is less than the 78,170 mt established by the 2008 and 2009 GOA harvest specifications. The Council also recommended a 2009 Pacific cod TAC of 41,807 mt for the GOA, which is less than the 50,269 mt established by the 2008 and 2009 harvest specifications for groundfish in the GOA. The Council's recommended TACs are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2008, which NMFS has determined is the best available scientific information for these fisheries.

Steller sea lions occur in the same location as the pollock and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock and Pacific cod are a principal prey species for Steller sea lions in the GOA. The seasonal apportionment of pollock and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(5)(iv) specify how the pollock TAC will be apportioned. The regulations at § 679.20(a)(6)(ii) and § 679.20(a)(12)(i) specify how the Pacific cod TAC shall be apportioned.

In accordance with § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2008 SAFE report for this fishery, the current GOA pollock and Pacific cod TACs are incorrectly specified. Consequently, pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2009 GOA pollock TAC to 49,900 mt and the 2009 GOA Pacific cod TAC to 41,807 mt.

Pursuant to § 679.20(a)(5)(iv), Table 6 of the final 2008 and 2009 harvest specifications for groundfish in the GOA (73 FR 10562, February 27, 2008) is revised for the 2009 pollock TACs in the Western, Central, and Eastern GOA consistent with this adjustment.

TABLE 6—FINAL 2009 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

(Values are rounded to the nearest metric ton)

Season	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total[1]	
A	3,234	(32.01%)	4,365	(43.21%)	2,503	(24.78%)	10,102	(100%)
B	3,233	(32.01%)	5,413	(53.59%)	1,455	(14.90%)	10,101	(100%)
C	4,391	(43.47%)	2,160	(21.38%)	3,550	(35.15%)	10,101	(100%)
D	4,391	(43.47%)	2,160	(21.38%)	3,550	(35.15%)	10,101	(100%)
Annual Total	15,249		14,098		11,058		40,405	

[1]The West Yakutat and Southeast Outside District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Note: As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

Pursuant to § 679.20(a)(6)(ii) and § 679.20(a)(12)(i), Table 7 of the final 2008 and 2009 harvest specifications for groundfish in the GOA (73 FR 10562, February 27, 2008) is revised for the 2009 Pacific cod TACs in the Western, Central, and Eastern GOA consistent with this adjustment.

TABLE 7 – FINAL 2009 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

(values are rounded to the nearest metric ton)

Season	Regulatory Area	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
	Western	16,175	14,558	1,617
A season (60%)		9,705	8,735	970
B season (40%)		6,470	5,823	647
	Central	23,641	21,277	2,364
A season (60%)		14,185	12,767	1,418
B season (40%)		9,456	8,510	946
	Eastern	1,991	1,792	199

TABLE 7 – FINAL 2009 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS—Continued

(values are rounded to the nearest metric ton)

Season	Regulatory Area	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
	Total	41,807	37,627	4,180

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for Pacific cod based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 13, 2008, and additional time for prior public comment would result in conservation concerns for the ESA–listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 20, 2009.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 30, 2008.

Alan D. Risenhoover

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–31363 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 2
Monday, January 5, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–144615–02]

RIN 1545–BI47

Section 482: Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations, notice of proposed rulemaking, and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide further guidance and clarification regarding methods under section 482 to determine taxable income in connection with a cost sharing arrangement in order to address issues that have arisen in administering the current regulations. These temporary regulations potentially affect controlled taxpayers within the meaning of section 482 that enter into cost sharing arrangements as defined therein. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on those proposed regulations.

DATES: Written or electronic comments must be received by April 6, 2009. Outline of topics to be discussed at the public hearing scheduled for April 21, 2009 must be received by April 6, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–144615–02), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–144615–02), Courier's 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–144615–02).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kenneth P. Christman, (202) 435–5265; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearings, Oluwafunmilayo Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The collection of information requirements are in proposed § 1.482–7(b)(2) and (k). Responses to the collections of information are required by the IRS to monitor compliance of controlled taxpayers with the provisions applicable to cost sharing arrangements.

Estimated total annual reporting and/or recordkeeping burden: 9350 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 18.7 hours.

Estimated number of respondents and/or recordkeepers: 500.

Estimated frequency of responses: On Occasion and Annually.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by March 6, 2009.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility; The accuracy of the estimated burden associated with the proposed collection of information (see above); How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information-technology; and Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Temporary regulations In the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 482. The temporary regulations provide guidance regarding methods under section 482 to determine taxable income in connection with a cost sharing arrangement. These temporary regulations potentially affect controlled taxpayers within the meaning of section 482 that enter into cost sharing arrangements as defined therein. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined also that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule applies to U.S. businesses and foreign affiliates that enter into cost sharing agreements. Few small entities

are expected to enter into cost sharing agreements, as defined by these regulations. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 21, 2009, beginning at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted 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 preamble.

The rules of 26 CFR 601.601(a)(93) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments by April 6, 2009 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 6, 2009. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Kenneth P. Christman of the Office of Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.367(a)–1 is revised to read as follows:

§ 1.367(a)–1 Transfers to foreign corporations subject to section 367(a): In general.

(a) through (d)(2) [Reserved].

(3) *Transfer.* For purposes of section 367 and regulations thereunder, the term *transfer* means any transaction that constitutes a transfer for purposes of section 332, 351, 354, 355, 356, or 361, as applicable. A person's entering into a cost sharing arrangement under § 1.482–7 or acquiring rights to intangible property under such an arrangement shall not be considered a transfer of property described in section 367(a)(1). See § 1.6038B–1T(b)(4) for the date on which the transfer is considered to be made.

(d)(4) through (g) [Reserved].

Par. 3. Section 1.482–0 is amended by revising the entries for §§ 1.482–1(b)(2)(iii), 1.482–2(e) and (f), 1.482–4(g) and (h), 1.482–7, and 1.482–9 to read as follows:

§ 1.482–0 Outline of regulations under section 482.

* * * * *

§ 1.482–1 Allocation of income and deductions among taxpayers.

* * * * *

(b) * * *

(2) * * *

(iii) Coordination of methods applicable to certain intangible development arrangements.

§ 1.482–2 Determination of taxable income in specific situations.

* * * * *

(e) Cost sharing arrangement.

(f) Effective/applicability date.

(1) In general.

(2) Election to apply paragraph (b) of this section to earlier taxable years.

§ 1.482–4 Methods to determine taxable income in connection with a transfer of intangible property.

* * * * *

(g) Coordination with rules governing cost sharing arrangements.

(h) Effective/applicability date.

(1) In general.

(2) Election to apply regulation to earlier taxable years.

* * * * *

§ 1.482–7 Methods to determine taxable income in connection with a cost sharing arrangement.

[The text of the proposed entries for § 1.482–7 is the same as the entries for § 1.482–7T in § 1.482–0T published elsewhere in this issue of the **Federal Register**].

* * * * *

§ 1.482–9 Methods to determine taxable income in connection with a controlled services transaction.

* * * * *

(a) through (m)(2) [Reserved]

(3) [The text of the proposed entry for § 1.482–9(m)(3) is the same as the entry for § 1.482–9T(m)(3) in § 1.482–0T published elsewhere in this issue of the **Federal Register**].

(m)(4) through (n)(3) [Reserved]

Par. 4. Section 1.482–1 is amended by:

1. Revising paragraph (b)(2)(i) and the last sentence of paragraph (j)(6)(i).

2. Adding a new paragraph (b)(2)(iii).

The addition and revisions read as follows:

§ 1.482–1 Allocation of income and deductions among taxpayers.

* * * * *

(b) * * *

(2) * * *

(i) [The text of the proposed amendment to § 1.482–1(b)(2)(i) is the same as the text of § 1.482–1T(b)(2)(i) published elsewhere in this issue of the **Federal Register**].

* * * * *

(iii) [The text of the proposed § 1.482–1(b)(2)(iii) is the same as the text of § 1.482–1T(b)(2)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(j) * * *

(6) * * *

(i) * * * . [The text of the proposed amendment to § 1.482–1(j)(6)(i) is the same as the text of the amendment to § 1.482–1T(j)(6)(i) published elsewhere in this issue of the **Federal Register**].

Par. 5. Section 1.482–2 is amended as follows:

1. Paragraph (e) is redesignated as paragraph (f) and newly-designated paragraphs (f)(1) and (f)(2) are revised.

2. New paragraph (e) is added.

The addition and revision reads as follows:

§ 1.482–2 Determination of taxable income in specific situations.

* * * * *

(e) [The text of proposed § 1.482–2(e) is the same as the text of § 1.482–2T(e) published elsewhere in this issue of the **Federal Register**].

(f) * * * (1) [The text of the proposed amendment to § 1.482–2(f)(1) is the same as the text of § 1.482–2T(f)(1) published elsewhere in this issue of the **Federal Register**].

(2) [The text of the proposed amendment to § 1.482–2(f)(2) is the same as the text of § 1.482–2T(f)(2) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 6. Section 1.482–4 is amended as follows:

1. Paragraph (f)(3)(i)(B) is revised.

2. Paragraph (f)(7) is removed.

3. New paragraphs (g) and (h) are added.

The additions and revision reads as follows:

§ 1.482–4 Methods to determine taxable income in connection with a transfer of intangible property.

* * * * *

(f) * * *

(3) * * *

(i) * * *

(B) [The text of the proposed amendment to § 1.482–4(f)(3)(i)(B) is the same as the text of § 1.482–4T(f)(3)(i)(B) published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) [The text of proposed § 1.482–4(g) is the same as the text of § 1.482–4T(g) published elsewhere in this issue of the **Federal Register**].

(h) [The text of proposed § 1.482–4(h) is the same as the text of § 1.482–4T(h) published elsewhere in this issue of the **Federal Register**].

Par. 7. Section 1.482–7 is revised to read as follows:

§ 1.482–7 Methods to determine taxable income in connection with a cost sharing arrangement.

[The text of the proposed § 1.482–7 is the same as the text of § 1.482–7T(a) through (m) published elsewhere in this issue of the **Federal Register**].

Par. 8. Section 1.482–8 is amended by revising paragraph (b) *Examples 13, 14, 15, 16, 17* and *18* to read as follows:

§ 1.482–8 Examples of the best method rule.

* * * * *

(b) * * *

Examples 13 through 18. [The text of the proposed § 1.482–8(b) *Examples 13* through *18* is the same as the text of § 1.482–8T(b) Examples 13 through 18 published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 9. Section 1.482–9 is added to read as follows:

§ 1.482–9 Methods to determine taxable income in connection with a controlled services transaction.

(a) through (m)(2) [Reserved].

(3) [The text of the proposed amendment to § 1.482–9(m)(3) is the same as the text of § 1.482–9T(m)(3) published elsewhere in this issue of the **Federal Register**].

(m)(4) through (n)(3) [Reserved].

L E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–30712 Filed 12–31–08; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1028]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

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

DATES: Comments are to be submitted on or before April 6, 2009.

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

You may submit comments, identified by Docket No. FEMA–B–1028, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

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

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

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

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

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

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

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Pope County, Arkansas, and Incorporated Areas				
Arkansas River	At the intersection of the Arkansas River and the Arkansas Avenue bridge.	None	+323	Unincorporated Areas of Pope County.
	At the confluence of the Arkansas River and Lake Dardanelle.	None	+340	
Lake Dardanelle	Approximately 8.323 miles downstream of the Highway 40 bridge.	None	+340	Unincorporated Areas of Pope County, City of Russellville.
	At the intersection of Lake Dardanelle and the Pleasant View Road Bridge.	None	+347	
Whig Creek	Approximately 5,166 feet from the intersection of Whig Creek and South Frankfort Avenue.	None	+330	Unincorporated Areas of Pope County, City of Russellville.
	Approximately 218 feet downstream of the intersection of Whig Creek and McHenry Road.	None	+340	

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

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

ADDRESSES

City of Russellville
Maps are available for inspection at 716 North El Paso Avenue, Russellville, AR 72801.
Unincorporated Areas of Pope County
Maps are available for inspection at 420 North Hampton, Suite B, Russellville, AR 72801.

Crawford County, Missouri, and Incorporated Areas				
Mermac River	Approximately 5,000 feet downstream Steelville city limits.	None	+708	Unincorporated Areas of Crawford County.
	Approximately 150 feet upstream HWY 19	None	+719	
Whittenburg Creek	Approximately 120 feet downstream Snake Road	None	+725	Unincorporated Areas of Crawford County, City of Steelville.
	Approximately 275 feet upstream HWY 8	None	+734	
Yadkin Creek	At confluence with Whittenburg Creek	None	+731	Unincorporated Areas of Crawford County.
	Approximately 900 feet upstream Steelville city limits	None	+790	

* National Geodetic Vertical Datum.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

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

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

ADDRESSES

City of Steelville
Maps are available for inspection at 204 3rd St., Steelville, MO 65565.

Unincorporated Areas of Crawford County
Maps are available for inspection at 302 Main Street, Steelville, MO 65565.

Stone County, Missouri, and Incorporated Areas

Crane Creek	Approximately 960 feet downstream Crane city limits	None	+1109	Stone County.
	Approximately 430 feet upstream Crane city limits	None	+1128	

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

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

ADDRESSES

Stone County
Maps are available for inspection at 108 4th Street, Galena, MO 65656.

San Juan County, New Mexico, and Incorporated Areas

Animas River	At the confluence with San Juan River	None	+5256	Unincorporated Areas of San Juan County.
	Approximately 1,200 feet downstream of Murray Dr./US–64.	None	+5267	
Bloomfield Canyon Creek	Approximately 2,232 feet upstream of E. Broadway Avenue.	None	+5436	City of Bloomfield, unincorporated Areas of San Juan County
	At the confluence of Bloomfield Canyon Creek Tributary.	None	+5545	
Bloomfield Canyon Creek Tributary.	At the confluence of Bloomfield Canyon Creek	None	+5545	City of Bloomfield, Unincorporated Areas of San Juan County.
	Approximately 2,366 feet upstream from unnamed dirt road bridge.	None	+5737	
San Juan River	Approximately 1,709 feet downstream of Bisti Highway.	None	+5245	Unincorporated Areas of San Juan County
	Approximately 9,367 feet upstream of confluence with Animas River.	None	+5269	

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

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

ADDRESSES

City of Bloomfield
Maps are available for inspection at 915 N. First St., P.O. Box 1839, Bloomfield, NM 87413.
Unincorporated Areas of San Juan County
Maps are available for inspection at 209 S. Oliver Drive, Aztec, NM 87410.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: December 22, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–31268 Filed 1–2–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1026]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

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

DATES: Comments are to be submitted on or before April 6, 2009.

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

You may submit comments, identified by Docket No. FEMA–B–1026, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

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

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Otero County, New Mexico, and Incorporated Areas				
Beeman Canyon Creek	From where the Flow Path meets the Dam	+4440	+4442	City of Alamogordo, Unincorporated Areas of Otero County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1906 feet upstream from North Scenic Drive to the Limit of Study.	None	+4603	
Flow Path #12	Approximately 758 feet downstream from Octillo Lane	None	+4471	Unincorporated Areas of Otero County.
	Approximately 3,560 feet upstream from South canyon Road.	None	+4670	
Flow Path #16	Approximately 461 feet downstream from Caneadea Loop.	None	+4461	Unincorporated Areas of Otero County.
	Approximately 2,904 feet upstream from Rocky Mountain Road to Limit of Study.	None	+4803	
Flow Path #2	Approximately 1,450 feet upstream from Dam	None	+4449	Unincorporated Areas of Otero County.
	Approximately 3,520 feet upstream from the Dam	None	+4481	
Flow Path #3	Approximately 741 feet downstream from Eddy drive	None	+4344	Unincorporated Areas of Otero County.
	Approximately 51 feet upstream from Eddy drive	None	+4350	
Flow Path #30	At the Alamogordo City Limits	None	+4122	Unincorporated Areas of Otero County, City of Alamogordo.
	Approximately 7,117 feet upstream of the Alamogordo City Limits.	None	+4202	
Flow Path #31	Approximately 2,617 feet downstream from Lavelle Road.	None	+4270	Unincorporated Areas of Otero County.
	Approximately 2,699 feet downstream from Lavelle Road.	None	+4270	

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

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

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

ADDRESSES

City of Alamogordo
Maps are available for inspection at 1376 East Ninth St., Alamogordo, NM 88310

Unincorporated Areas of Otero County
Maps are available for inspection at 1000 New York Ave., Alamogordo, NM 88310.

Niagara County, New York, and Incorporated Areas

Bergholtz Creek	At confluence with Cayuga Creek	+571	+570	City of Niagara Falls, Town of Cambria, Town of Wheatfield.
	Approximately 1.4 miles upstream of NY State Route 425 (Shawnee Road).	None	+631	
Bull Creek	At confluence with Tonawanda Creek—Backwater area.	+573	+575	City of North Tonawanda, Town of Cambria, Town of Pendleton, Town of Wheatfield.
	Approximately 240 feet upstream of Lockport Road	None	+604	
Cayuga Creek	Approximately 0.3 mile upstream of Pine Avenue/U.S. Route 62.	+572	+571	Town of Niagara, Town of Wheatfield.
	Approximately 70 feet downstream of the first Airport Overpass.	+586	+584	
Cayuga Creek West Tributary.	At the confluence with Cayuga Creek	+578	+579	Town of Niagara.
	Approximately 240 feet upstream of Lockport Road	None	+621	
Cayuga Creek West Tributary Diversion.	Just upstream of Porter Road	+583	+582	Town of Niagara.
	At the confluence with Cayuga Creek West Tributary	+583	+582	
Donner Creek	Approximately 326 feet downstream of Beatie Road	+618	+617	City of Lockport, Town of Lockport.
	Approximately 975 feet upstream of Lincoln Avenue	+632	+631	
Eighteenmile Creek	Just downstream of Stone Road	None	+364	City of Lockport.
	Approximately 0.41 mile upstream of Stone Road	+363	+364	
Eighteenmile Creek East Branch.	Approximately 1,300 feet downstream of Day Road	+369	+374	Town of Newfane.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 540 feet upstream of Day Road	+373	+374	
Gulf Branch	At confluence with Eighteenmile Creek	+362	+364	City of Lockport.
	Approximately 800 feet upstream of confluence with Eighteenmile Creek.	+363	+364	
Johnson Creek 2	Approximately 665 feet downstream of Sherman Road.	None	+476	Town of Hartland, Town of Royalton.
	Approximately 0.19 mile upstream of Telegraph Road	None	+541	
Mud Creek	At confluence with Tonowanda Creek	+581	+583	Town of Pendleton, Town of Lockport.
	Approximately 0.63 mile downstream of Minnick Road	+582	+583	
Sawyer Creek (East)	At confluence with Bull Creek	+572	+575	City of North Tonawanda, Town of Wheatfield.
	At the centerline of Ward Road	None	+578	
Sawyer Creek (West)	At confluence with Bergholtz Creek	None	+573	Town of Wheatfield.
	At the centerline of Ward Road	None	+578	
Tonawanda Creek	Approximately 0.9 mile upstream of Twin Cities Memorial Highway.	None	+572	City of North Tonawanda, Town of Lockport, Town of Pendleton, Town of Royalton, Town of Wheatfield.
	Approximately 2.8 miles upstream of Rapids Road	None	+593	
Town Ditch Number 2	At confluence with Tonawanda Creek	None	+578	Town of Pendleton.
	Approximately 0.8 mile upstream of Campbell Boulevard.	None	+578	
Twelvemile Creek	Approximately 2.0 miles upstream of Fitch Road	+301	+300	Town of Porter, Town of Wilson.
	Approximately 870 feet downstream of Ransomville Road.	+300	+301	

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

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

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

ADDRESSES

City of Lockport
Maps are available for inspection at Lockport Municipal Building, One Locks Plaza, Lockport, NY.

City of Niagara Falls
Maps are available for inspection at Niagara Falls City Hall, 745 Main Street, Niagara Falls, NY.

City of North Tonawanda
Maps are available for inspection at North Tonawanda City Hall, 216 Payne Avenue, North Tonawanda, NY.

Town of Cambria
Maps are available for inspection at Cambria Town Hall, 4160 Upper Mountain Road, Sanborn, NY.

Town of Hartland
Maps are available for inspection at Hartland Town Hall, 8942 Ridge Road, Gasport, NY.

Town of Lockport
Maps are available for inspection at Lockport Town Hall, 6560 Dysinger Road, Lockport, NY.

Town of Newfane
Maps are available for inspection at Newfane Town Hall, 2896 Transit Road, Newfane, NY.

Town of Niagara
Maps are available for inspection at Niagara Town Hall, 7105 Lockport Road, Niagara Falls, NY.

Town of Pendleton
Maps are available for inspection at Pendleton Town Hall, 6570 Campbell Boulevard, Lockport, NY.

Town of Porter
Maps are available for inspection at Porter Town Hall, 3265 Creek Road, Youngstown, NY.

Town of Royalton
Maps are available for inspection at Royalton Town Hall, 5316 Royalton Center Road, Middleport, NY.

Town of Wheatfield
Maps are available for inspection at Wheatfield Town Hall, 2800 Church Road, North Tonawanda, NY.

Town of Wilson
Maps are available for inspection at Wilson Town Hall, 375 Lake Street, Wilson, NY.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: December 22, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–31267 Filed 1–2–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1022]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On December 9, 2008, FEMA published in the **Federal Register** a Proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 73 FR 74673. The table provided here represents the flooding source, location of referenced elevation, effective and modified elevation, and communities affected for the City of Mosinee, City of Schofield, City of Wausau, Village of Kronenwetter, Village of Rothschild and the Unincorporated Areas of Marathon County, Wisconsin. Specifically, it addresses flooding sources Bull Junior Creek, Eau Claire River and Wisconsin River.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes Proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

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

Correction

In the Proposed rule published at 73 FR 74673, in the December 9, 2008 issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Marathon County, Wyoming and Incorporated Areas'' addressed flooding sources Bull Junior Creek, Eau Claire River and Wisconsin River. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, or communities affected for these flooding sources. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding sources	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Marathon County, Wisconsin, and Incorporated Areas				
Bull Junior Creek	At the mouth of the Wisconsin River	+1150	+1147	City of Mosinee.
	Approximately 450 feet downstream of Old U.S. Highway 51.	+1150	+1149	
Eau Claire River	At Brooks and Ross Dam	+1167	+1168	City of Schofield, City of Wausau.
	Approximately 1.1 miles upstream of Brooks and Ross Dam.	+1171	+1169	
Wisconsin River	Just upstream of the Dam in the City of Mosinee	+1150	+1147	Unincorporated Areas of Marathon County, City of Mosinee, Villate of Kronenwetter, Village of Rothschild.
	Just downstream of Rothschild Dam	+1160	+1159	

Dated: December 22, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–31283 Filed 1–2–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. B–1004]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed Rule; correction.

SUMMARY: On September 17, 2008, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at FR Doc. E8–21699. The table provided here represents the flooding source, location of referenced elevation, effective and modified elevation, and communities affected for Watauga County, North Carolina. Specifically, it addresses Winkler Creek.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

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

Correction

In the proposed rule published at FR Doc. E8–21699 in the September 17, 2008, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Watauga County, North Carolina, and Incorporated Areas'' addressed Winkler Creek. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, or communities affected for these flooding sources. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Watauga County, North Carolina and Incorporated Areas				
Winkler Creek	At the upstream side of Blowing Rock Road	+3,113	+3,114	Unincorporated Areas of Watauga County, Town of Boone.
	Approximately 300 feet upstream of Rainbow Mountain Road.	None	+3,442	

Dated: December 18, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–31281 Filed 1–2–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–1016]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On November 5, 2008, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 73 FR 65815. The table provided here represents the flooding source, location of referenced elevation, effective and modified elevation, and communities affected for St. Clair County, Michigan (All Jurisdictions). Specifically, it addresses flooding source ''Belle River.''

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities

participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

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

Correction

In the proposed rule published at 73 FR 65815, in the November 5, 2008 issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''St. Clair County, Michigan and Incorporated Areas'' addressed flooding source ''Belle River.'' That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, or communities affected for these flooding sources. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
St. Clair County, Michigan and Incorporated Areas				
Belle River	At confluence with St. Clair River	+580	+581	City of Marine City.
	Approximately 475 feet upstream of Broadway Street	+580	+581	

Dated: December 18, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–31278 Filed 1–2–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–7762]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed Rule; correction.

SUMMARY: On February 22, 2008, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at FR Doc. E8–3362. The table provided here represents the flooding source, location of referenced elevation, effective and modified elevation, and communities affected for Trinity County, California. Specifically, it addresses Hayfork Creek.

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

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

Correction

In the proposed rule published at FR Doc. E8–3362 in the February 22, 2008, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Trinity County, California, and Incorporated Areas'' addressed Hayfork Creek. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, or communities affected for these flooding sources. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Trinity County, California and Incorporated Areas				
Hayfork Creek	Approximately 260 feet downstream of the confluence of Salt Creek.	None	*2,280	Unincorporated Areas of Trinity County.
	Approximately 300 feet upstream of Bridge Street	None	*2,322	

Dated: December 22, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–31282 Filed 1–2–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1022]

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the table to a proposed rule published in the **Federal Register** of December 9, 2008. This correction clarifies the table representing the flooding source(s), location of referenced elevation, the effective and modified elevation in feet and the communities affected for Madison County, Mississippi, and Incorporated Areas; specifically, for flooding source ''Reunion Lake #1,'' than was previously published.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1-percent-annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

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

Correction

In proposed rule FR Doc. E8–29068, beginning on page 74669 in the issue of December 9, 2008, make the following corrections, in the table published under the authority of 44 CFR 67.4. On page 74669, in § 67.4, in the table with center heading Madison County, Mississippi, and Incorporated Areas, the flooding source, location of referenced elevation, the effective and modified elevation in feet and the communities affected for flooding source ''Reunion Lake #1'', needs to be corrected to read as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Madison County, Mississippi, and Incorporated Areas				
*	* * * * *	*	*	*
Reunion Lake #1	Reunion Lake #1	None	+327	Unincorporated Areas of Madison County.

Dated: December 22, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–31279 Filed 1–2–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1201 and 1242

[STB Ex Parte No. 681]

Class I Railroad Accounting and Financial Reporting—Transportation of Hazardous Materials

AGENCY: Surface Transportation Board.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board (STB) seeks comment on whether and how it should update its accounting and financial reporting for Class I rail carriers and refine its Uniform Railroad Costing System (URCS) to better capture the operating cost of transporting hazardous materials.

DATES: Comments on the advance notice are due on or before February 4, 2009.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 681, 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments received by the Board will be posted to the Board's Web site at *http://www.stb.dot.gov* and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131, 395 E Street, SW., Washington, DC. Copies of the comments will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245–0235 or 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Paul Aguiar, (202) 245–0323. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board uses its Uniform Railroad Costing System (URCS) to determine a carrier's variable costs in a variety of regulatory proceedings.[1] The URCS model determines, for each Class I railroad, what portion of each category of costs shown in that carrier's Annual Report to the Board (STB Form R–1) represents its system-average variable cost for that year, expressed as a unit cost. URCS does this through a series of computer programs and manual procedures that are organized into three phases. Phase I compiles the raw data provided by the carrier into a useable format, and then uses statistical estimation procedures to determine the proportion of specific expense account groupings that vary with changes in the volume of activity (such as running track maintenance, which varies with gross ton-miles). In Phase II, these cost/volume relationships are then used to develop the unit variable costs that allow costing of specific rail movements. Finally, in Phase III, these variable cost units are applied to specific movements via an interactive computer program that permits the user to enter data for the specific movements under consideration.

There may be unique operating costs associated with the transportation of hazardous materials, however, that URCS does not attribute to those movements. For example, transportation of hazardous material may require the carriers to pay higher insurance premiums. While carriers report those insurance expenses in the R–1 reports, URCS spreads those expenses across all traffic of the railroad, rather than attributing those higher insurance costs specifically to the transportation of the hazardous materials. Nor does the Uniform System of Accounts (USOA)—which Class I carriers must use to prepare the financial statements that they submit to the Board—include a separate classification for hazmat operations so as to allow an accounting of the assets used and costs incurred in providing such service.

The Board seeks public comment on whether and how it should improve its informational tools to better identify and attribute the costs of hazardous-material transportation movements. This would require both revising the USOA—to obtain more detailed accounting and reporting of expenses and operating statistics associated with hazmat transportation—and improving the analytic capabilities of URCS to better reflect the costs associated with the transportation of hazardous materials. We therefore seek comments on both (1) whether it is appropriate to refine URCS to cost hazmat operations better, and (2) how to identify the costs of hazmat operations through our accounting and reporting rules.

To add a hazmat adjustment to URCS, we would need more accounting detail. Currently, the costs of hazmat operations are reported throughout the Operating Expense Matrix (Schedule 410). Those costs could, however, be separately identified in Schedule 417—Specialized Service Sub-Schedule—Transportation. Further, the costs of assets devoted to hazmat operations are not explicitly provided for in the existing property accounts. Establishing a new category of assets within the existing accounting and reporting framework may be beneficial. Parties are encouraged to comment on how best to define those operations and expenses that could be reported in this sub-schedule. Please be specific. We encourage parties to offer a specific definition of what should constitute a movement of hazardous material for this purpose, and to address whether it should be limited to movements of ''Toxic Inhalation Hazards'' (TIH) or should be broader or narrower. Parties should also provide assistance in identifying and defining the operating costs of hazmat shipments, as well as assets devoted to hazmat operations.

Parties should also comment on the best operating statistic for URCS to use to allocate these specified hazmat costs to individual movements. Examples might include car-miles, revenue ton-miles, or revenue tons of hazardous materials movements. (If some form of this proposal is adopted, carriers would then be required to report that operating statistic in Schedule 755 of the R–1 annual financial report so the modification to URCS could be implemented.) We would propose to treat hazmat expenses as 100% variable, just as other specialized costs are treated in URCS.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

Decided: December 22, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E8–31263 Filed 1–2–09; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Adoption of the Uniform Railroad Costing System As A General Purpose Costing System For All Regulatory Costing Purposes, 5 I.C.C.2d 894, 899 (1989) (Adoption of URCS)* (The URCS model is the Board's ''general purpose costing system for all regulatory costing purposes.'').

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223 and 224

[Docket No. 0812291651–81652–01]

RIN 0648–XM05

Listing Endangered and Threatened Wildlife and Plants; 90–Day Finding on a Petition to List Atlantic Wolffish as Threatened or Endangered under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of petition finding; request for information.

SUMMARY: We, NMFS, announce a 90–day finding for a petition to list Atlantic wolffish (*Anarhichas lupus*) as endangered or threatened under the Endangered Species Act (ESA). We find that the petition presents substantial scientific information indicating the petitioned action may be warranted. We will conduct a status review of Atlantic wolffish to determine if the petitioned action is warranted. To ensure that the review is comprehensive, we solicit information pertaining to this species from any interested party.

DATES: Information related to this petition finding must be received by March 6, 2009.

ADDRESSES: You may submit comments, identified by the XRIN 0648–XM05, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http//www.regulations.gov*. Follow the instructions for submitting comments.
- Mail or hand-delivery: Assistant Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

We will post all comments on http://www.regulations.gov. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). The petition and other pertinent information are also available electronically at the NMFS website at *http://www.nero.noaa.gov/prot__res/CandidateSpeciesProgram/csr.htm*.

FOR FURTHER INFORMATION CONTACT: Kim Damon-Randall, NMFS, Northeast Regional Office (978) 281–9300 x6535 or Marta Nammack, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2008, we received a petition from the Conservation Law Foundation, Dr. Erica Fuller and Dr. Les Watling (hereafter, the Petitioners), requesting that we list the U.S. distinct population segment (DPS) of Atlantic wolffish (*Anarhichas lupus*), an Atlantic wolffish DPS consisting of one or more subpopulations in U.S. waters, or the entire species of Atlantic wolffish as endangered or threatened under the ESA and designate critical habitat for the species. The petition contains information on the species, including the taxonomy; historic and current distribution; physical and biological characteristics of its habitat and ecosystem relationships; population status and trends; and factors contributing to the species' decline. The Petitioners also included information regarding possible DPSs of Atlantic wolffish. The petition addresses the five factors identified in section 4(a)(1) of the ESA as they pertain to Atlantic wolffish: (1) current or threatened habitat destruction or modification or curtailment of habitat or range; (2) over-utilization for commercial purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) other natural or man-made factors affecting the species' continued existence.

ESA Statutory Provisions and Policy Considerations

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. ESA implementing regulations define substantial information as the amount of information that would lead a reasonable person to believe the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In determining whether substantial information exists for a petition to list a species, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (16 U.S.C. 1533(b)(3)(A)), and the finding is to be published promptly in the **Federal Register**. If we find that a petition presents substantial information indicating that the requested action may be warranted, section 4 (b)(3)(A) of the ESA requires the Secretary of Commerce (Secretary) to conduct a status review of the species. Section 4 (b)(3)(B) requires the Secretary to make a finding as to whether or not the petitioned action is warranted within 12 months of the receipt of the petition. The Secretary has delegated the authority for these actions to the NOAA Assistant Administrator for Fisheries.

Under the ESA, a listing determination can address a species, subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532 (16)). In 1996, the U.S. Fish and Wildlife Service and NMFS published a Policy on the Recognition of Distinct Vertebrate Population Segments (DPS) Under the Endangered Species Act (61 FR 4722; February 7, 1996) that described two criteria for identifying DPSs: discreteness and significance. The Petitioners present information in the petition supporting a single large DPS in the United States and also potentially dividing that DPS into three smaller DPSs in the United States northeast peak of Georges Bank, Great South Channel, and Stellwagen Bank/Jeffreys Ledge.

The ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range (ESA section 3(6)).'' A threatened species is defined as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (ESA section 3(19)).'' As stated previously, under section 4(a)(1) of the ESA, a species may be determined to be threatened or endangered as a result of any one of the following factors: (1) present or threatened destruction, modification, or curtailment of habitat or range; (2) over-utilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by any state or foreign nation to protect such species.

Life History of the Atlantic wolffish

Atlantic wolffish are distributed in the North Atlantic Ocean from the Northwest Atlantic Shelf region off North America, to Greenland, Iceland and the waters off of Northern Europe. In the Northwestern Atlantic, they are found in waters off western Greenland

and southern Labrador, in the Strait of Belle Isle and the Gulf of St. Lawrence, off the eastern and western coasts of Newfoundland and over the Grand Banks south to the Scotian Shelf, in the Gulf of Maine and on Georges Bank. The species distribution within the United States represents the most southern reach of its range in the Northwest Atlantic.

Atlantic wolffish are a large, slow growing, and late maturing species (COSEWIC, 2000). Maturity varies by region due to temperature influences, but most mature by age 6 and about 40 cm total length (Collette and Klein-MacPhee, 2002). Males and females form bonded pairs during the spring and summer. The spawning period for Atlantic wolffish remains unclear but most likely varies temporally depending on latitude. Prior to spawning, ripe female wolffish exhibit a pronounced pot-belly (Collette and Klein-MacPhee, 2002). Females produce between 5,000 and 12,000 eggs, with female fecundity increasing with fish size. Incubation is believed to last 4 to 9 months, depending on the water temperature (Collette and Klein-MacPhee, 2002). Eggs are laid in large clusters and are guarded by the parental male. The male stops feeding during this period and becomes more aggressive in his role as protector (Collette and Klein-MacPhee, 2002).

Atlantic wolffish appear to prefer areas with complex bottom substrates such as rocky outcroppings or seaweed beds (Collette and Klein-MacPhee, 2002). While they are believed to be a relatively sedentary and solitary demersal species, Collette and MacPhee (2002) suggest that feeding takes place away from their shelter sites. Atlantic wolffish feed primarily on benthic fauna. While the diet of this species shows strong regional variation, it consists mainly of various species of mollusks, crustaceans, echinoderms and less frequently, fishes. Their teeth are quickly worn down by the grinding of hard-shelled prey and are replaced annually after the spawning season (Collette and Klein-MacPhee, 2002). They fast during this replacement until the new teeth are fully functional (Collette and Klein-MacPhee, 2002). As predators, Atlantic wolffish may also be key factors in controlling density and distribution of certain benthic invertebrates, such as sea urchin (O'Dea and Haedrich, 2000).

Analysis of Petition

The Petitioners present information indicating that the U.S. population of Atlantic wolffish is discrete and significant, and thus, a DPS. They also present additional information indicating that the U.S. DPS can be divided into three smaller DPSs.

The Petitioners contend that the U.S. DPS of Atlantic wolffish is discrete based on the international boundary between the United States and Canada and by its physical isolation from other populations of Atlantic wolffish in the Canadian waters of the Atlantic.

They note that discrete local populations (or subpopulations) have been postulated for Atlantic wolffish due to differences in life history studies (O'Dea and Haedrich, 2002; CMER Research Topics, 2005). Evidence for these subpopulation units is based on tag-recapture studies which indicate a high level of site fidelity and a strong preference for rocky habitat areas (Bigelow and Schroeder, 1953). The Petitioners also examined the nearest ''neighbor'' distances for Atlantic wolffish subpopulations in the United States and determined that distances among localities ranged from 14 km to approximately 85 km, with a median distance of 19 km. They note that the most substantial remaining subpopulation in the United States exists in the Jeffreys Ledge/Stellwagen area, which is approximately 350 km from similar areas of concentration on Browns Bank in Canadian waters.

According to the Petitioners, the Fundian Channel represents a significant barrier between the Gulf of Maine and Georges Bank and the Scotian Shelf subpopulations of Atlantic wolffish. They indicate that oceanographic features, such as the Fundian Channel, isolate subpopulations that are found in different areas, thereby leading to geographic and genetic isolation. Without corridors for mixing between these disparate subpopulations, migration and effective recruitment is limited, which could lead to the extirpation of subpopulations in the United States. Not only is the Jeffreys Ledge/Stellwagen subpopulation geographically isolated from other subpopulations, but much of the habitat between it and the Canadian subpopulations is comprised of clay and silt substrata. According to the Petitioners, the literature suggests that Atlantic wolffish have never been documented on mud bottoms (Bigelow and Schroeder, 1953) and are rarely observed over sand bottoms (Collette and Klein-MacPhee, 2002). The Petitioners provide information indicating that Atlantic wolffish subpopulations in the United States are distinguishable from other Atlantic wolffish subpopulations due to differences in life history characteristics such as age at maturity, possible adaptation to higher ambient water temperatures, fidelity to specific spawning grounds, and lack of migration. Coloration differences between Atlantic wolffish in the western Gulf of Maine and from Georges Bank have been noted, and it is believed that Atlantic wolffish subpopulations in the United States have adapted to the highest recorded water temperatures for the species throughout its range in the North Atlantic (Bigelow and Schroeder, 1953). As noted above, the Petitioners contend that, based on the U.S. Fish and Wildlife Service and NMFS joint DPS policy (61 FR 4722; February 7, 1996), the United States/Canadian border constitutes a delimiting international boundary, as Canadian management practices for Atlantic wolffish under the Species at Risk Act (SARA) are less protective than those afforded by the ESA. According to the Petitioners, there are differences in conservation status, exploitation, management of habitat and harvest regulation in Canada, and thus, Atlantic wolffish in the United States should be provided with independent protection.

According to the Petitioners, the United States population of Atlantic wolffish and the various subpopulations also satisfy the second and fourth significance factors from the DPS policy. They state that the U.S. DPS is significant because the loss of this population would result in a significant gap in the range of the taxon and in the loss of a subpopulation that exhibits unique characteristics indicative of genetic differences. They contend that the range of Atlantic wolffish in the Northwest Atlantic has contracted over the last 4 decades, and consequently, the range within the United States represents the southernmost extent of their historic range. As such, the loss of the U.S. DPS would represent a significant gap in the range of Atlantic wolffish. The Petitioners also note that the U.S. DPS and the subpopulations exhibit certain behavioral and physiological differences (noted above) that suggest there are underlying genetic differences.

The petition asserts that the U.S. DPS or the three potential smaller DPSs in the United States warrant listing based on at least three of the five factors specified in the ESA, 16 USC 1533(a)(1). The primary threats to Atlantic wolffish identified in the petition are overutilization directly and indirectly in commercial and recreational fisheries and habitat destruction and modification by bottom trawling and dredging. The Petitioners cite information that indicates that bottom

trawling and dredging operations are harmful to the hard bottom habitat occupied by Atlantic wolffish for nesting, spawning, and hatching young. The petition states that existing laws and regulations do not protect Atlantic wolffish populations in the United States or in Canada and that they are inadequate to halt the likely extinction of the species in a significant portion of its range. The Petitioners also contend that the threats to Atlantic wolffish in the United States have been exacerbated by additional environmental factors such as warming ocean temperatures, ecosystem shifts due to the general freshening of continental shelf waters, and a general loss of biodiversity in the marine environment.

According to the Petitioners, catch rates in scientific surveys in Newfoundland waters have declined by 91 percent since 1978 and by 87 percent in all Canadian waters. The 2002 Stock Status Report for Atlantic wolffish produced by the Canadian Department of Fisheries and Oceans (DFO) for the Scotian Shelf, Georges Bank, and in the Bay of Fundy indicated a similar declining trend in the research trawl survey series which began in 1970. Not only have the numbers declined in the surveys, but the number of locations in which the species occurs has declined and the range where the species is abundant appears to have been reduced. The percentage of all Canadian survey stations in which wolffish were landed in the DFO trawl survey declined from close to 35 percent in 1978 to approximately 10 percent in 1994. In Newfoundland, Atlantic wolffish were historically captured at 88 percent of the survey stations until 1985; however, this declined to 33 percent by 1993.

The Petitioners estimate that in the United States, between 1983 and 2004, the rate of decline of Atlantic wolffish was approximately 95 percent. The Northeast Fishery Science Center (NEFSC) bottom trawl survey biomass index has shown a significant decline that began in the mid- to late 1980s and has continued to present. The NEFSC's spring biomass index for U.S. waters reached a high of 1.44 kg/tow in 1986, declined to a low of 0.00 in 2005 and 2006, and rose slightly to 0.009 in 2007. The fall biomass index for U.S. waters reached a high of 1.14 kg/tow in 1981 and declined to 0.00 in 2007. Bottom trawls are most likely not the most effective method for determining abundance of Atlantic wolffish as they do not efficiently sample the rocky bottom habitat inhabited by wolffish. However, a pronounced decline in the relative abundance trend over an extended time period is still evident from the available data.

The current distribution of Atlantic wolffish in the Northwest Atlantic is contracted when compared to the historic distribution. Historically, the Northwest Atlantic population was distributed throughout the entire Gulf of Maine and on Georges Bank south to New Jersey (Collette and Klein-MacPhee, 2002). The highest recorded abundance was from Jeffreys Ledge to the Great South Channel, and other reported areas of abundance included the Gulf of Maine region in Canadian waters on the northeast peak of Georges Bank and Browns Bank. Wolffish were frequently caught in inshore Maine waters and along the coast of Massachusetts. State trawl surveys from Maine to Massachusetts have documented very few wolffish in state waters over the last several decades. NEFSC bottom trawl surveys have also documented this range contraction, indicating that there are a few isolated areas in which Atlantic wolffish are concentrated, including the northeast peak of Georges Bank and the Jeffreys Ledge and Stellwagen Bank regions.

Petition Finding

Based on the above information and the criteria specified in 50 CFR 424.14(b)(2), we find that the petition presents substantial scientific and commercial information indicating that the petitioned actions concerning Atlantic wolffish may be warranted. The Petitioners also provided information to support listing the entire species as threatened or endangered. As such, the biological review team (BRT) that will be formed to assess the status of Atlantic wolffish will begin their review by considering the information available regarding population structure of Atlantic wolffish throughout their range in the Northwest Atlantic. The review will include consideration of whether there is a single U.S. DPS or smaller DPSs within the species' range in the United States as indicated by the Petitioners. The status of the species, as defined by the BRT and after consulting with NMFS, will then be assessed to provide information to us to make a determination as to whether the species is in danger of extinction throughout all or a significant portion of its range or likely to become so in the foreseeable future.

Under section 4(b)(3)(A) of the ESA, this finding requires NMFS to commence a status review of the species. We are now initiating this review, and thus, the Atlantic wolffish is now considered to be a candidate species (69 FR 19976; April 15, 2004). Within 12 months of the receipt of the petition (October 1, 2009), a finding will be made as to whether listing Atlantic wolffish or DPSs of Atlantic wolffish in the United States as endangered or threatened is warranted, as required by section 4(b)(3)(B) of the ESA. If warranted, we will publish a proposed rule and solicit public comments before developing and publishing a final rule.

Information Solicited

To ensure the status review is based on the best available scientific and commercial data, we are soliciting information on whether Atlantic wolffish are endangered or threatened. Specifically, we are soliciting information in the following areas: (1) historical and current distribution and abundance of this species throughout its range; (2) historic and current condition; (3) population status and trends; (4) information on any current or planned activities that may adversely impact the species, especially as related to the five factors specified in section 4(a)(1) of the ESA and listed above; (5) ongoing efforts to protect and restore the species and its habitat; (6) information indicating the existence of DPSs of Atlantic wolffish based upon genetic data or other information; and (7) information on whether any particular portions of the range of the Atlantic wolffish constitute significant portions of the range of the species or of any potential DPSs that may exist. We request that all information be accompanied by: (1) supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

Peer Review

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure listings are based on the best scientific and commercial data available. We are soliciting the names of recognized experts in the field that could take part in the peer review process for this status review. Independent peer reviewers will be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 29, 2008.

John Oliver,

Deputy Assistant Administrator for Management and Administration, National Marine Fisheries Service.

[FR Doc. E8–31362 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0812171612–81615–01]

RIN 0648–XM21

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline (HG) for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2009, through December 31, 2009. This HG is proposed according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific sardine off the Pacific coast. The proposed initial HG for the 2009 fishing year is 65,732 mt and is proposed to be divided across the seasonal allocation periods in the following way: January 1–June 30, 22,006 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; July 1–September 14, 25,293 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; September 15–December 31, 11,933 mt would be allocated for directed harvest with an incidental set-aside of 4,500 mt. If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, fishing would be closed to directed harvest and only incidental harvest would be allowed.

DATES: Comments must be received by February 4, 2009.

ADDRESSES: You may submit comments on the Initial Regulatory Flexibility Analysis (IRFA) prepared for this rule or on this proposed rule identified by 0648–XM21 by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- Fax: (562)980–4047

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you prefer to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the IRFA or the report ''Assessment of Pacific Sardine Stock for U.S. Management in 2009'' may be obtained from the Southwest Regional Office (see the Mailing address above).

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

During public meetings each year, the biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team) and the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel). At that time, the biomass, the acceptable biological catch (ABC) and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with HG recommendations and comments from the Team and Subpanel. Following review by the Council and after hearing public comment, the Council makes its HG recommendation to NMFS.

In November 2008, the Council held a public meeting in San Diego, California (73 FR 60680), and recommended an acceptable biological catch (ABC) or maximum harvest guideline (HG) of 66,932 mt for the 2009 Pacific sardine fishing year. This ABC is the result of applying a biomass estimate of 662,886 mt to the harvest control rule established in the CPS FMP. This ABC/HG is 25 percent less than the ABC/HG adopted by the Council for the 2008 fishing season. The Council recommended that 1,200 mt of this available ABC/HG be initially subtracted from the ABC and reserved for a potential industry-based research project. NMFS would need to issue an Exempted Fishing Permit (EFP) for such an activity to occur. A decision on whether to issue an EFP will be made prior to the start of the second seasonal period (July 1, 2009). If it is determined that an EFP cannot be issued then the 1,200 mt will be added to the third period's directed harvest allocation prior to the start of that period.

The Council recommended that the remaining 65,732 mt be used as the initial overall HG and be allocated across the seasonal periods established by Amendment 11 (71 FR 36999). The Council also recommended an incidental catch set-aside of 6,500 mt. Subtracting this set-aside from the initial overall HG establishes an initial directed harvest fishery of 59,232 mt and an incidental fishery of 6,500 mt. The purpose of the incidental fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, if and when a seasonal directed fishery is closed. The larger set aside in the third and final period is intended to adequately account for incidental harvest by the winter market squid fishery and to also help ensure that sardine harvests do not exceed the ABC.

The directed harvest levels and incidental set-aside would be initially allocated across the three seasonal allocation periods in the following way: January 1–June 30, 22,006 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; July 1–September 14, 25,293 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; September 15–December 31, 11,933 mt would be allocated for directed harvest with an incidental set-aside of 4,500 mt. If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, fishing would be closed to directed harvest and only incidental harvest would be allowed. For the

remainder of the period, any incidental Pacific sardine landings would be counted against that period's incidental set-aside. The proposed incidental fishery would also be constrained to a 20 percent by weight incidental catch rate when Pacific sardine are landed with other CPS so as to minimize the targeting of Pacific sardine. In the event that an incidental set aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period. If the set-aside is not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period would automatically be adjusted to account for the discrepancy. Additionally, if during any seasonal period the directed harvest allocation is not fully attained or is exceeded, then the following period's directed harvest total would be adjusted to account for this discrepancy as well.

If the total HG or these apportionment levels for Pacific sardine are reached or are expected to be reached, the Pacific sardine fishery would be closed via appropriate rulemaking until it re-opens either per the allocation scheme or the beginning of the next fishing season. The Regional Administrator would publish a notice in the **Federal Register** announcing the date of such closures.

Detailed information on the fishery and the stock assessment are found in the report ''Assessment of Pacific Sardine Stock for U.S. Management in 2009'' (see **ADDRESSES**).

The formula in the CPS FMP uses the following factors to

determine the HG:

1. *Biomass.* The estimated stock biomass of Pacific sardine age one and above for the 2009 management season is 662,886 mt.

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *Distribution.* The portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

4. *Fraction.* The harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested. The fraction used varies (5–15 percent) with current ocean temperatures; a higher fraction for warmer ocean temperatures and a lower fraction for cooler temperatures. Warmer ocean temperatures favor the production of Pacific sardine. For 2009, the fraction used was 15 percent, based on three seasons of sea surface temperature at Scripps Pier, California.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. note. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The results of the analysis are stated below. For copies of the IRFA, and instructions on how to send comments on the IRFA, please see the **ADDRESSES** section above.

The purpose of this proposed rule is to implement the 2009 HG for Pacific sardine in the U.S. EEZ off the Pacific coast. The HG is proposed according to the regulations implementing the CPS FMP and establishes allowable harvest levels for Pacific sardine off the Pacific coast. The HG is determined using an environmentally-based formula accounting for the effect of ocean conditions on stock productivity.

The HG is apportioned based on the following allocation scheme: 35 percent of the HG is allocated coastwide on January 1; 40 percent of the HG, plus any portion not harvested from the initial allocation is then reallocated coastwide on July 1; and on September 15 the remaining 25 percent, plus any portion not harvested from earlier allocations will be released. If the total HG or these apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery is closed until either it re-opens per the allocation scheme or the beginning of the next fishing season. There is no limit on the amount of catch that any single vessel can take during an allocation period or the year; the HG and seasonal allocations are available until fully utilized by the entire CPS fleet.

The small entities that would be affected by the proposed action are the vessels that compose the West Coast CPS finish fleet. Approximately 107 vessels are permitted to operate in the sardine fishery component of the CPS fishery off the U.S. West Coast; 63 permits in the Federal CPS limited entry fishery off California (south of 39° N. lat.), and a combined 44 permits in Oregon and Washington's state Pacific sardine fisheries. This proposed rule has an equal effect on all of these small entities and therefore will impact a substantial number of these small entities in the same manner. These vessels are considered small business entities by the U.S. Small Business Administration since the vessels do not have annual receipts in excess of $4.0 million. Therefore, there would be no economic impacts resulting from disproportionality between small and large business entities under the proposed action.

The profitability of these vessels as a result of this proposed rule is based on the average Pacific sardine ex-vessel price per mt. NMFS used average Pacific sardine ex-vessel price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was unavailable.

For the 2008 fishing year the HG was set at 89,093 mt. Approximately 87,000 mt (58,000 in California and 29,000 in Oregon and Washington) of this HG was harvested during the 2008 fishing season with an estimated ex-vessel value of $14.5 million. Although the 2008 HG was 42 percent lower than the HG for 2007, due to an increase in average annual ex-vessel price per pound annual ex-vessel revenue for 2008 was similar to that in 2007.

The proposed HG for the 2009 Pacific sardine fishing season (January 1, 2009 through December 31, 2009) is 65,732 metric tons (mt). This HG is 25 percent lower than the HG for 2008. If the fleet were to take the entire 2009 HG, and assuming a coastwide average ex-vessel price per mt of $168, the potential revenue to the fleet would be approximately $11 million. This would be similar to the average total coastwide ex-vessel value achieved from 2002–2007. Whether this will occur depends greatly on market forces within the fishery and on the regional availability of the resource to the fleets and the fleets' ability to find pure schools of Pacific sardine. A change in the market and/or the potential lack of availability of the resource to the fleets could cause a reduction in the amount of Pacific sardine that is harvested, in turn, reducing the total revenue to the fleet from Pacific sardine.

There will likely be a drop in profitability based on this rule compared to last season due to the lower HG this year. However, from 2002 through 2007 the average coastwide annual ex-vessel revenue was $11 million, therefore at current ex-vessel

price per mt, the harvest guideline for 2009 should provide similar revenue as seen from 2002 through 2007.

No significant alternatives to this proposed rule exist that would accomplish the stated objectives of the applicable statutes and which would minimize any significant economic impact of this proposed rule on the affected small entities. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific sardine fishery based on the harvest formula in the FMP. The harvest formula is applied to the current stock biomass estimate to determine the ABC, from which the HG is then derived. Determining the annual HG merely implements the established procedures of the FMP with the goal of continuing to provide expected net benefits to the nation, regardless of what the specific annual allowable harvest of Pacific sardine is determined to be.

There are no reporting, record-keeping, or other compliance requirements required by this proposed rule. Additionally, no other Federal rules duplicate, overlap or conflict with this proposed rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 29, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E8–31344 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0809031176–81596–01]

RIN 0648–AX25

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands and Gulf of Alaska Groundfish; Limited Access Privilege Programs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations implementing Amendment 90 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 78 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. This proposed regulation would amend the Bering Sea and Aleutian Islands Amendment 80 Program and the Central Gulf of Alaska Rockfish Program to allow post-delivery transfers of cooperative quota to cover overages. This action is necessary to mitigate potential overages, reduce enforcement costs, and provide for more precise total allowable catch management. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plans, and other applicable law.

DATES: Comments must be received no later than February 19, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–AX25,'' by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendments 90 and 78, and the Regulatory Impact Reviews/Initial Regulatory Flexibility Analyses (RIR/IRFAs) prepared for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.* This proposed action was categorically excluded from the need to prepare an environmental assessment under the National Environmental Policy Act.

The Council has submitted Amendments 90 and 78 for review by the Secretary of Commerce, and a Notice of Availability (NOA) of the FMP amendments was published in the **Federal Register** on December 17, 2008 with comments on the FMP amendments invited through February 17, 2009. All written comments received by February 17, 2009, whether specifically directed to the FMP amendments, this proposed rule, or both, will be considered in the approval or disapproval decision on the FMP amendments.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone off Alaska are managed under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act. Amendment 80 to the BSAI FMP implemented the Amendment 80 Program. Amendment 68 to the GOA FMP implemented the Central GOA Rockfish Program (Rockfish Program). Regulations implementing Amendment 80 were published on September 14, 2007 (72 FR 52668), and regulations implementing Amendment 68 were published on November 20, 2006 (71 FR 67210). These regulations are located at 50 CFR part 679.

Background

NMFS issued quota share (QS) under the Amendment 80 Program and the Rockfish Program. Under the Amendment 80 Program, NMFS issued QS to persons based on their qualifying harvest histories using specific trawl catcher/processor vessels in six BSAI non-pollock groundfish fisheries during 1998 through 2004. Under the Rockfish Program, NMFS issued QS to persons based on their qualifying harvest histories using trawl catcher vessels and trawl catcher/processors in several Central GOA (CGOA) rockfish fisheries and associated species that were harvested during those rockfish fisheries during 1996 through 2002. These two programs are commonly known as limited access privilege programs (LAPPs) because the participants in these fisheries may receive exclusive access to fishery resources if specific conditions are met. Each year, the person issued QS may choose to participate in either a fishery cooperative with other QS holders, or to

fish in a limited access fishery with all other non-cooperative participants who hold QS. The total amount of QS assigned to all members of a cooperative yields an amount of cooperative quota (CQ), which is a permit that provides an exclusive harvesting privilege for a specific amount of groundfish, in specific fisheries, in a given year. In addition, a cooperative also receives a specific amount of CQ that may be used for the incidental catch of a specific amount crab or halibut. Incidentally caught crab or halibut cannot be retained, processed, or sold, and are commonly called prohibited species catch (PSC). QS holders who choose to participate in the limited access fishery are not assigned an exclusive harvest or PSC use privilege, but can compete for the allocation of groundfish and PSC remaining after CQ has been assigned to all cooperatives.

Once a person joins a cooperative or the limited access fishery, they are required to participate in only that cooperative or the limited access fishery for that calendar year. A person who wishes to join a cooperative must designate the IFQ derived from his QS to the cooperative, and the specific vessels that will be fishing for that cooperative prior to the start of the fishing season for that LAPP. For example, persons wishing to participate in an Amendment 80 cooperative must assign their QS and vessels to an Amendment 80 cooperative by November 1 of each year to be eligible to fish in a cooperative for the following calendar year. Once a person assigns his QS or a vessel to a cooperative, he cannot reassign his QS or his vessel to another cooperative or the limited access fishery during that calendar year.

The specific groundfish species for which NMFS issues QS, and the PSC species that may be issued CQ if a person joins a cooperative under the Amendment 80 Program and Rockfish Program are shown in Table 1.

TABLE 1—GROUNDFISH AND PSC SPECIES THAT MAY YIELD CQ IN THE AMENDMENT 80 PROGRAM AND ROCKFISH PROGRAM

Groundfish species for which QS is issued and that can yield CQ	PSC species for which CQ can be issued
BSAI Amendment 80 Program	
Aleutian Islands Pacific ocean perch.	Pacific halibut.
Atka mackerel	Zone 1 Bristol Bay red king crab.
Flathead sole	Zone 1 *Chionoecetes opilio* crab.
Pacific cod	Zone 2 *C. opilio* crab.
Rock sole	Zone 1 *C. bairdi* crab.
Yellowfin sole	Zone 2 *C. bairdi* crab.
CGOA Rockfish Program	
Northern rockfish (catcher vessels & catcher/processors).	Pacific halibut.
Pacific ocean perch (catcher vessels & catcher/processors).	
Pelagic shelf rockfish (catcher vessels & catcher/processors).	
Thornyhead rockfish (catcher vessels & catcher/processors).	
Trawl sablefish (catcher vessels & catcher/processors).	
Rougheye rockfish (catcher/processors only).	
Shortraker rockfish (catcher/processors only).	
Pacific cod (catcher vessels only).	

The mechanisms for joining a cooperative, the process for issuing CQ for groundfish or PSC species, and the monitoring and enforcement provisions necessary to ensure proper accounting of catch under the Amendment 80 and Rockfish Programs are described in detail in the final rules implementing those LAPPs and are not repeated here (see 72 FR 52668, September 14, 2007, for the Amendment 80 Program; and 71 FR 67210, November 20, 2006, for the Rockfish Program).

The size of each annual CQ allocation to a cooperative is based on the amount of QS held by the members of the cooperative relative to the total QS pool for a given groundfish fishery. For example, if a cooperative in the Amendment 80 Program was comprised of members holding QS equaling 40 percent of the QS pool in the yellowfin sole fishery, that cooperative would receive CQ to harvest 40 percent of the annual total allowable catch (TAC) of yellowfin sole that is assigned to the Amendment 80 Program. Any catch of groundfish or PSC species that is assigned CQ under the specific LAPP (i.e., either the Amendment 80 or Rockfish Program) is debited from a cooperative's CQ account.

The Amendment 80 Program and the Rockfish Program allow cooperatives to transfer their unused CQ between cooperatives. Transfers allow cooperatives to tailor their operations to specific harvesting conditions. All transfers must be approved by NMFS before they become effective. Once a CQ transfer has been approved by NMFS, the CQ account of the transferring cooperative is debited and the CQ account of the receiving cooperative is credited.

CQ Overages Under Current System

Under existing regulations, a cooperative in either the Amendment 80 Program or the Rockfish Program is prohibited from catching groundfish or PSC on an annual basis that exceeds the amount of CQ that is issued to that cooperative (see § 680.7(n)(7)(i) for the Rockfish Program, and § 680.7(o)(4)(v) for the Amendment 80 Program). This prohibits a cooperative and its members from having a negative CQ balance for a given species, and subsequently receiving transferred CQ after the landing to rectify the negative CQ balance. A transfer of CQ after fish have been landed to rectify a negative CQ balance is commonly known as a post-delivery transfer.

If a harvester fishing for a cooperative delivers more groundfish, or catches more PSC, than the amount of CQ that the cooperative has been issued, that harvester and cooperative have violated existing regulations. This is commonly known as an overage. Overages can occur either through deliberate actions, or more commonly through unintentional errors such as miscalculating the weight of catch to be delivered relative to the amount of CQ available. As an example, harvesters operating a catcher vessel in the Rockfish Program may not know the precise weight of a delivery of groundfish, and estimates made onboard the vessel using a sample of average weight may be higher or lower than the actual delivery weight. Similarly, a harvester operating a trawl catcher/processor under either the Amendment 80 Program or Rockfish Program may not realize that he has harvested more than the amount of CQ assigned to his cooperative for a given groundfish or PSC species until after the catch from a haul has been weighed and the catch composition sampled by an onboard observer. If a harvester is making his or her last fishing trip for a cooperative for the year for a given groundfish or PSC species and no additional CQ is

available in his or her account, then an overage may occur. However, in most cases harvesters attempt to protect against potential overages by maintaining catch below their CQ holdings, and harvesting and using slightly less than the maximum amount of groundfish or PSC available on their CQ account, resulting in less value for the catch than possible.

Overages by cooperatives in the Rockfish Program and Amendment 80 Program are likely to be uncommon. In 2007, the first year under the Rockfish Program, no overages of CQ occurred. Results from 2008, the second year of the Rockfish Program, and the first year of the Amendment 80 Program are pending.

Currently, catcher vessel landings of groundfish are offloaded and processed by the facility receiving the delivery. PSC that is caught at sea is sampled, weighed, and returned to the sea by an onboard observer according to specific sampling protocols. The amount of groundfish and PSC CQ used by the vessel is reported once the vessel offloads its catch of groundfish. Catcher/processor landings are weighed, sampled, and recorded by onboard observers. The results from landings on a catcher/processor are reported to NMFS daily. Once a final weight has been determined, the applicable groundfish or PSC species is debited from the CQ account for the cooperative. Any CQ overage is noted and referred to NOAA Office for Law Enforcement (OLE).

Enforcement actions that may occur for a CQ overage would most likely rely on catch accounting records that show the violation. Violations from exceeding an exclusive annual harvest privilege in other LAPPs, such as the BSAI Crab Rationalization Program, and the Halibut and Sablefish IFQ Program are often apparent and not disputed because reliable records of observer sampling and offloads are generated at the time of landings. NMFS expects that similar violations that may occur in the Amendment 80 Program or Rockfish Program also would be apparent because reliable records of catch are kept under these two LAPPs. The amount and type of penalties that may be assessed are within the discretion of NOAA General Counsel.

Need for Proposed Action

Allowing post-delivery transfers in the Amendment 80 Program and Rockfish Program could mitigate potential overages, reduce enforcement costs, and provide for more precise TAC management and more value from the harvests for participants. Post-delivery transfers also would increase flexibility to the fleet and allow more efficient use of resources. As an example, this provision could allow harvesters to make landings for their cooperative and settle up CQ accounts after delivery. The flexibility to complete transfers after delivery reduces the potential that some CQ will remain unharvested if a cooperative is not able to harvest its CQ allocation without the risk of an overage, and minimizes the potential for CQ overages because a CQ account can be balanced after delivery through a transfer from another cooperative with the appropriate amount of CQ.

The Proposed Action

This action proposes to allow post-delivery transfers to cover overages of CQ. There would be no limit on the size of a post-delivery transfer or on the number of post-delivery transfers a cooperative could undertake, but a vessel that is assigned to that cooperative could not begin a new fishing trip for that cooperative if the CQ account balance was zero or negative for any of the groundfish or PSC species CQ assigned to a cooperative. No cooperative could have a negative balance in an annual CQ account for any groundfish or PSC species after the end of a calendar year.

No member of a cooperative would be permitted to use any vessel assigned to that cooperative to begin a new fishing trip for any groundfish CQ species until the overage was accounted for and the CQ balance of the cooperative for all groundfish or PSC species for which CQ is assigned was positive. NMFS proposes to define the term ''fishing trip'' for purposes of this requirement to provide a clear standard for fishery participants. A fishing trip would be defined as the period beginning when a vessel operator commences harvesting any groundfish species that is assigned CQ under the relevant LAPP and ending when the vessel operator removes any groundfish CQ species whether processed or unprocessed from that vessel. The specific groundfish and PSC species for both LAPPs are listed above in Table 1. The proposed definition of a fishing trip would effectively extend from the first harvest of a groundfish species that is issued CQ in the applicable LAPP until the beginning of a delivery of groundfish from a catcher vessel, or the beginning of offloading of processed groundfish from a catcher/processor. This definition would ensure that no member of a cooperative could commence fishing for any groundfish species on the cooperative's CQ permit on any vessel until the CQ accounts of all groundfish and PSC species assigned to that cooperative are positive. This provision is intended to discourage harvesters from continuing to debit groundfish or PSC against their cooperative's CQ account for numerous fishing trips and run a negative balance without ensuring that adequate unused CQ exists that can be transferred from another cooperative to cover that negative balance. This proposed rule would not modify existing regulations that require that CQ issued to a cooperative can be transferred only among other cooperatives, and that participants in a limited access fishery in either of these two LAPPs may not transfer any unused TAC to cooperatives as CQ.

The proposed action would prohibit a cooperative from maintaining a negative balance in its CQ accounts after the end of the calendar year for which that CQ was issued. This prohibition would effectively require that all post-delivery transfers of CQ must be completed by December 31 of each year. Overages that are not covered by December 31 of each year would be subject to a penalty or other enforcement action. This action would be expected to reduce the risk of potential overages because cooperatives would have time to settle up their CQ accounts by the end of the calendar year, rather than potentially exceed a CQ account at the time of landing.

Expected Effects of the Proposed Action

The RIRs describe in detail the predicted effects of the proposed action on harvesters, processors, communities, management and enforcement, consumers, and the nation (see **ADDRESSES**). Only the effects of the proposed action on harvesters are described here. Overall, the number of overages at the time of landing may increase slightly under the proposed action, but the risk that an overage would be subject to penalty would decrease.

Harvesters are likely to improve efficiency under this alternative through greater flexibility in harvesting. Overages could be covered with post-delivery transfers. Under the status quo, harvesters may be required to wait in port or remain idle on the fishing grounds until a transfer can be processed and a positive CQ balance is available. Under the proposed action, harvesters could finish their fishing trip and settle the balance when back in port. Some production efficiency gains should be realized by allowing harvesters to more precisely harvest the total CQ allocation with fewer uncovered overages. Harvesters also are likely to minimize the number of overage violations, which should be

reduced through post-delivery transfers. Based on public testimony received during Council deliberations and NMFS' review of overage rates in the Rockfish Program and Amendment 80 Program described in the RIR/IRFAs prepared for this proposed action (see **ADDRESSES**), it is unlikely that harvesters will have excessive overages by unreasonable reliance on the provision for post-delivery transfers. The available data indicate that overages are rare currently, and would likely continue to be in the future. This proposed action would benefit cooperatives and the members of cooperatives fishing under a cooperative's CQ permit.

Recordkeeping and Reporting Requirements

The NMFS Restricted Access Management Program (RAM) would continue to oversee share accounts and share usage. At the time of landing, RAM would maintain a record of any overage, but instead of reporting overages to NOAA OLE immediately, RAM would defer reporting until December 31 of the calendar year for which the CQ permit was issued. RAM would use the same process for processing post-delivery inter-cooperative transfer requests as is currently used to process inter-cooperative transfers under regulations at § 679.81 for the Rockfish Program, and at § 679.91 for the Amendment 80 Program.

Summary of Regulatory Changes

This action proposes the following changes to the existing regulatory text at 50 CFR part 679:

- Add two new paragraphs to define the term ''fishing trip'' at § 679.2;
- Modify the existing prohibitions at § 679.7(n)(7)(i) for the Rockfish Program and § 679.7(o)(4)(v) for the Amendment 80 Program to clarify that a person cannot begin a fishing trip with a vessel assigned to a Rockfish Program cooperative or Amendment 80 Program cooperative, if that Amendment 80 or Rockfish cooperative does not hold unused CQ for all species for which CQ is assigned; and
- Add prohibitions at § 679.7(n)(7)(vi) for the Rockfish Program and § 679.7(o)(4)(vi) for the Amendment 80 Program to prohibit a person from having a negative balance in a CQ account for any species after the end of the calendar year for which that CQ permit was issued.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with Amendments 90 and 78, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

IRFAs were prepared for Amendment 90 and Amendment 78 that describe the impact this proposed rule would have on small entities. Copies of the RIR/IRFAs prepared for this proposed rule are available from NMFS (see **ADDRESSES**). The RIR/IRFAs prepared for this proposed rule incorporate by reference extensive RIR/IRFAs prepared for Amendment 68 to the GOA FMP that implemented the Rockfish Program, and Amendment 80 to the BSAI FMP that implemented the Amendment 80 Program. The RIR/IRFAs prepared for Amendment 68 and Amendment 80 detailed the impacts of those LAPPs on small entities. These analyses are available from the NMFS Alaska Region, Records Office, P.O. Box 21668, Juneau, AK 99802, e-mail *Records.fakr@noaa.gov*, and on the Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

The IRFAs for this proposed action describe the action, why this action is being proposed, the objectives and legal basis for the proposed rule, the type and number of small entities to which the proposed rule would apply, and projected reporting, recordkeeping, and other compliance requirements of the proposed rule. The IRFAs identify any overlapping, duplicative, or conflicting federal rules and describes any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. The description of the proposed action, its purpose, and its legal basis are described in the preamble and are not repeated here.

This action directly regulates holders of CQ who might use post-delivery transfers to cover overages. Estimates of the number of small entities holding CQ are based on estimates of gross revenues. Landings data from the most recent season for which data are available are used to make these estimates. In the Rockfish Program, seven cooperatives formed in the first year (2007). Estimates of the number of these cooperatives that are small entities are based on estimates of gross revenues from the most recent year for which complete data are available (2005). Since rockfish prices vary from year to year, the gross revenues of participants are difficult to predict. Of the seven cooperatives that received CQ in the first year of the Rockfish Program, five are estimated to be large entities and two are estimated to be small entities. In the Amendment 80 Program, estimates of the number of these cooperatives that are small entities are based on estimates of gross revenues from the most recent year for which complete data are available (2007). In the first year of the Amendment 80 Program (2007), one cooperative formed. This cooperative is estimated to be a large entity.

Any cooperative wishing to cover an overage will be required to engage in a transfer of CQ. The required reporting and recordkeeping for a post-delivery transfer would be the same as for any other transfer of CQ.

All of the directly regulated individuals would be expected to benefit from this action relative to the status quo alternative because the proposed action would allow greater flexibility and a longer time period over which to account for overages. Holders of CQ would be expected to benefit the most because the proposed action would provide CQ holders greater flexibility to maximize the harvest of their allocation without risking overages. Non-cooperative members would not be expected to benefit from this action because those persons do not receive an exclusive annual harvest privilege. This action would not be expected to have any effect on non-cooperative members. Among the three alternatives considered, the proposed action would best minimize potential adverse economic impacts on the directly regulated entities. Under the status quo, no post-delivery transfers would be allowed and small entities would continue to be penalized for overages. A third alternative for both Amendment 78 and Amendment 90 would have allowed post-delivery transfers, but with more limitations and restrictions than the preferred alternative. The preferred alternative gives small entities the most flexibility to account for overages.

Allowing post-delivery transfers should reduce the number of overages that result in forfeiture of catch and other penalties.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and Reporting Requirements.

Dated: December 30, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is amended to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–199; Pub. L. 108–447; and Pub. L. 109–479.

2. In § 679.2, paragraphs (4) and (5) are added to the term ''Fishing trip'' to read as follows:

§ 679.2 Definitions.

* * * * *

Fishing trip means:

* * * * *

(4) *For purposes of 679.7(n)(7)*, the period beginning when a vessel operator commences harvesting any Rockfish Program species and ending when the vessel operator offloads or transfers any Rockfish Program species whether processed or unprocessed from that vessel.

(5) *For purposes of 679.7(o)(4)*, the period beginning when a vessel operator commences harvesting any Amendment 80 species and ending when the vessel operator offloads or transfers any Amendment 80 species whether processed or unprocessed from that vessel.

* * * * *

3. In § 679.7, paragraphs (n)(7)(i) and (o)(4)(v) are revised, and paragraphs (n)(7)(vi) and (o)(4)(vi) are added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(n) * * *

(7) * * *

(i) Begin a fishing trip for any Rockfish Program species with any vessel assigned to a Rockfish cooperative if the total amount of unharvested CQ that is currently held by that Rockfish cooperative is zero or less for any species for which CQ is assigned.

* * * * *

(vi) Have a negative balance in a CQ account for any species for which CQ is assigned after the end of the calendar year for which a CQ permit was issued.

* * * * *

(o) * * *

(4) * * *

(v) Begin a fishing trip for any Amendment 80 species with any vessel assigned to an Amendment 80 cooperative if the total amount of unharvested CQ that is currently held by that Amendment 80 cooperative is zero or less for any species for which CQ is assigned.

(vi) Have a negative balance in a CQ account for any species for which CQ is assigned after the end of the calendar year for which a CQ permit was issued.

* * * * *

[FR Doc. E8–31365 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 74, No. 2
Monday, January 5, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0136]

Notice of Request for Extension of Approval of an Information Collection; Lacey Act Declaration Requirement; Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection required by the Lacey Act for the importation of certain plants and plant products.

DATES: We will consider all comments that we receive on or before March 6, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0136* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0136, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0136.

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

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

FOR FURTHER INFORMATION CONTACT: For information on the Lacey Act declaration requirement, contact Mr. Alex Belano, Assistant Branch Chief, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–8758. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Lacey Act Declaration Requirement; Plants and Plant Products.

OMB Number: 0579–0349.

Type of Request: Extension of approval of an information collection.

Abstract: The Food, Conversation, and Energy Act of 2008, effective May 22, 2008, amended the Lacey Act (the Act) by expanding its protection to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices). The Lacey Act, as amended, makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of the laws of the United States, a State, an Indian tribe, or any foreign law that protects plants. The 2008 amendment to the Act also makes it unlawful to make or submit any false record, account or label for, or any false identification of, any plant covered by the Act.

In addition, beginning December 15, 2008, section 3 of the Act makes it unlawful to import certain plants and plant products without an import declaration, The declaration must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested.

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) is part of an interagency group working to implement the new provisions. That group includes representatives from APHIS, U.S. Forest Service, Customs and Border Protection, U.S. Trade Representative, U.S. Department of Justice, U.S. Department of State, U.S. Fish and Wildlife Service, Council on Environmental Quality, and Department of Commerce.

In a notice published in the **Federal Register** on October 8, 2008 (73 FR 58925–58927), APHIS stated that it was seeking approval from the Office of Management and Budget (OMB) to collect information that the Lacey Act requires importers to include in the declaration and that is not already being collected for other purposes, as well as approval of a paper form that may be used for declarations. APHIS received emergency approval from OMB that allowed us to make the form available to importers and brokers who wish to voluntarily submit the declaration beginning December 15. The form, PPQ Form 505 (Plant and Plant Product Declaration Form), is available at *http://www.aphis.usda.gov/plant_health/lacey_act/downloads/declarationform.pdf.*

We are asking OMB to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.5 hours per response.

Respondents: Importers of certain plants and plant products.

Estimated annual number of respondents: 279,398.

Estimated annual number of responses per respondent: 12.

Estimated annual number of responses: 3,352,776.

Estimated total annual burden on respondents: 5,029,164 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 23rd day of December 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–31369 Filed 1–2–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0144]

Notice of Intent To Destroy Outdated Hog Cholera Vaccine Seed Stock

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Animal and Plant Health Inspection Service is proposing to destroy outdated seed virus and other materials previously used to prepare hog cholera vaccine and antiserum.

DATES: We will consider all comments that we receive on or before February 4, 2009.

ADDRESSES: You may send your comments to USDA, APHIS, VS, Center for Veterinary Biologics, Policy Evaluation and Licensing, 510 South 17th Street, Suite 104, Ames, IA 50010; Attention: Ms. Chelsea J. Bare. You may also e-mail your comments to *Chelsea.J.Bare@aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Section Leader, Operational Support Section, Center for Veterinary Biologics, Veterinary Services, APHIS, 4700 River Road Unit 148, Riverdale, MD; phone (301) 734–8245, fax (301) 734–4314.

SUPPLEMENTARY INFORMATION: The preparation of hog cholera vaccine was banned in the United States in 1969. Concurrent with the ban on vaccine production, vaccine manufacturers and farmer cooperatives involved in vaccine production and distribution were required to surrender vaccine seed stocks and remaining product inventory to the U.S. Department of Agriculture for safekeeping. This material has remained securely stored at the National Veterinary Services Laboratories (NVSL) in Ames, IA, since that time. All of this material is now outdated, and the most recent inventory of the stored product revealed a significant deterioration of packaging and labeling that makes accurate identification of the virus stocks difficult, and raises additional concerns regarding whether such material can continue to be safely stored given the deteriorating condition of its packaging. Thus, we are advising interested parties that, unless substantial issues are raised in response to this notice, APHIS intends to destroy all remaining seed stocks and other material collected from producers/cooperators in response to the ban on hog cholera vaccine and serum production following the close of the comment period for this notice (see **DATES** above). The destruction of those materials will be accomplished by autoclaving and/or incineration on site at NVSL.

Done in Washington, DC, this 23rd day of December 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–31370 Filed 1–2–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #316, Animal Mortality Facility; #317, Composting Facility; #591, Amendments for Treatment of Agricultural Waste; #629, Waste Treatment; and #632, Solid Liquid Waste Separation Facility. These practices will be used to plan and install conservation practices related to animal agriculture.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to John A. Bricker, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1691; Fax number (804) 287–1737. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site: *http://www.va.nrcs.usda.gov/technical/draftstandards.html.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: December 8, 2008.

Patricia J. Bragg,

Acting State Conservationist, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. E8–31256 Filed 1–2–09; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must be Received on or Before: February 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 OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

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. If approved, 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 product(s) and/or service(s) to the Government.
2. If approved, the action will result in authorizing small entities to furnish the 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 services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List to be furnished by the nonprofit agency listed:

Services

Service Type/Location: Operation of Postal Service Center, Fort Riley, 802 Marshall Loop, Fort Riley, KS.
NPA: Skookum Educational Programs, Bremerton, WA.
Contracting Activity: Dept. of the Army, XR W6BA ACA Ft. Riley.

Deletions

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. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action will not result in the authorization of small entities to furnish the products 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 proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products:

Data Cartridge, Travan
NSN: 7045–01–461–0589—Data Cartridge, Travan.
NSN: 7045–01–459–8643—Data Cartridge, Travan.
NPA: North Central Sight Services, Inc., Williamsport, PA.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Barry S. Lineback,

Acting Director, Program Operations.

[FR Doc. E8–31246 Filed 1–2–09; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT 11/1/2008 THROUGH 12/30/2008

Firm	Address	Date accepted for filing	Products
Von Ruden Manufacturing, Inc	1008 First Street, NE., Buffalo, MN 55313–1755.	11/25/2008	Precision cast hydraulic motor and power train components, gear boxes, and custom fluid power component parts.
Milbank Manufacturing Co	4801 Deramus Ave., Kansas City, MO 64120.	12/1/2008	Electrical meter sockets, enclosures and pedestals.
TechniQuip Corp	5653 Stoneridge Drive, Pleasanton, CA 94588.	12/11/2008	Fiber optic illumination devices and fluorescent ring lights.
Thorock Metals, Inc	435 Weber Avenue, Compton, CA 90223.	12/9/2008	Alloyed aluminum ingots (RSI, or Recycled Secondary Ingots).
Diversified Plastics, Inc	8617 Xylon Court North, Minneapolis, MN 55445.	12/22/2008	Close-tolerance, small to medium-sized injection molded components.
Fey Industries, Inc	200 Fourth Avenue North, Edgerton, MN 56128–1286.	12/22/2008	Plastic media packaging, ring binders, business card cases, custom products, calendars, and an assortment of other plastic products.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT 11/1/2008 THROUGH 12/30/2008—Continued

Firm	Address	Date accepted for filing	Products
Kincaid Furniture Company, Inc	240 Pleasant Hill Road, Hudson NC 28638.	11/3/2008	Solid wood household furniture.
Dewey Ironworks LLC	1220 Industrial Parkway, Dewey, OK 74005.	11/4/2008	Linked hydraulic hoists.
Sigma Equipment Corporation	39 Westmoreland Ave., White Plains, NY 10606.	11/24/2008	Machinery for chemical process industries, specifically for bar soap and powder soap production.
Vermillion Inc	4754 S. Pallisade St., Wichita, KS 67217.	12/1/2008	Bulk cable and wiring harnesses.
Misty Mountain Threadworks, Inc	718 Burma Road, Banner Elk, NC 28604.	12/11/2008	Recreational mountain climbing gear, including waist/body harnesses, boulder pads, slings, chalk bags and tool bags.
General Products, LLC	4045 N. Rockwell Street, Chicago, IL 60618.	11/25/2008	Photo albums, folios, photo album inserts, pages and mats.
Huron Automatic Screw Company	4918 Gratiot Ave., P.O. Port Huron, MI 48061–0068.	12/23/2008	Specialty fasteners (such as bolts) and other precision turned products.
Ken-Mar LLC	2 Northwestern Drive, Salem, NH 03079	11/10/2008	Sheet metal enclosures, brackets, front panels and mechanical assemblies.
Beehive Kitchenware Company	1 West Street, 3rd Floor, Fall River, MA 02720.	12/11/2008	Spoons, measuring spoons, baby gifts, candlesticks, wall hooks, holiday ornaments, magnets, key rings, coasters, napkin rings, spatulas and coffee measures.
ALSCO Industries, Inc	174 Charlton Road, Sturbridge, MA 01566.	11/25/2008	Plastic injected molded items such as single use dental flossers, heart defibrillator parts, fiber optic spools, web for building foundations, decorative curtain-rod ends, display case components and other molded plastic products as requested by customers.
Spring Health Products, Inc	705 General Washington, Norristown, PA 19403.	11/25/2008	Dental diamond burrs and LED cure lights.
W. L. Fuller Inc	PO Box 8767, 7 Cypress, Warwick, RI 02888.	11/25/2008	Countersinks, counter bores, taper point drills, brad point drills, plug cutters, drill stops and stop collars.
Team Technologies, Inc	1400 Eubank Blvd., SE., Albuquerque, NM 87123.	11/26/2008	Instruments and apparatus for measuring electricity as well as engineering and design services.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: December 30, 2008.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. E8–31399 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1600]

Approval of Manufacturing Authority Within Foreign-Trade Zone 158, Vicksburg/Jackson, MS; Bauhaus USA, Inc. (Upholstered Furniture)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Mississippi Foreign-Trade Zone, Inc., grantee of FTZ 158, has requested authority under Section 400.28 (a)(2) of the Board's regulations on behalf of Bauhaus USA, Inc. (Bauhaus), to manufacture upholstered furniture and related parts under FTZ procedures within FTZ 158—Site 16 (FTZ Docket 30–2007, filed 7–26–2007);

Whereas, notice inviting public comment has been given in the **Federal Register** (72 FR 43232, 8–3–2007);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were subject to certain restrictions;

Now, therefore, the Board hereby grants authority for the manufacture of upholstered furniture and related parts (upholstery seat covers) within FTZ 158 for Bauhaus USA, Inc., as described in the application and **Federal Register** notice, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the following restrictions:

(1) The manufacturing authority shall not commence earlier than January 2, 2009 and shall remain in effect for a period of five years from the later of January 2, 2009 or the date of approval;

(2) The annual volume of the foreign micro-denier suede upholstery fabric finished with a caustic soda solution that Bauhaus may admit to the zone under

nonprivileged foreign status (19 CFR 146.42) is limited to 3.5 million square yards;

(3) Bauhaus must admit all foreign-origin upholstery fabrics other than micro-denier suede upholstery fabric finished with a caustic soda solution to the zone under domestic (duty-paid) status (19 CFR 146.43); and,

(4) Bauhaus shall submit supplemental annual report data for the purpose of monitoring by the FTZ Staff.

Signed at Washington, DC, this 22nd day of December 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–31343 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1599]

Approval of Manufacturing Authority Within Foreign–Trade Zone 158, Vicksburg/Jackson, MS, H.M. Richards, Inc. (Upholstered Furniture)

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Mississippi Foreign–Trade Zone, Inc., grantee of FTZ 158, has requested authority under Section 400.28 (a)(2) of the Board's regulations on behalf of H.M. Richards (Richards), to manufacture upholstered furniture and related parts under FTZ procedures within FTZ 158 Site 15 (FTZ Docket 29–2007, filed 7–26–2007);

Whereas, notice inviting public comment has been given in the **Federal Register** (72 FR 43232, 8–3–2007);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were subject to certain restrictions;

Now, therefore, the Board hereby grants authority for the manufacture of upholstered furniture and related parts (upholstery seat covers) within FTZ 158 for H.M. Richards, Inc., as described in the application and **Federal Register** notice, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the following restrictions:

1)the manufacturing authority shall not commence earlier than January 2, 2009 and shall remain in effect for a period of five years from the later of January 2, 2009 or the date of approval;

2)the annual volume of the foreign micro–denier suede upholstery fabric finished with a caustic soda solution that Richards may admit to the zone under nonprivileged foreign status (19 CFR § 146.42) is limited to 3.6 million square yards;

3)Richards must admit all foreign–origin upholstery fabrics other than micro–denier suede upholstery fabric finished with a caustic soda solution to the zone under domestic (duty–paid) status (19 CFR § 146.43); and,

4)Richards shall submit supplemental annual report data for the purpose of monitoring by the FTZ Staff.

Signed at Washington, DC, this 22nd day of December 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–31359 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1598]

Approval of Manufacturing Authority Within Foreign–Trade Zone 158m Vicksburg/Jackson, MS, Lane Furniture Industries, Inc. (Upholstered Furniture)

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Mississippi Foreign–Trade Zone, Inc., grantee of FTZ 158, has requested authority under Section 400.28 (a)(2) of the Board's regulations on behalf of Lane Furniture Industries, Inc. (Lane), to manufacture upholstered furniture and related parts under FTZ procedures within FTZ 158 Sites 14 (Belden, MS), 16 (Saltillo, MS), and 17 (Verona, MS) (FTZ Docket 28–2007, filed 7–26–2007);

Whereas, notice inviting public comment has been given in the **Federal Register** (72 FR 43233, 8–3–2007);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were subject to certain restrictions;

Now, therefore, the Board hereby grants authority for the manufacture of upholstered furniture and related parts (upholstery seat covers) within FTZ 158 for Lane Furniture Industries, Inc., as described in the application and **Federal Register** notice, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the following restrictions:

1)the manufacturing authority shall not commence earlier than January 2, 2009 and shall remain in effect for a period of five years from the later of January 2, 2009 or the date of approval;

2)the annual volume of the foreign micro–denier suede upholstery fabric finished with a caustic soda solution that Lane may admit to the zone under nonprivileged foreign status (19 CFR § 146.42) is limited to 6.5 million square yards;

3)Lane must admit all foreign–origin upholstery fabrics other than micro–denier suede upholstery fabric finished with a caustic soda solution to the zone under domestic (duty–paid) status (19 CFR § 146.43); and,

4)Lane shall submit supplemental annual report data for the purpose of monitoring by the FTZ Staff.

Signed at Washington, DC, this 22nd day of December 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–31360 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 0812221638–81639–01]

Request for Public Comments on the Effects of Export Controls on Decisions To Use or Not Use U.S.-Origin Parts and Components in Commercial Products and the Effects of Such Decisions

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comment on whether U.S. export controls influence manufacturers' decisions to use or not use U.S.-origin parts and components in commercial products and the effects of such decisions. BIS is interested in obtaining specific information about whether such a practice occurs, and if so, its economic effects in order to assess the effectiveness of export controls as well as the impact of export controls on the U.S. economy.

DATES: Comments must be received no later than February 19, 2009.

ADDRESSES: Comments may be submitted via e-mail to *publiccomments@bis.doc.gov*. Please Refer to ''Parts and Components Inquiry'' in the subject line. Comments may also be sent to Parts and Components Study, Office of Technology Evaluation, Room 2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jennifer Watts, Office of Technology Evaluation, Bureau of Industry and Security, telephone: 202–482–8343; fax: 202–482–5361; e-mail *jwatts@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Export controls imposed by various agencies of the United States government, including, but not limited to, those imposed by BIS necessarily have an impact outside the United States. Certain U.S. export control regulations impose license requirements or other restrictions on commercial items manufactured outside the United States if those foreign-manufactured items contain U.S.-origin parts and components. BIS is seeking information to help it assess the impact of U.S. export controls on decisions by manufacturers whether to use U.S.-origin parts and components in their commercial products and the impact of such decisions on the effectiveness of export controls, the strength of the defense industrial base, employment in the United States, the financial strength of U.S. industry, and the ability of U.S. industry to compete in the market.

Specific and quantitative data, from U.S. persons, as well as foreign entities and governments, will be particularly helpful to BIS's assessment, but other types of information, including anecdotal information, will be useful as well. Quantitative data that is aggregated to reflect the combined experience of a group of companies or an industry segment also will be useful, particularly if individual companies are reluctant to provide company-specific quantitative data.

Regardless of whether it is qualitative or quantitative, if a comment asserts that manufacturers have elected not to include U.S.-origin parts and components in a foreign-manufactured commercial product because such inclusion could subject the products to U.S. export controls, the following kinds of data would be useful to BIS's assessment:

- Any evidence or information about the existence of advertising or marketing efforts that use the absence of U.S. origin components or exemption from U.S. export controls as a selling point.
- Any information about possible customer preferences for products that do not contain U.S.-origin components, and whether such preference may be related to relevant U.S. export controls.
- Any information describing parts and components that manufacturers may elect not to use because of their U.S. origin and any information regarding the products into which such parts and components are incorporated.
- Any information about sales lost by U.S. suppliers to non-U.S. competitors.
- Any information about specific commercial products that were designed or modified to explicitly exclude U.S. parts and components due to U.S. export controls.
- Any information about decisions to locate or relocate production facilities outside the United States, including a description of which items (including relevant commodity classification information, such as Export Control Classification Number) would be produced abroad.
- Any information about the possible economic impact (*e.g.*, employment, outsourcing of specific expenditures such as research and development) to companies, industry segments or communities of any decision not to use U.S.-origin parts and components because of U.S. export controls, including any possible impact on the ability to support specific defense industrial base activities.

How To Comment

All comments must be in writing and submitted to one of the addresses indicated above. Comments must be received by BIS no later than February 19, 2009. BIS may consider comments received after that date if feasible to do so, but such consideration can not be assured. All comments submitted in response to this notice will be made a matter of public record, and will be available for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. BIS will seek to protect business confidential information from public disclosure to the extent permitted by law.

Dated: December 24, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–31233 Filed 1–2–09; 8:45 am]

BILLING CODE 3501–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230; telephone (202) 482–1391.

Upcoming Sunset Reviews for February 2009

There are no Sunset Reviews scheduled for initiation in February 2009.

For information on the Department's procedures for the conduct of sunset reviews, *See* 19 CFR 351.218. This notice is not required by statute but is published as a service to the international trading community. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's

Policy Bulletin 98.3, ''Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders;'' Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin''). The Notice of Initiation of Five-year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

December 18, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E8–31314 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213 (2004) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 20 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the **Federal Register** initiation notice.

Opportunity to Request a Review: Not later than the last day of January 2009,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
Antidumping Duty Proceedings	
Brazil: Prestressed Concrete Steel Wire Strand, A–351–837	1/1/08–12/31/08
India: Prestressed Concrete Steel Wire Strand, A–533–828	1/1/08–12/31/08
Mexico: Prestressed Concrete Steel Wire Strand, A–201–831	1/1/08–12/31/08
South Africa: Ferrovanadium, A–791–815	1/1/08–12/31/08
South Korea: Prestressed Concrete Steel Wire Strand, A–580–852	1/1/08–12/31/08
South Korea: Top-of-the Stove Stainless Steel Cooking Ware, A–580–601	1/1/08–12/31/08
Thailand: Prestressed Concrete Steel Wire Strand, A–549–820	1/1/08–12/31/08
The People's Republic of China: Crepe Paper Products, A–570–895	1/1/08–12/31/08
The People's Republic of China: Ferrovanadium, A–570–873	1/1/08–12/31/08
The People's Republic of China: Folding Gift Boxes, A–570–866	1/1/08–12/31/08
The People's Republic of China: Potassium Permanganate, A–570–001	1/1/08–12/31/08
The People's Republic of China: Wooden Bedroom Furniture, A–570–890	1/1/08–12/31/08
Countervailing Duty Proceedings	
South Korea: Top-of-the-Stove Stainless Steel Cooking Ware, C–580–602	1/1/08–12/31/08
Suspension Agreements	
Mexico: Fresh Tomatoes, A–201–820	1/22/08–12/31/08
Russia: Certain Cut-to-Length Carbon Steel Plate, A–821–808	1/1/08–12/31/08

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department changed its requirements for requesting reviews for countervailing duty orders. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to section 351.303(f)(3)(ii) of the regulations.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of January 2009. If the Department does not receive, by the last day of January 2009, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 23, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E8–31315 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–DS–P

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Revocation of Antidumping Duty Order: Certain Steel Concrete Reinforcing Bars from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2008, the Department of Commerce (the Department) initiated a sunset review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey. *See Initiation of Five-year (''Sunset'') Reviews*, 73 FR 6128 (Feb. 1, 2008). Pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (ITC) determined that revocation of this order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Steel Concrete Reinforcing Bar From Turkey; Determination*, 73 FR 77841 (Dec. 19, 2008) (*ITC Final*). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1)(iii), the Department is revoking the antidumping duty order on rebar from Turkey.

EFFECTIVE DATE: March 26, 2008.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, 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) 482–3874.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this order is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot–rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low–alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable under subheadings 7213.10.000 and 7214.20.000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

Background

On April 17, 1997, the Department issued the antidumping duty order on rebar from Turkey. *See Antidumping Duty Order: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 18748 (Apr. 17, 1997).

On February 1, 2008, the Department initiated, and the ITC instituted, a sunset review of the antidumping duty order on rebar from Turkey. See Initiation of Five-year (''Sunset'') Reviews, 73 FR 6128 (Feb. 1, 2008). As a result of its sunset review of this order, the Department found that revocation of the antidumping duty order would be likely to lead to the continuation or recurrence of dumping. *See Certain Steel Concrete Reinforcing*

Bars from Turkey; Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 73 FR 24534 (May 5, 2008). The Department notified the ITC of the magnitude of the margins likely to prevail were the antidumping duty order to be revoked.

On December 19, 2008, the ITC determined, pursuant to section 751(c) of the Act, that revocation of this order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See ITC Final* and USITC Publication 4052 (December 2008), titled *Steel Concrete Reinforcing Bar from Turkey* (Inv. No. 701–TA–745 (Second Review)).

Revocation

As a result of the determination by the ITC that revocation of this order is not likely to lead to the continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d) of the Act, is revoking the antidumping duty order on rebar from Turkey. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is March 26, 2008 (*i.e.*, the fifth anniversary of the date of publication in the **Federal Register** of the notice of continuation of this antidumping duty order). The Department will notify U.S. Customs and Border Protection to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after March 26, 2008, the effective date of revocation of the antidumping duty order. The Department will complete any pending administrative reviews of this order.

This revocation and notice are issued in accordance with section 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.222(i)(2).

Dated: December 24, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–31368 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Floor–Standing Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Extension of Time Limit for Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 5, 2009.

FOR FURTHER INFORMATION CONTACT: Michael Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION: On September 9, 2008, the Department of Commerce (the Department) published the preliminary results of its 2006–2007 administrative review of the antidumping duty order of floor–standing, metal–top ironing tables and certain parts thereof from the People's Republic of China. *See Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review* 73 FR 52277 (September 9, 2008). The current deadline for the final results of this review is January 7, 2009.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) requires the Department to issue the final results of this administrative review within 120 days after the date on which the preliminary results were published in the **Federal Register**. However, if it is not practicable to complete the review within this time period, the Department may extend the time period to issue the final results. See section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

The Department finds that it is not practicable to complete this review within the original time frame. In order to fully evaluate the issues raised by Petitioner (Home Products International) in its case brief concerning respondent Since Hardware's claimed purchases of inputs from market economy suppliers, we are extending the time frame for completion of this review.

Consequently, in accordance with section 751(2)(3)(A) of the Tariff Act and 19 CFR 351.213(h)(2), the Department is extending the time period for issuing the final results of review by 60 days. Therefore, the final results will be due no later than March 8, 2009. As March 8, 2009 falls on a Sunday, our final results will be issued no later than Monday March 9, 2009.

This notice is published in accordance with section 771(i) of the Act.

Dated: December 29, 2008.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–31361 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM33

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of a scientific research permit.

SUMMARY: Notice is hereby given that NMFS has issued Permit 1075 Modification 1 to the Eel River Salmon Restoration Project (ERSRP) in Miranda, California.

ADDRESSES: The application, permit, and related documents are available for review by appointment at: Protected Resources Division, NMFS, 1655 Heindon Road, Arcata, CA 95521 (ph: 707–825–5185, fax: 707–825–4840, e-mail at: *diane.ashton@noaa.gov*

FOR FURTHER INFORMATION CONTACT: Diane Ashton at 707–825–5185, or e-mail: *diane.ashton@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

The issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are

subject to the ESA and NMFS regulations (50 CFR parts 222–226) governing listed fish and wildlife permits.

Species Covered in This Notice

This notice is relevant to federally threatened Southern Oregon/Northern California Coast coho salmon (*Oncorhynchus kisutch*), threatened California Coastal Chinook salmon (*O. tshawytscha*), and threatened Northern California steelhead (*O. mykiss*)

Permit Issued

A notice of the receipt of an application for a scientific research permit (1075 Modification 2) was published in the **Federal Register** on October 25, 2006 (71 FR 6241). Subsequent to the publication of 71 FR 6241, NMFS determined that Permit 1075 Modification 2 is, in fact, Modification 1. Permit 1075 Modification 1 was issued to ERSRP on December 8, 2008.

Permit 1075 Modification 1 authorizes ERSRP to capture (by fyke-net trap), mark (using fin clips), and release juvenile Southern Oregon/Northern California Coast coho salmon, California Coastal Chinook salmon, and Northern California steelhead. Permit 1075 Modification 1 also authorizes ERSRP to capture (by weir-trap), and release adult Southern Oregon/Northern California Coast coho salmon, California Coastal Chinook, and Northern California steelhead.

Permit 1075 Modification 1 authorizes unintentional lethal take of juvenile Southern Oregon/Northern California Coast coho salmon, California Coastal Chinook salmon, and Northern California steelhead.to exceed 1.5 percent of fish captured. Permit 1075 Modification 1 authorizes (1) unintentional lethal take of adult Southern Oregon/Northern California Coast coho salmon and Northern California steelhead not to exceed 2 percent of fish captured; and (2) unintentional lethal take of adult California Coastal Chinook salmon not to exceed 1 percent of fish captured.

Permit 1075 Modification 1 is for research to be conducted in Redwood Creek and two tributaries of Sproul Creek, all of which are tributaries to the South Fork Eel River, Humboldt County, California. The purpose of the research is to address information needs identified by NMFS to monitor adult and juvenile salmonid populations in the South Fork Eel River. Permit 1075 Modification 1 expires on December 1, 2018.

Dated: December 30, 2008.

Therese Conant,

Deputy Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–31342 Filed 1–2–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, 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 February 4, 2009.

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, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the 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: December 30, 2008.

Stephanie Valentine,

Acting, IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Client Assistance Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 896.

Abstract: Form RSA–227 is used to meet specific data collection requirements contained in Section 112 of the Rehabilitation Act of 1973, as amended, and its implementing Federal Regulations at 34 CFR Part 370. Data from the form have been used to evaluate within individual programs. These data also have been used to indicate trends in the provision of services from year-to-year. In addition, Form RSA–227 will be used to analyze and evaluate the effectiveness of eligible Client Assistance Program (CAP) administered by designated CAP agencies. These agencies provide services to individuals seeking or receiving services from programs and projects authorized by the Rehabilitation Act of 1973, as amended. Form RSA–227 has enabled RSA to furnish the President and Congress with data on the provision of advocacy services and has helped to establish a sound basis for future funding requests.

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 3900. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–31372 Filed 1–2–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, February 24, 2009; 10 a.m. to 6 p.m. and Wednesday, February 25, 2009; 8:30 a.m. to 4 p.m.

ADDRESSES: Hilton Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC–25/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–1298.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the High Energy Physics Research program.

Tentative Agenda

Agenda will include discussions of the following:

Tuesday, February 24, 2009, and Wednesday, February 25, 2009

- Discussion of Department of Energy High Energy Physics Program.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, 301–903–1298 or *John.Kogut@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 90 days on the High Energy Physics Advisory Panel Web site. Minutes will also be available by writing or calling John Kogut at the address and phone number listed above.

Issued at Washington, DC on December 29, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–31269 Filed 1–2–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13291–000]

Golden Green Energy Storage, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene and Competing Applications

December 24, 2008.

On November 14, 2008, Golden Green Energy Storage, LLC filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Cliffs Energy Pumped Storage Project to be located in Klickitat County, Washington partially on lands owned by the Department of the Army. The proposed project utilizes water from Lake Umatilla on the Columbia River.

The proposed project would consist of: (1) An upper earthen dam with a length of 5,200 feet and height of 260 feet; (2) an upper reservoir with a surface area of 219 acres, a capacity of 14,000 acre-feet, and a maximum pool elevation of 2,436 feet msl; (3) a lower earthen dam with a length of 9,500 feet and a height of 120 feet; (4) a lower reservoir with a surface area of 209 acres, a capacity of 14,000 acre-feet, and a maximum pool elevation of 624 feet msl; (5) an 8,000 foot long, 25 foot diameter concrete penstock; (6) a powerhouse containing 4 pump/turbine units with a total installed capacity of 1,050 MW; (7) a 5 mile long, 500 kV transmission line and; (8) appurtenant facilities. The proposed project would have an annual production of 21 GWh which would be sold to a local utility.

Applicant Contact: Scott Tillman, 3313 West Second St, The Dalles, OR 97058, (541) 298–0819.

FERC Contact: Steven Sachs (202) 502–8666.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice.

Comments, motions to intervene, notices of intent and competing applications may be filed electronically via the internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13291) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–31310 Filed 1–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 13159–000 and 13230–000; Project No. 13231–000]

City of Marseilles, IL; Marseilles Land and Water Company; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 24, 2008.

The City of Marseilles, Illinois (City) and the Marseilles Land and Water Company (Land and Water Company) have filed applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of projects on the North and South Head Races of the Illinois River in La Salle County, Illinois. The proposed projects would use the U.S. Army Corps of Engineers' Marseilles Lock and Dam.

On March 31, 2008, the City filed an application, Project No. 13159, for the proposed Marseilles Hydroelectric

Project for surplus power production at the North Head Race. The proposed project would utilize the existing U.S. Army Corps of Engineers' Marseilles Lock and Dam, and install additional incremental capacity to a previously existing licensed project, Project No. 12020. The proposed project would consist of: (1) The existing 2,730-foot-long, 80 to 200-foot-wide North Head Race; (2) an existing powerhouse containing four new generating units having a total installed capacity of 5 megawatts; (3) a proposed 400-foot-long, 34-kilovolt transmission line; and (4) appurtenant facilities. The City's proposed Marseilles Hydroelectric Project for surplus power production at the North Head Race would have an average annual generation of 22.03 gigawatt-hours.

On May 20, 2008, the City filed a second application, Project No. 13230, for the proposed Marseilles Hydroelectric Project for power production at the North Head Race. The proposed project would utilize the existing U.S. Army Corps of Engineers' Marseilles Lock and Dam, and generate the now-available capacity from the recently terminated license in Project No. 12020. The project would consist of: (1) The existing 2,730-foot-long, 80-to 200-foot-wide North Head Race; (2) an existing powerhouse containing six new generating units having a total installed capacity of 4.745 megawatts; (3) a proposed 400-foot-long, 34-kilovolt transmission line; and (4) appurtenant facilities. The City's proposed Marseilles Hydroelectric Project for power production at the North Head Race would have an average annual generation of 37 gigawatt-hours.

On May 20, 2008, Land and Water Company filed an application, Project No. 13231, for the proposed Boyce Hydro-Marseilles Hydroelectric Project. The proposed project would utilize the existing U.S. Army Corps of Engineers' Marseilles Lock and Dam, and would consist of: (1) The existing 3,100-foot-long, 200-foot-wide North Head Race; (2) a proposed powerhouse containing three new generating units having a total installed capacity of 9.4 megawatts; (3) the existing 110-foot-wide south channel that narrows to approximately 50-feet-wide at the South Head Race; (4) a proposed 400-foot-long, 34-kilovolt transmission line; and (5) appurtenant facilities. The proposed Boyce Hydro-Marseilles Hydroelectric Project would have an average annual generation of 55 gigawatt-hours. Land and Water Company's proposed development competes with the two permit applications filed by the City.

Applicants Contact: For the City of Marseilles, Illinois: Ms. Jacquelyn Spencer, Clerk, City of Marseilles, Illinois, City Hall, 209 Lincoln Street, Marseilles, IL 61341, (815) 795–2133. For the Marseilles Land and Water Company: Mr. Lee W. Mueller, Vice President, Marseilles Land and Water Company, 4132 S Rainbow Boulevard, Las Vegas, NV 89103, (702) 367–7302.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice noted above.

Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13129, P–13143, or P–13284) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–31309 Filed 1–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP09–35–000; PF07–13–000]

Palomar Gas Transmission, LLC; Notice of Application

December 29, 2008.

Take notice that on December 11, 2008, as revised on December 12, 2008, Palomar Gas Transmission, LLC (Palomar) filed with the Federal Energy Regulatory Commission (Commission) an application under section 7 of the Natural Gas Act for a Certificate of Public Convenience and Necessity authorizing the construction, ownership and operation of the Palomar gas transmission system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

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) 420–5589.

On August 30, 2007, the Commission staff granted Palomar's request to utilize the Pre-Filing process and assigned Docket No. PF07–13–000 to staff activities involving the proposed Project. Now, as of the filing of the December 11, 2008 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP09–35–000 as noted in the caption of this Notice.

Any questions regarding this application should be directed to: John A. Roscher, Director, Rates and Regulatory Affairs, Palomar Gas Transmission, LLC, 1400 SW., Fifth Avenue, Suite 900, Portland, OR 97201; Tel: (503) 833–4254.

Palomar is a wholly owned subsidiary of Palomar Gas Holdings, LLC, a Delaware limited liability company, which is owned fifty percent (50%) by Gas Transmission Northwest Corporation (GTN) and fifty percent (50%) by Northwest Natural Gas Company (NW Natural). Palomar requests authorization to construct and operate a 36-inch-diameter, 216.9-mile-long natural gas transmission mainline; a 24-inch-diameter, 3.8-mile-long lateral line, three meter stations and appurtenant facilities to serve Oregon, the Pacific Northwest, and other parts of the western United States.

As proposed, the Palomar Project will have a design flow capacity of up to 1.3 billion cubic feet (Bcf) per day of natural gas eastbound and 98 million cubic feet (MMcf) per day of natural gas westbound. Palomar will be capable of transporting natural gas west from the existing GTN mainline pipeline system northwest of Madras in Wasco County, Oregon to NW Natural's local gas distribution system near Molalla, which provides access to NW Natural's Mist Storage Facility as well as NW Natural's distribution infrastructure. The Palomar

Project will also be designed to transport gas east from an interconnection with the proposed Bradwood Landing LNG Terminal in Clatsop County, Oregon. Gas supply from the Bradwood Landing LNG Terminal could be shipped to points along the Palomar mainline—such as NW Natural's system—and to the GTN pipeline where it can serve markets in the northwest and other parts of the western United States.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link at *http://www.ferc.gov.* The Commission strongly encourages intervenors to file electronically. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: January 30, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–31313 Filed 1–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

December 23, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–31–000.

Applicants: Snowflake White Mountain Power, LLC, Renegy Holdings, LLC, AZ Biomass, LLC.

Description: Joint Application for Authorization of Proposed Transaction under Section 203 of the Federal Power Act, and Request for Waiver of Certain Filing Requirements and Confidential Treatment.

Filed Date: 12/18/2008.

Accession Number: 20081218–5094.

Comment Date: 5 p.m. Eastern Time on Thursday, January 08, 2009.

Docket Numbers: EC09–32–000.

Applicants: Exelon Corporation.

Description: Exelon Corp submits application for approval of transaction including its aquisition of voting securities of NRG Energy, Inc etc.

Filed Date: 12/18/2008.

Accession Number: 20081222–0001.

Comment Date: 5 p.m. Eastern Time on Thursday, January 08, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–20–000.

Applicants: PowerSmith Cogeneration Project, LP.

Description: Notice of Self-Certification as an Exempt Wholesale Generator of PowerSmith Cogeneration Project, LP.

Filed Date: 12/22/2008.

Accession Number: 20081222–5042.

Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–1026–018; ER99–2284–011; ER98–2186–017; ER99–1773–011; ER99–1761–007; ER09–38–001; ER98–2185–016; ER01–1315–007; ER01–2401–013; ER98–2184–016; ER01–751–013; ER00–33–013; ER99–1228–008; ER05–442–005; ER97–2904–009.

Applicants: Indianapolis Power & Light Company; AEE 2 LLC; AES Alamitos, LLC, AES Creative Resources LP, AES Eastern Energy, LP, AES Energy Storage, LLC, AES Huntington Beach, L.L.C., AES Ironwood LLC, AES Red Oak LLC, AES Redondo Beach, L.L.C., AES Placerita Inc., Condon Wind Power, LLC, Lake Benton Power Partners LLC, Mountain View Power Partners, LLC, Storm Lake Power Partners II LLC.

Description: AES Parties submits updated market power analysis of the Central Region in support of their continued authority to sell energy, capacity and ancillary services under their respective market based rate tariffs et al.

Filed Date: 12/18/2008.

Accession Number: 20081222–0013.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Docket Numbers: ER00–2173–009; ER00–3219–007.
Applicants: Northern Indiana Public Service Company; Energy USA–TPC Corp.
Description: Northern Indiana Public Service Co et al. submits their triennial market power analysis in compliance with FERC's Order No. 697.
Filed Date: 12/18/2008.
Accession Number: 20081222–0015.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Docket Numbers: ER00–3251–018.
Applicants: Exelon Generation Company, LLC.
Description: Updated Market Power Analysis.
Filed Date: 12/22/2008.
Accession Number: 20081222–5199.
Comment Date: 5 p.m. Eastern Time on Friday, February 20, 2009.

Docket Numbers: ER00–3767–005; ER05–841–002.
Applicants: Praxair, Inc.; Praxair Plainfield, Inc.
Description: Praxair, Inc et al. submit a request for a Petition for Determination of Category 1 Seller Status and Amendments to Market Based Rate Tariffs in compliance with Order 697 and 697–A under ER00–3767 et al.
Filed Date: 12/18/2008.
Accession Number: 20081222–0014.
Comment Date: 5 p.m. Eastern Time on Thursday, January 08, 2009.

Docket Numbers: ER01–1266–011; ER01–1268–012; ER01–1269–011; ER01–1270–013; ER01–1271–012; ER01–1273–012; ER01–1277–011; ER01–1278–013; ER02–1213–010.
Applicants: Mirant Bowline, LLC; Mirant Canal, LLC; Mirant Chalk Point, LLC; Mirant Delta, LLC; Mirant Kendall, LLC; Mirant Mid-Atlantic, LLC; Mirant Potomac River, LLC; Mirant Potrero, LLC; Mirant Energy Trading, LLC.
Description: Mirant Entities submits Notice of Non-Material Change in Status to report the acquisition of 10 percent or greater of the outstanding publicly traded shares of the Mirant Entities indirect parent company, Mirant Corporation etc.
Filed Date: 12/17/2008.
Accession Number: 20081219–0104.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 07, 2009.

Docket Numbers: ER04–157–031.
Applicants: Bangor Hydro-Electric Company.
Description: Connecticut Light and Power Company et al. submit revised tariffs sheets to a comprehensive, long term transmission service agreement between the NU Companies and the Connecticut Municipal Electric Energy Cooperative.
Filed Date: 12/18/2008.
Accession Number: 20081222–0008.
Comment Date: 5 p.m. Eastern Time on Thursday, January 08, 2009.

Docket Numbers: ER06–754–005.
Applicants: Auburndale Power Partners, L.P.
Description: Auburndale Power Partners, Limited Partnership's Notice of Non-Material Change in Status.
Filed Date: 12/19/2008.
Accession Number: 20081219–5057.
Comment Date: 5 p.m. Eastern Time on Friday, January 09, 2009.

Docket Numbers: ER06–758–006; ER06–759–005.
Applicants: Selkirk Cogen Partners, L.P., Chambers Cogeneration Limited Partnership; Selkirk Cogen Partners L.P.
Description: Notice of Non-Material Change in Status of Chambers Cogeneration Limited Partnership et al.
Filed Date: 12/22/2008.
Accession Number: 20081222–5169.
Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: ER07–189–006; ER07–190–006; ER07–191–006; ER07–192–004.
Applicants: Duke Energy Indiana, Inc.; Duke Energy Kentucky, Inc.; Duke Energy Ohio, Inc.; Duke Energy Business Services, Inc.
Description: Duke Energy Indiana, Inc., et. al. submits Updated Market Power Analysis.
Filed Date: 12/17/2008.
Accession Number: 20081217–5161.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Docket Numbers: ER07–1071–005; ER07–1072–005.
Applicants: PJM Interconnection L.L.C.; Virginia Electric and Power Company.
Description: Virginia Electric and Power Company submits a revised and executed Wholesale Distribution Service Agreement Emporia Hydropower Limited Partnership etc.
Filed Date: 12/18/2008.
Accession Number: 20081222–0010.
Comment Date: 5 p.m. Eastern Time on Thursday, January 08, 2009.

Docket Numbers: ER08–1206–001.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits an unexecuted Service Agreement for Network Integration Transmission Service.
Filed Date: 12/17/2008.
Accession Number: 20081219–0098.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 07, 2009.

Docket Numbers: ER08–1297–002; ER02–2559–009; ER01–1071–013; ER08–1293–002; ER08–1294–002; ER06–9–008; ER05–1281–008; ER03–34–012; ER02–1903–010; ER06–1261–007; ER03–1104–009; ER03–1105–009; ER08–197–006; ER98–3566–018; ER98–4222–014; ER08–250–003; ER07–1157–004; ER07–174–007; ER08–1296–002; ER07–875–003; ER08–1300–002; ER07–904–004.
Applicants: Ashtabula Wind, LLC; Backbone Mountain Windpower, LLC; Badger Windpower, LLC; Crystal Lake Wind, LLC; Crystal Lake Wind II, LLC; FPL Energy Burleigh County Wind, LLC; FPL Energy Duane Arnold, LLC; FPL Energy Hancock County Wind, LLC; FPL Energy Marcus Hook, L.P.; FPL Energy Mower County, LLC; FPL Energy North Dakota Wind, LLC; FPL Energy North Dakota Wind II, LLC; FPL Energy Oliver Wind II, LLC; FPL Energy Power Marketing, Inc.; Lake Benton Power Partners II, LLC ; Langdon Wind, LLC; Logan Wind Energy LLC; Osceola Windpower, LLC; Osceola Windpower II, LLC; Peetz Table Wind Energy, LLC; Story Wind, LLC; FPL Energy Point Beach, LLC.
Description: Ashtabula Wind, LLC et al. submits revisions to their market-based rate schedules.
Filed Date: 12/17/2008.
Accession Number: 20081219–0092.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 07, 2009.

Docket Numbers: ER08–1556–001.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc. submits revisions to its Open Access Transmission and Energy Markets Tariff to comply with FERC's 11/18/08 Order.
Filed Date: 12/18/2008.
Accession Number: 20081222–0009.
Comment Date: 5 p.m. Eastern Time on Thursday, January 08, 2009.

Docket Numbers: ER09–9–001.
Applicants: Carolina Power & Light Company.
Description: Carolina Power & Light Co submits First Revised Sheet No. 78 et al. to Rate Schedule FERC No. 180, effective 12/1/08.
Filed Date: 12/17/2008.
Accession Number: 20081219–0096.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 07, 2009.

Docket Numbers: ER09–355–001.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits Substitute Original Service Agreement 1689 to FERC Electric Tariff, Fifth Revised Volume 1 as Exhibit I etc.
Filed Date: 12/18/2008.

Accession Number: 20081222–0007.
Comment Date: 5 p.m. Eastern Time on Thursday, January 08, 2009.

Docket Numbers: ER09–423–000.
Applicants: Southern Company Services, Inc.
Description: Alabama Power Company et al submits a Network Integration Transmission Service Agreement under the Open Access Transmission Tariff, FERC Electric Tariff, Fourth Revised Volume 5.
Filed Date: 12/17/2008.
Accession Number: 20081219–0094.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 07, 2009.

Docket Numbers: ER09–424–000.
Applicants: American Electric Power Service Corporation.
Description: The American Electric Power Service Corp et al. submits Second Revised Sheet No. 1 et al. to FERC Electric Tariff, Sixth Revised Volume No. 1, effective 12/1/08.
Filed Date: 12/17/2008.
Accession Number: 20081219–0095.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 07, 2009.

Docket Numbers: ER09–425–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits Second Revised Sheet No. 129 et al. to FERC Electric Tariff, Fifth Revised Volume No. 1, effective 2/15/09.
Filed Date: 12/17/2008.
Accession Number: 20081219–0093.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 07, 2009.

Docket Numbers: ER09–426–000.
Applicants: Carolina Power & Light Company.
Description: Carolina Power & Light Company submits a Network Integration Transmission Service Agreement and Network Operating Agreement with Haywood Electric Membership Corporation, *et al.*
Filed Date: 12/18/2008.
Accession Number: 20081222–0012.
Comment Date: 5 p.m. Eastern Time on Thursday, January 08, 2009.

Docket Numbers: ER09–427–000.
Applicants: Public Service Electric & Gas Company.
Description: Public Service Electric and Gas Company submits revised tariffs sheets to Schedule 12—Appendix of PJM Open Access Tariff.
Filed Date: 12/18/2008.
Accession Number: 20081222–0011.
Comment Date: 5 p.m. Eastern Time on Thursday, January 08, 2009.

Docket Numbers: ER09–428–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Co submits new agreements with the Western Area Power Administration.
Filed Date: 12/18/2008.
Accession Number: 20081222–0017.
Comment Date: 5 p.m. Eastern Time on Thursday, January 08, 2009.

Docket Numbers: ER09–437–000.
Applicants: New York State Reliability Council, L.L.C.
Description: New York State Reliability Council, L.L.C.'s revised Installed Capacity Requirement for the New York Control Area.
Filed Date: 12/19/2008.
Accession Number: 20081219–5156.
Comment Date: 5 p.m. Eastern Time on Friday, January 09, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–27–001.
Applicants: E.ON U.S. LLC.
Description: E. ON U.S. LLC submits a revised Attachment K to the LG&E/KU joint Open Access Transmission Tariff.
Filed Date: 12/17/2008.
Accession Number: 20081219–0099.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 07, 2009.

Docket Numbers: OA08–59–003.
Applicants: Entergy Services, Inc.
Description: Entergy Operating Companies submits compliance filing of Entergy Services, Inc.
Filed Date: 12/17/2008.
Accession Number: 20081219–0106.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 07, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–31270 Filed 1–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

December 24, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–411–015.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Market Power Update of Wolverine Power Supply Cooperative, Inc.
Filed Date: 12/23/2008.
Accession Number: 20081223–5088.
Comment Date: 5 p.m. Eastern Time on Monday, February 23, 2009.

Docket Numbers: ER98–4421–011; ER04–543–007; ER99–791–009; ER99–806–008; ER99–3677–010; ER01–570–011.
Applicants: Consumers Energy Company, CMS Energy Resource Management Company, Grayling Generation Station Limited Partnership, Genesee Power Station Limited Partnership, CMS Generation Michigan Power, L.L.C., Dearborn Industrial Generation, L.L.C.
Description: Consumers Energy Company *et al.* submits proposed

revisions to their market-based rate tariffs to reflect the correct 1/6/09 projects start date of the MISO ASM market.

Filed Date: 12/19/2008.

Accession Number: 20081223–0235.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: ER01–642–014; ER01–1335–016.

Applicants: CottonWood Energy Company LP, Magnolia Energy LP.

Description: Market Power Update.

Filed Date: 12/23/2008.

Accession Number: 20081223–5117.

Comment Date: 5 p.m. Eastern Time on Monday, February 23, 2009.

Docket Numbers: ER04–1181–002; ER04–1182–002; ER04–1184–002; ER04–1186–002.

Applicants: KGen Hinds LLC, KGen Hot Spring LLC, KGen Murray I and II LLC, KGen Sandersville LLC.

Description: Market Power Update.

Filed Date: 12/23/2008.

Accession Number: 20081223–5094.

Comment Date: 5 p.m. Eastern Time on Monday, February 23, 2009.

Docket Numbers: ER05–320–006; ER97–2460–011; ER97–2463–008.

Applicants: Unitil Power Corporation, Unitil Energy Systems, Inc., Fitchburg Gas and Electric Light Company.

Description: Notice of Change in Status that Does Not Raise Competitive Issues of Unitil Energy Systems, Inc. *et al.* Filed Date: 12/23/2008.

Accession Number: 20081223–5073.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER05–968–004.

Applicants: Basin Creek Equity Partners, LLC.

Description: Basin Creek Equity Partners, LLC submits revisions to its FERC Electric Tariff Original Volume 1 pursuant to the requirements of Order 697 and 697–A.

Filed Date: 12/16/2008.

Accession Number: 20081218–0169.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 06, 2009.

Docket Numbers: ER06–754–006.

Applicants: Auburndale Power Partners, L.P.

Description: Auburndale Power Partners, Limited Partnership submits updated market power analysis for the Southeast region in compliance with Order 697 and Order 697–A.

Filed Date: 12/19/2008.

Accession Number: 20081223–0245.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Docket Numbers: ER07–46–003; OA07–7–002; OA07–58–003; ER08–332–002.

Applicants: NorthWestern Corporation.

Description: Compliance Refund Report of NorthWestern Corporation (Montana).

Filed Date: 12/22/2008.

Accession Number: 20081222–5110.

Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: ER08–656–004.

Applicants: Shell Energy North America (U.S.), L.P.

Description: Shell Energy North American (US), LP submits updated market power analysis in compliance with the requirements of section 35.37 of the regulations of the FERC and the regional schedule set forth in Order 697–A for Southeast region.

Filed Date: 12/19/2008.

Accession Number: 20081223–0238.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 17, 2009.

Docket Numbers: ER08–1332–002; ER98–3774–006; ER08–1330–002; ER06–169–004.

Applicants: Choctaw Gas Generation, LLC, Choctaw Generation, Limited Partnership, Hot Spring Power Company, SUEZ Energy Marketing NA, Inc.

Description: GDF SUEZ Entities submits updated market power analysis supporting their continued authorization to sell power at market-based rates.

Filed Date: 12/12/2008.

Accession Number: 20081218–0002.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 10, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–31271 Filed 1–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

December 23, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP91–143–059.

Applicants: Great Lakes Gas Transmission LP.

Description: Great Lakes Gas Transmission Limited Partnership submits their Interruptible/Overrun Revenue Sharing Report for November 2007–October 2008.

Filed Date: 12/19/2008.

Accession Number: 20081222–0240.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: RP96–389–090.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits the FTS–1 Service Agreement 68436 with Williams Power Company dated December 5, 2000.

Filed Date: 12/15/2008.

Accession Number: 20081217–0042.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP98–18–039.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, LP submits First Revised Sheet 6R to FERC Gas Tariff, First Revised Volume 1.

Filed Date: 12/15/2008.

Accession Number: 20081216–0200.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP00–426–040.

Applicants: Texas Gas Transmission. LLC,

Description: Texas Gas Transmission, LLC submits First Revised Sheet 67 *et al.* to FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 12/19/2008.

Accession Number: 20081223–0164.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: RP09–169–000.

Applicants: Texas Eastern Transmission LP.

Description: Texas Eastern Transmission, LP submits Third Revised Sheet 811 *et al.* to FERC Gas Tariff, Seventh Revised Volume 1.

Filed Date: 12/18/2008.

Accession Number: 20081222–0002.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 30, 2008.

Docket Numbers: RP09–170–000.

Applicants: Kinder Morgan Interstate Gas Transmission.

Description: KMIGT 2008 Reconciliation Filing.

Filed Date: 12/19/2008.

Accession Number: 20081219–5100.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: RP09–171–000.

Applicants: Cheyenne Plains Gas Pipeline Company LLC.

Description: Cheyenne Plains Gas Pipeline Company, LLC submits Tenth Revised Sheet 1 *et al.* to its FERC Gas Tariff, Original Volume 1.

Filed Date: 12/19/2008.

Accession Number: 20081223–0166.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: RP09–172–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits First Revised Sheet 3000 *et al.* to it FERC Gas Tariff, Sixth Revised Volume 1.

Filed Date: 12/19/2008.

Accession Number: 20081223–0169.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: RP09–173–000.

Applicants: Texas Eastern Transmission LP.

Description: Texas Eastern Transmission, LP submits First Revised Sheet 25 to its FERC Gas Tariff, First Revised Volume 2.

Filed Date: 12/19/2008.

Accession Number: 20081223–0168.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: RP09–174–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company, LLC submits Fourteenth Revised Sheet 7 *et al.* to its FERC Gas Tariff, Fourth Revised Volume 1.

Filed Date: 12/19/2008.

Accession Number: 20081223–0167.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: RP09–175–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company, LLC submits First Revised Sheet 30 *et al.* to its FERC Gas Tariff, Fourth Revised Volume 1, to be effective 1/19/09.

Filed Date: 12/19/2008.

Accession Number: 20081223–0165.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: RP09–176–000.

Applicants: B–R Pipeline Company.

Description: B–R Pipeline Company submits First Revised Sheet 0 *et al.* to FERC Gas Tariff, Original Volume 1.

Filed Date: 12/19/2008.

Accession Number: 20081222–0239.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: RP09–177–000.

Applicants: USG Pipeline Company.

Description: USG Pipeline Company submits First revised Sheet 0 *et al.* to FERC Gas Tariff, Original Volume 1.

Filed Date: 12/19/2008.

Accession Number: 20081222–0238.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: RP09–178–000.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits Fourth revised Sheet 604 to FERC Gas Tariff, Sixth Revised Volume 1.

Filed Date: 12/19/2008.

Accession Number: 20081222–0241.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Docket Numbers: RP09–179–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Co submits Thirty-Eighth Revised Sheet 1 to its FERC Gas Tariff, Second Revised Volume 1A.

Filed Date: 12/19/2008.

Accession Number: 20081222–0242.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 31, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–31272 Filed 1–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

December 29, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP95–408–071.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits Ninetieth Revised Sheet 25 et al. to FERC Gas Tariff, Second Revised Volume 1, to be effective 2/1/09.

Filed Date: 12/22/2008.

Accession Number: 20081224–0086.

Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Docket Numbers: RP96–200–204.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Co submits a negotiated rate agreement with Petrohawk Energy Corp.

Filed Date: 12/18/2008.

Accession Number: 20081222–0003.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: RP09–180–000.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company submits Third Revised Sheet 7C *et al.* to FERC Gas Tariff, First Revised Volume 1, to be effective 12/1/08.

Filed Date: 12/22/2008.

Accession Number: 20081224–0087.

Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Docket Numbers: RP09–181–000.

Applicants: Cimarron River Pipeline, LLC.

Description: Cimarron River Pipeline, LLC submits First Revised Sheet 307 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 1/19/09.

Filed Date: 12/22/2008.

Accession Number: 20081224–0088.

Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Docket Numbers: RP09–182–000.

Applicants: Dauphin Island Gathering Partners.

Description: Dauphin Island Gathering Partners submits First revised Sheet 210 *et al.* to FERC Gas Tariff, First Revised Volume 1.

Filed Date: 12/22/2008.

Accession Number: 20081224–0089.

Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Docket Numbers: RP09–183–000.

Applicants: Transcontinental Gas Pipe Line Corp.

Description: Request for Waiver of Section 284.8(h)(1) of the Regulations.

Filed Date: 12/24/2008.

Accession Number: 20081224–5056.

Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Nathaniel J. Davis, Sr.

Deputy Secretary.

[FR Doc. E8–31273 Filed 1–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 803–087]

Butte County, CA; Notice of Availability of Environmental Assessment

December 29, 2008.

In accordance with the National Environmental Policy Act (NEPA) of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a new license for the DeSabla-Centerville Hydroelectric Project (project), located on Butt Creek in Butt County, California, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of licensing the project and conclude that issuing a license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 60 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''DeSabla-Centerville Hydroelectric Project No. 803–087'' to all comments. Comments may be filed electronically via 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 under the ''eFiling'' link.) For

further information, contact Kenneth Hogan at (202) 502–8434.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–31312 Filed 1–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–173–005; EL03–201–007]

Sempra Energy Trading LLC; Notice of Filing

December 24, 2008.

Take notice that on December 15, 2008, Sempra Energy Trading LLC filed an amendment to its Agreement and Stipulation in compliance with the Commission's November 14, 2008, Order Denying Rehearing, Coral Power, L.L.C., 125 FERC ¶ 61,176 (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 January 5, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–31311 Filed 1–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2082–027; Oregon and California]

PacifiCorp; Notice of Public Meetings Concerning the Relicensing of the Klamath Hydroelectric Project

December 24, 2008.

On February 25, 2004, PacifiCorp filed an application to relicense its 169-MW Klamath Hydroelectric Project. In November 2007, Commission staff issued its final Environmental Impact Statement, in which it analyzed a number of alternatives for relicensing the project. To date, neither the states of Oregon nor California have acted on PacifiCorp's requests for certification under section 401 of the Clean Water Act, precluding Commission action on the license application.

On November 24, 2008, PacifiCorp filed an Agreement in Principle, executed among PacifiCorp; the U.S. Departments of Agriculture, Commerce, and the Interior; and the States of California and Oregon, for the continued operation and potential future removal of Klamath Project dams.

The Agreement in Principle is complex and may have a significant effect on the analysis of PacifiCorp's relicense application. The compatibility of the Agreement with the licensing process and the appropriate procedures for the continued processing of the application will be discussed. Commission staff will hold two public meetings to obtain public comment on these matters. The meetings will be held as follows.

Date: Thursday, January 29, 2009.

Time: 1 p.m. and 7 p.m. (PST).

Place: Best Western Miner's Inn.

Address: 122 East Miner Street, Yreka, California.

For further information, please contact John Mudre at e-mail address *john.mudre@ferc.gov* or by telephone at (202) 502–8902.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–31308 Filed 1–2–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0908; FRL–8397–3]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 17, 2008 through November 28, 2008, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before February 4, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0908, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2008–0908. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–

2008–0908. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

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

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

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

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

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

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

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

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

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 17, 2008 through November 28, 2008, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit I. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number

assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 16 PREMANUFACTURE NOTICES RECEIVED FROM: 11/17/08 TO 11/28/08

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0071	11/14/08	02/11/09	CBI	(G) Chemical intermediate	(G) *N,N*-dialkylamine
P–09–0072	11/14/08	02/11/09	Mane, USA	(G) Perfumery ingredients	(S) 2-ethoxy-4-ethoxymethyl-phenol
P–09–0073	11/18/08	02/15/09	CBI	(S) Hot melt adhesive for metal-metal applications; hot melt adhesive for automotive parts; hot adhesive for medical device; hot melt adhesive for electronics	(G) Fatty acids, C_{18}-unsaturated, dimers, polymers with cycloaliphatic amide, aliphatic diamine, seabacic acid and stearic acid
P–09–0074	11/17/08	02/14/09	Esstech, Inc.	(S) Adhesive	(S) Butanedioic acid, methylene-, polymer with (2*Z*)-2-butenedioic acid and 2-propeneoic acid
P–09–0075	11/18/08	02/15/09	CBI	(G) Highly dispersive use	(G) Aliphatic aromatic unsaturated bicyclic derivative
P–09–0076	11/19/08	02/16/09	CBI	(G) Coloration component for cellulosic substrates	(G) Diamino - (substituted phenylazo) - benzene sulfonic acid, salt
P–09–0077	11/19/08	02/16/09	CBI	(G) Raw material for paint additive	(G) Alkylaminoalcohol
P–09–0078	11/19/08	02/16/09	CBI	(G) Raw material for paint additive	(G) Alkylaminoalcohol
P–09–0079	11/20/08	02/17/09	CBI	(G) Printing additive	(G) Polyester resin
P–09–0080	11/24/08	02/21/09	CBI	(S) Polymer additive for floor polish; heat seal/adhesive for flexible packaging; additive for inks to improve rub resistance; sizing agent for nylon and fiberglass	(G) Ethylene/methacrylic acid ropolymers, zinc and potassium salt
P–09–0081	11/24/08	02/21/09	CBI	(G) Industrial gel coat resins	(G) Polymer of aliphatic diols, aliphatic polyols, and carboxylic anhydrides
P–09–0082	11/25/08	02/22/09	U.S. Polymers-Accurez, LLC	(S) Binder for paint	(G) Reaction product of: 1,4 cyclohexanedimethanol, trimethylolpropane, phthalic anhydride, adipic acid and other polymers
P–09–0083	11/25/08	02/22/09	Kemira Chemicals	(S) Adhesive used in creping process of tissue paper; adhesive used for ply bonding of tissue sheets	(S) Cationic polyamide
P–09–0084	11/25/08	02/22/09	CBI	(G) Emulsifier	(G) Benzenesulfonic acid salt
P–09–0085	11/25/08	02/22/09	Champion Technologies, Inc.	(G) Formation stabilizer; drilling mud additive	(G) 1,3-propane diaminium-2-substituted,-hexaalkyl-,di halide
P–09–0086	11/28/08	02/25/09	Designer Molecules, Inc.	(G) Base resin and/or reactive diluent for thermoset adhesives	(S) Cyclosiloxanes, me 3-(2-oxiranylmethoxy)propyl

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 24 NOTICES OF COMMENCEMENT FROM: 11/17/08 TO 11/28/08

Case No.	Received Date	Commencement Notice End Date	Chemical
P–06–0750	11/25/08	11/11/08	(S) 2,5-furandione, polymer with 1-hexadecene, .alpha.-methyl-.omega.-(2-propenyloxy)poly(oxy-1,2-ethanediyl) and 1-tetradecene, lauryl amide
P–07–0131	11/24/08	11/11/08	(G) Polyether polyol polyester polyurethane
P–07–0181	11/26/08	10/29/08	(G) SMA ester
P–07–0461	11/25/08	10/30/08	(G) Derivative of a salt of a polymer of styrene, substituted methacrylic acid and an alkyl acrylate
P–07–0470	11/25/08	10/21/08	(G) Alkyl cycloether
P–08–0118	11/20/08	10/16/08	(G) Amide-alkyldioic acid compound
P–08–0136	11/25/08	11/05/08	(G) Polyethylene diethylene succinate
P–08–0202	11/24/08	11/17/08	(G) Polyetheramine diisocyanate prepolymer
P–08–0257	11/14/08	11/07/08	(G) Isocyanate quasiprepolymer
P–08–0258	11/14/08	11/03/08	(G) Isocyanate quasiprepolymer
P–08–0319	11/17/08	11/05/08	(G) Urethane diol
P–08–0394	11/25/08	11/03/08	(G) Dodecanedioic acid polymer with nonanediol
P–08–0423	11/24/08	11/11/08	(G) Poly(styrene-methacryloyloxyethylphosphoric acid ester)
P–08–0474	11/21/08	10/19/08	(G) Polyester
P–08–0487	11/26/08	11/11/08	(G) Triazine derivative

II. 24 NOTICES OF COMMENCEMENT FROM: 11/17/08 TO 11/28/08—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–08–0488	11/26/08	11/11/08	(G) Triazine derivative
P–08–0490	11/19/08	10/21/08	(S) Tert-decanoic acid, ethenyl ester, polymer with ethene, ethenyl acetate and methyl 2-methyl-2-propenoate
P–08–0492	11/26/08	11/11/08	(G) Aluminum diazo naphthalene derivative
P–08–0493	11/26/08	11/11/08	(G) Aluminum diazo naphthalene derivative
P–08–0538	11/19/08	10/23/08	(G) Polyetheramine derivative
P–08–0571	11/26/08	11/06/08	(G) Acrylate, polymer with acrylate, ketoacrylamide, styrene and acrylate
P–08–0659	11/19/08	11/19/08	(S) Chitosan, 2-hydroxypropanoate (salt)
P–08–0660	11/19/08	11/19/08	(S) Chitosan, acetate (salt)
P–96–1164	11/25/08	10/30/08	(G) Fatty acids, C_{18}-unsaturated dimers, polymers with ethylenediamine, a dibasic acid, a dibasic acid, diamines and a mono-basic acid

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: December 23, 2008.

Darryl S. Ballard,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E8–31290 Filed 1–2–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0907; FRL–8397–4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 15, 2008 through October 2, 2008, consists of the PMNs and TME, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before February 4, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0907, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2008–0907. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2008–0907. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required

to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

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

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

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

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

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

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

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

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

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 15, 2008 through October 2, 2008, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit I. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 52 PREMANUFACTURE NOTICES RECEIVED FROM: 09/15/08 TO 10/2/08

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0709	09/12/08	12/10/08	CBI	(G) Additive, open, non-dispersive use	(G) Alkylacrylates, copolymers with alkylmethacrylates and modified methacrylates
P–08–0710	09/15/08	12/13/08	Futurefuel Chemical Company	(S) Biodiesel fuel	(S) Extractives and their physically modified derivatives. It consists primarily of the glycerides of the fatty acids, gadoleic, linoleic, linolenic and oleic. (camelina) Fats and glyceridic oils, camelina
P–08–0711	09/15/08	12/13/08	Futurefuel Chemical Company	(S) Biodiesel fuel	(S) Extractives and their physically modified derivatives. It consists primarily of the glycerides of the fatty acids lesqueroleic, linoleic, linolenic and oleic. (lesquerella) Fats and glyceridic oils, lesquerella.
P–08–0712	09/15/08	12/13/08	Futurefuel Chemical Company	(S) Biodiesel fuel	(S) Fatty acids, camelina, me esters

I. 52 PREMANUFACTURE NOTICES RECEIVED FROM: 09/15/08 TO 10/2/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0713	09/15/08	12/13/08	Futurefuel Chemical Company	(S) Biodiesel fuel	(S) Fatty acids, lesquerella, me esters
P–08–0714	09/15/08	12/13/08	Futurefuel Chemical Company	(S) Biodiesel fuel	(S) Fatty acids, palm-oil, me esters
P–08–0715	09/15/08	12/13/08	Futurefuel Chemical Company	(S) Biodiesel fuel	(S) Fatty acids, peanut-oil, me esters
P–08–0716	09/16/08	12/14/08	CBI	(G) Intermediate	(G) Chlorosilane
P–08–0717	09/16/08	12/14/08	CBI	(S) Intermediate for coatings	(G) Fluorocarbon silane
P–08–0718	09/17/08	12/15/08	CBI	(G) Thermoset adhesive component	(S) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with acrylic acid, methacrylic acid and tricyclodecanedimethanol
P–08–0719	09/17/08	12/15/08	CBI	(G) Open non-dispersive (polyester polyol for making prepolymer)	(G) Polyester polyol
P–08–0720	09/17/08	12/15/08	CBI	(G) Thermoset adhesive component	(S) 1,3-benzenedicarboxylic acid, polymers with tricyclodecanedimethanol, mixed bis(acrylates and methacrylates)
P–08–0721	09/18/08	12/16/08	Gelest, Inc.	(S) Conversion to organosilyl derivative please see submission GLS097	(S) Poly(oxy-1,2-ethanediyl), .alpha.-(1-oxododecyl)-.omega.-(2-propen-1-yloxy)-
P–08–0722	09/18/08	12/16/08	Gelest, Inc.	(S) Pigment treatment; surface treatment	(S) Poly(oxy-1,2-ethanediyl), .alpha.-(1-oxododecyl)-.omega.-[3-triethoxylsilyl)propoxy]-
P–08–0723	09/18/08	12/16/08	CBI	(S) Resin for automotive coatings	(G) Cycloaliphatic anhydride, polymer with hydroxy alkyl diol, alkyl ester
P–08–0724	09/18/08	12/16/08	CBI	(S) Resin for automotive coatings	(G) Cycloaliphatic anhydride, polymer with hydroxy alkyl diol, alkyl ester
P–08–0725	09/18/08	12/16/08	CBI	(S) Resin for automotive coatings	(G) Cycloaliphatic anhydride, polymer with hydroxy alkyl diol, cycloaliphatic lactone, and alkyl ester
P–08–0726	09/18/08	12/16/08	CBI	(S) Resin for automotive coatings	(G) Cycloaliphatic anhydride, polymer with hydroxy alkyl diol, cycloaliphatic lactone, and alkyl ester
P–08–0727	09/18/08	12/16/08	CBI	(S) Resin for automotive coatings	(G) Hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, peroxide initiated
P–08–0728	09/18/08	12/16/08	CBI	(S) Resin for automotive coatings	(G) Hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, peroxide initiated
P–08–0729	09/18/08	12/16/08	CBI	(S) Resin for automotive coatings	(G) Hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, peroxide initiated
P–08–0730	09/18/08	12/16/08	CBI	(S) Resin for automotive coatings	(G) Hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, peroxide initiated
P–08–0731	09/18/08	12/16/08	CBI	(S) Resin for automotive coatings	(G) Hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, azobis [aliphatic nitrile] initiated
P–08–0732	09/18/08	12/16/08	CBI	(S) Resin for automotive coatings	(G) Hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, azobis [aliphatic nitrile] initiated

I. 52 PREMANUFACTURE NOTICES RECEIVED FROM: 09/15/08 TO 10/2/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0733	09/17/08	12/15/08	CBI	(G) (1) A reinforcement for composites: Open, non-dispersive use; (2) A conductive additive for composites: Open, non-dispersive use; (3) A conductive additive for batteries: Contained use	(G) A multi-walled carbon nanotube
P–08–0734	09/17/08	12/15/08	CBI	(G) (1) A reinforcement for composites: Open, non-dispersive use; (2) A conductive additive for composites: Open, non-dispersive use; (3) A conductive additive for batteries: Contained use	(G) A multi-walled carbon nanotube
P–08–0735	09/19/08	12/17/08	CBI	(G) Diagnostics indicator dye	(G) Reichardt's dye
P–08–0736	09/19/08	12/17/08	Cytec Industries Inc.	(S) Utra violet-cure resin for industrial metal substrates	(G) Alkanedioic acid, polymer with alkyl diisocyanate, substituted alkyldiol, substituted alkanoic acid, copolymer, substituted oxepanone homopolymer-blocked
P–08–0737	09/19/08	12/17/08	J.M. Huber Corporation	(S) Flame retardant	(G) Magnesium hydroxide surface treated
P–08–0738	09/22/08	12/20/08	Esstech, Inc.	(S) Adhesive; coating agent	(S) Magnesium bis[3-[[(carboxy-.kappa.o)methyl] (4-methylphenyl)amino-.kappa.*N*]-2-hydroxypropyl 2-methyl-2-propenoato]-, (*T*-4)-*
P–08–0739	09/22/08	12/20/08	CBI	(G) Polymer intermediate	(G) Fatty acids, vegetable, polymers with aliphatic and cycloaliphatic dicarboxylic acids, polyols, dihydroxycarboxylic acids, cycloaliphatic diisocyanates, and tertiary alkyl amines
P–08–0740	09/22/08	12/20/08	CBI	(S) Emulsion additive in the manufacture of printing toner.	(G) Morpholine, compounds with polyethylene glycol C_{12-14}-alkyl substituted methyl ethers
P–08–0741	09/23/08	12/21/08	The Dow Chemical Company	(G) Component of electrical laminates	(G) Cyclohexanedialdehyde tetra phenol
P–08–0742	09/23/08	12/21/08	Sachem, Inc.	(G) Chemical intermediate	(S) Phosphonium, tetrabutyl-, hydroxide (1:1)
P–08–0743	09/24/08	12/22/08	Incorez Corporation	(G) Curing agent for polyurethane systems	(G) Aldimine curing agent
P–08–0744	09/24/08	12/22/08	Esstech, Inc.	(S) Adhesive	(S) Acid copolymer
P–08–0745	09/25/08	12/23/08	Petroferm Inc.	(G) Intermediate used on site for manufacture of air care products, contained use. Additive to enhance surface tension and appearance of inks and finished metals, open non-dispesive	(G) Silicone copolyol phthalate
P–08–0746	09/25/08	12/23/08	Petroferm Inc.	(G) Additive for commercial and consumer air care products for dispersive use	(G) Silicone copolyol phthalate (zinc salts)
P–08–0747	09/25/08	12/23/08	Incorez Corporation	(S) Latent curing agent for roof coatings high build moisture cure coatings and varnishes, sealants and adhesives	(G) Bis oxazolidine
P–08–0748	09/25/08	12/23/08	CBI	(G) Repellency additive	(G) Fluorinated acrylic copolymer
P–08–0749	09/25/08	12/23/08	CBI	(G) Polymer	(G) Substituted acrylate polymer
P–08–0750	09/25/08	12/23/08	CBI	(G) Open non-dispersive use (aqueous polyurethane resin for use as industrial coating)	(G) Aqueous polyurethane resin dispersion
P–08–0751	09/25/08	12/23/08	CBI	(G) Oil and water repellent and release agent	(G) Fluorinated acrylic copolymer
P–08–0752	09/26/08	12/24/08	CBI	(G) Intermediate for processing additive	(G) Ester diol
P–08–0753	09/26/08	12/24/08	CBI	(G) Processing additive	(G) Organosilane derivative
P–08–0754	09/26/08	12/24/08	3M	(G) Monomer	(G) Aryloxyacrylate
P–08–0755	09/29/08	12/27/08	Ferro Corporation	(G) Additive for polymers	(G) Alkyl benzyl phthalate
P–08–0756	09/29/08	12/27/08	CBI	(G) Printing additive	(G) Polyester resin
P–08–0757	09/30/08	12/28/08	Seppic Inc.	(S) Intermediate in the synthesis of polyurethane materials	(G) Alkoxylated polyol

I. 52 PREMANUFACTURE NOTICES RECEIVED FROM: 09/15/08 TO 10/2/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0758	10/02/08	12/30/08	CBI	(G) Adhesive component	(G) Hexanedioic acid, polymer with oxybis (propanol) and alkylpolyol
P–09–0001	10/02/08	12/30/08	CBI	(G) Adhesive component	(G) Hexanedioic acid, polymer with oxybis (propanol) and alkylpolyol
P–09–0002	10/02/08	12/30/08	AOC L.L.C.	(S) Polyester component for fiber-glass reinforced plastic parts	(S) Hexanedioic acid, polymer with 2,′2-oxybis[ethanol], 2-ethylhexyl ester

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 44 NOTICES OF COMMENCEMENT FROM: 09/15/08 TO 10/02/08

Case No.	Received Date	Commencement Notice End Date	Chemical
P–03–0366	10/16/08	10/10/08	(G) Alkoxylated aliphatic alcohol
P–03–0487	10/07/08	12/19/03	(S) 2-propenenitrile, polymer with 1,3-butadiene, 3-carboxy-1-cyan0-1-methylpropyl-terminated, reaction products with 2,2′-[(1-methylethylidene)bis [(2,6-dibromo-4,1-phenylene)oxymethylene]]bis[oxirane]-4,4′-(1-methylethylidene)bis[2,6-dibromophenol] polymer, dimethacrylates (esters)
P–05–0283	10/15/08	09/26/08	(G) Polyalkyl-alkoxy-polyheteroatom containing alkanoic acid
P–05–0820	10/28/08	10/23/08	(G) Polyacrylate resin
P–06–0299	10/20/08	10/08/08	(S) 1,6-hexanediaminium, *N,N,N,N′,N′,N′*, -hexamethyl-,dibromide
P–06–0831	09/29/08	09/12/08	(S) Fatty acids, corn-oil, me esters
P–07–0081	10/02/08	09/11/08	(S) Nonanedioic acid, bis(2-octyldodecyl) ester
P–07–0171	10/09/08	10/06/08	(G) Polyoxyalkylene siloxane
P–07–0348	10/31/08	10/29/08	(G) Copolymer based on sulfonic acid monomer
P–07–0446	10/03/08	09/19/08	(G) Fluoroalkyl acrylate copolymer
P–07–0493	09/17/08	09/04/08	(G) Copolymer of 2,6-naphthalenedicarboxylic acid dialkyl ester and alkylene diol
P–07–0527	09/26/08	09/08/08	(G) Organic acid phosphate
P–07–0589	10/09/08	09/17/08	(G) Substituted dibasic ester
P–07–0590	10/09/08	09/18/08	(G) Substituted dibasic ester
P–07–0591	10/09/08	09/17/08	(G) Substituted dibasic ester
P–07–0592	10/09/08	09/17/08	(G) Substituted dibasic ester
P–07–0593	10/09/08	09/17/08	(G) Substituted dibasic ester
P–07–0724	10/10/08	09/22/08	(G) Substituted benzene polymer, aminomethylated
P–08–0017	09/17/08	08/23/08	(G) Phosphorated phenolic novolac
P–08–0026	10/01/08	06/06/08	(S) Methanone, 1,1′-(1,4-phenylene)bis[1-(4-fluorophenyl)-, polymer with bis (4-hydroxyphenyl) methanone
P–08–0166	09/25/08	09/11/08	(G) Trimethoxysilane
P–08–0191	10/31/08	10/22/08	(G) Modified polyamine
P–08–0192	10/31/08	10/23/08	(G) Modified polyamine
P–08–0194	09/24/08	09/19/08	(G) Fatty acids, dimers, polymers with alkenoic acid, polyoxyalkylene and alkyl substituted triol
P–08–0222	10/10/08	10/01/08	(G) Fluoroalkyl acrylate copolymer
P–08–0233	09/26/08	07/08/08	(G) Alkyd based intermediate resin
P–08–0266	09/15/08	09/04/08	(G) Guanidine, *N,N‴*-alkanediylbis[*N′*-cyano-, polymer with alkanediamine, phosphate
P–08–0270	09/16/08	08/18/08	(G) Glycidyl methacrylate modified carboxylated epoxy cresol novolac acrylate
P–08–0286	10/29/08	10/23/08	(G) Fatty acids, polymers with 2-[[4-(1,1-dimethylethyl)phenoxy]methyl]oxirane, glycidyl ph ether, fatty acid dimers and polyalkylenepolyamines
P–08–0338	09/15/08	09/08/08	(G) Polymer of alkenoic acid, substituted ethene and alkyl acrylate
P–08–0383	09/22/08	08/22/08	(G) Mixed metal aluminate
P–08–0396	09/17/08	09/07/08	(S) 2*H*-pyran-2-one, tetrahydro-5-pentyl-
P–08–0411	10/03/08	09/12/08	(G) Carbohydrate polymer with 2,5-furandione and 2-propenoic acid, sodium salt, hydrogen peroxide- and peroxydisulfuric acid ([(HO)S(O)2]202) sodium salt (1:2)-initiated
P–08–0413	10/03/08	09/12/08	(G) Carbohydrate polymer with 2,5-furandione, methyl 2-methyl-2-propenoate, 2-propenoic acid, sodium 4-ethenylbenzenesulfonate (1:1) and sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), sodium salt, hydrogen peroxide- and peroxydisulfuric acid ([(HO)S(O)2]202) sodium salt (1:2)-initiated
P–08–0416	10/03/08	09/12/08	(G) Carbohydrate polymer with 1-methyl hydrogen (2z)-2-butenedioate, 1,2-propanediol mono(2-methyl-2-propenoate) and 2-propenoic acid, ammonium salt, tert-bu hydroperoxide-initiated

II. 44 NOTICES OF COMMENCEMENT FROM: 09/15/08 TO 10/02/08—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–08–0432	10/23/08	10/03/08	(G) Phenol-xylylene resin
P–08–0450	09/26/08	09/08/08	(G) Polymer of alkenoic acid, substituted ethene and alkyl acrylate
P–08–0451	09/15/08	09/08/08	(G) Polymer of alkenoic acid, carbomonocyclic acrylate and methacrylic acid
P–08–0452	10/17/08	09/30/08	(G) Urethane prepolymer (polyether polyol react with organic isocyanate)
P–08–0463	10/15/08	09/28/08	(S) 2*H* pyran-2-one, tetrahydro-5-propyl
P–08–0469	10/03/08	09/12/08	(G) Isocyanate terminated hydroxylpolyalkyl polyurethane prepolymer
P–08–0471	10/16/08	10/01/08	(G) Tricyclic amine salt
P–08–0478	10/15/08	09/29/08	(G) Acrylic polymer, polymers with acrylates and polyethylene glycol acrylate alkyl ethers
P–08–0543	10/30/08	10/21/08	(G) Methyl ester of hydroxy alkyl acid

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: December 23, 2008.

Darryl S. Ballard,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E8–31292 Filed 1–2–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–New England Region I—EPA–R01–OW–2008–0919; FRL–8760–1]

Maine Marine Sanitation Device Standard—Receipt of Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice—Receipt of petition.

SUMMARY: Notice is hereby given that a petition has been received from the state of Maine requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Boothbay Harbor.

DATES: Comments must be submitted by February 4, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OW–2008–0919, by one of the following methods: *www.regulations.gov*, follow the on-line instructions for submitting comments.

- *E-mail: rodney.ann@epa.gov*.
- *Fax:* (617) 918–0538.

Mail and hand delivery: U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Deliveries are only accepted during the Regional Office's normal hours of operation (8 a.m.–5 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R01–OW–2008–0919. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov*, or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, 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.

Docket: All documents in the docket are listed in the *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 copy righted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office is open from 8 a.m.–5 p.m., Monday through Friday, excluding legal holidays. The telephone number is (617) 918–1538.

FOR FURTHER INFORMATION CONTACT: Ann Rodney, U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. *Telephone:* (617) 918–1538, *Fax number:* (617) 918–0538; *e-mail address: rodney.ann@epa.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a petition has been received from the state of Maine requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency, pursuant to Section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Boothbay Harbor area.

The proposed No Discharge Area for BOOTHBAY HARBOR:

Waterbody/general area	Latitude	Longitude
From the USCG navigational buoy green bell ''1C'' off the light station ''The Cuckholds'' north to ''Cape Newagen''.	43° 47′ 8.75″ N	69° 39′ 38.57″ W
North to ''Cameron Point'' on the northwest end of ''Townsend Gut''	43° 51′ 4.21″ N	69° 40′ 5.32″ W
North to the southern tip of ''Indiantown Island''	43° 51′ 19.4″ N	69° 40′ 4.75″ W
North to the northern end of ''Indiantown Island''	43° 51′ 57.73″ N ..	69° 40′ 36.1″ W
East to the head of navigation of unnamed stream	43° 15′ 17.33″ N ..	69° 38′ 9.31″ W
East to the head of navigation of unnamed stream	43° 51′ 8.04″ N	69° 37′ 24.62″ W
East to the head of navigation of unnamed stream	43° 51′ 4.99″ N	69° 36′ 50.93″ W
East to the northern end of ''Linekin Bay''	43° 51′ 42.94″ N ..	69° 35′ 26.86″ W
South to the western point of ''Ocean Point''	43° 48′ 50.14″ N ..	69° 36′ 16.39″ W
Southwest in a straight line to USCG navigational buoy green bell ''1C'' off the light station ''The Cuckholds''.	43° 46′ 22.55″ N ..	69° 39′ 0.09″ W

The proposed NDA includes the municipal waters of Boothbay Harbor.

There are marinas, yacht clubs and public landings/piers in the proposed area with a combination of mooring fields and dock space for the recreational and commercial vessels. Maine has certified that there are six pumpout facilities within the proposed area available to the boating public and all facilities are connected to the sewage system. A list of the facilities, phone numbers, locations, and hours of operation is provided at the end of this petition.

Maine has provided documentation indicating that the total vessel population is estimated to be 893 in the proposed area. It is estimated that 458 of the total vessel population may have a Marine Sanitation Device (MSD) of some type.

The proposed area is identified as a High Value Wildlife Habitat by the U.S. Fish and Wildlife Service. The intertidal zone includes a diverse array of habitats that are predominately rocky shore but does include isolated areas of salt marsh and mud flats. There are 252 acres of identified shellfish habitat. There are five marinas and this area is one of the more popular tourist locations in the state. This area is a popular destination for boaters due to its natural environmental diversity and would benefit from a No Discharge Area.

PUMPOUT FACILITIES WITHIN PROPOSED NO DISCHARGE AREA

Boothbay Harbor				
Name	Location	Contact info.	Hours	Mean low water depth
Harbormaster	Boothbay Harbor	207–633–3671 VHF 16	6am–8pm	N/A
Carousel Marina	Boothbay Harbor	207–633–2922 VHF 9	8am–5pm, 7days	10 ft
Brown's Wharf	Boothbay Harbor	207–633–5440 VHF 9	8am–5pm, 7 days	15 ft
Cap'n Fish's Marina	Boothbay Harbor	207–633–3244 VHF 9	8am–5pm, 7 days	15 ft
Tugboat Inn and Marina	Boothbay Harbor	207–633–4434 VHF 9	10am–2pm, 7 days	8 ft
Signal Point Marina	Boothbay Harbor	207–633–6920	24/7 Self Service	8 ft

Dated: December 19, 2008.

Robert W. Varney,

Regional Administrator, New England Region.

[FR Doc. E8–31297 Filed 1–2–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–New England Region I—EPA–R01–OW–2008–0921; FRL–8760–2]

Massachusetts Marine Sanitation Device Standard—Receipt of Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice—receipt of petition.

SUMMARY: Notice is hereby given that a petition has been received from the Commonwealth of Massachusetts requesting a determination by the Regional Administrator, U. S. Environmental Protection Agency, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Revere, Saugus, Lynn, Nahant, and Swampscott.

DATES: Comments must be submitted by February 4, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OW–2008–0921, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: rodney.ann@epa.gov.*
- *Fax:* (617) 918–0538.

Mail and hand delivery: U. S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Deliveries are only accepted during the Regional Office's normal hours of operation (8 a.m.–5 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R01–OW–2008–0921. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov,* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, 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.

Docket: All documents in the docket are listed in the *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 copy-righted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U. S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office is open from 8 a.m.–5 p.m., Monday through Friday, excluding legal holidays. The telephone number is (617) 918–1538.

FOR FURTHER INFORMATION CONTACT: Ann Rodney, U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. *Telephone:* (617) 918–1538, *Fax number:* (617) 918–0538; *e-mail address: rodney.ann@epa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that a petition has been received from the Commonwealth of Massachusetts requesting a determination by the Regional Administrator, U. S. Environmental Protection Agency, pursuant to Section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the communities of Revere, Saugus, Lynn, Nahant, and Swampscott.

The proposed No Discharge Area for Revere, Saugus, Lynn, Nahant, and Swampscott are:

Waterbody/general area	Latitude	Longitude
From the Revere and Winthrop municipal boundary (northern edge of the Boston Harbor NDA)	42°23′30″ N	70°58′50″ W
North along the Revere and Winthrop municipal boundary (northern edge of the Boston Harbor NDA)	42°24′28″ N	70°57′33″ W
Arc south along the Winthrop and Nahant municipal boundary	42°23′13″ N	70°55′28″ W
Arc east along the Winthrop and Nahant municipal boundary	42°23′04″ N	70°54′04″ W
Arc northeast along the Winthrop and Nahant municipal boundary	42°23′32″ N	70°51′28″ W
North to the Marblehead/Swampscott town line (southern edge of the Salem Sound NDA)	42°26′33″ N	70°49′05″ W
West along the Marblehead/Swampscott town line (southern edge of the Salem Sound NDA)	42°28′43″ N	70°52′45″ W
Inland on the Pines River, Rt. 107 Bridge	42°25′51.93″ N	70°59′50.28″ W
Inland on the Saugus River, Lincoln Ave. Bridge	42°27′34.7″ N	70°59′20.6″ W

The proposed NDA includes the Commonwealth and municipal waters of Revere, Saugus, Lynn, Nahant, and Swampscott.

There are marinas, yacht clubs and public landings/piers in the proposed area with a combination of mooring fields and dock space for the recreational and commercial vessels. Massachusetts has certified that there are two pumpout facilities within the proposed area available to the boating public. The facilities are connected to the municipal sewage system. A list of the facilities, phone numbers, locations, and hours of operation is provided at the end of this petition.

Massachusetts has provided documentation indicating that the total vessel population is estimated to be 1222 in the proposed area. It is estimated that 660 of the total vessel population may have a Marine Sanitation Device (MSD) of some type.

The proposed area contains the state recognized Rumney Marshes Area of Critical Environmental Concern (ACEC). The ACEC and many other areas of the Lower North Shore contain important salt marsh (approximately 2,274 acres), eelgrass and estuarine habitat that is utilized by migratory and native birds such as the snowy egrets, great blue heron, terns, glossy ibis, buffleheads, black ducks, snowy owls, sandpipers, and plovers. Fish such as alewife, blueback herring, rainbow smelt, American eel, striped bass, and several others migrate and/or live part of their lives within the Lower North Shore. Shellfish inhabitants include ribbed mussels, soft-shell clams, and razor clams.

The Northeastern University Marine Science Center is located in Nahant and requires clean waters for the study of the local coastal ecology and for its seawater intakes for its indoor experiments. There are numerous beaches, marinas, boat launches and shellfish harvesting areas, including 230 acres of clam flats, within the proposed area. This area is also a popular destination for recreational and commercial boating, sailboat racing, windsurfing, swimming, and recreational and commercial fishing. Due to its natural environmental diversity, economic value, and recreational value the Lower North Shore would benefit from a No Discharge Area.

PUMPOUT FACILITIES WITHIN PROPOSED NO DISCHARGE AREAS

Name	Location	Contact info.	Hours	Mean low water depth
REVERE, SAUGUS, LYNN, NAHANT, AND SWAMPSCOTT				
Seaport Landing Marina	Lynn Harbor	781–592–5821; VHF 9,13,16	8am–7pm April 15–Nov. 1	20 ft.
Revere Harbormaster	Revere	207–967–2511, VHF 9	On Call	NA

Dated: December 19, 2008.

Robert W. Varney,

Regional Administrator, New England Region.

[FR Doc. E8–31300 Filed 1–2–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8759–8]

Predicting Future Introductions of Nonindigenous Species to the Great Lakes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of a final report titled, ''Predicting Future Introductions of Nonindigenous Species to the Great Lakes'' (EPA/600/R–08/066F). The report was prepared by the National Center for Environmental Assessment (NCEA), within EPA's Office of Research and Development (ORD). The Great Lakes of the United States have been subjected to adverse ecological and economic impacts from introduced species. Ballast water discharge from commercial shipping is the major means by which these nonindigenous species have entered the Great Lakes. This assessment demonstrates that successful invasions are best predicted by knowing the propagule pressure (i.e., the number of larvae/individuals entering a new area) and habitat matching (i.e., how similar is the invaded area to the native range of the species). The purpose of the report is to help resource managers focus monitoring activities on particular nonindigenous species at ports that are most at risk of invasion.

DATES: This document will be available on or about January 5, 2009.

ADDRESSES: The document will be available electronically through the NCEA Web site at *http://www.epa.gov/ncea.* A limited number of paper copies will be available from EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198; facsimile: 301–604–3408; e-mail: *nscep@bps-lmit.com.* Please provide your name, your mailing address, the title and the EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: The Information Management Team, National Center for Environmental Assessment (8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: 703–347–8561; fax: 703–347–8691; e-mail: *nceadc.comment@epa.gov.*

Dated: December 22, 2008.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E8–31295 Filed 1–2–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[Docket No. 08–07]

Petition of Olympus Growth Fund III, L.P. and Olympus Executive Fund, L.P. for Declaratory Order, Rulemaking or Other Relief Notice of Filing of Petition

Notice is hereby given that Olympus Growth Fund III, L.P. and Olympus Executive Fund, L.P. (''Petitioners'') have petitioned the Federal Maritime Commission (''Commission'') pursuant to 46 CFR 502.51, 68 and 69, for the Commission to either: (1) Issue a declaratory order clarifying that the ''practice of re-routing the domestic inland transportation leg of a through intermodal shipment'' by non-vessel-operating common carriers or other shippers does not violate the Shipping Act of 1984 (''Shipping Act''); (2) initiate a rulemaking to consider these issues; and/or (3) initiate a docketed proceeding with respect to informal compromise procedures said to be underway between Global Link Logistics, Inc. (''Global Link'') and the Commission's Bureau of Enforcement (''BOE''), and grant Petitioners leave to intervene in the Commission's investigation thereof. Petitioners also request emergency relief from the Commission in the form of a stay of the informal proceedings before the BOE concerning Global Link.

This Petition arises out of the sale of Global Link by Petitioners, and subsequent arbitration involving Petitioners and the purchasers of Global Link and their successors. Petitioners claim that the purchasers seek to undo the sales transaction in arbitration by asserting that Global Link's prior practice of re-routing the domestic inland transportation leg of a through shipment violated the Shipping Act's proscription against obtaining ocean transportation of property at less than the rates or charges than would otherwise be applicable. *See* 49 U.S.C. 41102(a) (formerly section 10(a)(1) of the Shipping Act). Petitioners further claim that this alleged Shipping Act violation is being used by purchasers in an attempt to establish a violation of the stock purchase agreement governing Global Link's sale, and thereby undo the transaction in arbitration. Petitioners assert that BOE ''appears to be prepared to find'' that Global Link's practice of re-routing the domestic inland portion of a through transportation movement violates the Shipping Act, which finding allegedly would have far-reaching adverse effects on parties to ocean shipping transactions.

Persons named in the Petition include Global Link Logistics Inc. and the Bureau of Enforcement. *See* 46 CFR 502.58(f)(2). Accordingly, such persons are requested to submit views or arguments in reply to the Petition no later than January 9, 2009. Replies shall consist of an original and fifteen (15) copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioners' counsel, Lewis R. Clayton, of Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019–6064; and Warren L. Dean, Jr., of Thompson Coburn LLP, 1909 K Street, NW., Suite 600, Washington, DC 20006. A copy of the reply shall be submitted in electronic form (Microsoft Word 2003) by e-mail to *secretary@fmc.gov.* The Petition will be posted on the Commission's Web site at *http://www.fmc.gov/reading/Dockets.asp.* Replies filed in response to this petition

also will be posted on the Commission's Web site at this location.

Karen V. Gregory,

Secretary.

[FR Doc. E8–31277 Filed 1–2–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 21, 2009.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Leon Dale Loveall, individually, and acting in concert with Marlese Loveall, both of Columbia, Missouri, to acquire voting shares of Mid America Banking Corporation, Columbia, Missouri, and thereby indirectly acquire voting shares of Mid America Bank & Trust Company, Dixon, Missouri.

Board of Governors of the Federal Reserve System, December 30, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–31260 Filed 1–2–09; 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 January 23, 2009.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Franklin Resources, Inc., San Mateo, California, to acquire up to 8.4 percent of the voting shares of AB&T Financial Corporation, and thereby indirectly acquire voting shares of Alliance Bank & Trust Company, both of Gastonia, North Carolina.

Board of Governors of the Federal Reserve System, December 30, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–31261 Filed 1–2–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 051 0252]

Boulder Valley Individual Practice Association, et al.; Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 22, 2009.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Boulder Valley IPA, File No. 051 0252,'' to facilitate the organization of comments. A comment filed in paper form should include this 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 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] 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. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-BoulderValleyIPA*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC 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

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Constance M. Salemi, FTC Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2701.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 24, 2008), on the World Wide Web, at (*http://www.ftc.gov/os/2008/12/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent Order with Boulder Valley Individual Practice Association (''BVIPA''). The agreement settles charges that BVIPA violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by, among other things, orchestrating and implementing agreements among competing physician members of BVIPA to fix the price at which BVIPA physicians contract with health plans.

The proposed consent Order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received and decide whether to withdraw from the agreement or make the proposed Order final.

The purpose of this analysis is to facilitate public comment on the proposed Order. The analysis is not intended to constitute an official interpretation of the agreement and proposed Order or to modify their terms in any way. Further, the proposed consent Order has been entered into for settlement purposes only and does not constitute an admission by the proposed respondent that it violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

The Complaint

The allegations of the Complaint are summarized below.

BVIPA is a type of organization commonly referred to in the health care industry as an ''independent practice association'' because its members consist of independent physicians in solo and small group practices. BVIPA is controlled by its approximately 365 physician members in the Boulder County, Colorado area.

The Complaint challenges BVIPA's conduct starting in 2001, when BVIPA, on behalf of its members, began to negotiate the prices and terms in payer contracts at which its otherwise competing physician members would provide services to subscribers of health plans. BVIPA is governed by a board of directors consisting of physician members elected by the membership. Physicians joining BVIPA sign an agreement that gives BVIPA the authority to contract with health plans on their behalf, and they agree to accept the payment for their services that BVIPA negotiates. Members can provide input to BVIPA on whether a proposed rate level was acceptable.

Between 2001 and 2006, BVIPA, on behalf of its members, negotiated and signed agreements with approximately 17 payers and conducted periodic renegotiations of its contracts with large payers to obtain rate increases. BVIPA threatened payers facing rate increases with termination of their contracts when they refused to negotiate or otherwise respond to BVIPA's demands. Payers threatened with termination ultimately yielded to BVIPA's price demands.

BVIPA actively discouraged members from contracting directly with payers. Some payers attempted to contract with some of BVIPA's physician members with specialties that were important for the marketing of a provider network, and found that the providers refused to contract with payers outside BVIPA. Consequently, payers had to negotiate and sign contracts with BVIPA to ensure that these physicians would participate in the payers' health plans.

In 2004, BVIPA purported to offer payers three options for contracting with BVIPA members: a single-signature contract that ''delivered the entire BVIPA network,'' a ''modified messenger model'' that ''may or may not deliver our entire network;'' and direct contracting with individual members outside the IPA. Although BVIPA claimed to offer payers a choice of contracting methods, BVIPA did not develop or use a messenger model, and it continued to encourage its members not to contract outside the IPA.

BVIPA's conduct had the effect of unreasonably restraining trade and hindering competition in the provision of physician services by unreasonably restraining price and other forms of competition among physicians; increasing prices for physician services; and depriving health plans, employers, and individual consumers of the benefits of competition among physicians. BVIPA members did not engage in any efficiency-enhancing integration of their practices sufficient to justify the its challenged conduct. Accordingly, the Complaint alleges that BVIPA violated Section 5 of the FTC Act.

The Proposed Consent Order

The proposed Order is designed to remedy the illegal conduct charged in the Complaint and prevent its recurrence, while leaving BVIPA free to engage in legitimate, potentially procompetitive conduct. It is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans.

The proposed Order's specific provisions are as follows:

Paragraph II.A prohibits BVIPA from entering into or facilitating any agreement between or among any physicians: (1) to negotiate with payers on any physician's behalf; (2) to refuse to deal, or threaten to refuse to deal, with payers in furtherance of any conduct or agreement prohibited by any other provision of Paragraph II, (3) on any terms on which a physician is willing to deal with any payer; or (4) not to deal individually with any payer, or not to deal with any payer other than through BVIPA.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits BVIPA from facilitating exchanges of information between physicians concerning any physician's willingness to deal with a payer or the terms or conditions, including price terms, on which the physician is willing to deal with a payer. Paragraph II.C bars

attempts to engage in any action prohibited by Paragraph II.A, or II.B, and Paragraph II.D. proscribes BVIPA from inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing providers' collective bargaining with health-care purchasers, Paragraph II excludes certain kinds of agreements from its prohibitions. First, BVIPA is not precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians, such as a ''qualified risk-sharing joint arrangement'' or a ''qualified clinically-integrated joint arrangement.'' The arrangement, however, must not restrict the ability of, or facilitate the refusal of, physicians who participate in it to contract with payers outside of the arrangement.

As defined in the proposed Order, a ''qualified risk-sharing joint arrangement'' possesses two characteristics. First, all physician participants must share substantial financial risks through the arrangement, such that the arrangement creates incentives for the physician participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A ''qualified clinically-integrated joint arrangement,''on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed Order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in Order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Paragraph III, for three years, requires BVIPA to notify the Commission before it enters into any arrangements to act as a messenger or an agent on behalf of any physicians, with payers regarding contracts. Paragraph IV sets out the information necessary to make the notification complete.

Paragraph V, for three years, requires BVIPA to notify the Commission before participating in contracting with health plans on behalf of either a qualified risk-sharing or a qualified clinically-integrated joint arrangement. Paragraph VI sets out the information necessary to satisfy the notification requirement.

Paragraph VII imposes other notification obligations on BVIPA and requires the termination of certain contracts that were entered into illegally. Paragraphs VII.A requires BVIPA to distribute the Complaint and the Order to (1) physicians who have participated in BVIPA since 2001; (2) to various past and current personnel of BVIPA; and (3) to payers with whom BVIPA has dealt since 2001. Paragraph VII.B requires BVIPA, at any payer's request and without penalty, to terminate its existing contracts with the payer for the provision of physician services. Paragraph VII.B. allows certain contracts currently in effect to be extended at the written request of the payer no longer than one year from the date that the Order becomes final. Paragraph VII.C requires BVIPA to distribute payer requests for contract termination to physicians who participate in the contract. Paragraph VII.D requires BVIPA, for three years, to provide new members, personnel, and payers not previously receiving a copy, a copy of the Order and the Complaint. Paragraph VII.D also requires BVIPA to publish annually a copy of the Order and the Complaint in its newsletter.

Paragraphs VIII, IX, and X impose various obligations on BVIPA to report or provide access to information to the Commission to facilitate the monitoring of compliance with the Order. Finally, Paragraph XI provides that the Order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–31384 Filed 1–2–09: 8:45 am]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 061 0258]

Independent Practice Associates Medical Group, Inc.; Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 22, 2009.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''AllCareIPA, File No. 061 0258,'' to facilitate the organization of comments. A comment filed in paper form should include this 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 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] 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. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-AllCareIPA*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

FOR FURTHER INFORMATION CONTACT: John P. Wiegand, FTC Western Region, San Francisco, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (415) 848-5174.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 24, 2008), on the World Wide Web, at (*http://www.ftc.gov/os/2008/12/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order with Independent Practice Associates Medical Group, Inc., dba AllCare IPA (''AllCare'' or ''Respondent''). The agreement settles charges that AllCare violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by fixing prices charged to those offering coverage for health care services (''payors'') in the Modesto, California, area and refusing to deal with payors. The proposed Consent Order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed Consent Order final.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order. The analysis is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify their terms in any way. Further, the proposed Consent Order has been entered into for settlement purposes only and does not constitute an admission by Respondent that it violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

The Complaint's Allegations

AllCare is a multi-specialty independent practice association consisting of multiple, independent medical practices with a total of approximately 500 physician members, of which approximately 200 are devoted to primary care, in the Modesto, California, area. Since its formation, AllCare has negotiated contracts with payors under which it has received capitated (per member per month) payments. These contracts shift the risk of patient illness to the IPA by specifying that the health plan will pay the IPA a flat monthly fee for each enrollee, with almost no regard for patient utilization. This type of contracting is a form of financial integration. The Complaint does not challenge AllCare's activities concerning these contracts.

AllCare and its physicians also contract with Preferred Provider Organizations (''PPOs'') to provide fee-for-service medical care. In PPO arrangements, the payor compensates physicians or group practices for services actually rendered pursuant to agreed-upon fee schedules. PPO contracts may or may not entail financial risk-sharing or clinical integration on the part of providers. It is AllCare's negotiation of certain PPO contracts that is the subject of the Commission's Complaint.

The Complaint alleges that AllCare, since at least 2005, has acted to restrain competition on fee-for-service contracts by facilitating, entering into, and implementing agreements to fix the prices and other terms in contracts with PPO payors; to engage in collective negotiations over terms and conditions of dealing with such payors; and to have AllCare members refrain from negotiating individually with such payors or contracting on terms other than those approved by AllCare. The Complaint further alleges that AllCare, to enforce the joint negotiation efforts, caused a significant number of AllCare physicians to sent to at least one payor the same form termination letter. These letters terminated the physicians' individual agreements with the payor and affirmed that the physicians would contract with the payor only through an agreement with AllCare.

AllCare did not engage in any activity that might justify collective agreements on the prices its members would accept for their services. The physicians in AllCare, with respect to PPO contracts, do not share any financial risk in providing medical services, do not collaborate in programs to monitor and modify clinical practice patterns to control members' costs and ensure quality, or otherwise integrate their delivery of health care services. The Respondent's actions have restrained price and other forms of competition among physicians in the Modesto, California, area and thereby harmed consumers (including health plans, employers, and individual consumers) by increasing the prices for physician services.

The Proposed Consent Order

The proposed Consent Order is designed to prevent the continuance and recurrence of the unlawful conduct alleged in the Complaint while allowing AllCare to engage in legitimate, joint conduct. The proposed Consent Order does not affect AllCare's activities in contracting with the payors on a capitated basis.

Paragraph II.A prohibits Respondent from entering into or facilitating agreements between or among any health care providers (1) to negotiate on behalf of any physician with any payor, (2) to refuse to deal, or threaten to refuse to deal with any payor, (3) regarding any term, condition, or requirement upon which any physician deals, or is willing to deal, with any payor, including, but not limited to price terms or (4) not to deal individually with any payor, or not to deal with any payor except through AllCare.

The other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the Respondent from facilitating exchanges of information between health care providers concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing health care providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. Paragraph II does not preclude AllCare from engaging in

conduct that is reasonably necessary to form or participate in legitimate ''qualified risk-sharing'' or ''qualified clinically-integrated'' joint arrangements, as defined in the proposed Consent Order. Also, Paragraph II would not bar agreements that only involve physicians who are part of the same medical group practice, defined in Paragraph I.B, because it is intended to reach agreements between and among independent competitors.

Paragraphs III and IV require AllCare to notify the Commission before it initiates any arrangement to act as an agent or messenger with respect to physician contracting with payors. The Order also would require AllCare to provide to the Commission key details of the arrangement and to delay the implementation of that arrangement to permit further factual discovery by the Commission at its option. Paragraph III applies such requirements to arrangements under which AllCare would be acting as a messenger, and Paragraph IV applies them to arrangements under which AllCare plans to achieve financial or clinical integration.

Paragraph V.A requires AllCare to send a copy of the Complaint and Consent Order to its physician members, its management and staff, and any payors who communicated with AllCare, or with whom AllCare communicated, with regard to any interest in contracting for physician services.

Part V.B. of the Order requires AllCare to terminate preexisting payor contracts held by physicians who were AllCare participants since January 1, 2005, upon (1) receipt by AllCare of a written request for termination by relevant payors, or (2) the termination date, renewal date, or anniversary date of the contract, whichever is earlier. This termination can be delayed for up to one year after the effective date of the Order, upon the written request of the payor. This provision is intended to eliminate the effects of AllCare's joint price setting behavior.

Paragraph V.C requires that AllCare send a copy of any payor's request for termination to every physician who participates in each group. Paragraph V.D contains further notification provisions relating to future contact with physicians, payors, management, and staff. This provision requires AllCare to distribute a copy of the Complaint and Consent Order to each physician who begins participating in each group; each payor who contacts each group regarding the provision of physician services; and each person who becomes an officer, director, manager, or employee for three years after the date on which the Consent Order becomes final. In addition, Paragraph V.D requires AllCare to publish a copy of the Complaint and Consent Order, for three years, in any official publication that it sends to its participating physicians.

Paragraphs V.E and VI-VII impose various obligations on AllCare to provide to the Commission information that would assist in the monitoring of Respondent's compliance with the Consent Order.

Pursuant to Paragraph VIII, the proposed Consent Order will expire in 20 years from the date it is issued.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–31385 Filed 1–2–09: 8:45 am]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 061 0123]

Inverness Medical Innovations, Inc.; Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 20, 2009.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Inverness Medical Innovations, File No. 061 0123,'' to facilitate the organization of comments. A comment filed in paper form should include this 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 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] 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. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-Inverness*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC 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: Lore Unt, FTC Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-3019.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 23, 2008), on the World Wide Web, at (*http://www.ftc.gov/os/2008/12/index.htm*). A paper copy can be obtained from the

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from Inverness Medical Innovations, Inc. (''Inverness'').

The proposed Consent Agreement is designed to remedy the harm to competition from Inverness' conduct in acquiring certain assets of ACON Laboratories, Inc. (''ACON''). It would settle charges that Inverness engaged in an unlawful course of conduct to maintain its monopoly power in the lateral flow consumer pregnancy test market and hamper the development of future competition in that market, by restricting ACON's digital consumer pregnancy test supply and development joint venture with Church & Dwight Co., Inc. (''Church & Dwight''), and by acquiring ACON's competing water-soluble dye consumer pregnancy test technology.

Under the terms of the proposed Decision and Order, Inverness will divest ACON's water-soluble dye consumer pregnancy test product assets. In addition, Inverness will remove barriers to ACON's continued supply of digital tests to Church & Dwight during the remaining term of their joint venture. The proposed Decision and Order also limits Inverness' ability to interfere with the unwinding of the ACON/Church & Dwight joint venture by, among other things, requiring Inverness to disclaim ownership of intellectual property developed by ACON and Church & Dwight during their joint venture.

II. Background

Inverness is a leader in the research, development, manufacture, and sale of consumer pregnancy tests in the United States. Nearly all retail consumer pregnancy tests use immunoassay-based ''lateral flow'' technology, which tests a urine sample for the presence of the human chorionic gonadotropin (''hCG'') hormone produced by pregnant women. Consumer pregnancy tests consist of a plastic handheld stick device, which contains a test strip embedded beneath an indicator window. The test strip contains chemical agents that react to the presence of hCG in the urine sample. If the test is positive for hCG, a colored line will develop within the indicator window.

Lateral flow consumer pregnancy tests are more accurate, easier to use, and less costly than other pregnancy tests, which resemble laboratory test kits. There are no viable substitutes for consumer pregnancy tests based on lateral flow technology.

''Digital'' consumer pregnancy tests use and improve upon lateral flow technology. Rather than a colored line indicator, a digital pregnancy test indicates results through a digital display of words, such as ''PREGNANT'' or ''NOT PREGNANT.'' Digital consumer pregnancy tests are more difficult to develop and manufacture than standard consumer pregnancy tests, because they require more extensive know-how and more exacting manufacturing tolerances. Digital consumer pregnancy tests are a growing segment of the consumer pregnancy test market.

Inverness is the dominant firm in the market for consumer pregnancy tests. Inverness maintains an approximately 70% share of the U.S. consumer pregnancy test market. At the time of Inverness' acquisition of ACON, Inverness was one of only three independent companies marketing or manufacturing digital consumer pregnancy tests. The other firms exited the market in 2006.

ACON developed, manufactured, and sold consumer pregnancy tests in competition with Inverness. Before Inverness' acquisition of the ACON assets, ACON was developing digital consumer pregnancy tests in a joint venture with Church & Dwight, Inverness' leading competitor. The collaboration with Church & Dwight envisioned that ACON would manufacture and supply the resulting digital consumer pregnancy test products on Church & Dwight's behalf.

ACON also had invested in the development of new lateral flow tests that used water-soluble dyes, rather than colored particles, as the reactive agents in the test strip. ACON was one of the only, if not the only, firm involved in the development of consumer pregnancy tests that used water-soluble dye technology. Before the acquisition, ACON had completed prototypes of the product, and supplied sample quantities to U.S. customers.

In 2006, Inverness acquired certain assets from ACON, which included assets relating to ACON's water-soluble dye technology and assets relating to ACON's digital consumer pregnancy test joint venture with Church & Dwight.

III. The Proposed Complaint

The proposed complaint alleges that relevant market in which to analyze Inverness' conduct is the research, development, manufacture, and sale of consumer pregnancy tests in the United States. Inverness is the dominant player in the market for consumer pregnancy tests. Barriers to entry into the consumer pregnancy test market include intellectual property, know-how, and advertising.

The proposed complaint alleges that Inverness engaged in a course of conduct to maintain its monopoly power in this market by threatening to hamper or stifle future competition from two emerging alternative consumer pregnancy test technologies.

First, the proposed complaint alleges that Inverness' acquisition of the ACON assets weakened future competition from digital consumer pregnancy test products. The proposed complaint alleges that, through its acquisition of the ACON assets, Inverness: (a) imposed a covenant not to compete on ACON, which limited the scope and duration of the ACON's digital consumer pregnancy test joint venture with Church & Dwight; (b) required ACON to surrender to Inverness any profits from ACON's joint venture with Church & Dwight; and (c) acquired rights to the intellectual property developed by ACON and Church & Dwight in their joint venture. Through these actions, Inverness interfered with ACON's ability and incentive to develop and manufacture digital consumer pregnancy tests in its joint venture with Church & Dwight. Inverness' conduct also injured competition that might arise after the unwinding of the joint venture between ACON and Church & Dwight, by interfering with ACON's ability and incentive to serve as an independent developer and supplier of digital consumer pregnancy tests, and by hampering Church & Dwight's ability and incentive to introduce competing digital consumer pregnancy test products manufactured by another developer.

Second, the proposed complaint alleges that Inverness' acquisition of the ACON assets eliminated future competition from water-soluble dye lateral flow consumer pregnancy tests. After Inverness acquired the rights to ACON's water-soluble dye consumer pregnancy test product, Inverness made no use of the test, and ceased development and marketing efforts for

it. Inverness' acquisition of the ACON assets further entrenched Inverness' monopoly power in consumer pregnancy tests by preventing future competition from competing water-soluble dye consumer pregnancy tests.

IV. The Proposed Order

The proposed order will remedy the Commission's competitive concerns about Inverness' conduct in maintaining its consumer pregnancy test product monopoly power.

First, the proposed order contains provisions to prevent Inverness from interfering with the digital consumer pregnancy test product joint venture between ACON and Church & Dwight, and to enable ACON and Church & Dwight to maintain their competitive viability after the joint venture ends. These provisions include a requirement that Inverness disclaim any ownership rights on intellectual property developed during the joint venture. The proposed order further requires that Inverness will not interfere with ACON's transfer or licensing of digital consumer pregnancy test technology to Church & Dwight, and that Inverness not interfere with ACON's ability to manufacture digital consumer pregnancy tests for Church & Dwight during their collaboration.

Second, to prevent Inverness from harming emerging competition from water-soluble dye consumer pregnancy test products, the proposed order requires Inverness to divest, to Aemoh Products, LLC, a fully-paid perpetual exclusive sublicense to Inverness' water-soluble dye intellectual property. The proposed order seeks to ensure that water-soluble dye products can be developed without risk of infringing Inverness' intellectual property, by requiring Inverness to covenant not to assert intellectual property infringement claims against certain lateral flow products that use Inverness' water-soluble dye technology. These provisions, among others, will give Aemoh—a start-up run by a successful and experienced health products entrepreneur—the ability to complete the commercialization of water-soluble dye based consumer pregnancy tests.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed consent order and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed Consent Agreement, in order to aid the Commission in its determination of whether to make the proposed order final. This analysis is not intended to constitute an official interpretation of the proposed order nor is it intended to modify the terms of the proposed order in any way.

By direction of the Commission, Commissioner Harbour recused.

Richard C. Donohue,

Acting Secretary.

[FR Doc. E8–31366 Filed 1–2–09: 8:45 am]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 081 0240]

King Pharmaceuticals, Inc. and Alpharma Inc.; Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 27, 2009.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''King Alpharma, File No. 081 0240,'' to facilitate the organization of comments. A comment filed in paper form should include this 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 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] 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. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-KingAlpharma*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC 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: James Southworth, FTC Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2822.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Home Page (for December 29, 2008), on the World Wide Web, at (*http://www.ftc.gov/os/2008/12/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from King Pharmaceuticals, Inc. (''King) and Alpharma Inc. (''Alpharma''), which is designed to remedy the anticompetitive effects of King's acquisition of Alpharma. Under the terms of the Consent Agreement, the companies would be required to divest to Actavis all rights to Kadian, Alpharma's branded long-acting morphine sulfate opioid analgesic product. Kadian's patent runs until April of 2010. The divestiture gives Actavis all rights to Kadian, restoring the competition between Kadian and King's Avinza that would be lost with the acquisition.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (''Order'').

Pursuant to a merger agreement executed on November 23, 2008, King intends to acquire all the outstanding shares of Alpharma for approximately $1.6 billion. Both parties sell branded pharmaceuticals in the United States. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. The proposed Consent Agreement remedies the alleged violations by maintaining existing competition between branded Kadian and Avinza, and permitting an authorized generic version of branded Kadian to be launched prior to when the patent expires.

II. The Competitive Effects of the Proposed Acquisition

The proposed acquisition would cause significant anticompetitive harm by eliminating actual, direct and substantial competition between King and Alpharma in the market for oral long acting opioid analgesics (''oral LAOs''). The merging firms today offer the only two competitively significant branded morphine sulfate oral LAOs, and the evidence shows that they are particularly close competitors within the larger oral LAO market. The loss of head-to-head competition between King's Avinza and Alpharma's Kadian would result in higher prices for branded ER morphine sulfate.

While King and Alpharma oral LAO products compete most directly with each other, they also compete, to a lesser extent, with other oral LAOs. Oral LAOs have become the standard of care for the management of moderate-to-severe chronic pain because of their effectiveness, ease of titration and favorable risk-to-benefit ratio. Other oral LAOs are based on distinct chemical compounds, but all of these products have the same mechanisms of action, similar indications, similar dosage forms and similar dosage frequency. The most significant of the other oral LAOs is Purdue Pharma L.P.'s OxyContin, which is four times lager than Avinza and Kadian, combined. A fourth product, Endo Pharmaceutical's Opana ER, also competes in the market.

As with most pharmaceutical products, entry into the manufacture and sale of oral LAOs, is difficult, expensive and time consuming. Developing and obtaining U.S. Food and Drug Administration (''FDA'') approval for the manufacture and sale of oral LAOs takes at least two years due to substantial regulatory, technological and intellectual property barriers. As a result, new entry is unlikely to ameliorate the anticompetitive effects of the acquisition.

III. The Consent Agreement

The order would remedy the competitive concerns raised by the proposed acquisition by requiring King to divest Kadian to Actavis no later than ten days after its acquisition of Alpharma is consummated. Headquartered in Iceland, Actavis is one of the world's largest generic pharmaceutical companies. Currently, Actavis manufactures Kadian for Alpharma at its plant located in Elizabeth, New Jersey. With the divestiture, Actavis will continue to sell Kadian in competition with Avinza and other oral LAOs, and be able to introduce an ''authorized'' generic version of Kadian earlier than would have been otherwise possible, as Kadian's patent expires in April of 2010. An ''authorized'' generic is a pharmaceutical product that was originally marketed and sold by a brand company but is relabeled and marketed under a generic product name. As the current manufacturer of Kadian for Alpharma, Actavis has the incentive and ability to launch the first generic Kadian product prior to patent expiry.

The assets to be divested include all intellectual property and regulatory approvals, inventory, books and records, marketing materials, and assumed contracts necessary for Actavis to sell Kadian as either a branded or generic product. Because Actavis already manufactures Kadian, no divestiture of fixed assets, interim supply agreement, provision of technical assistance is required, or asset maintenance order are required.[2] The proposed order also contains provisions designed to restrict King's use of confidential business information relating to Kadian.

The FTC's prior orders involving the divestiture of branded pharmaceutical products have required that any buyer of branded products have the requisite brand marketing experience to replace the competition that would have been eliminated through the transactions. However, the Commission has determined that the divestiture of Kadian to the generic drug manufacturer Actavis is an appropriate remedy in this case because (1) with only a little over a year left to Kadian's patent life, further innovation of the Kadian product is unlikely, and (2) the proposed remedy not only prevents the loss of price competition between Avinza and Kadian which was the competitive concern identified in our investigation, but also makes possible early introduction of a generic product—with lower pricing for consumers—before the patent expires.

In the event that the Commission determines that Actavis is not an acceptable acquirer, the proposed order requires the parties to unwind the sale and then divest Kadian within six months of the date the order becomes final to another Commission-approved acquirer. The proposed order also provides that, in the event that the Commission determines that the manner of the divestiture is not acceptable, that the Commission may appoint a

[2] The proposed order requires the respondents to maintain the assets pending divestiture.

divestiture trustee to effectuate such modifications as are necessary to satisfy the requirements of the order. Additionally, the proposed order allows the Commission to appoint an Interim Monitor to ensure the respondents' compliance with the terms of the order.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission, Commissioner Harbour recused.

Donald S. Clark,

Secretary.

[FR Doc. E8–31386 Filed 1–2–09: 8:45 am]

BILLLING CODE: 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990—New]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request 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. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Evaluation of the Parents Speak Up National Campaign (PSUNC): National Media Tracking Surveys. OMB No. 0990–NEW–Office of Public Health and Science, Office of Population Affairs, Office of Adolescent Pregnancy Programs

Abstract: The OS proposes to conduct a national media tracking survey as part of the Parents Speak Up National Campaign. The U.S. Department of Health and Human Services (USDHHS) launched the Parents Speak Up National Campaign (PSUNC) in June 2007. This national public education campaign is designed to encourage parents of pre-teens and teens to talk to their children early and often about waiting to have sex. The campaign includes public service announcements (PSA) and print advertisements that guide parents to the 4parents.gov Web site.

The specific aim of this study is to determine the effectiveness of the PSUNC messages by measuring parents' awareness of, reactions to, and receptivity to specific PSUNC advertising. In partnership with Knowledge Networks, an online panel based on a random-digit-dial sample of the full United States population, a probability baseline sample will be selected of 2,000 parents of children aged 10 to 14.

Key research questions include changes in the following outcomes: Perceived risks from teen sexual activity, perceived susceptibility, attitudes towards teen sexual activity, self-efficacy to talk to their child, outcome efficacy, perceived value of delayed sexual activity, and parent-child communication about sex. Parents will self-administer the questionnaire at home on personal computers.

ESTIMATED ONE-YEAR ANNUALIZED BURDEN TABLE

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Fall 2009 Media Tracking Survey (unretained for follow-up).	Parents of children ages 10–14.	1,000	1	24/60	400
Fall 2009 and Spring/Fall 2010 Media Tracking Surveys (retained for follow-up).	Parents of children ages 10–14.	1,000*	2	24/60	800
Total		2,000			1,200

* Subset of original 2,000 collected for Fall 2009 Media Tracking Survey.

Mary Oliver-Anderson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–31375 Filed 1–2–09; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Administration and Management; Program Support Center; Statement of Organization, Functions and Delegations of Authority

This notice amends Part (P) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Office of the Assistant Secretary for Administration and Management (AJ), Program Support Center (P), as last amended at 73 FR 39314, and dated July 9, 2008. This notice will make the following organizational changes in the Program Support Center (PSC): realign the functions of the Administrative Operations Service (PE) and the Enterprise Systems Service (PB), and retitle the Enterprise Systems Service as the Information and Systems Management Service (ISMS) to more accurately reflect the consolidation of

the information technology activities dispersed between these two components. The changes are as follows:

I. Under Part P, Chapter PE, ''Administrative Operations Service,'' make the following changes:

A. Under Section PE–10 Organization, delete in its entirety and replace with the following:

Section PE–10 Organization. The Administrative Operations Service is headed by a Director who reports directly to the PSC Director, and includes the following components:

1. Immediate Office of the Director, Administrative Operations Service (PEA);
2. Cooperative Administrative Service Units PEAF2 (New York); PEAF7 (Kansas City); PEAF8 (Denver);
3. Division of Property Management & Logistics (PEC);
4. Division of Security and Emergency Services (PEL);
5. Commissioned Corps Support Services (PEN);
6. Division of Payroll Services (PEO); and
7. Division of Equal Employment Opportunity Services (PEM)

1. *Immediate Office of the Director (PEA).* The Immediate Office of the Director, Administrative Operations Service oversees the delivery of administrative and technical services to HHS components and other Federal agencies nationwide. These services include: (1) Property management, building operations, surplus real property, and leasing; (2) warehousing, logistics and space management services; (3) security services; (4) mail distribution and handling; (5) conference management services; (6) payroll services; (7) U.S. Public Health Service Commissioned Corps personnel assistance; (8) Equal Employment Opportunity servicing and claims processing functions; and (9) media and printing services.

2. *Cooperative Administrative Service Units (PEAF2, PEAF7, PEAF8).* The Cooperative Administrative Service Units (CASU) provide acquisition and deliver commonly needed PSC services and support to customers in the Regions. The CASUs perform the following functions in the Regions: (1) Deliver a variety of services tailored to the needs of Federal customer agencies, including: security services, financial management and procurement services, facilities management, mail operations, printing procurement, reprographics, copier management, forms and supplies distribution, moving services, personal property repair, and technology support and training; and (2) handles all contract, finance and contractor issues on behalf of their customer agencies.

3. *Division of Property Management & Logistics (PEC).* The Division of Property Management and Logistics (DPML) provides the following related services: (1) Building safety program, lease management, building management and operations, building alteration, repair and maintenance program; parking management, information and locator services; supply and inventory management; (2) shipping, receiving and laboring service and operates a property management and surplus property utilization and disposal system; and (3) on behalf of the Secretary, executes and implements the transfer of Federal surplus real property for public health purposes pursuant to sections 203(k) and (n) of the Federal Property and Administrative Services Act of 1949, as amended; and (4) Provides mail and messenger services; (5) support services for conference room facilities; (6) provides graphic design, printing, and reprographic services including high speed digital reproduction, electron image production, and product distribution; and (7) provides technical assistance and job planning; maintains photocopiers in customer locations throughout HHS.

4. *Division of Security and Emergency Services (PEL).* The Division of Security and Emergency Services (DSES) provides overall leadership, direction, coordination and planning to improve security and emergency services to HHS components, as well as other Federal agencies. Specifically, (1) Establishes program goals, objectives, priorities and provides oversight as to their execution; (2) plans, directs, coordinates and evaluates program-wide management activities; (3) maintains effective relationships with Department of Health and Human Services (HHS) organizations, other Federal agencies, State and local governments and other public and private organizations concerned with providing security and assisting with emergencies; and (4) plans, directs and coordinates administrative management activities, *i.e.* budget, finance, personnel, procurements, emergency planning, training, and has responsibilities related to awarding PSC contract funds.

5. *Commissioned Corps Support Services (PEN).* The Commissioned Corps Support Services Division (CCSS): (1) Performs all personnel operations functions associated with the Commissioned Corps personnel system, including functional areas of billet evaluation, pay administration, employment, awards, and decorations and provides technical and advisory services and counseling to management and employees; (2) provides advice and counseling concerning personnel management of the Commissioned Corps; (3) serves as the central repository for all records reflecting the service and status of members of the Corps and administers the Beneficiary Medical Program; (4) administers the Commissioned Corps retirement program and survivors assistance program; and (5) provides technical support for the Commissioned Corps personnel and pay system.

6. *Division of Payroll Services (PEO).* The Division of Payroll Services (DPS): (1) Serves as liaison to the Defense Finance and Accounting Service who processes the F-IHS payroll; (2) manages and conducts payroll accounting, reconciliation, and adjustment processing, produces feeder reports for HHS accounting systems, and coordinates the Department's employee debt collection program related to payroll issues; (3) processes all actions relative to separated employees, including retirement and other separation actions, maintains retirement records and processes death benefit claims; (4) audits leave accounts and processes unemployment compensation actions; and (5) diagnoses problems and devises solutions to systemic problems and inefficiencies.

7. *Division of Equal Employment Opportunity Services (PEM).* The Division of Equal Employment Opportunity (DEEO): (1) Encourages and assists the PSC and its customers in voluntarily taking affirmative steps to correct the effects of past discrimination and prevent present and future discrimination without resorting to litigation or other formal government action; (2) works toward achieving the Federal and the HHS goal of having a fully representative workforce which includes members of racial and ethnic groups as well as people with disabilities; (3) administers special emphasis and diversity programs designed to accommodate the special needs of particular groups. This includes programs such as the Hispanic Employment Program, the Federal Women's Program, The People with Disabilities Program, and programs concerning African Americans, Asian Americans/Pacific Islanders, and American Indians/Alaskan Natives; (4) seeks to identify and eliminate discriminatory policies and practices from the workplace based on race, national origin, color, sex, age, religion, disability, sexual orientation or reprisal; (5) promotes the early resolution of complaints of discrimination, and

provides for the prompt, fair and impartial processing of discrimination complaints; and (6) manage several of HHS OPDIVs EEO complaints processing program.

II. Delete Section PB, the ''Enterprise Support Service,'' in its entirety.

III. Establish Section PI, ''Information and Systems Management Service.''

Section PI.00 Mission: The mission of the Information and Systems Management Service (ISMS) is to provide high-quality information technology services including project management, application development, operations and maintenance, infrastructure support services, records management and requests for access to information from the public.

Section PI–10 Organization. The Information and Systems Management Service (ISMS) is headed by a Director who reports directly to the PSC Director, and includes the following components:

1. Immediate Office of the Director (PTA)
2. Program Management Services Division (PIB)
3. Division of Information Technology Infrastructure & Operations (PIC)
4. Division of Enterprise Systems Services (PIH)
5. Telecommunications Management Division (PID)
6. Freedom of Information Act and Records Management Division (PIF)

Section PI–20 Functions. ISMS functions include the following:

1. *Immediate Office of the Director, ISMS (PIA):* The Immediate Office of the ISMS Director (IO/ISMSD) oversees the implementation of information services to HHS components and other Federal agencies nationwide and implements Federal Government and HHS-specific information technology policy. ISMS business functions include: (1) Provides leadership and overall management for information technology resources for which PSC has responsibility; (2) directs the development, implementation, and enforcement of the Office of the Secretary and the PSC's information technology architecture, policies, standards, and acquisitions in all areas of information technology; (3) oversees PSC's information systems security program, and serves as PSC Information Technology Security Officer (PSC/ITSO); (4) manages and directs the PSC's IT business functions including business planning, development, budgeting and fiscal planning, establishing service level agreements, assessing customer satisfaction, assuring compliance with the Government Performance Results Act (GPRA) and overseeing capital planning and investment control (CPIC) for IT initiatives, researching emerging technologies and managing business systems initiatives; (5) provides operations and maintenance support services; (6) provides application software development support; (7) provides and updates PSC content for the HHS Intranet and Internet; plans and implements Section 508 compliance and remediation for Web content and other media for the PSC (in coordination with the HHS Web Communications Division, Office of the Assistant Secretary for Public Affairs); and (8) provides the Freedom of Information Act (FOIA) and record-keeping services.

2. *Program Management Services Division (PIB).* The Program Management Services Division (PMSD) performs the following functions: (1) Planning, estimation, and project management of information technology projects; (2) assess IT projects and programs in accordance with Federal policy directives and commercial best-practices; (3) deliver Project Officer services for IT services contracts including development of acquisition strategy, development of Statement of Work, contractor or vendor technical evaluations, and ongoing review of contractor performance against contract performance standards; (4) define the technical and functional requirements for new or enhanced systems; (5) perform cost-benefit analyses and facilitate buy or build decisions; (6) conduct review of selected vendor products or services; and (7) deliver information systems security services including audits, certifications and accreditations, develop security standard operating procedures, and disaster recovery planning in accordance with Departmental policy.

3. *Division of Information Technology Infrastructure and Operations (PIC) Section PIC.OO Mission.* The mission of the Division of Information Technology Infrastructure and Operations (DITIO) is to provide information technology infrastructure support services, including the use of a performance-based contract model to participating components within HHS. The services provided include network services; Help Desk, Call Center, and Desktop support services; server management and monitoring, server hosting, network architecture; IT security services; and Continuity of Operations Planning (COOP) support. As appropriate, the Division coordinates IT initiatives with the Office of the Chief Information Officer, Office of the Assistant Secretary for Resources and Technology.

Section PIC. 10 Organization. The Division of Information Technology Infrastructure and Operations (DITIO) reports to the ISMS Director, and includes the following components:

a. Immediate Office of the Director (PIC)
b. Customer Services Branch (PIC1)
c. Technical Services and Operations Branch (PIC2)
d. Program and Contract Management Branch (PIC3)

Section PIC.20 Functions

a. Immediate Office of the Director (PIC): The Immediate Office of the Director, Division of Information Technology Infrastructure and Operations provides leadership, guidance and oversight to the ISMS and oversees the development and implementation of administrative support functions for DITIO including administrative policies, financial operating plans, budgeting and personnel management. Develops, maintains and implements the DITIO Strategic Plan. Prepares staffing forecasts, analyzes staffing requirements and utilization, and recommends strategies for changes in human capital within DITIO.

b. *Customer Services Branch (PIC1):* The Customer Services Branch (CSB) provides end user support for all customers receiving IT infrastructure support services. It performs the following functions: (1) Serves as the customers' point of contact for escalation of service issues; (2) coordinates with the contractor and customers for IT issues; (3) serves as the customers' point of contact for new equipment and service requests; (4) coordinates with customers to develop equipment and service requirements documentation; (5) prepare and issue broadcast communications to participating customers; (6) develops, maintains and implements the DITIO Communications Plan; (7) monitors Service Level Agreement (SLA) compliance; (8) develops implementation plans in support of new customer organizations; and (9) oversees the information technology inventory data collection for customer organizations.

c. *Technical Services and Operations Branch (PIC2):* The Technical Services and Operations Branch (TSOP) provides for IT policy development; capital planning; information security, and implementation and operational responsibilities, as required for participating HHS components. It performs the following functions: (1) Designs, develops, tests, implements and maintains operational needs for enterprise initiatives; (2) coordinates the strategic planning process to assure that

technical plans support business planning and mission accomplishment; (3) assists with the budgeting process for DITIO and the IT infrastructure technical support services; (4) monitors the operational responsibility for enterprise email system; (5) develops policies and guidance on information resources and technology management; including telecommunications, as required by laws, regulations and Departmental guidance; (6) implements the security program to protect information resources in compliance with laws, Executive Orders, OMB Directives, other Federal mandates and HHS guidance, e.g., Clinger-Cohen Act, Presidential Decision Directive 63, and OMB Circular A–130; (7) develops and maintains information security programs and policies to provide availability, confidentiality and integrity of information and network services; (8) coordinate the development and implementation of cyber security policies and guidance, including requirements for employees and contractors who are responsible for systems or data, or for the acquisition, management or use of information resources; (9) monitors information system security program activities by reviewing security plans for systems, implementing improvements and evaluating safeguards to protect information systems and IT infrastructure; (10) responds to requests in conjunction with OMB Circular A–130, the Computer Security Act of 1987, Presidential Decision Directive 63, Homeland Security Presidential Directive 12 (HSPD–12), Federal Information Security Management Act (FISMA), and other legislative or mandated requirements related to IT security or privacy; (11) in accordance with Departmental policy, establishes and leads teams to conduct reviews of cyber and personnel security programs and conduct vulnerability assessments of critical assets; (12) monitors operations for security compliance. Provides advice and guidance to ensure compliance standards are included throughout the system development life cycle; (13) provides recommendations to grant or deny programs the authority to operate information systems based on security compliance to include regular certification of existing systems as well as newly implemented systems; and (14) participates on the HHS Computer Security Incident Response Capability Team and the Department's overall cyber security incident response and coordination center.

d. *Program and Contract Management Branch (PIC3):* The Program and Contract Management Branch (PCMB) are responsible for all contractual, technical, financial and logistical matters associated with the provision of IT infrastructure support services. It performs the following functions: (1) Serves as the Program Management Office (PMO), including the Contracting Officer's Technical Representative (COTR); (2) identifies operational requirements for contract revision; (3) coordinates operational changes to the technical environment based upon customer requirements; (4) reviews and provides oversight and direction for IT assets management transfer and inventory; (5) monitors situational awareness of operational status including systems, service levels, networks, and planned events outages; (6) monitors and reports performance using Service Level Agreements (SLA); (7) monitors and reports on customer satisfaction; (8) tracks and reviews program budget and costs in accordance with validated requirements; (9) identifies policy requirements in support of service delivery, IT budgeting and investment control; (10) assists in developing the necessary background materials and recommendations for capital funding decisions and develops performance metrics to evaluate program for both initial and continued funding; and (11) reviews information resources to avoid having redundant resources, in conformance with the Clinger-Cohen Act.

4. *Division of Enterprise Systems Services (PIH).* The Division of Enterprise Systems Services (DESS): Provides the full range of technical support activities associated with the development and maintenance of information technology systems; specifically: (1) Analyzes, designs, and implements system changes, enhancements, and new requirements; (2) provides customer liaison services to resolve issues and improve customer service; (3) administers PSC data resources including database administration; (4) provides and implements data analysis activities that assist in technology or workforce decision making as well as application and regulatory reporting; (5) develops detailed system and subsystem specifications, program specifications, program modules, files, databases, libraries, and documentation necessary to support system maintenance and development activities; (6) participates in the development of unit test criteria and test methodology necessary to conduct system or subsystem and program level tests needed to ensure the integrity of information technology systems; (7) implements enterprise resource planning systems, including but not limited to, using commercial-off the-shelf (COTS) packages; (8) develops and implements emerging technology projects which cross cut service business lines; (9) assists in the design, development, and maintenance of PSC Web applications in accordance with the HHS Chief Information Officer and the Office of the Assistant Secretary for Public Affairs policies and practices; and (10) provides support for Unified Financial Management System (UFMS), and Healthcare Acquisition System (HCAS).

a. *Enterprise Systems Services Programs Branch (PIH1).* The Enterprise Systems Service Programs Branch (ESSPB): (1) Manages and directs activities of the Division; (2) develops Business Case Analyses, Project Plans and Statements of Work; (3) develops continuity of operations (COOP) test plan, test case scenarios, and performs scheduled testing; (4) conducts reviews and analysis to identify security threats or vulnerabilities to systems and data; (5) develops and updates information security plans, risk assessments, continuity of operations plans and other certification and accreditation efforts for systems under its purview; (6) documents, tracks, and monitors activities to eliminate IT security weaknesses, and implement approaches to resolve weaknesses; (7) performs internal systems audits using random samples and document results, resolves Departmental audit-related issues and findings; and (8) coordinates with external auditors and staff and management to provide complete, accurate, and timely information for SAS7O audits and conducts periodic reviews of security-related documentation to ensure compliance with Federal and Department regulations and policy.

b. *Systems and Operations Branch (PIH2).* The Systems and Operations Branch (SOB) has the following functions: (1) Performs operations and maintenance on PSC systems including, but not limited to human resources, procurement and financial management systems; (2) provide systems administration support for PSC systems; (3) provides data warehousing support for PSC systems; (4) provides hardware support for HHS servers; (5) provides capacity planning and system performance reporting; (6) conducts batch processing operations and production control; (7) provides database administration support for the HHS human resources management system; (8) provides administration and management of production testing

environment; (9) provides application software support; (10) serves as network System Administrator for production and development systems; and (11) installs, configures, and maintains the Internet software environment for enterprise applications.

c. *Quality Assurance and Support Branch (PIH3).* The Quality Assurance and Support Branch (QASB) has the following functions: (1) Provides functional expertise and troubleshooting support for PSC systems; (2) develops system change requirements; (3) provides interagency IT communications support; (4) performs functional testing of PSC systems; (5) develops training materials for the HHS human resources management system and the HHS time and attendance system; (6) develops and maintains the HHS Time and Attendance Policy Manual; (7) provides advice on enhancement requests; (8) administers the help desk function and tracks all calls and e-mails for support for the human resources and time & attendance systems; (9) provides functional expertise to the technical staff; (10) provides system training including regulations and procedures related to IT; (11) assists in reviews of functional and system requirements and performs documentation testing to ensure the accuracy and completeness of all system enhancements; and (12) develops test plans, test cases, and scenarios.

d. *Application Development Branch (PIH4).* The Application Development Branch (ADB) provides the following functions: (1) Provides overall technical support for PSC systems; (2) provides software application management, systems administration, and configuration management; (3) provides software development services; (4) provides liaison services to other Agency offices providing automated interfaces; (5) evaluates and recommends various software and hardware products in support of the PSC's systems; (6) provides Tier 2 and Tier 3 ''break/fix'' support contact for users and help desk personnel for problems with FAD applications; (7) provides support for enterprise reporting; (8) develops and delivers current and/or historical personnel and payroll reports; (9) maintains existing reports, including periodic reports generated for the Office of Personnel Management and HHS internal and external customers; and (10) performs daily loading of HHS personnel data and bi-weekly loading of payroll data into the historical database.

5. *Telecommunications Management Division (PID).* The Telecommunications Management Division (TMD) provides the following services: (1) Plans, engineers, and schedules program implementation and management of telecommunications networks and services (such as ordering, installation, and operational control of telephone station equipment); (2) monitors telecommunications billing for dial-tone, voice mail, adds/moves/changes, and telecommunications equipment; (3) plans and administers telecommunications budgets; (4) maintains inventory files and cost data of all installed telecommunications equipment; (5) manages on-site support for users of voice messaging; (6) provides training for end users; and (7) administers the Federal Telecommunications Service contract, and manages carriers, contractors and vendors for PSC and its customers.

6. *Freedom of Information Act and Records Management Division (PIF).* The Freedom of Information Act (FOIA) and Records Management Division (FRMD): (1) Responds to all FOIA requests for records generated by, and in the custody and control of, all components of the Office of Public Health and Science (OPHS), and the Program Support Center (PSC); (2) responds to all requests for records that involve more than one of the Public Health Service components and the PSC; (3) responds to all administrative appeals; (4) coordinates with the Office of the General Counsel to resolve the administrative appeals which result in litigation; and (5) provides FOIA training and consultation.

III. Under AJ, ''Office of Business Transformation (AJJ)'' make the following change: Retitle the ''Division of Competitive Sourcing (AJJ2)'' as the ''Division of Commercial Services Management (AJJ2).''

IV. *Delegations of Authority:* All delegations and re-delegations of authority to officers and employees of the Program Support Center, which were in effect immediately prior to this reorganization will be continued in effect with them or their successors, pending further redelegation, provided they are consistent with this reorganization.

Dated: December 20, 2008.

Segundo Pereira,

Acting, Assistant Secretary for Administration and Management.

[FR Doc. E8–31257 Filed 1–2–09; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics, (BSC, NCHS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates:

11 a.m.–5:30 p.m., January 22, 2009.

8:30 a.m.–2 p.m., January 23, 2009.

Place: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: This meeting is open to the public; however, visitors must be processed in accordance with established federal policies and procedures. For foreign nationals or non-US citizens, pre-approval is required (please contact Althelia Harris, 301–458–4261, *adw1@cdc.gov* or Virginia Cain, *vcain@cdc.gov* at least 10 days in advance for requirements). All visitors are required to present a valid form of picture identification issued by a state, federal or international government. As required by the Federal Property Management Regulations, Title 41, Code of Federal Regulation, Subpart 101–20.301, all persons entering in or on Federal controlled property and their packages, briefcases, and other containers in their immediate possession are subject to being x-rayed and inspected. Federal law prohibits the knowing possession or the causing to be present of firearms, explosives and other dangerous weapons and illegal substances. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters To Be Discussed: The agenda will include welcome remarks by the Director, NCHS; review of the NHANES program; presentation of the ambulatory and hospital care surveys program; and an open session for comments from the public.

Requests to make oral presentations should be submitted in writing to the contact person listed below. All requests

must contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and must be received by January 8, 2009.

The agenda items are subject to change as priorities dictate.

Contact Person for More Information: Virginia S. Cain, PhD, Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7211, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4020.

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: December 24, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–31340 Filed 1–2–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0642]

Draft Guidance for Industry and Food and Drug Administration Staff; Assay Migration Studies for In Vitro Diagnostic Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Assay Migration Studies for In Vitro Diagnostic Devices.'' This draft guidance presents a least burdensome regulatory approach to gaining FDA approval of Class III or certain licensed in vitro diagnostic devices in cases when a previously approved assay is migrating (i.e., transitioning) to a New System for which the assay has not been previously approved or licensed.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by April 6, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Assay Migration Studies for In Vitro Diagnostic Devices'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850 or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to CDRH at 240–276–3151. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Sally Hojvat, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0711.

For further information concerning the guidance including statistical content as it relates to devices regulated by CBER: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N Rockville, MD 20852, 301–827–6210

For further information concerning the statistical content in the guidance: Marina V. Kondratovich, Center for Devices and Radiological Health (HFZ–550), Food and Drug Administration, 1350 Piccard Drive, Rockville, MD 20850, 240–276–3126.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance presents a least burdensome regulatory approach to gain FDA's approval of Class III or certain licensed in vitro diagnostic devices, when a previously approved assay is migrating (i.e., transitioning) to a New System, for which the assay has not been previously approved or licensed. The regulatory approach in this guidance is also applicable to some 510(k) cleared devices, when the device transitioning to a new system presents specific concerns, either because of the nature of the analyte and indications, or because of the specific technology used (e.g., nucleic acid amplification tests). The focus of this guidance is on the study designs and performance criteria that should be fulfilled, so that sponsors can utilize the migration study approach in support of the change. The FDA believes that the assay migration study paradigm proposed in this draft guidance, provides a least burdensome scientific and regulatory pathway for manufacturers to transfer a previously approved or licensed assay, with full clinical data from an Old System to a New System (previously not approved or licensed). The paradigm is suitable in cases when sufficient knowledge can be derived from the documentation of design controls, risk analyses, and prior performance studies on an Old System.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized will represent the agency's current thinking on assay migration studies for in vitro diagnostic devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive ''Assay Migration Studies for In Vitro Diagnostic Devices,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1660 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic

submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the CBER Internet site at *http://www.fda.gov/cber/guidelines.htm* or on the Division of Dockets Management Internet site at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations and guidance documents. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807 subpart E have been approved under OMB Control Number 0910–0120; the collections of information in 21 CFR part 814 have been approved under OMB Control Number 0910–0231; the collections of information in 21 CFR part 801 and 809 have been approved under OMB Control Number 0910–0485; the collections of information in 21 CFR 820 have been approved under OMB Control Number 0910–0073; and the collections of information in 21 CFR part 601 have been approved under OMB Control Number 0910–0338.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: December 22, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–31319 Filed 1–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–D–0437] (formerly Docket No. 2004D–0549)

Guidance for Industry on Labeling Over-the-Counter Human Drug Products—Questions and Answers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Labeling OTC Human Drug Products—Questions and Answers.'' This guidance is intended to assist manufacturers, packers, and distributors of over-the-counter (OTC) drug products in complying with the agency's regulation on standardized content and format requirements for the labeling of OTC drug products. This guidance primarily discusses labeling questions that have been frequently asked by manufacturers, packers, and distributors relating to these requirements. The labeling examples in this guidance show various format and content features and suggest how OTC drug monograph labeling information finalized before the new requirements can be converted to the new format. This guidance finalizes the draft guidance of the same name published January 13, 2005 (70 FR 2415).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5496, Silver Spring, MD 20993–0002, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Labeling OTC Human Drug Products—Questions and Answers.'' This is one of several guidances the agency has developed to help manufacturers, packers, and distributors implement the final rule establishing standardized content and format requirements for the labeling of all OTC drug products. Once finalized, these guidances supersede all other statements, feedback, and correspondence provided by the agency on these matters since the issuance of the final rule.

In the **Federal Register** of March 17, 1999 (64 FR 13254), FDA published a final rule establishing standardized content and format requirements for the labeling of OTC drug products (§ 201.66 (21 CFR 201.66)). This regulation is intended to standardize labeling for all OTC drug products so consumers can easily read and understand OTC drug product labeling and use these products safely and effectively.

The regulation requires manufacturers to present OTC drug labeling information in a prescribed order and format. The standardized format requires revision of all prior labeling and covers all OTC drug and drug-cosmetic products, whether marketed under a new drug application, abbreviated new drug application, or OTC drug monograph (or drug product not yet the subject of a final OTC drug monograph).

Following issuance of the final rule, the agency received a number of inquiries from manufacturers seeking guidance on how to present the labeling information for their OTC drug products using the standardized content and format requirements. To address these inquiries, FDA published a notice in the **Federal Register** of January 13, 2005 (70 FR 2415), announcing the availability of a draft guidance for industry entitled ''Labeling OTC Human Drug Products—Questions and Answers.'' That draft guidance summarized the new Drug Facts labeling requirements as set forth in § 201.66. The draft guidance discussed those industry inquiries and

provided labeling examples to show various format and content features of the labeling requirements, and suggested how OTC drug monograph labeling finalized before the new regulation was issued can be converted to the new format. The draft guidance also described how to list inactive ingredients that may or may not be contained in the OTC drug product.

The notice invited interested persons to submit comments on the draft guidance by March 14, 2005. FDA did not receive any comments in response to the notice. Therefore, we are announcing the availability of this final guidance with only editorial changes.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on how OTC drug monograph labeling finalized before or after the new requirements can be converted to the new OTC Drug Facts labeling format. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.regulations.gov*.

Dated: December 22, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–31321 Filed 1–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–D–0303] (formerly Docket No. 2004D–0466)

''Guidance for Industry: Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Guidance for Industry: Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act.'' The guidance describes the amount, type, and quality of evidence that FDA recommends a manufacturer have to substantiate a claim under this section of the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written requests for single copies of the guidance to the Office of Nutrition, Labeling, and Dietary Supplements (HFS–800), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Robert Moore, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1441.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 9, 2004 (69 FR 64962), FDA made available a draft guidance entitled ''Guidance for Industry: Substantiation for Dietary Supplement Claims Made Under Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act'' and gave interested parties an opportunity to submit comments by January 10, 2005. FDA considered received comments as it finalized this guidance.

This guidance describes the amount, type, and quality of evidence FDA recommends a manufacturer have to substantiate a claim under section 403(r)(6) of the act (21 U.S.C. 343(r)(6)). This final guidance document is limited to issues pertaining to substantiation under section 403(r) of the act; it does not extend to substantiation issues that may exist in other sections of the act.

FDA is issuing this guidance document as a level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents FDA's current thinking on the substantiation for dietary supplement claims made under section 403(r)(6) of the act. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in the guidance was approved under OMB Control No. 0910–0626.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket

management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance document at *http://www.cfsan.fda.gov/guidance.html*.

Dated: December 23, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–31249 Filed 1–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Joint Meeting of the Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 30, 2009, from 8 a.m. to 4:30 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy, Gaithersburg, MD. The hotel phone number is 301–977–8900.

Contact Person: Kalyani Bhatt, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, fax: 301–827–6776, e-mail: *Kalyani.Bhatt@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512529 or 3014512535. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory hotline/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss the available safety and efficacy data for all propoxyphene-containing products (including hydrochloric acid (HC1), napsylate salts, and combination drugs) and whether any regulatory action is appropriate.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 22, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 9, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 13, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 19, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–31248 Filed 1–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0651]

Training Program for Regulatory Project Managers; Information Available to Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) Center for Drug Evaluation and Research (CDER) is announcing the continuation of the Regulatory Project Management Site Tours and Regulatory Interaction Program (the Site Tours Program). The purpose of this document is to invite pharmaceutical companies interested in participating in this program to contact CDER.

DATES: Pharmaceutical companies may submit proposed agendas to the agency by March 6, 2009.

FOR FURTHER INFORMATION CONTACT: Beth Duvall-Miller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6466, Silver Spring, MD 20993–0002, 301–796–0700, e-mail: *elizabeth.duvallmiller@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

An important part of CDER's commitment to make safe and effective drugs available to all Americans is optimizing the efficiency and quality of the drug review process. To support this primary goal, CDER has initiated various training and development programs to promote high performance in its regulatory project management

staff. CDER seeks to significantly enhance review efficiency and review quality by providing the staff with a better understanding of the pharmaceutical industry and its operations. To this end, CDER is continuing its training program to give regulatory project managers the opportunity to tour pharmaceutical facilities. The goals are to provide the following: (1) First hand exposure to industry's drug development processes and (2) a venue for sharing information about project management procedures (but not drug-specific information) with industry representatives.

II. The Site Tours Program

In this program, over a 2- to 3-day period, small groups (five or less) of regulatory project managers, including a senior level regulatory project manager, can observe operations of pharmaceutical manufacturing and/or packaging facilities, pathology/toxicology laboratories, and regulatory affairs operations. Neither this tour nor any part of the program is intended as a mechanism to inspect, assess, judge, or perform a regulatory function, but is meant rather to improve mutual understanding and to provide an avenue for open dialogue. During the Site Tours Program, regulatory project managers will also participate in daily workshops with their industry counterparts, focusing on selective regulatory issues important to both CDER staff and industry. The primary objective of the daily workshops is to learn about the team approach to drug development, including drug discovery, preclinical evaluation, tracking mechanisms, and regulatory submission operations.

The overall benefit to regulatory project managers will be exposure to project management, team techniques, and processes employed by the pharmaceutical industry. By participating in this program, the regulatory project manager will grow professionally by gaining a better understanding of industry processes and procedures.

III. Site Selection

All travel expenses associated with the site tours will be the responsibility of CDER; therefore, selection will be based on the availability of funds and resources for each fiscal year. Firms interested in offering a site tour or learning more about this training opportunity should respond by (see **DATES**) by submitting a proposed agenda to Beth Duvall-Miller (see **FOR FURTHER INFORMATION**).

Dated: December 22, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–31320 Filed 1–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Part C Early Intervention Services Grant

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Non-competitive Program Expansion Supplemental Award.

SUMMARY: HRSA will be providing temporary critical HIV medical care and treatment services through the Medical Center of Louisiana at New Orleans to avoid a disruption of HIV clinical care to clients in Orleans Parish in Louisiana.

SUPPLEMENTARY INFORMATION:

Intended recipient of the award: Medical Center of Louisiana at New Orleans, New Orleans, Louisiana.

Amount of the award: $186,664 to ensure ongoing clinical services to the target population.

Authority: Section 2651 of the Public Health Service Act, 42 U.S.C. 300ff–51.

CFDA Number: 93.918.

Project period: July 1, 2006 to June 30, 2011. The period of supplemental support is from November 1, 2008, to June 30, 2009.

Justification for the Exception to Competition: Critical funding for HIV medical care and treatment services to clients in Orleans Parish in Louisiana will be continued through a non-competitive program expansion supplement to an existing grant award to Medical Center of Louisiana at New Orleans, New Orleans, Louisiana. This is a temporary award because the previous grant recipient serving this population notified HRSA that it would not be able to continue participating in the program after the fiscal year (FY) 2008 award was made. Medical Center of Louisiana at New Orleans is the best qualified grantee for this supplement since it serves many of the former grantee's patients and is the closest Part C Program to the former grantee. Further funding beyond June 30, 2009, for this service area will be competitively awarded during the Part C HIV Early Intervention Service (EIS) competing application process for FY 2009.

FOR FURTHER INFORMATION CONTACT: Kathleen Treat, through e-mail *ktreat@hrsa.gov*, or via telephone, 301–443–0493.

Dated: December 19, 2008.

Elizabeth M. Duke,

Administrator.

[FR Doc. E8–31373 Filed 1–2–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; SBIR Contracts.

Date: February 26, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Hotel Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Guo Zhang, Ph.D., MD, Scientific Review Officer, National Center for Research Resources; or, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1064, MSC 4874, Bethesda, MD 20892–4874, 301–435–0812, *zhanggu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: December 24, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–31388 Filed 1–2–09; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of R03 and R21 applications.

Date: January 28, 2009.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jonathan Horsford, Ph.D., Scientific Review Officer, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd, Room 664, Bethesda, MD 20892, 301–594–4859, *horsforj@mail.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of RFA–DE–08–009 Developing Complex Models of Oral Health Behavior.

Date: February 11, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research. 6701 Democracy Blvd., Rm. 676, Bethesda, MD 20892–4878, 301–594–4861, *mooremar@nidcr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Special Emphasis Panel Review of RFA DE–09–001 and RFA DE–09–002 R01 and R21 Applications.

Date: February 17, 2009.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Rebecca Wagenaar Miller, Ph.D., Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd., Rm 666, Bethesda, MD 20892, 301–594–0652, *rwagenaa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 24, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–31376 Filed 1–2–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Biofilm P01.

Date: January 12, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Tracy A. Shahan, PhD, MBA, Scientific Review Officer, Scientific Review Program, NIH/NIAID/DHHS, Room 3121, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2606, *tshahan@niaid.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. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 24, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–31378 Filed 1–2–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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.

Proposed Project: 2009 National Survey on Drug Use and Health Methods Field Test—NEW

The National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, non-institutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal Government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources. The procedures and materials are currently being redesigned for the 2012

survey. In order to adequately test the proposed materials and procedures, a stand-alone field test will be conducted in the third quarter of 2009. This field test will examine the impact of changing a number of data collection procedures upon costs and data quality.

The field test will feature an experiment assessing the benefits of offering a $5 incentive for the screening interview versus conducting the screening over the telephone. The portion of the sample that will receive the incentive will be notified of the cash payment in the lead letter. For the telephone screening sample, normal procedures will be used for the first 8 weeks. During week 8, the remaining households who have not been screened will either be contacted using a reverse look-up procedure and asked to complete the screener, or mailed a letter asking them to call a toll-free number to be screened.

Other changes included in the field test version of the survey are an increased interview incentive and a brief appeal for honesty at the beginning of the questionnaire. New respondent debriefing questions will be added to the questionnaire while debriefing items that the interviewer answers will be modified. In addition, the hard copy pill cards and reference date calendar used during the administration of the interview have been converted to an electronic format.

The total burden estimate is shown below:

	No. of responses	Responses per respondent	Average burden per response (hr.)	Total burden (hrs.)
Household Screening	3,900	1	.083	323.7
Interview	1,875	1	1.0	1,875
Screening Verification	390	1	.067	26.1
Interview Verification	188	1	.067	12.6
Total	6,353			2,237

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail her a copy at *summer.king@samhsa.hhs.gov*. Written comments should be received within 60 days of this notice.

Dated: December 24, 2008.

Dennis O. Romero,

Acting Deputy Executive Officer.

[FR Doc. E8–31299 Filed 1–2–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: National Outcome Measures for Substance Abuse Prevention (OMB No. 0930–0230)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) is requesting Office of Management and Budget (OMB) approval for CSAP's data collection set of National Outcome Measures (NOMs) identified for the field of prevention. The current approval, under OMB No. 0930–0230, is expiring on December 31, 2008. All new grantees initially funded at the end of FY08 and beyond (subject to OMB approval) will be required to use these measures as appropriate at the State, substate, program and participant levels. CSAP is requesting approval to continue collecting data using measures in the following domains: Abstinence from Alcohol and Other Drugs, Employment/Education, Crime and Criminal Justice, Access/Service Capacity, Retention, Social Support/Social Connectedness, Cost-Effectiveness, and Use of Evidence-Based Practices. These NOMs relate to youth ages 12 to 17 and to adults ages 18 and older.

CSAP is proposing to eliminate 22 of the 49 measures that received OMB clearance in 2005, to reduce reporting burden for grantees. CSAP also requests permission to make minor changes to the question wording and response categories for some of the remaining measures. Since the National Survey of Drug Use and Health (NSDUH) provides an economical extant source of data for NOMs measures at the State level, it is important that the NOMs conform to NSDUH question wording. CSAP believes NOMs measures are necessary to assess the performance of its prevention programs. Based on their long history working with States, communities, and prevention providers; the Data Analysis Coordination and Consolidation Center (DACCC) and outside expert panels believe consistent prevention measures allow for valid comparison evaluations. CSAP is requesting to modify the wording of 12 previously approved questions in order to make them comparable to individual NOMs items. For example, NSDUH items on 30-day use ask respondents to report the number of days on which they used specific substances. Three currently approved NOMs 30-day use questions ask respondents for the number of occasions on which they used substances. CSAP would like to change the wording of these questions and their corresponding response options to conform to NSDUH wording. Second, response options for NSDUH questions typically include a *Don't Know* response option. CSAP is requesting modification of nine currently approved NOMs questions to include this response option.

CSAP intends to implement the following approach in collecting NOMs data:

Required NOMs Data for States. CSAP pre-populates State level NOMs measures for all but three domains using data from the NSDUH. States supply the data on the number of persons served, cost efficiency, and evidence based practices from their own administrative data bases.

Required NOMs Data for Discretionary Grantees. SAMHSA's CSAP has identified specific outcome measures that are required of non-State discretionary grant recipients. These NOMs represent the domains noted above and relate to youth ages 12 to 17 and to adults ages 18 and older. Grantees providing services are required to administer surveys to all participants at program entry (baseline), program

exit, and three to six months following program exit.

CSAP believes that the NOMs measures are necessary to assess the performance of its prevention programs; based on its long history working with States, communities, and prevention providers, and on input from its Data Analysis Coordination and Consolidation Center (DACCC) and from outside expert panels who made recommendations based on a review of existing measures using standard criteria. Additionally, we believe that these measures can be collected at the National, State, substate, and/or program level as appropriate, providing the consistency of measurement towards which we strive. NOMs epidemiologic measures are already collected by other agencies and no burden will be imposed on SAMHSA/CSAP grantees. The NOMs measures will be used as follows:

National/State: Outcome trend measures are used to identify need and monitor global effectiveness at the population level, for the purpose of informing Federal resource allocation decisions.

Community: Outcome trend measures are used to (1) Determine need and target resources to communities at greatest risk and (2) track performance of universal programs and environmental strategies. The data will inform allocation of community resources.

Program: Outcome pre/post measures are used to assess program performance of direct service programs at the individual program participant level.

BURDEN ESTIMATE

SAMHSA/CSAP program	Number of grantees	Number of respondents	Responses per respondent	Hours/response	Total hours
FY 09					
Science/Services:					
Fetal Alcohol	23	4,800	3	0.75	10,800
Workplace	13	6,000	3	0.75	13,500
Capacity:					
HIV/Targeted Capacity	135	35,300	3	0.75	79,425
SPF SIG	42	.....	.....	.....	.....
SPF SIG/Community Level *	.....	480	1	0.75	360
SPF SIG/Program Level *	.....	12,000	3	0.25	9,000
Methamphetamine	12	3,000	3	0.75	6,750
FY 9 Subtotal	.....	61,580	.....	.....	119,835
FY 10					
Science/Services:					
Fetal Alcohol	23	4,800	3	0.75	10,800
Workplace	13	6,000	3	0.75	13,500
Capacity:					
HIV/Targeted Capacity	135	35,300	3	0.75	79,425
SPF SIG	42				
SPF SIG/Community Level *	.....	480	1	0.75	360
SPF SIG/Program Level *	.....	12,000	3	0.25	9,000
Methamphetamine	12	3,000	3	0.75	6,750
FY 10 Subtotal	.....	61,580	.....	.....	119,835
FY 11					
Science/Services:					
Fetal Alcohol	23	4,800	3	0.75	10,800
Workplace	13	6,000	3	0.75	13,500
Capacity:					
HIV/Targeted Capacity	135	35,300	3	0.75	79,425
SPF SIG	42				
SPF SIG/Community Level *	.....	480	1	0.75	360
SPF SIG/Program Level *	.....	1,200	3	0.25	900
Methamphetamine	12	3,000	3	0.75	6,750
FY 11 Subtotal	.....	50,780	.....	.....	111,735
Total of 3 Years	.....	173,940	.....	.....	351,405
Annual Average	.....	57,980	.....	.....	117,135

*The Strategic Prevention Framework State Incentive Grant (SPF SIG) has a three level evaluation: The Grantee, Community and Program Level. The Grantee level data will be pre-populated by SAMHSA. The use of the Community Level instrument is optional as they relate to targeted interventions implemented during the reporting period. At the program level, items will be selected to direct services implemented.

Written comments and recommendations concerning the proposed information collection should be sent by February 4, 2009 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: December 24, 2008.

Dennis O. Romero,

Acting Deputy Executive Officer.

[FR Doc. E8–31301 Filed 1–2–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3298–EM]

Maine; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Maine (FEMA–3298–EM), dated December 15, 2008, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 15, 2008, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Maine resulting from a severe winter storm beginning on December 11, 2008, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Maine.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Maine have been designated as adversely affected by this declared emergency:

Cumberland, Knox, Lincoln, Sagadahoc, Waldo, and York Counties for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–31294 Filed 1–2–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3296–EM]

Massachusetts; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Massachusetts (FEMA–3296–EM), dated December 13, 2008, and related determinations.

DATES: *Effective Date:* December 13, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 13, 2008, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the Commonwealth of Massachusetts resulting from a severe winter storm beginning on December 11, 2008, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act). Therefore, I declare that such an emergency exists in the Commonwealth of Massachusetts.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as

you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Mark H. Landry, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Massachusetts have been designated as adversely affected by this declared emergency:

Berkshire, Bristol, Essex, Franklin, Hampden, Hampshire, Middlesex, Suffolk, and Worcester Counties for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–31293 Filed 1–2–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3297–EM]

New Hampshire; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New Hampshire (FEMA–3297–EM), dated December 13, 2008, and related determinations.

DATES: *Effective Date:* December 13, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 13, 2008, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of New Hampshire resulting from a severe winter storm beginning on December 11, 2008, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of New Hampshire.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of New Hampshire have been designated as adversely affected by this declared emergency:

Belknap, Carroll, Cheshire, Coos, Grafton, Hillsborough, Merrimack, Rockingham, Strafford, and Sullivan Counties for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–31296 Filed 1–2–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1811–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1811–DR), dated December 12, 2008, and related determinations.

DATES: Effective Date: December 12, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 12, 2008, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from a severe winter storm and record and near record snow during the period of November 5–7, 2008, is of sufficient severity and magnitude to warrant a major

disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas; assistance for emergency protective measures (Public Assistance Category B), including snow removal for any continuous 48-hour period during or proximate to the incident period in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Nancy M. Casper, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this major disaster:

Bennett, Butte, Corson, Dewey, Haakon, Harding, Jackson, Meade, Mellette, Perkins, Shannon, Todd, and Ziebach Counties and the portions of the Pine Ridge Reservation, Rosebud Reservation, Cheyenne River Reservation, and Standing Rock Reservation that lie within the designated counties for Public Assistance.

Butte and Perkins Counties for emergency protective measures (Category B), including snow removal assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties and Tribal Reservations within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–31291 Filed 1–2–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Amspec Services LLC, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Amspec Services LLC, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Amspec Services LLC, 22010 South Wilmington Avenue Suite #304, Carson, CA 90745, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The approval of Amspec Services LLC, as commercial gauger became effective on October 22, 2008. The next triennial inspection date will be scheduled for October 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 24, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–31289 Filed 1–2–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

[Docket No. FR–5271–N–01]

S.A.F.E. (SAFE) Mortgage Licensing Act; Notification of Availability of Model Legislation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces that the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators have developed model legislation to assist states in meeting the minimum requirements of the SAFE Mortgage Licensing Act. HUD has reviewed this model legislation and finds that it meets the minimum requirements of the SAFE Mortgage Licensing Act. The model legislation is available on HUD's Web site at *http://www.hud.gov/offices/hsg/sfh/reguprog.cfm,* along with HUD commentary on certain provisions of the statute, and the model legislation.

FOR FURTHER INFORMATION CONTACT: For information contact William Matchneer, Office of Regulatory Affairs and Manufactured Housing, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000; telephone number 202–708–6401. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

The Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act or Act) was enacted into law on July 30, 2008, as part of the Housing and Economic Recovery Act of 2008. This new law encourages the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish a nationwide mortgage

licensing system for the residential mortgage industry for the purpose of providing (1) uniform state-licensing application and reporting requirements for residential mortgage loan originators, and (2) a comprehensive database by which such mortgage loan originators may be found and tracked. This new law also imposes the obligation on states to adopt mortgage licensing requirements that meet the minimum standards specified in the law in lieu of HUD establishing and maintaining a licensing system for loan originators.

To aid and facilitate states' compliance with the requirements of the SAFE Act, the Act directs the establishment of a nationwide mortgage licensing system and registry (NMLSR), to be developed and maintained by CSBS and AARMR. If HUD determines that a state's mortgage loan originator licensing standards do not meet the minimum requirements of the Act, HUD must implement and administer a licensing system for that state. A loan originator in such a state would have to comply with the requirements of HUD's SAFE Act-compliant licensing system for that state as well as with any applicable state requirements. A HUD license for a state would be valid for that state only, even if HUD must implement licensing systems in multiple states. Additionally, if HUD determines that the NMLSR is failing to meet the requirements and purposes of the SAFE Act, HUD must establish a system that meets the requirements of the SAFE Act. While states are charged with enacting licensing standards that meet the requirements of the SAFE Act, overall responsibility for interpretation, implementation, and compliance of the SAFE Act rests with HUD.

To assist states in complying with the requirements of the SAFE Act, the CSBS and AARMR have developed model legislation. This legislation was developed through outreach to and consultation with the states and industry. HUD has reviewed this model legislation and finds that it meets the minimum requirements of the SAFE Act. State legislation that follows the provisions of the model state law will not be determined by HUD to be noncompliant with SAFE Act.

The model legislation, reviewed by HUD and found to be compliant with the SAFE Act, is available on HUD's Web site at *http://www.hud.gov/offices/hsg/sfh/reguprog.cfm.* Additionally, the Web site provides HUD commentary on certain provisions of the SAFE Act, and the model legislation.

Dated: December 24, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E8–31389 Filed 1–2–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[FWS–R1–R–2008–N0233; 1265–0000–10137–S3]

Papahāanaumokuaākea Marine National Monument, Hawai'i

AGENCIES: Fish and Wildlife Service (FWS), Interior; National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of the monument management plan, environmental assessment, and findings of no significant impact.

SUMMARY: This notice advises the public that NOAA, FWS, the State of Hawai'i's Department of Land and Natural Resources (DLNR), and the Office of Hawai'ian Affairs have completed a Monument Management Plan (MMP) for the Papahāanaumokuaākea Marine National Monument (Monument) located in the Northwestern Hawai'ian Islands (NWHI). The Monument's resources, and current and future management activities, are described in the MMP and associated environmental assessment (EA). The NOAA and FWS developed separate findings of no significant impact (FONSIs) to address each agency's MMP/EA findings. Both FONSIs are available with the MMP/EA.

DATES: The MMP/EA and FONSIs are now available. Implementation of the MMP is effective and may begin immediately.

ADDRESSES: Printed copies of the MMP/EA and FONSIs are available for viewing at NOAA's Papahāanaumokuaākea Marine National Monument office at 6600 Kalaniana'ole Highway, Suite 300, Honolulu, HI 96825, and may be obtained by visiting or writing to the office or by telephone at (808) 397–2660. These documents are also available on compact disk from the Monument, and for viewing and downloading on the Internet at *http://papahanaumokuakea.gov*, and *http://www.fws.gov/pacific/planning/*. Additional documents developed as part of the MMP/EA planning process that specifically support FWS programs and environmental compliance requirements are also available on *http://www.fws.gov/pacific/planning/*.

FOR MORE INFORMATION CONTACT: Susan White, FWS Superintendent, phone (808) 792–9480.

SUPPLEMENTARY INFORMATION:

Monument Background

On June 15, 2006, President George W. Bush established the NWHI Marine National Monument by issuing Presidential Proclamation 8031 (Proclamation) (71 FR 36443, June 26, 2006) under the authority of the Antiquities Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) (the Act).

On December 8, 2006, the Secretaries of Commerce and the Interior and the Governor of Hawai'i signed a Memorandum of Agreement to jointly manage Federal and State lands and waters within the Monument as Co-Trustees and to collectively protect, conserve, and enhance the Monument's marine and terrestrial habitats and resources.

On February 28, 2007, President Bush amended the Proclamation to rename the Monument the Papahāanaumokuaākea Marine National Monument to reflect the region's significance in Native Hawai'ian culture (72 FR 10031, March 6, 2007).

Location, Size, and Federal and State Resource Management

Proclamation 8031 reserves all lands and interests in lands owned or controlled by the Government of the United States in the NWHI, including emergent and submerged lands and waters out to a distance of approximately 50 nautical miles from the islands.

The Monument is approximately 100 nautical miles wide and 1,200 miles in length, and extends around coral islands, seamounts, banks, and shoals. The Monument encompasses the following areas.

- Northwestern Hawai'ian Islands Coral Reef Ecosystem Reserve.
- Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial.
- Hawai'ian Islands National Wildlife Refuge.
- Hawai'i State Seabird Sanctuary at Kure Atoll.
- State of Hawai'i's Northwestern Hawai'ian Islands Marine Refuge.

The NOAA maintains responsibility for managing the NWHI Coral Reef Ecosystem Reserve, included within the Monument, and has primary

responsibility regarding the management of the marine areas of the Monument, in consultation with FWS.

Refuge lands within the Monument, including the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, are managed by FWS.

The State maintains responsibility for managing state lands and waters within the Monument including NWHI State Marine Refuge and State Seabird Sanctuary at Kure Atoll.

Public Comments

The Draft MMP/EA was distributed for public review and comments for 90 days, from April 23, 2008, to July 23, 2008. Public meetings were held during the review period to provide the public opportunities to ask staff questions and provide comments and recommendations. A total of ten meetings were held on six different islands and in Washington, DC. as follows: Three meetings on O'ahu, two meetings on the Island of Hawai'i, and one meeting each on Maui, Lāna'i, Moloka'i, and Kaua'i, and one meeting in Washington, DC. A total of 231 people attended the public meetings; 78 individuals provided public testimony and one recorded comments on a tape recorder. Comments given at these public meetings were recorded in transcripts taken by court reporters. In addition, written comments were accepted via e-mail, individual letters, and form letters throughout the review period. Comments received via individual e-mail totaled 76, individual letters totaled 30, and e-mail form letters totaled 6,246, for a total of 6,352 comment communications. Changes made to the MMP and associated documents based on public comments are summarized in Volume V, Response to Comments.

MMP Action Plans

Two alternatives were analyzed in the Draft MMP/EA; a No Action Alternative and a Proposed Action Alternative (the preferred alternative). Under the No Action Alternative, the Co-Trustees would continue to implement activities to address priority management needs based on agency-specific plans. Under the Proposed Action Alternative, the Co-Trustees would implement new and expanded activities, in addition to ongoing activities, to manage high priority needs. The Proposed Action was selected for implementation.

The MMP describes a comprehensive and coordinated management regime to achieve the Monument's vision, mission, and guiding principles and to address priority management needs over the next 15 years. The MMP will be reviewed and updated every five years. The core of the MMP is contained in 22 action plans consisting of multiple strategies and activities to address specific priority management needs and to achieve the following desired outcomes:

Understanding and Interpreting the NWHI

- Marine Conservation Science. Protect the ecological integrity of natural resources by increasing the understanding of the distributions, abundances and functional linkages of marine organisms and their habitats to improve ecosystem-based management decisions in the Monument.
- Native Hawaiian Culture and History. Increase understanding and appreciation of Native Hawaiian histories and cultural practices related to the Monument and effectively manage resources for their cultural, educational, and scientific values.
- Historic Resources. Identify, document, preserve, protect, stabilize, and where appropriate, reuse, recover, and interpret historic resources associated with Midway Atoll and other areas within the Monument.
- Maritime Heritage. Identify, interpret, and protect maritime heritage resources in the Monument.

Conserving Wildlife and Habitats

- Threatened and Endangered Species. Safeguard and recover threatened and endangered plants and animals and other protected species within the Monument.
- Migratory Birds. Conserve migratory bird populations and habitats within the Monument.
- Habitat Management and Conservation. Protect and maintain all the native ecosystems and biological diversity of the Monument.

Reducing Threats to Monument Resources

- Marine Debris. Reduce the adverse effects of marine debris to Monument resources and reduce the amount of debris entering the North Pacific Ocean.
- Alien Species. Detect, control, eradicate where possible, and prevent the introduction of alien species into the Monument.
- Maritime Transportation and Aviation. Investigate, identify, and reduce potential threats to the Monument from maritime and aviation traffic.
- Emergency Response and Natural Resource Damage Assessment (NRDA). Minimize damage to Monument resources through coordinated emergency response and NRDA.

Managing Human Uses

- Permitting. Implement an effective and integrated permit program for the Monument that manages, minimizes, and prevents negative human impacts by limiting access only for those activities consistent with Proclamation 8031 and the applicable laws, regulations, and executive orders.
- Enforcement. Achieve compliance with all regulations within the Monument.
- Midway Atoll Visitor Services. Offer visitors opportunities to discover, honor, enjoy, appreciate, and protect Monument natural, cultural, and historic resources.

Coordinating Conservation and Management Activities

- Agency Coordination. Successfully collaborate with government partners to achieve publicly supported, coordinated management in the Monument.
- Constituency Building and Outreach. Cultivate an informed, involved constituency that supports and enhances conservation of the natural, cultural, and historic resources of the Monument.
- Native Hawaiian Community Involvement. Engage the Native Hawaiian community in active and meaningful involvement in Monument management.
- Ocean Ecosystems Literacy. Cultivate an ocean ecosystems stewardship ethic, contribute to the Nation's science and cultural literacy, and create a new generation of conservation leaders through formal environmental education.

Achieving Effective Monument Operations

- Central Operations. Conduct effective and well-planned operations with appropriate human resources and adequate physical infrastructure in the main Hawaiian Islands to support management of the Monument.
- Information Management. Consolidate and make accessible relevant information to meet educational, management, and research needs for the Monument.
- Coordinated Field Operations. Coordinate field activities and provide adequate infrastructure to ensure safe and efficient operations while avoiding impacts to the ecosystems in the Monument.
- Evaluation. Determine the degree to which management actions are achieving the vision, mission, and goals of the Monument.

Dated: December 11, 2008.

David J. Wesley,

Acting Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Oceanic and Atmospheric Administration, Silver Spring, Maryland.

[FR Doc. E8–31303 Filed 1–2–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14927–A; F–14927–A2; AK–965 1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Russian Mission Native Corporation. The lands are in the vicinity of Russian Mission, Alaska, and are located in:

Seward Meridian, Alaska

T. 18 N., R. 66 W.,
Secs. 5 and 6.
Containing approximately 1,052 acres.

T. 21 N., R. 66 W.,
Secs. 5, 8, 17, and 20;
Secs. 21, 28, 29, and 32;
Secs. 33 and 34.
Containing approximately 6,260 acres.

T. 18 N., R. 67 W.,
Secs. 1 to 5, inclusive;
Secs. 7 to 11, inclusive;
Secs. 14 to 18, inclusive;
Secs. 21, 22, 23, and 28.
Containing approximately 7,776 acres.

T. 20 N., R. 67 W.,
Secs. 1 and 2.
Containing approximately 1,143 acres.

T. 18 N., R. 68 W.,
Sec. 13.
Containing approximately 593 acres.
Aggregating approximately 16,824 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Russian Mission Native Corporation. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until February 4, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Linda L. Keskitalo,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E8–31400 Filed 1–2–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000.L12200000.PA0000; 09–08807; TAS: 14X1109]

Mojave-Southern Great Basin Resource Advisory Council Meetings, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Mojave-Southern Great Basin Resource Advisory Council (RAC), will hold three meetings in Nevada in fiscal year 2009. All meetings are open to the public.

DATES: February 5 and 6, Pahrump; April 24, Caliente; and June 25 and 26, Tonopah. Each meeting will include a public comment period, where the public may submit oral or written comments to the RAC. Each public comment period will begin at approximately 8:15 a.m., Friday, unless otherwise listed in each specific, final meeting agenda.

FOR FURTHER INFORMATION CONTACT: Chris Hanefeld, (775) 289–1842, E-mail: *chris_hanefeld@nv.blm.gov*.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Nevada.

Meeting locations and topics for discussion include, but are not limited to:

- February 5 and 6, Saddle West Hotel and Casino, 1220 S. Highway 160, Pahrump: Pahrump Field Office, Conservation Transfer Area, SNPLMA Round 10, BLM Ely District Resource Management Plan implementation.
- April 24, Caliente Youth Center, U.S. Highway 93 North, Caliente: BLM Ely District travel management planning processes, renewable energy.
- June 25 and 26, Tonopah Convention Center, 301 Brougher Ave., Tonopah: Battle Mountain Resource Management Plan, Ash Springs Recreation Area Management Plan.

Managers' reports of district and field office activities will be given at each meeting. The council may raise other topics at any of the three planned meetings. Final agendas with any additions/corrections to agenda topics, locations, field trips and meeting times, will be posted on the BLM Web site at: *http://www.blm.gov/nv/st/en/fo/ely_field_office.html*, and sent to the media at least 14 days before each meeting. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, should contact Chris Hanefeld no later than 10 days prior to each meeting.

Dated: December 22, 2008.

Tye H. Petersen,

Acting Ely District Office Manager.

[FR Doc. E8–31394 Filed 1–2–09; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI02000.L57000000.HV0000; IDI–35397; DGG–08–0001]

Notice of Realty Action; R&PP Classification and Land Sale; Idaho

AGENCY: Bureau of Land Management, (BLM), Interior.

ACTION: Notice.

SUMMARY: Recreation and Public Purposes application for classification and sale of 400 acres of public land in

Bannock County, Idaho. Bannock County proposes to purchase the public land to use for landfill purposes.

DATES: Interested parties may submit written comments for a period of 45 days, or until February 19, 2009.

ADDRESSES: Send written comments to: David Pacioretty, Pocatello Field Manager, 4350 Cliffs Drive, Pocatello, Idaho 83201.

FOR FURTHER INFORMATION CONTACT: Contact Candi Aguirre, Realty Specialist, 208–478–6357.

SUPPLEMENTARY INFORMATION: The 400 acres of public land applied for under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), have been examined and found suitable for classification and conveyance for landfill purposes. The parcel of land is located adjacent to Bannock County's existing Fort Hall Mine Landfill, and is legally described as:

Boise Meridian, Bannock County, Idaho

T. 7 S., R. 35 E.,
Sec. 28: SW¼ NW¼, sec. 29: NE¼ SE¼, SE¼ SE¼, sec. 32: NE¼ NE¼, SE¼ NE¼, sec. 33: NW¼, NW¼NE¼.
Containing 400 acres more or less.

The lands are not needed for Federal purposes. The conveyance is consistent with BLM land use planning and would be in the public interest. The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act, as amended, and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Pocatello Field Office, 4350 Cliffs Drive, Pocatello, Idaho. Interested parties may submit written comments and recommendations regarding the proposed land classification and conveyance until February 19, 2009. Classification Comments: are restricted to whether the land is physically suited for landfill purposes, whether the use will maximize the future use or uses of the land, whether the land use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

R&PP Application Comments: should be regarding the proposed use by Bannock County and whether the BLM followed proper administrative procedure, or any other factor not directly related to the suitability of the land for landfill purposes. Any adverse comments will be reviewed by the Idaho State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective on March 6, 2009 and this realty action becomes the final determination of the Department of the Interior.

Confidentiality of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2741.5.

Dated: December 18, 2008.

David A. Pacioretty,

Pocatello Field Manager.

[FR Doc. E8–31197 Filed 1–2–09; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service.

ACTION: Notice of February 7, 2009 Meeting.

SUMMARY: This notice sets forth the date of the February 7, 2009 meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, February 7, 2009 from 10 a.m. to 1 p.m. (Eastern). The Commission will meet jointly with the Flight 93 Memorial Task Force.

Location: The meeting will be held at the Somerset County Courthouse, Court Room #1, located at 111 E. Union Street, Somerset, PA 15501.

Agenda: The February 7, 2009 joint Commission and Task Force meeting will consist of:

1. Opening of Meeting and Pledge of Allegiance.
2. Review and Approval of Commission Minutes from November 1, 2008.
3. Reports from the Flight 93 Memorial Task Force and National Park Service. Comments from the public will be received after each report and/or at the end of the meeting.
4. Old Business.
5. New Business.
6. Public Comments.
7. Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501, 814.443.4557.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. Address all statements to: Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Dated: December 9, 2008.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. E8–31122 Filed 1–2–09; 8:45 am]

BILLING CODE 4312–25–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 20, 2008.

Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th Floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 20, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARKANSAS

Hempstead County

Southwestern Proving Ground Building No. 129, (World War II Home Front Efforts in Arkansas, MPS) 195 Hempstead Co. Rd. 279, Hope, 08001373

Nevada County

Camden to Washington Road-Rosston Segment, Nevada Co. Rd. 10, Rosston, 08001374

COLORADO

Boulder County

Arnett-Fullen House, 646 Pearl St., Boulder, 08001376

Grand County

Barger Gulch Locality B, Address Restricted, Kremmling, 08001377

CONNECTICUT

Litchfield County

Lime Rock Park, 497 Lime Rock Rd., Salisbury, 08001380

New Haven County

Medad Stone Tavern, 197 Three Mile Course, Guilford, 08001378

New London County

House at 130 Mohegan Avenue, 130 Mohegan Ave., New London, 08001379

DISTRICT OF COLUMBIA

District of Columbia

First African New Church, 2105–07 10th St., NW., Washington, DC, 08001375

IOWA

Jones County

Anamosa Main Street Historic District, 200–300 block W. Main St., 100 block E. Main St., 100 block N. and S. Ford St., 100 block N. Garnavillo St., Anamosa, 08001381

Page County

Iowan's Hotel, 508 E. Railroad St., Essex, 08001382

MISSOURI

Adair County

Smith, Dr. E. Sanborn, House, 111 E. Patterson St., Kirksville, 08001385

Buchanan County

Buchanan County Infirmary, 3500 N. Village Dr., Saint Joseph, 08001386

Jackson County

Dierks Building, 1000–1006 Grand Blvd., Kansas City, 08001387

MONTANA

Chouteau County

Eagle Butte School, Eagle Butte School Rd., 23 mi. off MT 80, Fort Benton, 08001383

Fergus County

Hagadone, Frank, Homestead, Missouri River, Mile No. 97, Fergus County, 08001384

NEVADA

Clark County

Walking Box Ranch, 6333 W. NV 164, Searchlight, 08001392

NORTH CAROLINA

Wake County

Welles, Paul and Ellen, House, 3227 Birnamwood Rd., Raleigh, 08001388

Watauga County

Miller, John Smith, House, 561 Chestnut Grove Rd., Boone, 08001389

Wilkes County

Hubbard, Benjamin, House, US 18 on the N., one mile E. of NC 1106, Moravian Falls, 08001390

Yancey County

Bald Creek Historic District, Both sides of Bald Creek School Rd., 76–239 Pleasant Valley Rd., and 6193–6195 U.S. 19E, Burnsville, 08001391

OREGON

Multnomah County

Bunyan, Paul, Statue, SW. corner of N. Denver Ave. and N. Interstate Ave., Portland, 08001393

SOUTH CAROLINA

Clarendon County

Liberty Hill A.M.E. Church, 2310 Liberty Hill Rd., Summerton, 08001394

Orangeburg County

Providence Methodist Church, 4833 Old State Rd., Holly Hill, 08001395

Richland County

Columbia Central Fire Station, 1001 Senate St., Columbia, 08001396
Pine Grove Rosenwald School, (Rosenwald School Building Program in South Carolina, 1917–1932) 937 Piney Woods Rd., Columbia, 08001397
Wesley Methodist Church, (Segregation in Columbia, South Carolina MPS) 1727 Gervais St., Columbia, 08001398
Woman's Club of Columbia, The, 1703 Blossom St., Columbia, 08001399

TEXAS

Tarrant County

Fort Worth Botanic Garden, 3220 Botanic Garden Blvd., Fort Worth, 08001400

WEST VIRGINIA

Berkeley County

Davis-Keesecker House, 3337 Little Georgetown Rd., Hedgesville, 08001401
Deck, John William, House, 1139 VanClevesville, VanClevesville, 08001402
Orndoff-Cross House, 6 Winebrenner Rd., Martinsburg, 08001403

Jefferson County

Bullskin Run Historic District, Along Bullskin Run, including portions of Summit Point Rd., Vermeer Rd., Lloyd Rd., Wheatland Rd., and Berryville Pike, Charles Town, 08001404
Orndoff-Cross House, 6 Winebrenner Rd., Martinsburg, 08001403

Request for removal has been made for the following resources:

FLORIDA

Volusia County

Halifax Drive Historic District, Roughly along Halifax Dr. From Dunlawton to Herbert Sts., Port Orange, 98000056

[FR Doc. E8–31387 Filed 1–2–09; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: Form ETA–9127, Foreign Labor Certification Quarterly Activity Report.

OMB Control No. 1205–0457.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning Form ETA 9127, Foreign Labor Certification Quarterly Activity Report. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or at this WEB site: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before March 6, 2009.

ADDRESSES: William L. Carlson, Administrator, Office of Foreign Labor Certification, U.S. Department of Labor, Room C4312, 200 Constitution Ave., NW., Washington, DC 20210; by phone at (202) 693–3010 (this is not a toll-free number); by fax at (202) 693–2768; or by e-mail at *ETA.OFLC.Forms@dol.gov* subject line: Form 9127.

SUPPLEMENTARY INFORMATION:

I. Background: Foreign labor certification programs administered by the Employment and Training Administration (ETA) of the Department of Labor (DOL or Department) require State Workforce Agencies (SWAs) to initially process applications for temporary labor certifications (H–2A and H–2B) filed by U.S. employers on behalf of foreign workers seeking to be employed in the U.S. SWAs are also responsible for issuing prevailing wage determinations, reviewing employer-provided wage surveys or other source data, conducting housing inspections of facilities offered to migrant and seasonal workers, and conducting and monitoring recruitment activities seeking qualified U.S. workers for the temporary jobs employers are attempting to fill with foreign workers. The SWAs perform these functions under a reimbursable grant that is awarded annually. The information pertaining to these functions is proposed to be collected on the Form ETA 9127 and will be used by Departmental staff to manage foreign (alien) labor certification programs in the SWAs. The Department will use the data collected to: (1) Monitor the number of temporary applications that are received, processed, and forwarded to the national processing centers; (2) determine the number of prevailing wage determinations issued to employers under the permanent and temporary labor certification programs, as well as, the H–1B program for nonimmigrant professionals in specialty occupations; and, (3) track the number of agricultural prevailing wage and practice surveys conducted, housing inspections made, and job orders filed. The information on workload will be used for formulating budget estimates for both state and Federal workloads, and for monitoring a State's performance against the grant statement of work and work plan. Without such information, the budget workload figures will be estimates and the allocation of funding to the SWAs will not reflect the true workload in a State.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions:

In order to meet its statutory responsibilities under the INA, the Department needs to extend an existing collection of information to continue to collect data from SWAs.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Foreign Labor Certification Quarterly Activity Report.

OMB Number: 1205–0457.

Agency Number(s): Form ETA 9127.

Recordkeeping: Quarterly.

Affected Public: State, Local, or Tribal governments.

Total Respondents: 54 State Workforce Agencies.

Estimated Total Burden Hours: 432.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 29, 2008.

William L. Carlson,

Administrator, Office of Foreign Labor Certifications.

[FR Doc. E8–31264 Filed 1–2–09; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,397]

ITT Marine & Leisure, Gloucester, MA, Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 12, 2008 in response to a worker petition filed by the Massachusetts Division of Employment and Training Services on behalf of workers at ITT Marine & Leisure, Gloucester, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of December 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–31332 Filed 1–2–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,368]

Newport Corporation, Irvine, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 6, 2008 in response to a worker petition filed the State Workforce Office on behalf of workers at Newport Corporation, Irvine, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 22nd day of December 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–31331 Filed 1–2–09; 8:45 am]

BILLING CODE 4510–FN–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2009–1 CRB Webcasting III]

Digital Performance in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges are announcing the commencement of the proceeding to determine the reasonable rates and terms for two statutory licenses, permitting certain digital performances of sound recordings and the making of ephemeral recordings for the period beginning January 1, 2011, and ending on December 31, 2015. The Copyright Royalty Judges also are announcing the date by which a party who wishes to participate in the rate determination proceeding must file its Petition to Participate and the accompanying $150 filing fee.

DATES: Petitions to Participate and the filing fee are due no later than February 4, 2009.

ADDRESSES: An original, five copies, and an electronic copy in Portable Document Format (PDF) on a CD of the Petition to Participate, along with the $150 filing fee, may be delivered to the Copyright Royalty Board by either mail or hand delivery. Petitions to Participate and the $150 filing fee may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), Petitions to Participate, along with the $150 filing fee, must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, Petitions to Participate, along with the $150 filing fee, must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, Petitions to Participate, along with the $150 filing fee, must be delivered to the Congressional Courier Acceptance Site, located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: LaKeshia Brent, CRB Program Specialist, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2007, the Copyright Royalty Judges (''Judges'') announced their final determination of the rates and terms for public performances of sound recordings by means of an eligible nonsubscription transmission and transmissions made by a new subscription service and the making of an ephemeral recording in furtherance of making a permitted public performance of the sound recording for the period January 1, 2006, through December 31, 2010. 72 FR 24084. Section 804(b)(3)(A) of the Copyright Act, title 17 of the United States Code, requires that ''[s]uch proceedings shall next be commenced in January 2009 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2011.'' 17 U.S.C. 804(b)(3)(A). Pursuant to this provision, this notice commences the rate determination proceeding for the license period 2011–2015. Section 803(b)(1)(A)(i)(III) of the Copyright Act requires the Judges to publish a **Federal Register** notice no later than January 5, 2009, commencing this proceeding.

Petitions To Participate

Petitions to Participate must be filed in accordance with § 351.1(b) of the Judges' regulations. *See* 37 CFR 351.1(b). Petitions to Participate must be accompanied by the $150 filing fee. Cash will not be accepted; therefore, parties must pay the filing fee with a check or money order made payable to ''Copyright Royalty Board.'' If a check received in payment of the filing fee is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed.

Note that in accordance with 37 CFR 350.2 (Representation), only attorneys who are members of the bar in one or more states and in good standing will be allowed to represent parties before the Copyright Royalty Judges, unless a party is an individual who represents herself or himself.

Dated: December 23, 2008.

Stanley C. Wisniewski,

Copyright Royalty Judge.

[FR Doc. E8–30972 Filed 1–2–09; 8:24 am]

BILLING CODE 1410–72–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2009–2 CRB New Subscription II]

Digital Performance Right in Sound Recordings and Ephemeral Recordings for a New Subscription Service

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges are announcing the commencement of the proceeding to determine the rates and terms for the use of sound recordings in transmissions made by new subscription services and for the making of ephemeral recordings necessary for the facilitation of such transmissions for the period beginning on January 1, 2011, and ending on December 31, 2015. The Judges also are announcing the date by which a party who wishes to participate in the rate determination proceeding must file its Petition to Participate and the accompanying $150 filing fee.

DATES: Petitions to Participate and the filing fee are due on or before February 4, 2009.

ADDRESSES: An original, five copies, and an electronic copy in Portable Document Format (PDF) on a CD of the Petition to Participate, along with the $150 filing fee, may be delivered to the Copyright Royalty Board by either mail or hand delivery. Petitions to Participate and the $150 filing fee may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), Petitions to Participate, along with the $150 filing fee, must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, Petitions to Participate, along with the $150 filing fee, must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, Petitions to Participate, along with the $150 filing fee, must be delivered to the Congressional Courier Acceptance Site, located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: LaKeshia Brent, CRB Program Specialist, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 114(f)(2)(C) of the Copyright Act, title 17 of the United States Code, allows a new type of eligible nonsubscription service or a new subscription service on which sound recordings are performed that is or is about to become operational to file a petition with the Copyright Royalty Judges (''Judges'') for the purpose of determining reasonable terms and rates of royalty payments for such new type of service. 17 U.S.C. 114(f)(2)(C). Upon receipt of such a petition, the Judges are required to commence a proceeding to determine said reasonable terms and rates. 17 U.S.C. 804(b)(3)(C)(ii). The Judges have conducted one proceeding pursuant to these provisions. *See* 70 FR 72471, 72472 (December 5, 2005) (after receipt of petition, commencing proceeding to determine rates and terms for a new type of subscription service that ''performs sound recordings on digital audio channels programmed by

the licensee for transmission by a satellite television distribution service to its residential customers, where the audio channels are bundled with television channels as part of a 'basic' package of service and not for a separate fee''). The parties to that proceeding ultimately reached an agreement on the rates and terms for the new subscription service at issue; and the Judges, after publishing the settlement for public comment, adopted the settlement as final regulations.[1] *See* 72 FR 72253 (December 20, 2007). The current rates expire on December 31, 2010.[2]

In order to have successor rates and terms in place prior to the expiration of the current rates, the Judges, by this notice, are commencing the rate determination proceeding for the license period 2011–2015 for the new subscription service defined in § 383.2(h). *See* 17 U.S.C. 804(b)(3)(C). Section 803(b)(1)(A)(i)(III) of the Copyright Act requires the Judges to publish a **Federal Register** notice by January 5, 2009, commencing this proceeding.

Petitions To Participate

Petitions to Participate must be filed in accordance with § 351.1(b) of the Judges' regulations. *See* 37 CFR 351.1(b). Petitions to Participate must be accompanied by the $150 filing fee. Cash will not be accepted; therefore, parties must pay the filing fee with a check or money order made payable to ''Copyright Royalty Board.'' If a check received in payment of the filing fee is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed.

Note that in accordance with 37 CFR 350.2 (Representation), only attorneys who are members of the bar in one or more states and in good standing will be allowed to represent parties before the Copyright Royalty Judges, unless a party is an individual who represents herself or himself.

[1] The terms of the settlement are codified at 37 CFR Part 383. The new subscription service is defined in 37 CFR 383.2(h).

[2] Section 114(f)(2)(C) states that the license period for services covered by this provision begins ''with the inception of such new type of service and ending on the date on which the royalty rates and terms for preexisting subscription digital audio transmission services or preexisting satellite digital radio audio services * * * expire, or such other period as the parties may agree.'' 17 U.S.C. 114(f)(2)(C). The current rates for these preexisting services expire on December 31, 2012. *See* 72 FR 71795 (December 19, 2007) (preexisting subscription services) and 73 FR 4080 (January 24, 2008) (preexisting satellite digital radio audio services). While the license period for the new subscription service defined in § 383.2(h) began with the inception of that service, the parties agreed to an expiration date different than that of the preexisting services, as allowed under this section.

Dated: December 23, 2008.

Stanley C. Wisniewski,

Copyright Royalty Judge.

[FR Doc. E8–30974 Filed 1–2–09; 8:23 am]

BILLING CODE 1410–72–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (08—100)]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Jasmeet Seehra, Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JB0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is an application form to be considered for an undergraduate or graduate scholarship. Students are required to submit an application package consisting of an application form, academic background, proposed area of study, curriculum vitae or personal statement, three letters of reference, and an essay or research proposal.

II. Method of Collection

NASA will utilize a Web-based application form with instructions and other application materials also on-line. All data will be collected via this web-based application (separate under graduate and graduate forms) and unless the user chooses to download the application form and other application materials and mail them in.

III. Data

Title: NASA Aeronautics Scholarship Program.

OMB Number: 2700–0134.

Type of Review: Revision of currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 400.

Estimated Time Per Response: 1.0 hour.

Estimated Total Annual Burden Hours: 400 hours.

Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Walter Kit,

NASA Clearance Officer.

[FR Doc. E8–31245 Filed 1–2–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (08–101)]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Jasmeet Seehra, Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JB0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA's Science Engineering Mathematics and Aerospace Academy (SEMAA) is a national education project, which works with K–12 students and their families, that employs hands-on, inquiry-based activities and emphasizes the benefits of STEM literacy. This data collection will help to assess SEMAA project effectiveness and to provide data that can inform decisions made by NASA leadership and local sites about project modifications and implementation.

II. Method of Collection

Data will be collected by means of a telephone survey with site directors and via paper surveys from applicants and participants and their parents.

III. Data

Title: SEMAA (Science Engineering Mathematics and Aerospace Academy) Program Evaluation.

OMB Number: 2700–XXXX.

Type of Review: New collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2030.

Estimated Number of Responses per Respondent: 2.

Estimated Time Per Response: 0.5 hour.

Estimated Total Annual Burden Hours: 2030 hours.

Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Walter Kit,

NASA Clearance Officer.

[FR Doc. E8–31247 Filed 1–2–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

Notice: (08–102).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Dr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JE0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Contractor Financial Management Reporting System is the basic financial medium for contractor reporting of estimated and incurred costs, providing essential data for projecting costs and hours to ensure that contractor performance is realistically planned and supported by dollar and labor resources. The data provided by these reports is an integral part of the Agency's accrual accounting and cost-based budgeting systems required under 31 U.S.C. 3512.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Contractor Financial Management Reports.

OMB Number: 2700–0003.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 850.

Estimated Time Per Response: 9 hrs.

Estimated Total Annual Burden Hours: 91,500.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Walter Kit,

NASA Clearance Officer.

[FR Doc. E8–31250 Filed 1–2–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, January 8, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of supervisory activities. Closed pursuant to Exemptions (8) and (9).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. E8–31444 Filed 12–31–08; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL MEDIATION BOARD

Submission for OMB Review; Comment Request

AGENCY: National Mediation Board (NMB).

SUMMARY: The Director, Office of Administration, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments within 30 days from the date of this publication.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (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 Director, Office of Administration, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection 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.

Currently, the National Mediation Board is soliciting comments concerning the proposed extension of the Application for Mediation Services and is interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 30, 2008.

June D. W. King,

Director, Office of Administration, National Mediation Board.

[FR Doc. E8–31392 Filed 1–2–09; 8:45 am]

BILLING CODE 7550–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2008–0481]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor and that a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

2. *Current OMB approval number:* 3150–0021.

3. *How often the collection is required:* Upon submittal of an application for a construction permit, operating license, operating license renewal, early site review, design certification review, decommissioning or termination review, or manufacturing license, or upon submittal of a petition for rulemaking.

4. *Who is required or asked to report:* Licensees and applicant requesting approvals for actions proposed in accordance with the provisions of 10 CFR Parts 30, 32, 33, 34, 35, 36, 39, 40, 50, 52, 54, 61, 61, 70, and 72.

5. *The number of annual respondents:* 23

6. *The number of hours needed annually to complete the requirement or request:* 92,281.

7. *Abstract:* 10 CFR Part 51 specifies information to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

Submit, by March 6, 2009, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments 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. Comments submitted should reference Docket No. NRC–2008–0481. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2008–0481. Mail comments to NRC Clearance Officer, Gregory Trussell (T–5 F53), U.S. Nuclear Regulatory Commission,

Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Gregory Trussell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6445, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 29th day of December 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–31402 Filed 1–2–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027 and 52–028]

South Carolina Electric and Gas Company Acting for Itself and as Agent for the South Carolina Public Service Company (Also Referred to as Santee Cooper) Virgil C. Summer Nuclear Station Units 2 and 3; Combined License Application; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

South Carolina Electric and Gas Company (SCE&G) acting for itself and as an agent for South Carolina Public Service Company (also referred to as Santee Cooper) has submitted an application for combined licenses (COLs) to build Units 2 and 3 at its Virgil C. Summer Nuclear Station (VCSNS) site, located on approximately 3,600 acres in Fairfield County, South Carolina, on the Broad River, approximately 15 miles west of the county seat of Winnsboro and 26 miles northwest of Columbia, South Carolina. SCE&G submitted the application for the COLs to the U.S. Nuclear Regulatory Commission (NRC) by letter dated March 27, 2008, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Part 52. A notice of receipt and availability of the application, including the environmental report (ER), was published in the **Federal Register** on July 9, 2008 (73 FR 39339). A notice of acceptance for docketing of the application for the COLs was published in the **Federal Register** on August 6, 2008 (73 FR 45792). A notice of hearing and opportunity to petition for leave to intervene in the proceeding on the application was published in the **Federal Register** on October 10, 2008 (73 FR 60362). The purposes of this notice are: (1) To inform the public that the NRC staff will be preparing an environmental impact statement (EIS) as part of the review of the application for the COLs and (2) to provide the public with an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29.

In addition, as outlined in 36 CFR 800.8(c), ''Coordination with the National Environmental Policy Act,'' the NRC staff plans to coordinate compliance with Section 106 of the National Historic Preservation Act (NHPA) with steps taken to meet the requirements of the National Environmental Policy Act of 1969, as amended (NEPA). Pursuant to 36 CFR 800.8(c), the NRC staff intends to use the process and documentation for the preparation of the EIS on the proposed action to comply with section 106 of the NHPA in lieu of the procedures set forth on 36 CFR 800.3 through 800.6.

In accordance with 10 CFR 51.45 and 51.50, SCE&G submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Parts 51 and 52 and is available for public inspection at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Electronic Reading Room (ERR) link. The accession number in ADAMS for the environmental report included in the application is ML081300569. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209/301–415–4737 or via e-mail to *pdr@nrc.gov*. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/new-reactors/col/summer.html*. In addition, the Fairfield County Library, 300 Washington Street, Winnsboro, South Carolina 29180 has agreed to make the ER available for public inspection.

The following key reference documents related to the application and the NRC staff's review processes are available through the NRC's Web site at *http://www.nrc.gov*:

a. 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Function;

b. 10 CFR Part 52, Licenses, Certifications, and Approvals for Nuclear Power Plants;

c. 10 CFR Part 100, Reactor Site Criteria;

d. NUREG–1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants;

e. NUREG/BR–0298, Brochure on Nuclear Power Plant Licensing Process;

f. Regulatory Guide 4.2, Preparation of Environmental Reports for Nuclear Power Stations;

g. Regulatory Guide 4.7, General Site Suitability Criteria for Nuclear Power Stations;

h. Fact Sheet on Nuclear Power Plant Licensing Process;

i. Regulatory 1.206, Combined License Applications for Nuclear Power Plants, and;

j. Nuclear Regulatory Commission Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions.

The regulations, NUREG-series documents, regulatory guides, and the fact sheet can be found under Document Collections in the Electronic Reading Room on the NRC webpage. The environmental justice policy statement can be found in the **Federal Register**, 69 FR 52040, August 24, 2004.

This notice advises the public that the NRC intends to gather the information necessary to prepare an EIS as part of the review of the application for the COLs at the VCSNS site. Possible alternatives to the proposed action (issuance of the COLs for the VCSNS Units 2 and 3) include no action, reasonable alternative energy sources, and alternate sites. As set forth in 10 CFR 51.20(b)(2), issuance of a COL under 10 CFR Part 52 is an action that requires an EIS. This notice is being published in accordance with NEPA and the NRC's regulations in 10 CFR Part 51.

The NRC will first conduct a scoping process for the EIS and, as soon as practicable thereafter, will prepare a draft EIS for public comment. Participation in this scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the draft EIS will be used to accomplish the following:

a. Define the proposed action that is to be the subject of the EIS;

b. Determine the scope of the EIS and identify the significant issues to be analyzed in-depth;

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to but are not part of the scope of the EIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Identify parties consulting with the NRC under the NHPA, as set forth in 36 CFR 800.8(c)(1)(i);

g. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;

h. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies; and

i. Describe how the EIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, South Carolina Electric & Gas;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who intends to petition for leave to intervene in the proceeding, or who has submitted such a petition, or who is admitted as a party.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC staff has elected to hold two identical public scoping meetings for the EIS regarding the SCE&G COL application. The first meeting will be held at the Fairfield Central High School, 836 U.S. Highway 321 Bypass S, Winnsboro, SC 29180 on Tuesday, January 27, 2009 at 7 p.m., and will continue until approximately 10 p.m. The second meeting will be held at the McCrorey-Liston Elementary School, 1978 State Highway 215 South, Blair, SC 29015 on Wednesday, January 28, 2009 at 7 p.m., with a repetition of the overview portions of the first meeting, and will continue until approximately 10 p.m. The meetings will be transcribed and will include the following: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the EIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments on the environmental issues or the proposed scope of the EIS. Additionally, the NRC staff will host informal discussions for one hour prior to the start of each public meeting. No formal comments on the proposed scope of the EIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may register to attend or present oral comments at the meeting on the scope of the NEPA review by contacting Ms. Patricia Vokoun or Mr. Mark Notich at 1–800–368–5642, extension 3470 or 3053, respectively. In addition, persons can register via e-mail to the NRC at *Summer.COLEIS@nrc.gov* no later than January 20, 2009.

Members of the public may also register to speak at the meeting prior to the start of the session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the EIS. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Ms. Vokoun's attention no later than January 13, 2009, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the scope of the VCSNS COLs environmental review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop TWB–05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on federal workdays. To ensure that comments will be considered in the scoping process, written comments must be postmarked or delivered by March 6, 2009. Electronic comments may be sent by e-mail to the NRC at *Summer.COLEIS@nrc.gov*. Electronic submissions must be sent no later than March 6, 2009, to ensure that they will be considered in the scoping process. Comments will be made available electronically and will be accessible through the NRC's ERR link *http://www.nrc.gov/reading-rm/adams.html*.

Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates. The notice of hearing and opportunity to petition for leave to intervene in the proceeding on the application for the COLs was published in the **Federal Register** on October 10, 2008.

At the conclusion of the scoping process, the NRC staff will prepare a concise summary of the determination and conclusions reached on the scope of the environmental review, including the significant issues identified, will make this summary publicly available and will send the summary to each participant in the scoping process for whom the staff has an address. The staff will then prepare and issue for comment the draft EIS, which will be the subject of a separate **Federal Register** notice and a separate public meeting. Copies of the draft EIS will be available for public inspection at the PDR through the above-mentioned address and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final EIS, which will also be available to the public.

Information about the proposed action, the EIS, and the scoping process may be obtained from Ms. Patricia Vokoun or Mr. Mark Notich at 1–800–368–5642, extensions 3470 or 3053, respectively; at the U.S. Nuclear Regulatory Commission, mailstop T–6D32 or T–7E30, Washington, DC 20555–0001; or via e-mail at *Patricia.Vokoun@nrc.gov* or *Mark.Notich@nrc.gov*.

Dated at Rockville, Maryland, this 24th day of December 2008.

For the Nuclear Regulatory Commission.

Scott C. Flanders,

Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. E8–31280 Filed 1–2–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–036]

Entergy Operations, Inc.; River Bend Station Unit 3 Combined License Application; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Entergy Operations, Inc. (EOI) on behalf of itself; Entergy Louisiana, LLC (ELL); Entergy Gulf States Louisiana, L.L.C. (EGSL); and Entergy Mississippi, Inc. (EMI) has submitted an application

for a combined license (COL) to build Unit 3 at its River Bend Station (RBS) site, located on approximately 3,330 acres in West Feliciana Parish on the Mississippi River, approximately three miles southeast of St. Francisville, Louisiana and 24 miles north-northwest of Baton Rouge, Louisiana. EOI submitted the application for the COL to the U.S. Nuclear Regulatory Commission (NRC) on September 25, 2008, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Part 52.

A notice of receipt and availability of the application, including the environmental report (ER), was published in the **Federal Register** on November 17, 2008 (73 FR 67895). A notice of acceptance for docketing of the application for the COL was published in the **Federal Register** on December 10, 2008 (73 FR 75141). A notice of hearing and opportunity to petition for leave to intervene in the proceeding of the application will be the published in a future **Federal Register**.

The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) as part of the review of the COL application and to provide the public with an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29.

In addition, as outlined in 36 CFR 800.8(c), ''Coordination with the National Environmental Policy Act,'' the NRC staff plans to coordinate compliance with Section 106 of the National Historic Preservation Act (NHPA) with steps taken to meet the requirements of the National Environmental Policy Act of 1969, as amended (NEPA). Pursuant to 36 CFR 800.8(c), the NRC staff intends to use the process and documentation for the preparation of the EIS on the proposed action to comply with Section 106 of the NHPA in lieu of the procedures set forth on 36 CFR 800.3 through 800.6.

In accordance with 10 CFR 51.45 and 51.50, EOI submitted the ER as part of the COL application. The ER was prepared pursuant to 10 CFR Parts 51 and 52 and is available for public inspection at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Electronic Reading Room (ERR) link. The accession number in ADAMS for the environmental report included in the application is ML082830263. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209/301–415–4737 or via e-mail to *PDR.Resource@nrc.gov*. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/new-reactors/col/river-bend.html*. In addition, the following libraries have agreed to make the ER available for public inspection:

1. State Library of Louisiana at 701 North 4th Street, Baton Rouge, Louisiana;

2. West Feliciana Parish Library at 11865 Ferdinand Street, St. Francisville, Louisiana; and

3. Point Coupee Parish Library; at 201 Claybourne Street, New Roads, Louisiana.

The following key reference documents related to the application and the NRC staff's review processes are available through the NRC's Web site at *http://www.nrc.gov:*

a. 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,

b. 10 CFR Part 52, Licenses, Certifications, and Approvals for Nuclear Power Plants,

c. 10 CFR Part 100, Reactor Site Criteria,

d. NUREG–1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants,

e. NUREG/BR–0298, Brochure on Nuclear Power Plant Licensing Process,

f. Regulatory Guide 4.2, Preparation of Environmental Reports for Nuclear Power Stations,

g. Regulatory Guide 4.7, General Site Suitability Criteria for Nuclear Power Stations,

h. Fact Sheet on Nuclear Power Plant Licensing Process,

i. Regulatory 1.206, Combined License Applications for Nuclear Power Plants, and

j. Nuclear Regulatory Commission Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions.

The regulations, NUREG-series documents, regulatory guides, and the fact sheet can be found under Document Collections in the ERR on the NRC Webpage. The environmental justice policy statement can be found in the **Federal Register**, 69 FR 52040, August 24, 2004.

This notice advises the public that the NRC intends to gather the information necessary to prepare an EIS as part of the review of the COL application for the River Bend Station site. Possible alternatives to the proposed action (issuance of the COL for RBS Unit 3) include no action, reasonable alternative energy sources, and alternative sites. As set forth in 10 CFR 51.20(b)(2), issuance of a full power license to operate a nuclear power reactor is an action that requires an EIS. This notice is being published in accordance with NEPA and the NRC's regulations in 10 CFR Part 51.

The NRC will first conduct a scoping process for the EIS and, as soon as practicable thereafter, will prepare a draft EIS for public comment. Participation in this scoping process by members of the public, local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the draft EIS will be used to accomplish the following:

a. Define the proposed action that is to be the subject of the EIS,

b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth,

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant,

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to but are not part of the scope of the EIS being considered,

e. Identify other environmental review and consultation requirements related to the proposed action,

f. Identify parties consulting with the NRC under the NHPA, as set forth in 36 CFR 800.8(c)(1)(i),

g. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule,

h. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies, and describe how the EIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, EOI on behalf of itself, ELL, EGSL, and EMI,

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards,

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards,

d. Any affected Indian tribe,

e. Any person who requests or has requested an opportunity to participate in the scoping process, and

f. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC staff will hold a public scoping meeting for the EIS regarding the RBS Unit 3 COL application. The scoping meeting will be held at the West Feliciana Parish High School Auditorium, 8604 U.S. Highway 61, St. Francisville, Louisiana, 70775, on Thursday, January 29, 2009. The meeting will convene at 7 p.m. and will continue until approximately 10 p.m. The meeting will be transcribed and will include the following: (1) An overview by the NRC staff of the environmental review process, the proposed scope of the EIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the EIS. Additionally, the NRC staff will host informal discussions for one hour prior to the start of the public meeting. No formal comments on the proposed scope of the EIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may register to attend or present oral comments at the meeting on the scope of the NEPA review by contacting Mr. Andrew Kugler or Ms. Jessie M. Muir by telephone at 1–800–368–5642, extension 2828 or 0491, respectively, or via e-mail to the NRC at *RBS3.COLAEIS@nrc.gov* no later than January 21, 2009.

Members of the public may also register to speak at the meeting prior to of the start of the session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the EIS. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Ms. Jessie M. Muir's attention no later than January 14, 2009, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the scope of the RBS3 COL environmental review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. To be considered in the scoping process, written comments must be postmarked or delivered by February 23, 2009. Electronic comments may be sent via e-mail to the NRC at *RBS3.COLAEIS@nrc.gov.* Electronic submissions must be sent no later than March 6, 2009, to be considered in the scoping process. Comments will be made available electronically and will be accessible through the NRC's Electronic Reading Room link *http://www.nrc.gov/reading-rm/adams.html.*

Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates. Notice of a hearing and opportunity to request leave to intervene in the proceeding on the application for COL will be published in a future **Federal Register** notice.

At the conclusion of the scoping process, the NRC staff will prepare a concise summary of the determination and conclusions reached on the scope of the environmental review, including the significant issues identified, and will send this summary to each participant in the scoping process for whom the staff has an address. The staff will then prepare and issue for comment the draft EIS, which will be the subject of a separate **Federal Register** notice and a separate public meeting. Copies of the draft EIS will be available for public inspection at the PDR through the above-mentioned address and one copy per request will be provided free of charge. After receipt and consideration of comments on the draft EIS, the NRC will prepare a final EIS, which will also be available to the public.

Information about the proposed action, the EIS, and the scoping process may be obtained from Mr. Andrew Kugler at 301–415–2828 or via e-mail at *Andrew.Kugler@nrc.gov*, or Ms. Jessie M. Muir at 301–415–0491 or via e-mail at *Jessie.Muir@nrc.gov.*

Dated at Rockville, Maryland, this 24th day of December 2008.

For the Nuclear Regulatory Commission.

Scott C. Flanders,

Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. E8–31276 Filed 1–2–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services Covered by Chapter Nine of the United States-Oman Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Determination under Trade Agreements Act of 1979.

DATES: *Effective Date:* January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476, or Katherine Tai, Associate General Counsel, Office of the United States Trade Representative, (202) 395–9589.

On January 19, 2006, the United States and Oman entered into the United States-Oman Free Trade Agreement (''Oman FTA''). Chapter Nine of the Oman FTA sets forth certain obligations with respect to government procurement of goods and services, as specified in Annex 9 of the Oman FTA. On September 26, 2006, the President signed into law the United States-Oman Free Trade Agreement Implementation Act (''the Oman FTA Act'') (Pub. L. 109–283, 120 Stat. 1191) (19 U.S.C. 3805 note). In section 101(a) of the Oman FTA Act, the Congress approved the Oman FTA. The Oman FTA entered into force on January 1, 2009.

Section 1–201 of Executive Order 12260 of December 31, 1980 (46 *FR* 1653) delegates the functions of the President under Sections 301 and 302 of the Trade Agreements Act of 1979 (''the Trade Agreements Act'') (19 U.S.C. 2511, 2512) to the United States Trade Representative.

Now, therefore, I, Susan C. Schwab, United States Trade Representative, in conformity with the provisions of Sections 301 and 302 of the Trade Agreements Act, and Executive Order 12260, and in order to carry out U.S. obligations under Chapter Nine of the Oman FTA, do hereby determine that:

1. Oman is a country, other than a major industrialized country, which, pursuant to the Oman FTA, will provide appropriate reciprocal competitive government procurement opportunities

to United States products and suppliers of such products. In accordance with Section 301(b)(3) of the Trade Agreements Act, Oman is so designated for purposes of Section 301(a) of the Trade Agreements Act.

2. With respect to eligible products of Oman (*i.e.*, goods and services covered by the Schedules of the United States in Annex 9 of the Oman FTA) and suppliers of such products, the application of any law, regulation, procedure, or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than accorded—

(A) To United States products and suppliers of such products; or

(B) To eligible products of another foreign country or instrumentality which is a party to the Agreement on Government Procurement referred to in section 101(d)(17) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(17)) and suppliers of such products, shall be waived.

With respect to Oman, this waiver shall be applied by all entities listed in the Schedules of the United States in Section A and in List A of Section B of Annex 9 of the Oman FTA.

3. The designation in paragraph 1 and the waiver in paragraph 2 are subject to modification or withdrawal by the United States Trade Representative.

Dated: December 30, 2008.

Susan C. Schwab,

United States Trade Representative.

[FR Doc. E8–31407 Filed 1–2–09; 8:45 am]

BILLING CODE 3190–W9–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–19; Order No. 160]

International Mail Contracts

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document announces a recently-filed Postal Service notice of a new global expedited package services contract. It addresses procedural steps associated with this filing.

DATES: Comments due January 5, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 23, 2008, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 1 (GEPS 1) contract.[1] GEPS 1 provides volume-based incentives for mailers that send large volumes of Express Mail International (EMI) and/or Priority Mail International (PMI). The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS agreements, and supported by the Governors' Decision filed in Docket No. CP2008–5.[2] Notice at 1–2. It further notes that in Order No. 86 which established GEPS 1 as a product, the Commission held that additional contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. 3633 and if they are functionally equivalent to the initial GEPS 1 contract filed in Docket No. CP2008–5.[3] Notice at 1.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 86. It submitted the contract and supporting material under seal, and attached a redacted copy of the certified statement required by 39 CFR 3015.5(c)(2) to the Notice. *Id.* at 1–2.

The Notice addresses reasons why the instant GEPS 1 contract fits within the Mail Classification Schedule language for GEPS 1, explains expiration terms, and discusses the Postal Service's interest in confidential treatment for the contract and related material.[4] *Id.* at 2–3. It also provides the Postal Service's rationale for concluding that the instant contract is functionally equivalent to the initial contract filed in Docket No. CP2008–5. The Postal Service requests that this contract be included within the GEPS product. *Id.* at 3–5.

II. Notice of Filing

The Commission establishes Docket No. CP2009–19 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3622, or 3642. Comments are due no later than January 5, 2009. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filings.

It is Ordered:

1. The Commission establishes Docket No. CP2009–19 for consideration of the matters raised in this docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than January 5, 2009.

4. The Secretary shall arrange for the publication of this Order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–31318 Filed 1–2–09; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, December 23, 2008 (Notice).

[2] *See* Docket No. CP2008–5, Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Expedited Package Services Contracts (Governors' Decision No. 08–7), May 6, 2008, and United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08–7, July 23, 2008.

[3] *See* PRC Order No. 86, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86).

[4] Contract expiration is set to expire one year after the Postal Service notifies the customer that all necessary regulating approvals have been obtained. *Id.* at 2.

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–18; Order No. 159]

International Mail Contracts

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document announces a recently-filed Postal Service notice of an additional Global Direct Contracts agreement. It addresses procedural steps associated with this filing.

DATES: Comments are due January 5, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 23, 2008, the Postal Service filed a notice announcing that it has entered into an additional Global

Direct Contracts agreement.[1] Global Direct Contracts provide a rate for mail acceptance within the United States and transportation to a receiving country, with the addition by the customer of appropriate foreign indicia, and payment by the Postal Service of the appropriate settlement charges to the receiving country. The Postal Service believes the instant agreement is functionally equivalent to previously submitted Global Direct Contracts agreements, and supported by the Governors' Decision filed in Docket No. MC2008–7.[2] The Postal Service contends that the instant agreement should be included within the Global Direct Contracts product.

The instant contract. The Postal Service filed the instant agreement pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the agreement is in accordance with PRC Order No. 153. It submitted the contract and supporting material under seal, and attached a redacted copy of the certified statement required by 39 CFR 3015.5(c)(2) to the Notice.

The Notice identifies the instant agreement as fitting within the Mail Classification Schedule language for Global Direct Contracts, and indicates that this agreement is set to expire no later than January 31, 2010.[3] The Notice discusses the Postal Service's interest in the confidential treatment of the contract and related material. *Id.* at 2–3. The Notice also provides the Postal Service's rationale for concluding that the instant contract is functionally equivalent to the initial contracts filed in Docket Nos. CP2009–10 and CP2009–11. *Id.* at 2–6.

II. Notice of Filing

The Commission establishes Docket No. CP2009–18 for consideration of matters related to the agreement identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's agreement is consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than January 5, 2009. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Michael J. Ravnitzky to serve as Public Representative in the captioned filings.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket No. CP2009–18 for consideration of the matters raised in this docket.

2. Pursuant to 39 U.S.C. 505, Michael J. Ravnitzky is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than January 5, 2009.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–31374 Filed 1–2–09; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Direct Contracts Negotiated Service Agreement, December 23, 2008 (Notice).

[2] Notice at 1–2. *See* Docket No. MC2008–7, Request of the United States Postal Service to Add Global Plus 2 Negotiated Service Agreements to the Competitive Product List, and Notice of Filing (Under Seal) the Enabling Governors' Decision and Two Functionally Equivalent Agreements, Attachment A, August 8, 2008, for a redacted version of Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts (Governors' Decision No. 08–10), July 16, 2008. The Postal Service also filed under seal an unredacted version of the Governors' Decision in that docket.

[3] The Postal Service also states that this agreement has the same duration, basically a one-year period, as the previously approved Global Direct Contracts agreements. Notice at 5.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59166; File No. SR–Phlx–2008–82]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Rule 1028 (Confirmations)

December 29, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2008, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have substantially been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1028, Confirmations, to eliminate the requirement that members indicate in written confirmations to options customers the specific exchange on which transactions were done.[5] The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Phlx Rule 1028 to eliminate the requirement that the market on which an options transaction is executed be disclosed on a written confirmation furnished to a customer of a member organization. Pursuant to Phlx Rule 1028, the member organization will continue to be required to furnish a written confirmation that contains a description of each transaction in the option contracts which shall show: the type of option; the underlying security (*e.g.*,

[4] 17 CFR 240.19b–4(f)(6).

[5] The proposed filing is being done pursuant to an industry-wide initiative under the auspices of the Options Self-Regulatory Council (''OSRC''), which is a committee comprised of representatives from each of the options exchanges functioning pursuant to the OSRC Plan (the ''Plan''). *See* Securities Exchange Act Release No. 20158 (Sept. 8, 1983), 48 FR 41256 (Sept. 14, 1983). The Plan is not a National Market System (''NMS'') plan under Section 11A of the Act, but rather is a plan to allocate regulatory responsibilities under Rule 17d–2 under the Act. 17 CFR 240.17d–2.

stock or Exchange Traded Fund); the expiration month; the exercise price; the number of option contracts; the premium and commissions; the transaction and settlement dates; whether the transaction was a purchase or a sale (writing) transaction; whether the transaction was an opening or a closing transaction; and whether the transaction was effected on a principal or agency basis.

The Exchange believes that with the expansion of multi-listing of options and the introduction of new options exchanges, it has become operationally inefficient to require the disclosure of the market center on which an order was executed on the confirmation. As an example, a customer may have a single option order containing numerous option contracts executed on multiple exchanges. As such, it would be inefficient for the member organization to be required to identify the exchange symbol for each contract executed on that customer's order. This proposal will clarify that written confirmations furnished by the member organization(s) to a customer will not need to specify the exchange or exchanges on which such option contracts were executed.

This proposal is similar to rule change proposals that have been filed by the Chicago Board Options Exchange (''CBOE''), the Financial Industry Regulatory Authority, Inc. (''FINRA''), and the American Stock Exchange LLC (''Amex'').[6] The Exchange believes that similar proposals will be filed with the Commission by the New York Stock Exchange (''NYSE'') and other exchanges, and if adopted, would continue to provide a uniform approach with respect to confirmations to customers regarding standardized options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[7] in general, and furthers the objectives of section 6(b)(5) of the Act[8] 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 by clarifying the Exchange's options confirmation procedure rules to better reflect the realities of the modern options market.

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

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to section 19(b)(3)(A)[9] of the Act and Rule 19b–4(f)(6)(iii) thereunder[10] 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.

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 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 proposed rule change is substantially similar to an Amex rule that provides that written confirmations relating to options transactions are not required to specify the options exchange or exchanges on which such options were executed.[13] The Exchange believes that this proposed rule change does not raise any new, unique or substantive issues from those raised in the approved Amex filing. The Exchange also believes that acceleration of the operative date is consistent with the protection of investors and the public interest.[14]

Lastly, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five days prior to the date of the filing of the proposed rule change as required by Rule 19b–4(f)(6).

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–Phlx–2008–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2008–82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days

[6] *See* Securities Exchange Act Release Nos. 58814 (Oct. 20, 2008), 73 FR 63527 (Oct. 24, 2008) (SR–Amex–2008–53); 58932 (Nov. 12, 2008), 73 FR 69696 (Nov. 19, 2008) (SR–FINRA–2008–32); and 58980 (Nov. 19, 2008), 73 FR 72091 (Nov. 26, 2008) (SR–CBOE–2008–61).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] *Id.*

[13] *See supra* note 6, and related text.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–Phlx–2008–82 and should be submitted on or before January 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–31259 Filed 1–2–09; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 6472]

Family Advocacy Case Records

SUMMARY: Notice is hereby given that the Department of State proposes to create a new system of records, pursuant to the provision of the Privacy Act of 1974 as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on December 29, 2008.

It is proposed that the system be named ''Family Advocacy Case Records System.'' The system description will specify that Family Advocacy Case Record System maintains records concerning alleged, suspected or established child abuse or neglect or domestic violence on individuals who have been the subject of the Department of State's Family Advocacy Program, including individuals who are or were under the authority of a Chief of Mission at a post abroad. Individuals whose information is continued in the system of records may include children who are alleged to have been the subject of abuse or neglect, family members of such children, alleged perpetrators of such abuse or neglect and those involved with allegations of domestic violence.

Any persons interested in commenting on the new Family Advocacy Case Records system of records may do so by submitting comments in writing to Margaret P. Grafeld, Director, Office of Information Programs and Service, A/ISS/IPS, SA–2, 515 22nd Street, NW., Department of State, Washington, DC 20522–8001. The new system of records for the Family Advocacy Case Records will be effective, unless comments are received 40 days from the date of publication that result in a contrary determination.

This new system description will read as set forth below.

Dated: December 29, 2008.

William H. Moser,

Acting Assistant Secretary for the Bureau of Administration, Department of State.

State–75

SYSTEM NAME:

Family Advocacy Case Records.

SECURITY CLASSIFICATION:

Primarily unclassified but may include classified information.

SYSTEM LOCATION:

Department of State, Office of Medical Services, SA–1, 2401 E Street, NW., Washington, DC 20522, and at overseas posts.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been the subject of the Department of State Family Advocacy Program, including but not limited to individuals who are or were under the authority of a Chief of Mission at a post abroad. Individuals may include children who are alleged to have been the subject of abuse or neglect, family members of such children, and the alleged perpetrators of such abuse or neglect. Individuals also may include those involved with allegations of domestic violence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 226 of the Victims of Child Abuse Act of 1990 42 U.S.C. 13031; sections 201, 206, 207 of Foreign Service Act of 1980 22 U.S.C. 3921, section 3926, section 3927 (Management of the Foreign Service); section 904 of the Foreign Service Act, 22 U.S.C. 4084 (Health Care for the Foreign Service); 5 U.S.C. 301 (Management of the Department of State); 22 U.S.C. 4802, Executive Order 10450; and 28 CFR 81.1 *et seq.*

CATEGORIES OF RECORDS IN THE SYSTEM:

All available information concerning alleged, suspected or established child abuse or neglect or domestic violence. Included could be medical records, reports from medical officers at post, health care records from post, Family Advocacy Committee and Post Family Advocacy Team recommendations, law enforcement investigative reports, Regional Security Officer reports, witness reports, telegrams, email communications, correspondence, evaluative reports by medical and other professionals, photographs, lab results, x-rays, court documents, legal documents such as power of attorney, and other related records.

PURPOSE:

The information in this system is used at post by members of the Family Advocacy Team and in the Department of State by the Family Advocacy Committee. The information may be shared within the Department of State on a need to know basis and in medical clearance determinations for overseas assignment of covered employees and family members, as well as for making determinations involving curtailment, medical evacuation, suitability, and security clearance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The routine uses of the information also include:

(1) In cases of suspected child abuse, to the officials designated to receive reports of such cases pursuant to the Victims of Child Abuse Act of 1990;

(2) In cases of suspected child abuse or neglect, or domestic violence, to the appropriate federal, state, local or foreign government officials who may be involved with the investigation, prosecution, or the provision of services in such cases;

(3) To medical professionals, health care providers, and social workers, for purposes of providing treatment and/or services to the individuals covered by this system of records;

(4) To other United States Government agencies and local authorities in the performance of their official duties relating to coordination of family advocacy programs, medical care and research concerning child abuse and neglect, and domestic abuse in cases involving employees; or

(5) To medical professionals to whom referrals are being made for evaluation and/or diagnostic assessments.

Also see ''Routine Uses'' paragraph of the Prefatory Statement published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Individual name.

SAFEGUARDS:

All Department of State employees and contractors with authorized access

[15] 17 CFR 200.30–3(a)(12).

have undergone a thorough background security investigation. All users must pass training on the correct procedures for handling Sensitive but Unclassified and personally identifiable information. Annual refresher training is mandatory.

Access to the Department of State, its annexes and posts overseas is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing Family Advocacy Case information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel.

RETENTION AND DISPOSAL:

Records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with published records schedules of the Department of State as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of Information Programs and Services, A/ISS/IPS, SA–2, Department of State, 515 22nd Street, NW., Washington DC 20522–8001.

SYSTEM MANAGER AND ADDRESS:

Director, Mental Health Services, Office of Medical Services, U.S. Department of State, SA–1, 2401 E Street, NW., Washington, DC 20522. At overseas locations, the on-site system manager is the head of the Family Advocacy Team at post.

NOTIFICATION ACCESS AND AMENDMENT PROCEDURES:

Individuals who believe that the Office of Medical Services may have records pertaining to them may write to the Director, Office of Information Programs and Services, A/ISS/IPS, SA–2, Department of State, 515 22nd Street, NW., Washington DC 20522–8001, and specify that he/she wishes the Family Advocacy Case Records to be reviewed. At a minimum, the individual should include: Name, date and place of birth, current mailing address and zip code, signature, a brief description of the circumstances that may have caused the creation of the record, and the approximate date(s) of the records.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or to amend records pertaining to them may write to the Director, Office of Information Programs and Services (address above).

RECORD SOURCE CATEGORIES:

Records contain information obtained primarily from the individual who is the subject of the records, medical professionals and other health care providers, social workers, investigating officers, prosecuting attorneys, witnesses, and Family Advocacy Team and Committee members, and other United States Government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

Pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), certain records contained in this system of records are exempt from 5 U.S.C. (a)(c)(3), (d)(e)(1), (e)(4)(G), (H), (I), and (f) in accordance with Department of State rules published in the **Federal Register**.

[FR Doc. E8–31339 Filed 1–2–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 6465]

International Security Advisory Board (ISAB) Meeting Notice; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App section 10(a)(2), the Department of State announces a meeting of the International Security Advisory Board (ISAB) to take place on January 13, 2009, at the Department of State, Washington, DC.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App section 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this Board meeting will be closed to the public in the interest of national defense and foreign policy because the Board will be reviewing and discussing matters classified in accordance with Executive Order 12958. In addition, pursuant to 41 CFR 102–3.150, this meeting might be held with less than 15 days public notice for the following reason: the meeting must be held prior to January 20, 2009, and January 13, 2009, is the only available day for the officials who wish to attend the meeting.

The purpose of the ISAB is to provide the Department with a continuing source of independent advice on all aspects of arms control, disarmament, political-military affairs, and international security and related aspects of public diplomacy. The agenda for this meeting will include classified discussions related to the Board's ongoing studies on current U.S. policy and issues regarding international security, nuclear proliferation, and diplomacy.

For more information, contact Thelma Jenkins-Anthony, Deputy Executive Director of the International Security Advisory Board, Department of State, Washington, DC 20520, telephone: (202) 647–8346.

Dated: December 29, 2008.

Brandon A. Buttrick,

Executive Director, International Security Advisory Board, Department of State.

[FR Doc. E8–31337 Filed 1–2–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending November 21, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–1996–1530.

Date Filed: November 20, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 11, 2008.

Description: Application of FedEx Express, requesting renewal of its certificate of public convenience and necessity for Route 638, authorizing it to provide scheduled foreign air transportation of property and mail between a point or points in the United States, via any intermediate points, to a point or points in China open to scheduled international operations, and beyond to any points outside of China, with full traffic rights.

Docket Number: DOT–OST–2007–28728.

Date Filed: November 20, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 11, 2008.

Description: Joint application of Alitalia-Linee Aeree Italiane S.p.A. and CAI Compagnia Aerea Italiana S.p.A. requesting transfer and reiussance of

exemption and foreign air carrier permit.

Barbara J. Hairston,

Supervisory Dockets Officer, Alternate Federal Register Liaison.

[FR Doc. E8–31404 Filed 1–2–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Agreements Filed the Week Ending November 21, 2008

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2008–0359.
Date Filed: November 21, 2008.
Parties: Members of the International Air Transport Association.
Subject: PSC/RESO/142 dated October 21, 2008. Expedited Resolutions & Recommended Practices. *Intended Effective Date:* 1 December 2008, 1 January 2009.

Docket Number: DOT–OST–2008–0361.
Date Filed: November 21, 2008.
Parties: Members of the International Air Transport Association.
Subject: PSC/RESO/142 dated October 21, 2008, Expedited Resolutions & Recommended Practices. *Intended Effective Date:* 1 December 2008 and 1 January 2009.

Docket Number: DOT–OST–2008–0362.
Date Filed: November 21, 2008.
Parties: Members of the International Air Transport Association.
Subject: Technical Correction: TC3 Within South East Asia, From Malaysia to Guam, Expedited Resolution 002cg, (Memo 1250). *Intended Effective Date:* 15 January 2009.

Docket Number: DOT–OST–2008–0363.
Date Filed: November 21, 2008.
Parties: Members of the International Air Transport Association.
Subject: Technical Correction: TC3 Within South East Asia, Except from Malaysia to Guam, Expedited Resolution 002cd, (Memo 1251). *Intended Effective Date:* 15 January 2009.

Docket Number: DOT–OST–2008–0364.
Date Filed: November 21, 2008.
Parties: Members of the International Air Transport Association.
Subject: Technical Correction: TC3 Japan, Korea-South East Asia, Except between Korea (Rep. of) and Guam, Northern Mariana Islands, Expedited Resolution 002cc, (Memo 1252). *Intended Effective Date:* 15 January 2009.

Docket Number: DOT–OST–2008–0365.
Date Filed: November 21, 2008.
Parties: Members of the International Air Transport Association.
Subject: Technical Correction: TC3 South East Asia–South Asian Subcontinent, Expedited Resolution 002cf, (Memo 1253). *Intended Effective Date:* 15 January 2009.

Barbara J. Hairston,

Supervisory Dockets Officer, Alternate Federal Register Liaison.

[FR Doc. E8–31403 Filed 1–2–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request for a Land Exchange at the Moriarty Municipal Airport, Moriarty, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the exchange of property at the Moriarty Municipal Airport, Moriarty, New Mexico. The City of Moriarty as airport owner has requested to exchange land that was acquired for a crosswind runway. Since this acquisition, it has been determined that the planned alignment of the proposed crosswind runway does not meet FAA crosswind criteria and requires realignment. Any and all lands to be exchanged by the city require release from any and all provisions of applicable Grant Agreements and Grant Assurances, and to change forever, the lands requested to be released from aeronautical to nonaeronautical use under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21 Century (AIR 21). The City of Moriarty is requesting an exchange of 68.55 acres of land with the State of New Mexico Land Office. These lands to be exchanged are appraised at equal value and no monetary considerations are involved. The City of Moriarty will also exchange 9.63 acres of land with an individual property owner. These lands have also been appraised at equal value and no monetary considerations are involved. The acquisition of these lands by exchange and fee simple purchase of additional property will align the future runway to meet FAA criteria and user requirements.

DATES: *Effective Date:* Comments must be received on or before February 4, 2009.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Lacey D. Spriggs, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Louisiana/New Mexico Airports Development Office, ASW–640, Fort Worth, Texas 76193–0640.

In addition, one copy of any comments submitted to the FAA must he mailed or delivered to the Honorable Adan Encinias, Mayor, City of Moriarty, PC Box 130, Moriarty, New Mexico 87035.

FOR FURTHER INFORMATION CONTACT: Sarah Conner, Program Manager, Federal Aviation Administration, LA/NM Airports Development Office, ASW–640G, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0640.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to exchange of this property in that: The release of 78.48 acres from the Grant Agreement Grant Assurances and incorporation of the same amount of land into dedicated airport property, all under the provisions of AIR 21.

The following is a brief overview of the request:

The city of Moriarty as owner of the Moriarty Municipal Airport has requested of the Federal Aviation Administration to exchange approximately 78.48 acres for land of the same size adjacent to the airport and an individual property owner. The exchange in addition to separate fee simple acquisition, will provide the land needed for the construction of the proposed crosswind runway. The lands of the tracts requested to be released will be changed from aeronautical to non-aeronautical use and the lands released from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances. Upon this exchange the Assurances of the Grant Agreements shall hereafter apply to all new lands. All land to be acquired by exchange.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the office of Mayor Adan Encinias, city of Moriarty, P.O. Box 130, Moriarty, NM.

Issued in Fort Worth, Texas on December 11, 2008.

Kelvin Solco,

Manager, Airports Division.

[FR Doc. E8–31241 Filed 1–2–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–25756]

Commercial Driver's License (CDL) Standards; Volvo Trucks North America, Inc.'s Exemption Application

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: FMCSA announces its decision to grant Volvo Trucks North America, Inc.'s (Volvo) application for an exemption for one of its drivers to enable him to test-drive commercial motor vehicles (CMVs) in the United States without a commercial driver's license (CDL) issued by one of the States. Volvo stated the exemption is needed to support a field test to meet future air quality standards and to test-drive Volvo prototype vehicles to verify results in ''real world'' environments. Its driver holds a valid CDL issued in Sweden but lacks the U.S. residency necessary to obtain a CDL issued by one of the States. FMCSA believes the knowledge and skills testing and training program that drivers must undergo to obtain a Swedish CDL ensures that their drivers will achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: This exemption is effective January 5, 2009 and expires January 5, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC-PSD, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–4325. E-mail: *MCPSD@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the CDL requirements in 49 CFR 383.23 for a 2-year period if it finds '' * * * such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption * * * '' (49 CFR 381.305 (a)). FMCSA has evaluated Volvo's application on its merits and decided to grant the exemption for its field test engineer, Fredrik Eriksson, for a 2-year period.

Volvo Application for an Exemption

Volvo applied for an exemption from the 49 CFR 383.23 requirement that the operator of a CMV obtain a CDL issued by one of the States. This section of the Federal Motor Carrier Safety Regulations (FMCSRs) sets forth the standards that States must employ in issuing CDLs. An individual must be a resident of a State in order to qualify for a CDL. The Volvo driver-employee for whom this exemption is sought is a citizen and resident of Sweden; therefore, he cannot apply for a CDL in any State of the United States. A copy of the request for exemption from section 383.23 is in the docket identified at the beginning of this notice.

Swedish Driver

This exemption enables Fredrik Eriksson to test-drive in the U.S. Volvo CMVs that are assembled, sold or primarily used in the U.S. Volvo currently employs this driver in Sweden, and wants him to be able to test-drive Volvo prototype vehicles at its test site and in the vicinity of Phoenix, Arizona, to verify vehicle results in ''real world'' environments. He is a highly trained, experienced CMV operator with a valid Swedish-issued CDL. Because he was required to satisfy strict CDL testing standards in Sweden to obtain a CDL and has extensive training and experience operating CMVs, Volvo believes that the exemption will maintain a level of safety equivalent to the level of safety that would be obtained absent the exemption.

Method To Ensure an Equivalent or Greater Level of Safety

According to Volvo, drivers applying for a Swedish-issued CDL must undergo a training program and pass knowledge and skills tests. Volvo believes the knowledge and skills tests and training program that these drivers undergo to obtain a Swedish CDL ensure the exemption would provide a level of safety that is equivalent to, or greater than, the level of safety obtained by complying with the U.S. requirement for a CDL. In addition, Volvo has submitted a copy of the violation-free Swedish driving record of this driver.

FMCSA had previously determined that the process for obtaining a Swedish-issued CDL adequately assesses the driver's ability to operate CMVs in the U.S. Therefore, the process for obtaining a Swedish-issued CDL is considered to be comparable to, or as effective as, the requirements of 49 CFR part 383.

Comments

The Agency received no response to its request for public comments published in the **Federal Register** on September 5, 2008 (73 FR 51879).

Terms and Conditions for the Exemption

Based upon evaluation of the application for an exemption, FMCSA grants Volvo an exemption from the CDL requirement in 49 CFR 383.23 for its driver, Fredrik Eriksson, to test-drive CMVs within the United States, subject to the following terms and conditions: (1) That this driver will be subject to drug and alcohol regulations, including testing, as provided in 49 CFR part 382, (2) that this driver is subject to the same driver disqualification rules under 49 CFR parts 383 and 391 that apply to other CMV drivers in the U.S., (3) that this driver keep a copy of the exemption on the vehicle at all times, (4) that Volvo notify FMCSA in writing of any accident, as defined in 49 CFR 390.5, involving this driver, and (5) that Volvo notify FMCSA in writing if this driver is convicted of a disqualifying offense described in section 383.51 or 391.15 of the FMCSRs.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The driver for Volvo fails to comply with the terms and conditions of the exemption, (2) the exemption has resulted in a lower level of safety than was maintained before it was granted, or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

Issued on: December 19, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–31367 Filed 1–2–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–25290]

Commercial Driver's License Standards; Isuzu Motors America, Inc.'s Exemption Application

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: The FMCSA announces its decision to approve Isuzu Motors America, Inc.'s (Isuzu), application for an exemption for a period of 2 years for 27 of its driver-employees who are citizens and residents of Japan and hold a Japanese CDL, to enable them to test-drive commercial motor vehicles (CMVs) in the United States without a commercial driver's license (CDL) issued by one of the States. Isuzu requested the exemption so that these driver-employees can operate as a team, evaluating and testing production and prototype CMVs in the United States in order to assist in the design of safe vehicles for sale in the United States. FMCSA believes the knowledge and skills testing and training program that Japanese drivers must undergo to obtain a Japanese CDL ensures a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: This exemption is effective on January 5, 2009 and expires on January 5, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Schultz, Jr., FMCSA Office of Bus and Truck Standards and Operations, Driver and Carrier Operations Division, Telephone: 202–366–4325, or e-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a maximum of 2 years if it finds ''* * * such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption * * *'' The procedure for requesting an exemption is prescribed by 49 CFR part 381. FMCSA has evaluated Isuzu's application on its merits and decided to grant the exemption from 49 CFR 383.23 for the 27 Isuzu employees listed under ''Japanese Drivers'' below for a 2-year period.

Isuzu Application for an Exemption

Isuzu has applied for an exemption from the requirement of 49 CFR 383.23 that operators of CMVs must obtain a CDL from one of the States. Specifically, it asks that 27 of its employee-drivers who are citizens and residents of Japan and hold a Japanese CDL be permitted to operate a CMV in the United States for a period of 2 years. The exemption would allow these individuals to test-drive Isuzu CMVs without a CDL issued by one of the States. A copy of the request for exemption is in the docket identified at the beginning of this notice.

Comments

On August 25, 2008, FMCSA published a notice of Isuzu's application for exemption (73 FR 50065), and requested comments from the public. Only one brief comment was received; it urged FMCSA to deny the exemption because the author believed that the 27 Isuzu employees should be required to comply with the CDL law. The comment did not address the qualifications of these employees to operate CMVs, nor did it address the core issue as defined by 49 U.S.C. 31315 and 31136(e), *i.e.* whether granting these exemptions will lower the level of safety of CDL operations in the U.S. below the level of safety that would be experienced if this exemption were denied.

Japanese Drivers

This exemption enables the following 27 drivers to operate CMVs in the U.S. without a CDL for a period of 2 years: Yasushi Akazawa, Kenji Takashima, Kunihisa Nagata, Hidenori Seki, Toshihiko Morikawa, Koichi Uneo, Atsushi Fujiwara, Katsushi Suzuki, Mitsugu Yamamoto, Takashi Nakaya, Takahisa Chiba, Shigeru Kitano, Daisuke Mori, Takahiro Kakizaki, Takamasa Ono, Koichi Sekine, Shinichi Takahashi, Shinya Ogawa, Masamitsu Oohata, Tamotsu Watanabe, Masahito Suzuki, Kazuya Suwa, Hiroshi Yokobori, Tatsuji Kitamura, Shinichi Ishiguro, Takashi Hiromatsu, and Jun Mizushima.

Method To Ensure an Equivalent or Greater Level of Safety

These Isuzu drivers are citizens and residents of Japan, have valid Japanese-issued CDLs, and are experienced CMV operators. Drivers applying to obtain a Japanese-issued CDL must successfully pass a knowledge test and a skills test before a license to operate a CMV is issued. Prior to taking the tests, drivers are required to hold a conventional driver's license for at least 3 years. A driver granted a Japanese CDL may legally operate any CMV permitted on the roads of Japan. Thus, the requirements of a Japanese-issued CDL are considered comparable to, or as effective as, the requirements for a U.S. CDL (49 CFR part 383). Isuzu believes that these drivers will operate in such a manner that the level of safety with the exemptions in place will equal, or exceed, the level of safety that would be attained in the absence of the exemption.

FMCSA Decision

The FMCSA decision to grant these 27 drivers an exemption from Section 383.23 is based on the merits of the application for exemption, the rigorous knowledge and skills testing of Japanese drivers concerning the safe operation of CMVs, and consideration of the comment submitted in response to the public notice.

Terms and Conditions of the Exemption

Exemption from the requirements of Section 383.23 is granted to the 27 individuals identified under the ''Japanese Drivers'' heading above, subject to the following terms and conditions: (1) That these drivers are subject to the drug and alcohol regulations, including testing, as provided in 49 CFR part 382, (2) that these drivers are subject to the same driver disqualification rules under 49 CFR parts 383 and 391 that apply to other CMV drivers in the United States, (3) that these drivers keep a copy of the exemption in the CMV they are driving at all times, (4) that Isuzu notify FMCSA in writing of any accident, as defined in 49 CFR 390.5, involving one of the exempted drivers, and (5) that Isuzu notify FMCSA in writing if any driver is convicted of a disqualifying offense described in section 383.51 or 391.15 of the Federal Motor Carrier Safety Regulations.

The exemption will be revoked if: (1) The Isuzu drivers fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

Issued on: December 19, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–31364 Filed 1–2–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held from 11 a.m. to 12:30 p.m. (EDT) on Thursday, January 22, 2009, at the Corporation's Administration Headquarters, Suite W32–300, 1200 New Jersey Avenue, SE., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than Friday, January 16, 2009, Anita K. Blackman, Chief of Staff, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue, SE., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on December 29, 2008.

Collister Johnson, Jr.,

Administrator.

[FR Doc. E8–31251 Filed 1–2–09; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0005]

Agency Information Collection (Application for Dependency and Indemnity Compensation by Parent(s), (Including Accrued Benefits and Death Compensation, When Applicable)) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 4, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0005'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0005.''

SUPPLEMENTARY INFORMATION:

Title: Application for Dependency and Indemnity Compensation by Parent(s), (Including Accrued Benefits and Death Compensation, When Applicable), VA Form 21–535.

OMB Control Number: 2900–0005.

Type of Review: Extension of a currently approved collection.

Abstract: Surviving parent(s) of veterans whose death was service connected complete VA Form 21–535 to apply for dependency and indemnity compensation, death compensation, and/or accrued benefits. The information collected is used to determine the claimant's eligibility for death benefits sought.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 21, 2008, at pages 62588–62589.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,320 hours.

Estimated Average Burden per Respondent: 1 hour 12 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,600.

Dated: December 23, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E8–31284 Filed 1–2–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0701]

Proposed Information Collection (Bereaved Family Member Satisfaction Survey) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to assess the quality of care provided to veterans prior to his or her death.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 6, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *mary.stout@va.gov*. Please refer to ''OMB Control No. 2900-0701'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or Fax (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct

or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Bereaved Family Member Satisfaction Survey, VA Form 10–21081(NR).

OMB Control Number: 2900–0701.

Type of Review: Extension of a currently approve collection.

Abstract: The data collected on VA Form 10–21081(NR) will be use to survey family members of deceased veterans on their satisfaction with the quality care provided to their loved one prior to his or her death at a VA facility.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,650 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 9,900.

Dated: December 23, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E8–31285 Filed 1–2–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0265]

Proposed Information Collection (Educational/Vocational Counseling Application) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine an applicant's entitlement to counseling services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 6, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0265'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Educational/Vocational Counseling Application, VA Form 28–8832.

OMB Control Number: 2900–0265.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 28–8832 to apply for counseling services. VA provides personal counseling as well as counseling in training and career opportunities. The information collected will be used to determine the claimant's eligibility for counseling.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,550 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 5,100.

Dated: December 24, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E8–31286 Filed 1–2–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 21–0820)]

Proposed Information Collection (Report of General Information) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed as evidence to determine a claimant's entitlement to benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 6, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC

20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–New (VA Form 21–0820)'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or Fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. VA Form 21–0820, Report of General Information.

b. VA Form 21–0820a, Report of Death of Beneficiary.

c. VA Form 21–0820b, Report of Nursing Home Information.

d. VA Form 21–0820c, Report of Defense Finance and Accounting Service (DFAS).

e. VA Form 21–0820d, Report of Lost Check.

f. VA Form 21–0820e, Report of Incarceration.

OMB Control Number: 2900–New (VA Form 21–0820).

Type of Review: New collection.

Abstract: The forms will be used by VA personnel to document verbal information obtained telephonically from claimants or their beneficiary. The data collected will be used as part of the evidence needed to determine the claimant's or beneficiary's eligibility for benefits.

Affected Public: Federal Government.

Estimated Annual Burden:

a. VA Form 21–0820, Report of General Information—19,667.

b. VA Form 21–0820a, Report of Death of Beneficiary—6,667.

c. VA Form 21–0820b, Report of Nursing Home Information—2,500.

d. VA Form 21–0820c, Report of Defense Finance and Accounting Service (DFAS)—2,500.

e. VA Form 21–0820d, Report of Lost Check—2,500.

f. VA Form 21–0820e, Report of Incarceration—833.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Hourly.

Estimated Number of Respondents:

a. VA Form 21–0820, Report of General Information—2,360,000.

b. VA Form 21–0820a, Report of Death of Beneficiary—80,000.

c. VA Form 21–0820b, Report of Nursing Home Information—30,000.

d. VA Form 21–0820c, Report of Defense Finance and Accounting Service (DFAS)—30,000.

e. VA Form 21–0820d, Report of Lost Check—30,000.

f. VA Form 21–0820e, Report of Incarceration—10,000.

Dated: December 24, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E8–31287 Filed 1–2–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
January 5, 2009

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 301, and 602

Section 482: Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 9441]

RIN 1545–BI46

Section 482: Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that provide further guidance and clarification regarding methods under section 482 to determine taxable income in connection with a cost sharing arrangement in order to address issues that have arisen in administering the current regulations. The temporary regulations affect domestic and foreign entities that enter into cost sharing arrangements described in the temporary regulations. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on January 5, 2009.

Applicability Date: For dates of applicability, see §§ 1.482–1T(j)(6)(i), 1.482–2T(f), 1.482–4T(h), 1.482–7T(l), 1.482–8T(c), 1.482–9T(n)(3), and 1.301–7701–1(f).

FOR FURTHER INFORMATION CONTACT: Kenneth P. Christman, (202) 435–5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and pending receipt and valuation of public comments, approved by the Office of Management and Budget under control number 1545–1364.

The collections of information in these temporary regulations are in § 1.482–7T(b)(2) and (k). Responses to the collections of information are required by the IRS to monitor compliance of controlled taxpayers with the provisions applicable to cost sharing arrangements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

A notice of proposed rulemaking and notice of public hearing regarding additional guidance to improve compliance with, and administration of, the rules in connection with a cost sharing arrangement (CSA) were published in the **Federal Register** (70 FR 51116) on (REG–144615–02) August 29, 2005 (the 2005 proposed regulations). A correction to the notice of proposed rulemaking and notice of public hearing was published in the **Federal Register** (70 FR 56611) on September 28, 2005. A public hearing was held on December 16, 2005.

The Treasury Department and the IRS received substantial comments on a wide range of issues addressed in the 2005 proposed regulations. In response to these comments, these temporary regulations make several significant changes to the rules of the 2005 proposed regulations. The temporary regulations are generally applicable for CSAs commencing on or after January 5, 2009, with transition rules for certain preexisting arrangements. These regulations are being issued in temporary and proposed form so that taxpayers and the IRS may apply the new cost sharing rules while maintaining the opportunity for further input and refinements before the issuance of final rules.

Explanation of Provisions

A. Overview

The temporary regulations generally provide guidance regarding the application of section 482 and the arm's length method to cost sharing arrangements. Several comments on the proposed regulations questioned whether and how the proposed regulations conform to the arm's length standard, as well as its corollary, the commensurate with income (CWI) requirement added by the Tax Reform Act of 1986. In response, the temporary regulations provide further guidance on the evaluation of the arm's length results of cost sharing transactions (CSTs) and platform contribution transactions (PCTs). The regulations address the material functional and risk allocations in the context of a CSA, including the reasonably anticipated duration of the commitments, the intended scope of the intangible development, the degree and uncertainty of profit potential of the intangibles to be developed, and the extent of platform and other contributions of resources, capabilities, and rights to the development and exploitation of cost shared intangibles (CSA Activity).

Under the temporary regulations, if available data of uncontrolled transactions reflect, or may be reliably adjusted to reflect, similar facts and circumstances to a CSA, they may be the basis for application of a comparable uncontrolled transaction method to value the CST and PCT results. Because of the difficulty of finding data that reliably reflects such facts and circumstances (even after adjustments), the temporary regulations also provide for other methods. These include the newly specified income, acquisition price, market capitalization, and residual profit split methods. The temporary regulations also make related changes to other sections of the regulations, including Temp. Treas. Reg. §§ 1.482–1T, 1.482–4T, 1.482–8T, and 1.482–9T, and Treas. Reg. § 1.6662–6.

B. Flexibility and Scope of CSA Coverage

Commentators criticized the 2005 proposed regulations for lack of flexibility concerning the types and provisions of arrangements eligible for CSA treatment. Some comments also addressed non-conforming intangible development arrangements that would not be treated as CSAs.

In response to these comments, the temporary regulations provide taxpayers with greater flexibility in designing certain aspects of CSAs. The temporary regulations also address the treatment of non-conforming intangible development arrangements.

1. Intangible Development Arrangements Other Than CSAs—Temp. Treas. Reg. §§ 1.482–1T(b)(2)(i) and (iii), 1.482–4T(g), 1.482–7T(b)(5), and 1.482–9T(m)(3)

The 2005 proposed regulations defined the contractual terms, risk allocations, and other material provisions of a CSA covered by the cost sharing rules. While other intangible development arrangements might be referred to colloquially as cost sharing arrangements, they were not to be treated as CSAs by the 2005 proposed regulations unless either a taxpayer

substantially complied with the CSA administrative requirements and reasonably concluded that its arrangement was a CSA, or a taxpayer substantially complied with the CSA administrative requirements and the Commissioner determined to apply the CSA rules to the arrangement.

Commentators suggested broadening the scope of intangible development arrangements that meet the CSA definition. Some commentators urged the regulations not to define CSA terms and conditions but to extend CSA treatment to any arrangement that uncontrolled parties might call a cost sharing arrangement, even though such arrangement may involve materially different risk allocations and provisions than addressed in the cost sharing rules. Still other commentators, while accepting that the regulations should define the scope of arrangements treated under the cost sharing rules, suggested that non-conforming arrangements would be subject only to the general principles of Treas. Reg. § 1.482–1 and would not be governed by the sections of the regulations addressed to specific transactional types. Some commentators also expressed concern that the Commissioner might treat a non-conforming arrangement as a CSA even in a situation where that result was not warranted.

Because the cost sharing rules are designed to provide guidance for specific types of transactions and arrangements, the Treasury Department and the IRS continue to believe that the new rules set forth for CSAs should apply only to the transactions intended. From the standpoint of the purpose of the cost sharing rules and their administrability, it is important that the rules be applicable only to the defined scope of intangible development arrangements and apply no more broadly or narrowly than intended. In recognition of taxpayer concerns, however, the temporary regulations seek to provide taxpayers with greater flexibility and scope in the types and provisions of arrangements that may qualify as CSAs.

Under Treas. Reg. § 1.482–1(b)(2)(ii) (Selection of category of method applicable to transaction), non-conforming arrangements are governed by methods provided in other sections of the regulations under section 482, as applied in accordance with Treas. Reg. § 1.482–1. See also Treas. Reg. §§ 1.482–2(d), 3(a), and 4(a), and Temp. Treas. Reg. § 1.482–9T(a). Thus, intangible development arrangements, including partnerships, outside the scope of the cost sharing rules are governed by the transfer of intangible rules of Treas. Reg. § 1.482–4(a), or the controlled services provisions of Temp. Treas. Reg. § 1.482–9T, as appropriate. The temporary regulations make clarifying amendments to Temp. Treas. Reg. §§ 1.482–1T(b)(2)(i) and (iii), 1.482–4T(g), and 1.482–9T(m)(3). These amendments confirm that Treas. Reg. § 1.482–1 provides principles, not methods. For methods, reference must be made to the other sections of the regulations under section 482. While treatment of a CSA is governed by Temp. Treas. Reg. § 1.482–7T, Temp. Treas. Reg. §§ 1.482–4T(g) and 1.482–9T(m)(3), as appropriate, govern intangible development arrangements other than CSAs, including partnerships.

Nevertheless, the methods and best method considerations under the cost sharing rules may be adapted for purposes of the evaluation of non-conforming intangible development arrangements. Importantly, the temporary regulations provide that the analysis under the intangible transfer or controlled services provisions, as applicable, should take into account the principles, methods, comparability, and reliability considerations set forth in Temp. Treas. Reg. § 1.482–7T in determining the best method for purposes of those provisions, including an unspecified method, as those methods and considerations may be appropriately adjusted in light of the differences in the facts and circumstances between the non-conforming arrangement and a CSA.

Finally, Temp. Treas. Reg. § 1.482–7(b)(5) clarifies the circumstances under which the Commissioner may treat an arrangement as a CSA, notwithstanding a technical failure to meet the substantive requirements of a CSA. Namely, the Commissioner must conclude that the taxpayer substantially complied with the CSA administrative requirements and that application of the CSA rules to such non-conforming arrangement will provide the most reliable measure of an arm's length result. For these purposes, the temporary regulations also clarify that applicable contractual provisions will be interpreted by reference to economic substance and the parties' actual conduct, and the Commissioner may disregard terms lacking economic substance and impute terms consistent with the economic substance.

2. Territorial and Other Divisional Interests—Temp. Treas. Reg. § 1.482–7T(b)(1)(iii) and (4)

The 2005 proposed regulations required the controlled participants in a CSA to receive non-overlapping territorial interests that entitled each controlled participant to the perpetual and exclusive right to the profits in its territory attributable cost shared intangibles. Commentators suggested that requiring territorial divisions of interests was overly restrictive and did not align with common business models. They also questioned the need for the non-overlapping, perpetual, and exclusivity conditions.

To provide taxpayers with more flexibility in designing qualifying divisional interests, the temporary regulations permit use of a new basis—the field of use division of interests—in addition to the territorial basis. Further, the regulations also authorize other non-overlapping divisional interests provided that the basis used meets four criteria: (1) The basis must clearly and unambiguously divide all interests in cost shared intangibles among the controlled participants; (2) the consistent use of such basis can be dependably verified from the records maintained by the controlled participants; (3) the rights of the controlled participants to exploit cost shared intangibles are non-overlapping, exclusive, and perpetual; and (4) the resulting benefits associated with each controlled participant's interest in cost shared intangibles are predictable with reasonable reliability. The temporary regulations illustrate instances in which divisional interests tied to specific manufacturing facilities, as an example, would, and would not, qualify under these criteria. See Temp. Treas. Reg. § 1.482–7T(b)(4)(v), Examples 2 and 3.

3. Platform and Other Contributions—Temp. Treas. Reg. § 1.482–7T(c) and (g)(2)(ii)

The 2005 proposed regulations described external contributions for which compensation was due from other controlled participants, that is, preliminary or contemporaneous transactions. A preliminary or contemporaneous transaction corresponded to the buy-in pursuant to § 1.482–7(g) of the 1995 final regulations. Under the 2005 proposed regulations, an external contribution generally consisted of the rights in the reference transaction (RT) in any resource or capability reasonably anticipated to contribute to developing cost shared intangibles. The RT consisted of a transaction, to be designated in the CSA documentation, affording the perpetual and exclusive rights in the subject resource or capability. While the RT was relevant to valuing the compensation obligation under a PCT, the controlled participants were not required to actually enter into the RT. Although the RT assumed

perpetual and exclusive rights, proration was required to the extent that the subject resource or capability was reasonably anticipated to contribute both to the CSA Activity and other business activities. Evaluation of the preliminary or contemporaneous transaction compensation obligation for the subject rights could be in the aggregate with preliminary or contemporaneous transaction compensation obligation with respect to other external contributions, or in the aggregate with the compensation obligations with respect to other rights, where valuation on an aggregate basis would provide the most reliable measure of an arm's length result for the aggregated preliminary or contemporaneous transactions and other transactions.

Commentators objected to the RT as overbroad. Commentators further contended that external contributions included elements such as workforce, goodwill or going concern value, or business opportunity, which in the commentators' view either do not constitute intangibles, or are not being transferred, and so, in the commentators' view, are not compensable.

The temporary regulations replace the term ''external contribution'' with the term ''platform contribution'' and replace the term ''preliminary or contemporaneous transaction'' with the term ''platform contribution transaction.'' The temporary regulations, like the 2005 proposed regulations, do not limit platform contributions that must be compensated in PCTs to the transfer of intangibles defined in section 936(h)(3)(B). For example, to the extent a controlled participant (the PCT Payee) contributes the services of its research team for purposes of developing cost shared intangibles pursuant to the CSA, the other controlled participant (the PCT Payor) would owe compensation for the services of such team under Temp. Treas. Reg. § 1.482–9T, just as would be the case in a contract research arrangement. Where there is a combined contribution of research services, intangibles in process, or other resources, capabilities, or rights, the temporary regulations provide for an aggregate valuation where that would provide the most reliable measure of an arm's length result for the aggregated PCTs and other transactions. The treatment available under the cost sharing rules of the contribution of the services of a research team as controlled services is without any inference concerning the potential status of workforce in place as an intangible within the meaning of section 936(h)(3)(B).

On the other hand, the temporary regulations only require the PCT Payor to compensate the PCT Payee for platform contributions, or cross operating contributions, reasonably anticipated to contribute to the CSA Activity in the PCT Payor's division as defined in Temp. Treas. Reg. § 1.482–7T(j)(1)(i). A PCT Payor is not obligated to compensate the PCT Payee for any of the PCT Payee's resources, capabilities, or rights that are reasonably anticipated to benefit only the PCT Payee's operations. Similarly, under the temporary regulations, the PCT Payee is also not entitled to compensation from the PCT Payor on account of any of the PCT Payor's own resources, capabilities, or rights, including any goodwill or going concern value of the PCT Payor. For example, where operations of parties involve undertaking functions and risks of scope and duration comparable to those of the PCT Payor, an application of the income method based on the comparable profits method would retain for the PCT Payor the returns reasonably anticipated to its own contributions to operations in its division, including any goodwill or going concern value associated with those operations, based on the returns to the comparable parties used in the CPM analysis. Similarly, the PCT Payor retains the ability to pursue its own business opportunities in its division, including through operating cost contributions to maintain or develop resources, capabilities, or rights to promote its operations.

In response to comments that the concept of the RT was unnecessary and confusing, the temporary regulations do not use that concept. Instead, the temporary regulations adopt a presumption that a PCT Payee provides any resource, capability, or right to the intangible development activity (IDA) pursuant to the CSA on an exclusive basis. A taxpayer can rebut the presumption by showing to the satisfaction of the Commissioner that the subject resource, capability, or right is reasonably anticipated to contribute not just to the CSA, but to other business activities as well. For example, if the platform resource is a research tool, then the taxpayer could rebut the presumption of exclusivity by establishing to the satisfaction of the Commissioner that the tool is reasonably anticipated not only to be applied in the IDA, but also to be licensed to an uncontrolled taxpayer. The temporary regulations provide guidance on proration of PCT payments in cases where the taxpayer rebuts the presumption.

4. Intangible Development Activity and Costs—Temp. Treas. Reg. § 1.482–7T(d)

Some commentators suggested that taxpayers can limit the application of the cost sharing rules by defining the IDA with reference only to specifically listed platform contributions. Without any inference intended as to the economic substance of such an approach, the temporary regulations are clarified to exclude this possibility. The scope of the IDA includes all activities that could reasonably be anticipated to contribute to developing the reasonably anticipated cost shared intangibles. The IDA cannot be described merely by a list of particular resources, capabilities, or rights that will be used in the CSA, since the IDA is a function of what are the reasonably anticipated cost shared intangibles and such a list might not identify reasonably anticipated cost shared intangibles. Also, the scope of the IDA may change as the nature or identity of the reasonably anticipated cost shared intangibles or the nature of the activities necessary for their development become clearer. For example, the relevance of certain ongoing work to developing reasonably anticipated cost shared intangibles or the need for additional work may only become clear over time.

The Treasury Department and the IRS requested in Notice 2005–99, 2005–52 CB 1214 comments regarding the valuation of stock options and other stock-based compensation. The Treasury Department and the IRS received comments and continue to consider the technical changes and issues described in Notice 2005–99 and intend to address those in a subsequent regulations project. See Treas. Reg. § 601.601(d)(2)(ii)(*b*).

5. Changes in Participation—Temp. Treas. Reg. § 1.482–7T(f)

The increased flexibility to adopt a divisional basis other than a territorial or field of use basis entails the need for provisions to prevent abuse and facilitate compliance. Capability fluctuations, whether market-driven or strategic, that materially alter the controlled participants' RAB shares as compared with their respective divisional interests create the equivalent of a controlled transfer of interests and should therefore equally occasion arm's length compensation. Accordingly, the temporary regulations modify the change of participation provision to classify such a material capability variation, in addition to a controlled transfer of interest, as a change in

participation that requires arm's length consideration by the controlled participant whose RAB share increases, to the controlled participant whose RAB share decreases, as the result of the capability variation.

C. Income and Other Specified and Unspecified Methods

1. Best Method Analysis Considerations—Temp. Treas. Reg. § 1.482–7T(g)(2)

The 2005 proposed regulations articulated ''general principles''—such as the realistic alternatives principle—applicable to any method to determine the arm's length charge in a PCT. Commentators expressed uncertainty about the role intended for these principles. For example, they wondered if these principles themselves dictated, or trumped, methods or applications of methods.

The temporary regulations clarify that these principles were intended to provide supplementary guidance on the application of the best method rule to determine which method, or application of a method, provides the most reliable measure of an arm's length result in the CSA context. In other words, the principles provide best method considerations to aid the competitive evaluation of methods or applications, and are not themselves methods or trumping rules.

a. *Consistency with upfront terms and risk allocation—the investor model—Temp. Treas. Reg. § 1.482–7T(g)(2)(ii).*

The investor model is a core principle of the 2005 proposed regulations. A PCT Payor, through cost sharing and payments made pursuant to the PCT (PCT Payments), is investing for the term of the CSA Activity and expects returns over time consistent with the riskiness of that investment.

The upfront evaluation pursuant to the investor model of expected returns to particular risks assumed in intangible development and exploitation under the facts and circumstances is key to ensuring consistency of the results of a CSA with the arm's length standard. Commentators have criticized the investor model for stripping away risky returns from the PCT Payor. The temporary regulations provide additional guidance to explain that when the PCT Payor assumes risks, it accordingly enjoys the returns (or suffers the detriments) that may result from such risks.

For example, in addition to its cost contributions to developing cost shared intangibles, a PCT Payor may also commit significant operating contributions, such as existing marketing or manufacturing process intangibles, to operations in its division as well as make significant operating cost contributions towards further developing such intangibles. To the extent parties to comparable transactions undertake similar risks of similar scope and duration, the PCT Payor will be appropriately awarded based on a method that relies in whole or part on the returns in such comparable transactions (including applications of the income method based on a CUT or the CPM). To the extent its operating contributions are nonroutine, that is, not reflected in available comparable transactions, then the PCT Payor may share in nonroutine divisional profit under the application of the residual profit split method (RPSM) provided in the temporary regulations.

Moreover, the temporary regulations provide guidance on discount rates and arm's length ranges, so as to further clarify the ability of the PCT Payor to achieve results commensurate with its assumption of risks.

b. *Aggregation of transactions—Temp. Treas. Reg. § 1.482–7T (g)(2)(iv).*

The temporary regulations make conforming changes to the guidance included in the 2005 proposed regulations on aggregate evaluation of multiple transactions. Thus, if the combined effect of transactions in connection with a CSA involving platform, operating, and other contributions of resources, capabilities, or rights are reasonably anticipated to be interrelated, then determination of the arm's length charge for PCTs and other transactions on an aggregate basis may provide the most reliable measure of an arm's length result.

c. *Discount rates—Temp. Treas. Reg. § 1.482–7T(g)(2)(v).*

The 2005 proposed regulations provided general guidance that, where a present value is needed for a purpose in a cost sharing analysis, a discount rate should be used that most reliably reflects the risk of the particular set of activities or transactions based on all the information potentially available at the time for which the present value calculation is to be performed. Further, depending on the particular facts and circumstances, the discount rate may differ among a company's various activities and transactions. As examples, the proposed regulations indicated that a weighted average cost of capital (WACC) of the taxpayer, or an uncontrolled taxpayer, could provide the most reliable basis for a discount rate if the CSA Activity involves the same risk as projects undertaken by the taxpayer, or uncontrolled taxpayer, as a whole. As another example, in certain appropriate conditions, a company's internal hurdle rate for projects of comparable risk might provide a reliable basis for a discount rate in a cost sharing analysis.

Commentators offered several criticisms of the discount rate guidance. Some comments concluded that the 2005 proposed regulations placed an inappropriate emphasis on a taxpayer's WACC as a basis for analysis. Other comments suggested a clarification be made that more than a single discount rate may be appropriate in a cost sharing analysis. Yet other comments addressed whether a discount rate in a cost sharing analysis should be before, or after, tax. Some commentators asserted that cash flows, rather than items entering into income, analytically are the more appropriate amounts to be discounted.

The temporary regulations revise and elaborate upon the best method analysis considerations in regard to discount rates. Guidance is provided recognizing that the appropriate discount rate may, depending on the facts and circumstances, vary between realistic alternatives and forms of payment. As regards discount rate variation between realistic alternatives, for example, licensing intangibles needed for its operations would ordinarily be less risky for a licensee, and so require a lower discount rate, than entering into a CSA which would involve the licensee assuming the additional risk of funding its cost contributions to the IDA. As regards discount rate variation between forms of payment, for example, ordinarily a royalty computed on a profits base would be more volatile, and so require a higher discount rate to discount projected payments to present value, than a royalty computed on a sales base.

The temporary regulations recognize that, in general, discount rates inferred from the operations of the capital markets are post-tax rates. An analysis applying post-tax discount rates would be expected to treat taxes like any other expense. However, the equivalent result may in certain circumstances be achieved by applying a post-tax discount rate to pre-tax net income multiplied by the difference of one minus the tax rate. If such an approach is adopted in applying the income method, to the extent that the controlled participants' respective tax rates are not materially affected by whether they enter into the cost sharing or licensing alternative (or if reliable adjustments may be made for varying tax rates), the mulitiplier (that is, one minus the tax rate) may be cancelled from both sides of the equation of the cost sharing and

licensing alternative present values. Accordingly, in such circumstance it is sufficient to apply post-tax discount rates to pre-tax items for the purpose of equating the cost sharing and licensing alternatives. See also the discussion of the income method in this preamble.

The specific reference to a WACC or to hurdle rates are eliminated as unnecessary, but without any inference as to a WACC or a hurdle rate being an appropriate discount rate, or an appropriate starting point in ascertaining a discount rate, depending on the particular facts.

Certain methods in the temporary regulations (such as the income method under Temp. Treas Reg. § 1.482–7T(g)(4)) are theoretically based on valuation techniques that use ''cash flow'' projections rather than income projections. While use of cash flow projections is permitted under these methods, for a number of practical and administrative reasons, detailed guidance on the specific applications of the methods are based on income, rather than cash flow, measures. The Treasury Department and the IRS considered whether to provide guidance on the use of cash flows, rather than income, as the appropriate amounts to be discounted in a cost sharing analysis. The Treasury Department and the IRS continue to consider, and solicit comments, on whether and how the cost sharing rules could reliably be administered on the basis of cash flows instead of operating income, and whether such a basis is consistent with the second sentence of section 482 and its CWI requirement.

d. *Projections—Temp. Treas. Reg. § 1.482–7T(g)(2)(vi).*

The temporary regulations note that the reliability of an estimate will often depend upon the reliability of the projections used in making the estimate. Projections should reflect the best estimates of the items projected (for example, reflecting a probability weighted average of possible outcomes).

e. *Arm's length range—Temp. Treas. Reg. § 1.482–7T(g)(2)(ix).*

The 2005 proposed regulations provided supplemental guidance on applying arm's length methods in the cost sharing context in accordance with the provisions of Treas. Reg. § 1.482–1 including, inter alia, the arm's length range of Treas. Reg. § 1.482–1(e). The proposed regulations did not, however, provide guidance on how to adapt an arm's length range for cost sharing.

The temporary regulations adapt the guidance in Treas. Reg. § 1.482–1(e) for use with some of the methods for computing PCT Payments that are specified in the temporary regulation. The provisions elaborate, where the entire range of results cannot be regarded as of sufficient comparability and reliability, how to derive a statistically enhanced range of arm's length charges for a PCT.

The guidance in Treas. Reg. § 1.482–1(e) regarding arm's length ranges is most easily understood in the context of a method (for example, comparable uncontrolled price, cost plus, resale price, comparable uncontrolled transaction, comparable profits), in which the result of each comparable transaction directly provides an estimate for the result of the controlled transaction. Some of the methods specified in the temporary regulations (for example, the income method) have a different structure, in which an arm's length result is estimated by performing mathematical calculations that depend on two or more input parameters (for example, a relevant discount rate, certain financial projections, a return for routine activities) that must be determined. The additional guidance in this section addresses the arm's length range in the context of such methods.

The temporary regulations distinguish certain input parameters (variable input parameters) that, for purposes of determining an arm's length range, may be assigned more than one possible value. Such input parameters are limited to those whose value is most reliably determined by considering two or more observations of market data (for example, profit levels or stock betas of two or more companies) that have, or with adjustment can be brought to, a similar reliability and comparability, as described in Treas. Reg. § 1.482–1(e)(2)(ii). If there are two or more variable input parameters, the narrowing effect of the interquartile range is used twice: First, to narrow the variation of each input parameter, and again to narrow the resulting set of PCT Payment values. This double narrowing reflects that the use of two or more variable input parameters normally introduces additional unreliability into a method, even though that method may be the best method.

Generally, Treas. Reg. § 1.482–1(e)(3) governs the Commissioner's ability to make an adjustment to a PCT Payment due to the taxpayer's results being outside the arm's length range. Consistent with the principles expressed there, adjustment under the temporary regulations will normally be to the median, as defined in Treas. Reg. § 1.482–1(e)(3). Also, the Commissioner is not required to establish an arm's length range prior to making an allocation under section 482.

The Treasury Department and the IRS solicit comments on the design and mechanics of the supplemental guidance on determination of an arm's length range in paragraph (g)(2)(ix) of the temporary regulations, including the limitation of variable input parameters to market-based input parameters. Any alternative proposal should specify the design and mechanics in detail, and should discuss whether such an approach enhances the reliability of the analysis, is administrable, and is not so manipulable as to yield unrealistic ranges.

2. Comparable Uncontrolled Transaction Method—Temp. Treas. Reg. § 1.482–7T(g)(3)

The 2005 proposed regulations provided for possible use of the comparable uncontrolled transaction (CUT) method to determine the arm's length charge in a PCT where appropriate in accordance with the standards of the intangibles transfer and controlled services provisions of the regulations under section 482. Some commentators asserted that any arrangement that uncontrolled parties might call a cost sharing arrangement could serve as a CUT, even though such arrangement may involve materially different risk allocations and provisions than addressed in the cost sharing rules.

In response to these comments, the temporary regulations describe the relevant considerations for purposes of evaluating whether a putative CUT may, or may not, reflect the most reliable measure of an arm's length result. Although all of the factors entering into a best method analysis described in Treas. Reg. §§ 1.482–1(c) and (d) must be considered, comparability and reliability under the CUT method in the CSA context are particularly dependent on similarity of contractual terms, degree to which allocation of risks is proportional to reasonably anticipated benefits from exploiting the results of intangible development, similar period of commitment as to the sharing of intangible development risks, and similar scope, uncertainty, and profit potential of the subject intangible development, including a similar allocation of the risks of any existing resources, capabilities, or rights, as well as of the risks of developing other resources, capabilities, or rights that would be reasonably anticipated to contribute to exploitation within the parties' divisions, that is consistent with the actual allocation of risks between the controlled participants as provided in the CSA in accordance with the cost sharing rules.

3. Income Method—Temp. Treas. Reg. § 1.482–7T(g)(4)

The 2005 proposed regulations made the income method a specified method for purposes of evaluating the arm's length charge in a PCT. Under the general rule, the arm's length charge was an amount that equated a controlled participant's present value of entering into a CSA with the present value of the controlled participant 's best realistic alternative. Also provided were two applications of the income method. One, based on a CUT analysis, assumed that a PCT Payee's best realistic alternative would be to develop the cost shared intangibles on its own, bearing all the intangible development costs (IDCs) itself, and then license the cost shared intangibles. A second, based on a comparable profits method (CPM) analysis, assumed that the PCT Payor's best realistic alternative would be to acquire the rights to external contributions (renamed platform contributions under the temporary regulations) for payments with a present value equal to the PCT Payor's anticipated profit, after reward for its routine contributions to its operations, from the CSA Activity in its territory (the only division permitted under the 2005 proposed regulations). Both income method applications provided for a cost contribution adjustment in order to allocate to the PCT Payor the return to its additional risk, as compared to its realistic alternative, of bearing its reasonably anticipated benefits (RAB) share of the IDCs. As set forth in the 2005 proposed regulations, both the CUT and CPM based applications of the income method built in a conversion to a royalty form of payment, either on sales or on operating profit.

Commentators offered several criticisms with reference to the income method. As a general matter, some comments asserted that the income method stripped away risky returns from the PCT Payor. Other comments focused on technical aspects of the method and the applications. In particular, comments pointed to the potential risk differentials between cost sharing and the alternative arrangements. For example, cost sharing would generally be more risky than licensing for the PCT Payor as the result of its sharing with the PCT Payee the risks of the IDA. As a corollary, cost sharing would generally be less risky for the PCT Payee than licensing. The comments observed that these risk differentials would ordinarily be reflected in different discount rates being appropriate under the cost sharing and licensing alternatives. Other comments suggested the possible use of different discounts for different financial flows (sales, cost of sales, operating expenses, cost contributions, etc.).

The temporary regulations provide further guidance on the income method and its applications. In general, they provide that the best realistic alternative of the PCT Payor to entering into the CSA would be to license intangibles to be developed by an uncontrolled licensor that undertakes the commitment to bear the entire risk of intangible development that would otherwise have been shared under the CSA. Similarly, the best realistic alternative of the PCT Payee to entering into the CSA would be to undertake the commitment to bear the entire risk of intangible development that would otherwise have been shared under the CSA and license the resulting intangibles to an uncontrolled licensee.

The licensing alternative is derived on the basis of a functional and risk analysis of the cost sharing alternative, but with a shift of the risk of cost contributions to the licensor. Accordingly, the PCT Payor's licensing alternative consists of entering into a license with an uncontrolled party, for a term extending for what would be the duration of the CSA Activity, to license the make-or-sell rights in subsequently to be developed resources, capabilities, or rights of the licensor. Under such license, the licensor would undertake the commitment to bear the entire risk of intangible development that would otherwise have been shared under the CSA. Apart from the difference in the allocation of the risks of the IDA, the licensing alternative should assume contractual provisions with regard to non-overlapping divisional intangible interests, and with regard to allocations of other risks, that are consistent with the actual CSA in accordance with the cost sharing rules. For example, the analysis under the licensing alternative should assume a similar allocation of the risks of any existing resources, capabilities, or rights, as well as of the risks of developing other resources, capabilities, or rights that would be reasonably anticipated to contribute to exploitation within the parties' divisions, that is consistent with the actual allocation of risks between the controlled participants as provided in the CSA in accordance with the temporary regulations.

The temporary regulations, like the 2005 proposed regulations, describe both CUT-based applications and CPM-based applications of the Income Method. However, they differ from the applications described in the 2005 proposed regulations by equating the cost sharing and licensing alternatives of the PCT Payor using discount rates appropriate to those alternatives. In circumstances where the market-correlated risks as between the cost sharing and licensing alternatives are not materially different, a reliable analysis may be possible by using the same discount rate with respect to both alternatives. Otherwise, as recognized in the best method considerations concerning discount rates, realistic alternatives having the same reasonably anticipated present value may nevertheless involve varying risk exposure and, thus, generally are more reliably evaluated using different discount rates. To the extent that the controlled participants' respective tax rates are not materially affected by whether they enter into the cost sharing or licensing alternative (or reliable adjustments may be made for varying tax rates), it is appropriate to apply post-tax discount rates to pre-tax items for purpose of equating the cost sharing and licensing alternatives. The discount rate for the cost sharing alternative will generally depend on the form of PCT Payments assumed (for example, lump sum, royalty on sales, royalty on divisional profit).

The income method may be applied to determine PCT Payments in any form of payment (for example, lump sum, royalty on sales, royalty on divisional profit). If an income method application is used to determine arm's length PCT Payments in a particular form, then the PCT Payments in that form may be converted to an alternative form in accordance with Temp. Treas. Reg. § 1.482–7(h) (Form of payment rules).

The temporary regulations clarify the opportunities, depending on the facts and circumstances, for the PCT Payor to assume risks and, accordingly, to enjoy the returns (or suffer the detriments) that may result from such risks. For example, in addition to its cost contributions to developing cost shared intangibles, a PCT Payor may also commit significant operating contributions, such as existing marketing or manufacturing process intangibles, to operations in its division as well as make significant operating cost contributions towards further developing such intangibles. To the extent parties to comparable transactions undertake risks of similar scope and duration, the PCT Payor will be appropriately rewarded based on a method that relies in whole or part on returns in such comparable transactions under an application of the income method whether based on a CUT or the

CPM. Where its operating contributions are nonroutine, that is, not reflected in available comparable transactions, the PCT Payor may share in nonroutine divisional profit under the application of the RPSM provided in the temporary regulations. Similarly, while the income method is limited to cases in which only one of the controlled participants provides nonroutine platform contributions as the PCT Payee, the RPSM in the temporary regulations addresses the situation where more than one controlled participant furnishes nonroutine platform contributions.

Yet other comments criticized the income method as positing an unrealistic ''perpetual life.'' The income method is premised on the assumption that, at arm's length, an investor will make a risky investment (for example, in a platform for developing additional technology) only if the investor reasonably anticipates that the present value of its reasonably anticipated operational results will be increased at least by a present value equal to the platform investment. It may be, depending on the facts and circumstances, that the technology is reasonably expected to achieve an incremental improvement in results for only a finite period (after which period, results are reasonably anticipated to return to the levels that would otherwise have been expected absent the investment). The period of enhanced results that justifies the platform investment in such circumstances effectively would correspond to a finite, not a perpetual, life.

4. Acquisition Price and Market Capitalization Methods—Temp. Treas. Reg. § 1.482–7T(g)(5) and (6)

The 2005 proposed regulations included guidance on the acquisition price and market capitalization methods for evaluating the arm's length charge in a PCT. Under the acquisition price method, the arm's length charge for a PCT is the adjusted acquisition price, that is, the acquisition price increased by the value of the target's liabilities on the date of acquisition, and decreased by the value on that date of target's tangible property and any other resources and capabilities not covered by the PCT. Under the market capitalization method, the arm's length charge for a PCT is the adjusted average market capitalization, that is, the average daily market capitalization over the 60 days ending with the date of the PCT, increased by the value of the PCT Payee's liabilities on such date, and decreased on account of tangible property and any other resources and capabilities of the PCT Payee not covered by the PCT.

Commentators questioned the reliability of these methods in light of volatility of stock prices and lack of correlation between stock price and underlying assets, for example, owing to control premiums or economies of integration.

The Treasury Department and the IRS recognize that these comments point to considerations that, depending on the facts and circumstances, will need to be taken into account in a best method analysis that compares the reliability of the results under application of these methods as against the results under application of other methods (which may themselves have aspects that reduce their reliability). The temporary regulations retain the best method considerations from the 2005 proposed regulations that observe that reliability is reduced under these methods if a substantial portion of the target's, or PCT Payor's, nonroutine contributions to business activities is not required to be covered by a PCT and, in the case of the market capitalization method, if the facts and circumstances demonstrate the likelihood of a material divergence between the PCT Payee's average market capitalization and the value of its underlying resources, capabilities, and rights for which reliable adjustments cannot be made. The temporary regulations also provide that proximity in time between the acquisition of the target and the PCT Payment is an important comparability factor under the acquisition price method.

5. Residual Profit Split Method—Temp. Treas. Reg. § 1.482–7T(g)(7)

The temporary regulations conform the modified RPSM from the proposed regulations to the changes made to the income method.

6. Unspecified Methods—Temp. Treas. Reg. § 1.482–7T(g)(8)

Under the temporary regulations in order to use an unspecified method, a taxpayer must maintain documentation to describe and explain the method selected to determine the arm's length payment due in a PCT.

D. Form of Payment

1. Post Formation Acquisitions

The 2005 proposed regulations generally provided taxpayers flexibility to provide for PCT Payments either in fixed amounts (whether in lump sums or installment payments with arm's length interest) or in contingent amounts. PCT Payments could not be paid in shares of stock of the PCT Payor. The form of payment selected for any PCT, including the basis and structure of the payments, had to be specified no later than the date of the PCT. In the case of a post formation acquisition (PFA)—that is, an external contribution (renamed platform contribution in the temporary regulations) that is acquired by a controlled participant in an uncontrolled transaction (either directly, or indirectly through the acquisition of an interest in an entity or tier of entities)—the consideration under the PCT for a PFA had to be paid in the same form as the consideration in the uncontrolled transaction in which the PFA was acquired. An example indicates that acquisitions for stock were considered to be for a fixed form of payment. One principal rationale for the special rules for PFAs was that PFAs stand in the place of IDCs and, therefore, reflect a risk allocation equivalent to that in the IDC context, which requires the sharing of outlays on a fixed form of payment basis. Another principal rationale was the difficulty the IRS has had in examining CSAs using a contingent form of payment for PFAs.

Commentators criticized the same form of payment requirement for PFAs, especially the treatment of stock acquisitions as having a fixed form of payment. The comments pointed out that a purchaser paying with its own stock is selling a part of its business, and thus pays consideration that is ultimately contingent on the success of its business. Other comments objected to the timing mismatch caused by the same form of payment rule, because fixed PCT Payments would be immediately includable, but the PFA assets would be amortizable only over time. Still other comments asserted that taxpayers may choose their form of payment for PFAs, as with other external contributions, so long as the price (taking into account the form of payment) is arm's length.

The temporary regulations do not retain the special rules for PFAs. Subsequent acquisitions remain an important source of platform contributions that occasion the requirement of PCT compensation. However, the temporary regulations no longer require a special form of payment for such compensation. Therefore, controlled participants may choose the form of payment for PCTs regardless of whether the PCTs occur at the outset of the CSA or later. Removal of the special rules for PFAs moots questions regarding whether stock consideration should be treated as contingent or fixed payment and whether (and how) the timing mismatch should be addressed. Nonetheless, the IRS will continue to

scrutinize the contractual documentation, pricing, and implementation of contingent forms of payment for PFAs.

2. Contingent Payments—Temp. Treas. Reg. § 1.482–7T(h)(2)(iv) and (v)

The temporary regulations incorporate rules to ensure that the contingent form for PCT Payments is applied properly by both taxpayers and the IRS. In accordance with Treas. Reg. § 1.482–1(d)(3)(iii)(B), a CSA contractual provision that provides for payments for a PCT (or group of PCTs) to be contingent on the exploitation of cost shared intangibles will be respected as consistent with economic substance only if the allocation between the controlled participants of the risks attendant on such form of payment is determinable before the outcomes of such allocation that would have materially affected the PCT pricing are known or reasonably knowable. The temporary regulations require a contingent payment provision to clearly and unambiguously specify the basis on which the contingent payment obligations are to be determined. In particular, the contingent payment provision must clearly and unambiguously specify the events that give rise to an obligation to make PCT Payments, the royalty base (such as sales or revenues), and the computation used to determine the PCT Payments. The royalty base specified must permit verification of its proper use by reference to books and records maintained by the controlled participants in the normal course of business (for example, books and records maintained for financial accounting or business management purposes).

The temporary regulations also provide that where a method yields a fixed value for PCT Payments, a conversion may be made to a contingent form of payments. Guidance is also provided on discount rates for purposes of such conversion. Certain forms of payment may involve different risks than others. For example, ordinarily a royalty computed on a profits base would be more volatile, and so require a higher discount rate to discount projected payments to present value, than a royalty computed on a sales base.

E. Periodic Adjustments

1. Determination of Periodic Adjustments—Temp. Treas. Reg. § 1.482–7T(i)(6)(v) and (vi)

The 2005 proposed regulations addressed the CWI principle of the second sentence of section 482 in the context of cost sharing. The Commissioner could make periodic adjustments for an open taxable year (the Adjustment Year) and all subsequent years of the CSA Activity in the event of a Periodic Trigger. Under the 2005 proposed regulations, a Periodic Trigger arose if the PCT Payor realized, over the period beginning with the earliest date on which an IDC occurred through the end of the Adjustment Year, an actually experienced return ratio of the present value of its total territorial operating profits divided by the present value of its investment consisting of the sum of its cost contributions plus PCT Payments, outside the periodic return ratio range of between .5 and 2. In arriving at these present values, the Commissioner would use an applicable discount rate, which in the case of certain publicly traded entities would be their weighted average cost of capital, unless the Commissioner determines, or the controlled participants establish, that another discount rate better reflects the degree of risk of the CSA Activity. Periodic adjustments would be determined under a modified RPSM. Exceptions were provided, such as for an effective CUT or for results due to extraordinary events beyond the controlled participants' control and that could not have been reasonably anticipated. In determining whether to make any periodic adjustments, the Commissioner would consider whether the outcome as adjusted more reliably reflects an arm's length result under all the relevant facts and circumstances.

Commentators offered several criticisms of the periodic adjustment rules. Some comments considered the periodic adjustment rules to be inconsistent with the arm's length standard and, through hindsight, to strip away returns to risk. Other comments claimed for taxpayers the same ability as the Commissioner to make periodic adjustments to implement the CWI principle where subsequent results diverge from original expectations. Comments also addressed the exceptions and means for taxpayers to demonstrate their results were arm's length so as to avoid periodic adjustments.

The Treasury Department and the IRS reaffirm that the CWI principle is consistent, and periodic adjustments are to be administered consistently, with the arm's length standard. Congress adopted the CWI principle in 1986 out of concern about related-party long-term transfers of high-profit potential intangibles for relatively insignificant lump sum or royalty consideration justified by reference to putatively comparable transactions between unrelated parties that differed significantly in terms of the division of functionality and risks when compared to the transfers at issue. See H.R. Rep. 99–426, at 424–25 (1985). See also Notice 88–123 (the White Paper), 1988–2 CB 458, 472–74, 477–80. Congress intended that taxpayers be able to ''use certain bona fide cost-sharing arrangements as an appropriate method of allocating income attributable to intangibles among related parties, if and to the extent such agreements are consistent with the purposes of this provision that the income allocated among the parties reasonably reflect the actual economic activity undertaken by each.'' H.R. Conf. Rep. No. 99–841, at II–638 (1986). See Treas. Reg. § 601.601(d)(2)(ii)(*b*).

Accordingly, the temporary regulations continue to provide for periodic adjustments along lines similar to those in the intangible transfer section of the regulations, as adapted for the cost sharing context. Compare Treas. Reg. § 1.482–4(f)(2)(Periodic adjustments). The temporary regulations, however, adopt a smaller periodic return ratio range than the 2005 proposed regulations. Setting a Periodic Trigger to occur if the actually experienced return ratio falls outside the periodic return ratio range of between .667 and 1.5 (or between 0.8 and 1.25, if the taxpayer has not substantially complied with the documentation requirements of Temp. Treas. Reg. § 1.482–7T(k)) is intended to isolate situations in which actual results suggest the potential of an absence of arm's length pricing as of the date of the PCT. The Treasury Department and the IRS consider that the periodic return ratio range under the temporary regulations more realistically targets the threshold at which periodic adjustment scrutiny is appropriate. In determining whether to make any periodic adjustments, the Commissioner considers whether the outcome as adjusted more reliably reflects an arm's length result under all the relevant facts and circumstances.

The temporary regulations also make conforming changes to the determination of periodic adjustments, in the event of a Periodic Trigger, in light of other changes in the temporary regulations, for example, in the RPSM and form of payment provisions.

2. Advance Pricing Agreement

In addition, the Treasury Department and the IRS intend to issue by revenue procedure separate published guidance that provides an exception to periodic adjustments, similar to exceptions

provided in Temp. Treas. Reg. § 1.482–7T(i)(6)(vi), in the context of an advance pricing agreement (APA) entered into pursuant to Rev. Proc. 2006–9, 2006–1 CB 278 (as it may be amended or superseded by subsequent administrative pronouncement). The guidance would provide that no periodic adjustments will be made in any year based on a Trigger PCT that is a covered transaction under the APA. See Treas. Reg. § 601.601(d)(2)(ii)(*b*).

An APA process generally is contemporaneous with a taxpayer's original transactions and involves transparency concerning a taxpayer's upfront efforts to conform to the arm's length standard. Thus, the APA process may overcome the asymmetry in information addressed by the periodic adjustment provisions, eliminating a primary basis for a CWI adjustment. See generally 70 FR 51128–51130 (preamble to 2005 proposed regulations).

The Treasury Department and the IRS considered the possibility of a further exception to periodic adjustments based on documentation that a taxpayer would maintain contemporaneously with a PCT. Compare Treas. Reg. § 1.6662–6(d)(2)(iii). Such an exception was not incorporated into the temporary regulations in light of the concern that documentation prepared only by the taxpayer would not benefit from a similar degree of contemporaneous transparency and explanation as involved in an APA. The Treasury Department and the IRS continue to consider this matter and solicit comments on whether and how a documentation exception could be adapted to the purposes of the CWI principle.

F. Terminology and Table of Definitions—Temp. Treas. Reg. § 1.482–7T(j)(1)

For ease of reference, a comprehensive table of terms is provided. The table sets forth, alphabetically, technical terms used in the regulations, any applicable abbreviations, definitions (if not elsewhere defined in the regulations), and cross references to relevant portions of the regulations where the terms are defined or used.

G. Administrative and Transition Rules—Temp. Treas. Reg. § 1.482–7T(m)

The 2005 proposed regulations included transition rules for existing qualified cost sharing arrangements so as not to disturb taxpayers' reliance on the prior regulations, while providing for appropriate prospective application of the new regulations. Grandfather treatment would have been terminated in certain events, including the occasion of a Periodic Trigger as the result of a subsequent PCT occurring after the regulations' effective date, a material change in the scope of the arrangement, such as a material expansion of the activities undertaken beyond the scope of the intangible development area, or a 50 percent or greater change in the ownership of interests in cost shared intangibles.

Commentators objected to the grandfather termination events, in particular in the case of a subsequent Periodic Trigger or a 50 percent change of ownership, as defeating taxpayers' legitimate expectation under the prior regulations.

The temporary regulations do not terminate grandfather treatment upon a 50 percent change of ownership or on account of a subsequent Periodic Trigger or a material change in scope of the arrangement. The temporary regulations instead adopt a targeted provision that applies the temporary regulations' periodic adjustment rules to PCTs that occur on or after the date of a material change in the scope of the grandfathered CSA. A material change in scope would include a material expansion of the activities undertaken beyond the scope of the intangible development area, as described in former Treas. Reg. § 1.482–7(b)(4)(iv). For this purpose, a contraction of the scope of a CSA, absent a material expansion into one or more lines of research and development beyond the scope of the intangible development area, does not constitute a material change in scope of the CSA. Whether a material change in scope has occurred is determined on a cumulative basis. Therefore, a series of expansions, any one of which is not a material expansion by itself, may collectively constitute a material expansion.

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 been determined also that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be 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 proposed regulations is Kenneth P. Christman of the Office of Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendment to the Regulations

■ Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.482–7A also issued under 26 U.S.C. 482. * * *

■ **Par. 2.** Section 1.367(a)–1 is added to read as follows:

§ 1.367(a)–1 Transfers to foreign corporations subject to section 367(a): In general.

(a) through (d)(2) [Reserved].

(3) [Reserved] For further guidance, see § 1.367(a)–1T(d)(3).

(d)(4) through (g) [Reserved].

■ **Par 3.** Section 1.367(a)–1T is amended by revising the second sentence of paragraph (d)(3) to read as follows:

§ 1.367(a)–1T Transfers to foreign corporations subject to section 367(a): In general (temporary).

* * * * *

(d) * * *

(3) * * * A person's entering into a cost sharing arrangement under § 1.482–7T or acquiring rights to intangible property under such an arrangement shall not be considered a transfer of property described in section 367(a)(1). * * *

* * * * *

■ **Par. 4.** Section 1.482–0 is amended by adding the entries for §§ 1.482–1(b)(2)(iii), 1.482–2(e) and (f), 1.482–4(g)

and (h) and revising the entries for § 1.482–7 to read as follows:

§ 1.482–0 Outline of regulations under section 482.

* * * * *

§ 1.482–1 Allocation of income and deductions among taxpayers.

* * * * *

(b) * * *

(2) * * *

(iii) [Reserved]. For further guidance, see § 1.482–0T, the entry for § 1.482–1T(b)(2)(iii).

* * * * *

§ 1.482–2 Determination of taxable income in specific situations.

* * * * *

(e) and (f) [Reserved]. For further guidance, see § 1.482–0T, the entries for § 1.482–2T(e) and (f).

* * * * *

§ 1.482–4 Methods to determine taxable income in connection with a transfer of intangible property.

* * * * *

(g) and (h) [Reserved]. For further guidance, see § 1.482–0T, the entries for § 1.482–4T(g) and (h).

* * * * *

§ 1.482–7 Methods to determine taxable income in connection with a cost sharing arrangement.

[Reserved]. For further guidance, see § 1.482–0T, the entries for § 1.482–7T.

* * * * *

■ **Par. 5.** Section 1.482–0T is amended as follows:

■ 1. The entries for §§ 1.482–1T(b)(2)(iii), (c), (d)(1), (d)(2), (d)(3)(ii)(A), and (d)(3)(ii)(B) are revised.

■ 2. A new entry for § 1.482–1T(b)(2)(iii) is added.

■ 3. The entries for § 1.482–2T(e) are revised, and new entries for § 1.482–2T(f) are added.

■ 4. The entries for § 1.482–4T(f)(7) are removed, and the entries for § 1.482–4T(g) and (h) are added.

■ 5. The entries for § 1.482–7T are added.

■ 6. The entries for § 1.482–9T(m)(3) and (n) are revised.

The additions and revisions read as follows:

§ 1.482–0T Outline of regulations under section 482 (temporary).

* * * * *

§ 1.482–1T Allocation of income and deductions among taxpayers (temporary).

* * * * *

(b) * * *

(2) * * *

(ii) [Reserved]. For further guidance, see § 1.482–0, the entry for § 1.482–1(b)(2)(ii).

(iii) Coordination of methods applicable to certain intangible development arrangements.

(c) through (d)(3)(ii)(B) [Reserved]. For further guidance, see § 1.482–0, the entries for § 1.482–1(c) through (d)(3)(iii)(B).

* * * * *

§ 1.482–2T Determination of taxable income in specific situations (temporary).

* * * * *

(e) Cost sharing arrangement.

(f) Effective/applicability Date.

(1) In general.

(2) Election to apply section paragraph (b) to earlier taxable years.

(3) Expiration date.

* * * * *

§ 1.482–4T Methods to determine taxable income in connection with a transfer of intangible property (temporary).

* * * * *

(g) Coordination with rules governing cost sharing arrangements.

(h) Effective/applicability date.

(1) In general.

(2) Election to apply regulation to earlier taxable years.

(3) Expiration date.

* * * * *

§ 1.482–7T Methods to determine taxable income in connection with a cost sharing arrangement (temporary).

(a) In general.

(1) RAB share method for cost sharing transactions (CSTs).

(2) Methods for platform contribution transactions (PCTs).

(3) Methods for other controlled transactions.

(i) Contribution to a CSA by a controlled taxpayer that is not a controlled participant.

(ii) Transfer of interest in a cost shared intangible.

(iii) Other controlled transactions in connection with a CSA.

(iv) Controlled transactions in the absence of a CSA.

(4) Coordination with the arm's length standard.

(b) Cost sharing arrangement.

(1) Substantive requirements.

(i) CSTs.

(ii) PCTs.

(iii) Divisional interests.

(iv) Examples.

(2) Administrative requirements.

(3) Date of a PCT.

(4) Divisional interests.

(i) In general.

(ii) Territorial based divisional interests.

(iii) Field of use based divisional interests.

(iv) Other divisional bases.

(v) Examples.

(5) Treatment of certain arrangements as CSAs.

(i) Situation in which Commissioner must treat arrangement as a CSA.

(ii) Situation in which Commissioner may treat arrangement as a CSA.

(iii) Examples.

(6) Entity classification of CSAs.

(c) Platform contributions.

(1) In general.

(2) Terms of platform contributions.

(i) Presumed to be exclusive.

(ii) Rebuttal of Exclusivity.

(iii) Proration of PCT Payments to the extent allocable to other business activities.

(A) In general.

(B) Determining the proration of PCT Payments.

(3) Categorization of the PCT.

(4) Certain make-or-sell rights excluded.

(i) In general.

(ii) Examples.

(5) Examples.

(d) Intangible development costs.

(1) Determining whether costs are IDCs.

(i) Definition and scope of the IDA.

(ii) Reasonably anticipated cost shared intangible.

(iii) Costs included in IDCs.

(iv) Examples.

(2) Allocation of costs.

(3) Stock-based compensation.

(i) In general.

(ii) Identification of stock-based compensation with the IDA.

(iii) Measurement and timing of stock-based compensation IDC.

(A) In general.

(*1*) Transfers to which section 421 applies.

(*2*) Deductions of foreign controlled participants.

(*3*) Modification of stock option.

(*4*) Expiration or termination of CSA.

(B) Election with respect to options on publicly traded stock.

(*1*) In general.

(*2*) Publicly traded stock.

(*3*) Generally accepted accounting principles.

(*4*) Time and manner of making the election.

(C) Consistency.

(4) IDC share.

(5) Examples.

(e) Reasonably anticipated benefit shares.

(1) Definition.

(i) In general.

(ii) Examples.

(2) Measure of benefits.

(i) In general.

(ii) Indirect bases for measuring anticipated benefits.
(A) Units used, produced, or sold.
(B) Sales.
(C) Operating profit.
(D) Other bases for measuring anticipated benefits.
(E) Examples.
(iii) Projections used to estimate benefits.
(A) In general.
(B) Examples.
(f) Changes in participation under a CSA.
(1) In general.
(2) Controlled transfer of interests.
(3) Capability variation.
(4) Arm's length consideration for a change in participation.
(5) Examples.
(g) Supplemental guidance on methods applicable to PCTs.
(1) In general.
(2) Best method analysis applicable for evaluation of a PCT pusuant to a CSA.
(i) In general.
(ii) Consistency with upfront contractual terms and risk allocations—the investor model.
(A) In general.
(B) Examples.
(iii) Consistency of evaluation with realistic alternatives.
(A) In general.
(B) Examples.
(iv) Aggregation of transactions.
(v) Discount rate.
(A) In general.
(B) Considerations in best method analysis of discount rates.
(*1*) Discount rate variation between realistic alternatives.
(*2*) Discount rate variation between forms of payment.
(*3*) Post-tax rate.
(C) Example.
(vi) Financial projections.
(vii) Accounting principles.
(A) In general.
(B) Examples.
(viii) Valuations of subsequent PCTs.
(A) Date of subsequent PCT.
(B) Best method analysis for subsequent PCT.
(ix) Arm's length range.
(A) In general.
(B) Methods based on two or more input parameters.
(C) Variable input parameters.
(D) Determination of arm's length PCT Payment.
(*1*) No variable input parameters.
(*2*) One variable input parameters.
(*3*) More than one variable input parameter.
(E) Adjustments.
(x) Valuation undertaken on a pre-tax basis.
(3) Comparable uncontrolled transaction method.
(4) Income method.
(i) In general.
(A) Equating cost sharing and licensing alternatives.
(B) Cost sharing alternative.
(C) Licensing alternative.
(D) Only one controlled participate with nonroutine platform contributions.
(E) Income method payment forms.
(F) Discount rates appropriate to cost sharing and licensing alternatives.
(G) The effect of taxation on determining the arm's length amount.
(ii) Evaluation of PCT Payor's cost sharing alternative.
(iii) Evaluation of PCT Payor's licensing alternatives.
(A) Evaluation based on CUT.
(B) Evaluation based on CPM.
(iv) Lump sum payment form.
(v) Best method analysis considerations.
(vi) Routine platform and operating contributions.
(vii) Examples.
(5) Acquisition Price Method.
(i) In general.
(ii) Determination of arm's length charge.
(iii) Adjusted acquisition price.
(iv) Best method analysis consideration.
(v) Examples.
(6) Market capitalization method.
(i) In general.
(ii) Determination of arm's length charge.
(iii) Average market capitalization.
(iv) Adjusted average market capitalization.
(v) Best method analysis consideration.
(vi) Examples.
(7) Residual profit split method.
(i) In general.
(ii) Appropriate share of profits and losses.
(iii) Profit split.
(A) In general.
(B) Determine nonroutine residual divisional profit or loss.
(C) Allocate nonroutine residual divisional profit or loss.
(*1*) In general.
(*2*) Relative value determination.
(*3*) Determination of PCT Payments.
(*4*) Routine platform and operating contributions.
(iv) Best method analysis considerations.
(A) In general.
(B) Comparability.
(C) Data and assumptions.
(D) Other factors affecting reliability.
(v) Examples.
(8) Unspecified methods.
(h) Form of payment rules.
(1) CST Payments.
(2) PCT Payments.
(i) In general.
(ii) No PCT Payor stock.
(iii) Specified form of payment.
(A) In general.
(B) Contingent payments.
(C) Examples.
(iv) Conversion from fixed to contingent form of payment.
(3) Coordination of best method rule and form of payment.
(i) Allocations by the Commissioner in connection with a CSA.
(1) In general.
(2) CST allocations.
(i) In general.
(ii) Adjustments to improve the reliability of projections used to estimate RAB shares.
(A) Unreliable projects.
(B) Foreign-to-foreign adjustments.
(C) Correlative adjustments to PCTs.
(D) Examples.
(iii) Timing of CST allocations.
(3) PCT allocations.
(4) Allocations regarding changes in participation under CSA.
(5) Allocations when CSTs are consistently and materially disproportionate to RAB shares.
(6) Periodic adjustments.
(i) In general.
(ii) PRRR.
(iii) AERR.
(A) In general.
(B) PVTP.
(C) PVI.
(iv) ADR.
(A) In general.
(B) Publicly traded companies.
(C) Publicly traded.
(D) PCT Payor WACC.
(E) Generally accepted accounting principles.
(v) Determination of periodic adjustments.
(A) In general.
(B) Adjusted RPSM as of Determination Date.
(vi) Exceptions to periodic adjustments.
(A) Controlled participants establish periodic adjustment not warranted.
(*1*) Transactions involving the same platform contribution as in the Trigger PCT.
(*2*) Results not reasonably anticipated.
(*3*) Reduced AERR does not cause Periodic Trigger.
(*4*) Increased AERR does not cause Periodic Trigger.
(B) Circumstances in which Periodic Trigger deemed out to occur.
(*1*) 10-year period.
(*2*) 5-year period.
(vii) Examples.
(j) Definitions and special rules.
(1) Definitions.

(i) In general.
(ii) Examples.
(2) Special rules.
(i) Consolidated group.
(ii) Trade or business.
(iii) Partnership.
(3) Character.
(i) CST Payments.
(ii) PCT Payments.
(iii) Examples.
(k) CSA administrative requirements.
(1) CSA contractual requirements.
(i) In general.
(ii) Contractual provisions.
(iii) Meaning of contemporaneous.
(A) In general.
(B) Example.
(iv) Interpretation of contractual provisions.
(A) In general.
(B) Examples.
(2) CSA documentation requirements.
(i) In general.
(ii) Additional CSA documentation requirements.
(iii) Coordination rules and production of documents.
(A) Coordination with penalty regulations.
(B) Production of documentation.
(3) CSA accounting requirements.
(i) In general.
(ii) Reliance on financial accounting.
(4) CSA reporting requirements.
(i) CSA Statement.
(ii) Content of CSA Statement.
(iii) Time for filing CSA Statement.
(A) 90-day rule.
(B) Annual return requirement.
(1) In general.
(2) Special filing rule for annual return requirement.
(iv) Examples.
(l) Effective/applicability date.
(m) Transition rule.
(*1*) In general.
(*2*) Transitional modification of applicable provisions.
(3) Special rule for certain periodic adjustments.
(n) Expiration date.

* * * * *

§ 1.482–9T Methods to determine taxable income in connection with a controlled services transaction (temporary).

* * * * *

(m) * * *

(3) Coordination with rules governing cost sharing arrangements. * * *

(n) Effective/applicability dates.

■ **Par. 6.** Section 1.482–1 is amended by revising the last sentence of paragraph (c)(1) to read as follows:

§ 1.482–1 Allocation of income and deductions among taxpayers.

* * * * *

(c) * * *

(1) * * * See § 1.482–7T for the applicable methods in the case of a cost sharing arrangement.

* * * * *

■ **Par. 7.** Section 1.482–1T is amended by:
■ 1. Revising paragraphs (b)(2)(i), (b)(2)(ii), (c), (d)(1), (d)(2), (d)(3)(i), (d)(3)(ii) and (j)(6)(iii).
■ 2.Adding a new paragraph (b)(2)(iii).
■ 3.Adding a new sentence to the end of paragraph (j)(6)(i).

The additions and revisions read as follows:

§ 1.482–1T Allocation of income and deductions among taxpayers (temporary).

* * * * *

(b) * * *

(2) *Arm's length methods*—(i) *Methods.* Sections 1.482–2 through 1.482–6, 1.482–7T, and 1.482–9T provide specific methods to be used to evaluate whether transactions between or among members of the controlled group satisfy the arm's length standard, and if they do not, to determine the arm's length result. Section 1.482–1 and this section provide general principles applicable in determining arm's length results of such controlled transactions, but do not provide methods, for which reference must be made to those other sections in accordance with paragraphs (b)(2)(ii) and (iii) of this section. Section 1.482–7T provides the specific methods to be used to evaluate whether a cost sharing arrangement as defined in § 1.482–7T produces results consistent with an arm's length result.

(ii) [Reserved]. For further guidance, see § 1.482–1(c) through (d)(3)(ii)(C) *Example 1* and *2*.

(iii) *Coordination of methods applicable to certain intangible development arrangements.* Section 1.482–7T provides the specific methods to be used to determine arm's length results of controlled transactions in connection with a cost sharing arrangement as defined in § 1.482–7T. Sections 1.482–4 and 1.482–9T, as appropriate, provide the specific methods to be used to determine arm's length results of arrangements, including partnerships, for sharing the costs and risks of developing intangibles, other than a cost sharing arrangement covered by § 1.482–7T. See also §§ 1.482–4T(g) (Coordination with rules governing cost sharing arrangements) and 1.482–9T(m)(3) (Coordination with rules governing cost sharing arrangements).

(c) through (d)(3)(ii)(C) *Examples 1* and *2*. [Reserved]. For further guidance, see § 1.482–1(c) through (d)(3)(ii)(C) *Example 1* and *2*.

* * * * *

(j) * * *

(6) * * *

(i) * * * The provision of paragraph (b)(2)(iii) of this section is generally applicable on January 5, 2009.

* * * * *

(iii) Except as noted in the succeeding sentence, the applicability of § 1.482–1T expires on or before July 31, 2009. The applicability of paragraph (b)(2)(iii) of this section expires on or before December 30, 2011.

■ **Par. 8.** Section 1.482–2T is amended as follows:
■ 1. Paragraph (e) is redesignated as paragraph (f) and newly-designated paragraph (f) is revised.
■ 2. New paragraph (e) is added.

The addition and revision reads as follows:

§ 1.482–2T Determination of taxable income in specific situations (temporary).

* * * * *

(e) *Cost sharing arrangement.* For rules governing allocations under section 482 to reflect an arm's length consideration for controlled transactions involving a cost sharing arrangement, see § 1.482–7T.

(f) *Effective/applicability date*—(1) *In general.* The provision of paragraph (b) of this section is generally applicable for tax years beginning after December 31, 2006. The provision of paragraph (e) of this section is generally applicable on January 5, 2009.

(2) *Election to apply paragraph (b) to earlier taxable years.* A person may elect to apply the provisions of paragraph (b) of this section to earlier taxable years in accordance with the rules set forth in § 1.482–9T(n)(2).

(3) *Expiration date.* The applicability of paragraph (b) of this section expires on or before July 31, 2009. The applicability of paragraph (e) of this section expires on or before December 30, 2011.

■ **Par. 9.** Section 1.482–4T is amended as follows
■ 1. Paragraph (f)(3)(i)(B) is revised.
■ 2. Paragraph (f)(7) is removed.
■ 3. New paragraphs (g) and (h) are added.

The additions and revision reads as follows:

§ 1.482–4T Methods to determine taxable income in connection with a transfer of intangible property (temporary).

* * * * *

(f) * * *

(3) * * *

(i) * * *

(B) *Cost sharing arrangements.* The rules in this paragraph (f)(3) regarding ownership with respect to cost shared intangibles and cost sharing

arrangements will apply only as provided in § 1.482–7T.

* * * * *

(g) *Coordination with rules governing cost sharing arrangements.* Section 1.482–7T provides the specific methods to be used to determine arm's length results of controlled transactions in connection with a cost sharing arrangement. This section provides the specific methods to be used to determine arm's length results of a transfer of intangible property, including in an arrangement for sharing the costs and risks of developing intangibles other than a cost sharing arrangement covered by § 1.482–7T. In the case of such an arrangement, consideration of the principles, methods, comparability, and reliability considerations set forth in § 1.482–7T is relevant in determining the best method, including an unspecified method, under this section, as appropriately adjusted in light of the differences in the facts and circumstances between such arrangement and a cost sharing arrangement.

(h) *Effective/applicability date*—(1) *In general.* Except as provided in the succeeding sentence, the provisions of paragraphs (f)(3) and (4) of this section are generally applicable for taxable years beginning after December 31, 2006. The provisions of paragraphs (f)(3)(i)(B) and (g) of this section are generally applicable on January 5, 2009.

(2) *Election to apply regulation to earlier taxable years.* A person may elect to apply the provisions of paragraphs (f)(3) and (4) of this section to earlier taxable years in accordance with the rules set forth in § 1.482–9T(n)(2).

(3) *Expiration date.* The applicability of this section expires on or before December 30, 2011.

■ **Par. 10.** Section 1.482–5 is amended by revising the last sentence of paragraph (c)(2)(iv) to read as follows:

§ 1.482–5 Comparable profits method.

* * * * *

(c) * * *

(2) * * *

(iv) * * * As another example, it may be appropriate to adjust the operating profit of a party to account for material differences in the utilization of or accounting for stock-based compensation (as defined by § 1.482–7T(d)(3)(i)) among the tested party and comparable parties.

* * * * *

■ **Par. 11.** Section 1.482–7 is redesignated § 1.482–7A, and an undesignated centerheading preceding § 1.482–7A is added to read as follows:

Regulations applicable on or before January 5, 2009.

■ **Par. 12.** Section 1.482–7T is added to read as follows:

§ 1.482–7T Methods to determine taxable income in connection with a cost sharing arrangement (temporary).

(a) *In general.* The arm's length amount charged in a controlled transaction reasonably anticipated to contribute to developing intangibles pursuant to a cost sharing arrangement (CSA), as described in paragraph (b) of this section, must be determined under a method described in this section. Each method must be applied in accordance with the provisions of § 1.482–1, except as those provisions are modified in this section.

(1) *RAB share method for cost sharing transactions (CSTs).* See paragraph (b)(1)(i) of this section regarding the requirement that controlled participants, as defined in section (j)(1)(i) of this section, share intangible development costs (IDCs) in proportion to their shares of reasonably anticipated benefits (RAB shares) by entering into cost sharing transactions (CSTs).

(2) *Methods for platform contribution transactions (PCTs).* The arm's length amount charged in a platform contribution transaction (PCT) described in paragraph (b)(1)(ii) of this section must be determined under the method or methods applicable under the other section or sections of the section 482 regulations, as supplemented by paragraph (g) of this section. See § 1.482–1(b)(2)(ii) (Selection of category of method applicable to transaction), § 1.482–1T(b)(2)(iii) (Coordination of methods applicable to certain intangible development arrangements), and paragraph (g) of this section (Supplemental guidance on methods applicable to PCTs).

(3) *Methods for other controlled transactions*—(i) *Contribution to a CSA by a controlled taxpayer that is not a controlled participant.* If a controlled taxpayer that is not a controlled participant contributes to developing a cost shared intangible, as defined in section (j)(1)(i) of this section, it must receive consideration from the controlled participants under the rules of § 1.482–4T(f)(4) (Contribution to the value of an intangible owned by another). Such consideration will be treated as an intangible development cost for purposes of paragraph (d) of this section.

(ii) *Transfer of interest in a cost shared intangible.* If at any time (during the term, or upon or after the termination, of a CSA) a controlled participant transfers an interest in a cost shared intangible to another controlled taxpayer, the controlled participant must receive an arm's length amount of consideration from the transferee under the rules of §§ 1.482–1 and 1.482–4 through 1.482–6 as supplemented by paragraph (f)(4) of this section regarding arm's length consideration for a change in participation. For this purpose, a capability variation described in paragraph (f)(3) of this section is considered to be a controlled transfer of interests in cost shared intangibles.

(iii) *Other controlled transactions in connection with a CSA.* Controlled transactions between controlled participants that are not PCTs or CSTs (for example, provision of a cross operating contribution, as defined in paragraph (j)(1)(i) of this section, or make-or-sell rights) require arm's length consideration from the latter controlled participant under the rules of §§ 1.482–1, 1.482–4 through 1.482–6, and 1.482–9T as supplemented by paragraph (g)(2)(iv) of this section.

(iv) *Controlled transactions in the absence of a CSA.* If a controlled transaction is reasonably anticipated to contribute to developing intangibles pursuant to an arrangement that is not a CSA described in paragraph (b)(1) or (5) of this section, whether the results of any such controlled transaction are consistent with an arm's length result must be determined under the applicable rules of the other sections of the regulations under section 482. For example, an arrangement for developing intangibles in which one controlled taxpayer's costs of developing the intangibles significantly exceeds its share of reasonably anticipated benefits from exploiting the developed intangibles would not in substance be a CSA, as described in paragraphs (b)(1)(i) through (iii) of this section or paragraph (b)(5)(i) of this section. In such a case, unless the rules of this section are applicable by reason of paragraph (b)(5) of this section, the arrangement must be analyzed under other applicable sections of regulations under section 482 to determine whether it achieves arm's length results, and if not, to determine any allocations by the Commissioner that are consistent with such other regulations under section 482. See §§ 1.482–1(b)(2)(ii) (Selection of category of method applicable to transaction) and 1.482–1T(b)(2)(iii) (Coordination of methods applicable to certain intangible development arrangements).

(4) *Coordination with the arm's length standard.* A CSA produces results that are consistent with an arm's length result within the meaning of § 1.482–

1(b)(1) if, and only if, each controlled participant's IDC share (as determined under paragraph (d)(4) of this section) equals its RAB share, each controlled participant compensates its RAB share of the value of all platform contributions by other controlled participants, and all other requirements of this section are satisfied.

(b) *Cost sharing arrangement.* A cost sharing arrangement is an arrangement by which controlled participants share the costs and risks of developing cost shared intangibles in proportion to their RAB shares. An arrangement is a CSA if and only if the requirements of paragraphs (b)(1) through (4) of this section are met.

(1) *Substantive requirements*—(i) *CSTs.* All controlled participants must commit to, and in fact, engage in cost sharing transactions. In CSTs, the controlled participants make payments to each other (CST Payments) as appropriate, so that in each taxable year each controlled participant's IDC share is in proportion to its respective RAB share.

(ii) *PCTs.* All controlled participants must commit to, and in fact, engage in platform contributions transactions to the extent that there are platform contributions pursuant to paragraph (c) of this section. In a PCT, each other controlled participant (PCT Payor) is obligated to, and must in fact, make arm's length payments (PCT Payments) to each controlled participant (PCT Payee) that provides a platform contribution. For guidance on determining such arm's length obligation, see paragraph (g) of this section.

(iii) *Divisional interests.* Each controlled participant must receive a non-overlapping interest in the cost shared intangibles without further obligation to compensate another controlled participant for such interest.

(iv) *Examples.* The following examples illustrate the principles of this paragraph (b)(1):

Example 1. Company A and Company B, who are members of the same controlled group, execute an agreement to jointly develop vaccine X and own the exclusive rights to commercially exploit vaccine X in their respective territories, which together comprise the whole world. The agreement provides that they will share some, but not all, of the costs for developing Vaccine X in proportion to RAB share. Such agreement is not a CSA because Company A and Company B have not agreed to share all of the IDCs in proportion to their respective RAB shares.

Example 2. Company A and Company B agree to share all the costs of developing Vaccine X. The agreement also provides for employing certain resources and capabilities of Company A in this program including a skilled research team and certain research facilities, and provides for Company B to make payments to Company A in this respect. However, the agreement expressly provides that the program will not employ, and so Company B is expressly relieved of the payments in regard to, certain software developed by Company A as a medical research tool to model certain cellular processes expected to be implicated in the operation of Vaccine X even though such software would reasonably be anticipated to be relevant to developing Vaccine X and, thus, would be a platform contribution. See paragraph (c) of this section. Such agreement is not a CSA because Company A and Company B have not engaged in a necessary PCT for purposes of developing Vaccine X.

Example 3. Companies C and D, who are members of the same controlled group, enter into a CSA. In the first year of the CSA, C and D conduct the intangible development activity, as described in paragraph (d)(1) of this section. The total IDCs in regard to such activity are $3,000,000 of which C and D pay $2,000,000 and $1,000,000, respectively, directly to third parties. As between C and D, however, their CSA specifies that they will share all IDCs in accordance with their RAB shares (as described in paragraph (e)(1) of this section), which are 60% for C and 40% for D. It follows that C should bear $1,800,000 of the total IDCs (60% of total IDCs of $3,000,000) and D should bear $1,200,000 of the total IDCs (40% of total IDCs of $3,000,000). D makes a CST payment to C of $200,000, that is, the amount by which D's share of IDCs in accordance with its RAB share exceeds the amount of IDCs initially borne by D ($1,200,000–$1,000,000), and which also equals the amount by which the total IDCs initially borne by C exceeds its share of IDCS in accordance with its RAB share ($2,000,000–$1,800,000). As a result of D's CST payment to C, the IDC shares of C and D are in proportion to their respective RAB shares.

(2) *Administrative requirements.* The CSA must meet the requirements of paragraph (k) of this section.

(3) *Date of a PCT.* The controlled participants must enter into a PCT as of the earliest date on or after the CSA is entered into on which a platform contribution is reasonably anticipated to contribute to developing cost shared intangibles.

(4) *Divisional interests*—(i) *In general.* Pursuant to paragraph (b)(1)(iii) of this section, each controlled participant must receive a non-overlapping interest in the cost shared intangibles without further obligation to compensate another controlled participant for such interest. Each controlled participant must be entitled to the perpetual and exclusive right to the profits from transactions of any member of the controlled group that includes the controlled participant with uncontrolled taxpayers to the extent that such profits are attributable to such interest in the cost shared intangibles.

(ii) *Territorial based divisional interests.* The CSA may divide all interests in cost shared intangibles on a territorial basis as follows. The entire world must be divided into two or more non-overlapping geographic territories. Each controlled participant must receive at least one such territory, and in the aggregate all the participants must receive all such territories. Each controlled participant will be assigned the perpetual and exclusive right to exploit the cost shared intangibles through the use, consumption, or disposition of property or services in its territories. Thus, compensation will be required if other members of the controlled group exploit the cost shared intangibles in such territory.

(iii) *Field of use based divisional interests.* The CSA may divide all interests in cost shared intangibles on the basis of all uses (whether or not known at the time of the division) to which cost shared intangibles are to be put as follows. All anticipated uses of cost shared intangibles must be identified. Each controlled participant must be assigned at least one such anticipated use, and in the aggregate all the participants must be assigned all such anticipated uses. Each controlled participant will be assigned the perpetual and exclusive right to exploit the cost shared intangibles through the use or uses assigned to it and one controlled participant must be assigned the exclusive and perpetual right to exploit cost shared intangibles through any unanticipated uses.

(iv) *Other divisional bases.* (A) In the event that the CSA does not divide interests in the cost shared intangibles on the basis of exclusive territories or fields of use as described in paragraphs (b)(4)(ii) and (iii) of this section, the CSA may adopt some other basis on which to divide all interests in the cost shared intangibles among the controlled participants, provided that each of the following criteria is met:

(*1*) The basis clearly and unambiguously divides all interests in cost shared intangibles among the controlled participants.

(*2*) The consistent use of such basis for the division of all interests in the cost shared intangibles can be dependably verified from the records maintained by the controlled participants.

(*3*) The rights of the controlled participants to exploit cost shared intangibles are non-overlapping, exclusive, and perpetual.

(*4*) The resulting benefits associated with each controlled participant's interest in cost shared intangibles are predictable with reasonable reliability.

(B) See paragraph (f)(3) of this section for rules regarding the requirement of arm's length consideration for changes in participation in CSAs involving divisions of interest described in this paragraph (b)(4)(iv).

(v) *Examples.* The following examples illustrate the principles of this paragraph (b)(4):

Example 1. Companies P and S, both members of the same controlled group, enter into a CSA to develop product Z. Under the CSA, P receives the interest in product Z in the United States and S receives the interest in product Z in the rest of the world, as described in paragraph (b)(4)(ii) of this section. Both P and S have plants for manufacturing product Z located in their respective geographic territories. However, for commercial reasons, product Z is nevertheless manufactured by P in the United States for sale to customers in certain locations just outside the United States in close proximity to P's U.S. manufacturing plant. Because S owns the territorial rights outside the United States, P must compensate S to ensure that S realizes all the cost shared intangible profits from P's sales of product Z in S's territory. The pricing of such compensation must also ensure that P realizes an appropriate return for its manufacturing efforts. Benefits projected with respect to such sales will be included for purposes of estimating S's, but not P's, RAB share.

Example 2. The facts are the same as in *Example 1* except that P and S agree to divide their interest in product Z based on site of manufacturing. P will have exclusive and perpetual rights in product Z manufactured in facilities owned by P. S will have exclusive and perpetual rights to product Z manufactured in facilities owned by S. P and S agree that neither will license manufacturing rights in product Z to any related or unrelated party. Both P and S maintain books and records that allow production at all sites to be verified. Both own facilities that will manufacture product Z and the relative capacities of these sites are known. All facilities are currently operating at near capacity and are expected to continue to operate at near capacity when product Z enters production so that it will not be feasible to shift production between P's and S's facilities. P and S have no plans to build new facilities and the lead time required to plan and build a manufacturing facility precludes the possibility that P or S will build a new facility during the period for which sales of Product Z are expected. Based on these facts, this basis for the division of interests in Product Z is a division described in paragraph (b)(4)(iv) of this section. The basis for the division of interest is unambiguous and clearly defined and its use can be dependably verified. P and S both have non-overlapping, exclusive and perpetual rights in Product Z. The division of interest results in the participant's relative benefits being predictable with reasonable reliability.

Example 3. The facts are the same as in *Example 2* except that P's and S's manufacturing facilities are not expected to operate at full capacity when product Z enters production. Production of Product Z can be shifted at any time between sites owned by P and sites owned by S, although neither P nor S intends to shift production as a result of the agreement. The division of interests in Product Z between P and S based on manufacturing site is not a division described in paragraph (b)(4)(iv) of this section because their relative shares of benefits are not predictable with reasonable reliability. The fact that neither P nor S intends to shift production is irrelevant.

(5) *Treatment of certain arrangements as CSAs*—(*i*) Situation in which Commissioner must treat arrangement as a CSA. The Commissioner must apply the rules of this section to an arrangement among controlled taxpayers if the administrative requirements of paragraph (b)(2) of this section are met with respect to such arrangement and the controlled taxpayers reasonably concluded that such arrangement was a CSA meeting the requirements of paragraphs (b)(1), (3), and (4) of this section.

(ii) *Situation in which Commissioner may treat arrangement as a CSA.* For arrangements among controlled taxpayers not described in paragraph (b)(5)(i) of this section, the Commissioner may apply the provisions of this section if the Commissioner concludes that the administrative requirements of paragraph (b)(2) of this section are met, and, notwithstanding technical failure to meet the substantive requirements of paragraph (b)(1), (3), or (4) of this section, the rules of this section will provide the most reliable measure of an arm's length result. See § 1.482–1(c)(1) (the best method rule). For purposes of applying this paragraph (b)(5)(ii), any such arrangement shall be interpreted by reference to paragraph (k)(1)(iv) of this section.

(iii) *Examples.* The following examples illustrate the principles of this paragraph (b)(5). In the examples, assume that Companies P and S are both members of the same controlled group.

Example 1. (i) P owns the patent on a formula for a capsulated pain reliever, P–Cap. P reasonably anticipates, pending further research and experimentation, that the P–Cap formula could form the platform for a formula for P–Ves, an effervescent version of P–Cap. P also owns proprietary software that it reasonably anticipates to be critical to the research efforts. P and S execute a contract that purports to be a CSA by which they agree to proportionally share the costs and risks of developing a formula for P–Ves. The agreement reflects the various contractual requirements described in paragraph (k)(1) of this section and P and S comply with the documentation, accounting, and reporting requirements of paragraphs (k)(2) through (4) of this section. Both the patent rights for P–Cap and the software are reasonably anticipated to contribute to the development of P–Ves and therefore are platform contributions for which compensation is due from S as part of PCTs. Though P and S enter into and implement a PCT for the P–Cap patent rights that satisfies the arm's length standard, they fail to enter into a PCT for the software.

(ii) In this case, P and S have substantially complied with the contractual requirements of paragraph (k)(1) of this section and the documentation, accounting, and reporting requirements of paragraphs (k)(2) through (4) of this section and therefore have met the administrative requirements of paragraph (b)(2) of this section. However, because they did not enter into a PCT, as required under paragraphs (b)(1)(ii) and (b)(3) of this section, for the software that was reasonably anticipated to contribute to the development of P–Ves (see paragraph (c) of this section), they cannot reasonably conclude that their arrangement was a CSA. Accordingly, the Commissioner is not required under paragraph (b)(5)(i) of this section to apply the rules of this section to their arrangement.

(iii) Nevertheless, the arrangement between P and S closely resembles a CSA. If the Commissioner concludes that the rules of this section provide the most reliable measure of an arm's length result for such arrangement, then pursuant to paragraph (b)(5)(ii) of this section, the Commissioner may apply the rules of this section and treat P and S as entering into a PCT for the software in accordance with the requirements of paragraph (b)(1)(ii) of this section, and make any appropriate allocations under paragraph (i) of this section. Alternatively, the Commissioner may conclude that the rules of this section do not provide the most reliable measure of an arm's length result. In such case, the arrangement would be analyzed under the methods under other sections of the 482 regulations to determine whether the arrangement reaches an arm's length result.

Example 2. The facts are the same as *Example 1* except that P and S do enter into and implement a PCT for the software as required under this paragraph (b). The Commissioner determines that the PCT Payments for the software were not arm's length; nevertheless, under the facts and circumstances at the time they entered into the CSA and PCTs, P and S reasonably concluded their arrangement to be a CSA. Because P and S have met the requirements of paragraph (b)(2) of this section and reasonably concluded their arrangement is a CSA, pursuant to paragraph (b)(5)(i) of this section, the Commissioner must apply the rules of this section to their arrangement. Accordingly, the Commissioner treats the arrangement as a CSA and makes adjustments to the PCT Payments as appropriate under this section to achieve an arm's length result for the PCT for the software.

Example 3. (i) The facts are the same as *Example 1* except that P and S do enter into a PCT for the software as required under this paragraph (b). The agreement entered into by P and S provides for a fixed consideration of $50 million per year for four years, payable at the end of each year. This agreement

satisfies the arm's length standard. However, S actually pays P consideration at the end of each year in the form of four annual royalties equal to two percent of sales. While such royalties at the time of the PCT were expected to be $50 million per year, actual sales during the first year were less than anticipated and the first royalty payment was only $25 million.

(ii) In this case, P and S failed to implement the terms of their agreement. Under these circumstances, P and S could not reasonably conclude that their arrangement was a CSA, as described in paragraph (b)(1) of this section. Accordingly, the Commissioner is not required under paragraph (b)(5)(i) of this section to apply the rules of this section to their arrangement.

(iii) Nevertheless, the arrangement between P and S closely resembles a CSA. If the Commissioner concludes that the rules of this section provide the most reliable measure of an arm's length result for such arrangement, then pursuant to paragraph (b)(5)(ii) of this section, the Commissioner may apply the rules of this section and make any appropriate allocations under paragraph (i) of this section. Alternatively, the Commissioner may conclude that the rules of this section do not provide the most reliable measure of an arm's length result. In such case, the arrangement would be analyzed under the methods under other sections of the 482 regulations to determine whether the arrangement reaches an arm's length result.

Example 4. (i) The facts are the same as in *Example 1* except that P does not own proprietary software and P and S use a different method for determining the arm's length amount of the PCT Payment for the P–Cap patent rights from the method used in *Example 1*.

(ii) P and S determine that the arm's length amount of the PCT Payments for the P–Cap patent is $10 million. However, the IRS determines the best method for determining the arm's length amount of the PCT Payments for the P–Cap patent rights and under such method the arm's length amount is $100 million. To determine this $10 million present value, P and S assumed a useful life of eight years for the platform contribution, because the P–Cap patent rights will expire after eight years. However, use of the P–Cap patent rights in research is expected to lead to benefits attributable to exploitation of the cost shared intangibles extending many years beyond the expiration of the P–Cap patent, because use of the P–Cap patent rights will let P and S bring P–Ves to market before the competition, and because P and S expect to apply for additional patents covering P–Ves, which would bar competitors from selling that product for many future years. The assumption by P and S of a useful life for the platform contribution that is less than the anticipated period of exploitation of the cost shared intangibles is contrary to paragraph (g)(2)(ii) of this section, and reduces the reliability of the method used by P and S.

(iii) The method used by P and S employs a declining royalty. The royalty starts at 8% of sales, based on an application of the CUT method in which the purported CUTs all involve licenses to manufacture and sell the current generation of P–Cap, and declines to 0% over eight years, declining by 1% each year. Such make-or-sell rights are fundamentally different from use of the P-Cap patent rights to generate a new product. This difference raises the issue of whether the make-or-sell rights are sufficiently comparable to the rights that are the subject of the PCT Payment. See § 1.482–4(c). While a royalty rate for make-or-sell rights can form the basis for a reliable determination of an arm's length PCT Payment in the CUT-based implementation of the income method described in paragraph (g)(4) of this section, under that method such royalty rate does not decline to zero. Therefore, the use of a declining royalty rate based on an initial rate for make-or-sell rights further reduces the reliability of the method used by P and S.

(iv) Sales of the next-generation product are not anticipated until after seven years, at which point the royalty rate will have declined to 1%. The temporal mismatch between the period of the royalty rate decline and the period of exploitation raises further concerns about the method's reliability.

(v) For the reasons given in paragraphs (ii) through (iv) of this *Example 4*, the method used by P and S is so unreliable and so contrary to provisions of this section that P and S could not reasonably conclude that they had contracted to make arm's length PCT Payments as required by paragraphs (b)(1)(ii) and (b)(3) of this section, and thus could not reasonably conclude that their arrangement was a CSA. Accordingly, the Commissioner is not required under paragraph (b)(5)(i) of this section to apply the rules of this section to their arrangement.

(vi) Nevertheless, the arrangement between P and S closely resembles a CSA. If the Commissioner concludes that the rules of this section provide the most reliable measure of an arm's length result for such arrangement, then pursuant to paragraph (b)(5)(ii) of this section, the Commissioner may apply the rules of this section and make any appropriate allocations under paragraph (i) of this section. Alternatively, the Commissioner may conclude that the rules of this section do not provide the most reliable measure of an arm's length result. In such case, the arrangement would be analyzed under the methods under other section 482 regulations to determine whether the arrangement reaches an arm's length result.

(6) *Entity classification of CSAs.* See § 301.7701–1(c) of this chapter for the classification of CSAs for purposes of the Internal Revenue Code.

(c) *Platform contributions*—(1) *In general.* A platform contribution is any resource, capability, or right that a controlled participant has developed, maintained, or acquired externally to the intangible development activity (whether prior to or during the course of the CSA) that is reasonably anticipated to contribute to developing cost shared intangibles. The determination whether a resource, capability, or right is reasonably anticipated to contribute to developing cost shared intangibles is ongoing and based on the best available information. Therefore, a resource, capability, or right reasonably determined not to be a platform contribution as of an earlier point in time, may be reasonably determined to be a platform contribution at a later point in time. The PCT obligation regarding a resource or capability or right once determined to be a platform contribution does not terminate merely because it may later be determined that such resource or capability or right has not contributed, and no longer is reasonably anticipated to contribute, to developing cost shared intangibles. Notwithstanding the other provisions of this paragraph (c), platform contributions do not include rights in land or depreciable tangible property, and do not include rights in other resources acquired by IDCs. See paragraph (d)(1) of this section.

(2) *Terms of platform contributions*—(i) *Presumed to be exclusive.* For purposes of a PCT, the PCT Payee's provision of a platform contribution is presumed to be exclusive. Thus, it is presumed that the platform resource, capability, or right is not reasonably anticipated to be committed to any business activities other than the CSA Activity, as defined in paragraph (j)(1)(i) of this section, whether carried out by the controlled participants, other controlled taxpayers, or uncontrolled taxpayers.

(ii) *Rebuttal of exclusivity.* The controlled participants may rebut the presumption set forth in paragraph (c)(2)(i) of this section to the satisfaction of the Commissioner. For example, if the platform resource is a research tool, then the controlled participants could rebut the presumption by establishing to the satisfaction of the Commissioner that, as of the date of the PCT, the tool is reasonably anticipated not only to contribute to the CSA Activity but also to be licensed to an uncontrolled taxpayer. In such case, the PCT Payments may need to be prorated as described in paragraph (c)(2)(iii) of this section.

(iii) *Proration of PCT Payments to the extent allocable to other business activities*—(A) *In general.* Some transfer pricing methods employed to determine the arm's length amount of the PCT Payments do so by considering the overall value of the platform contributions as opposed to, for example, the value of the anticipated use of the platform contributions in the CSA Activity. Such a transfer pricing method is consistent with the presumption that the platform contribution is exclusive (that is, that the resources, capabilities or rights that are the subject of a platform contribution are reasonably anticipated

to contribute only to the CSA Activity). See paragraph (c)(2)(i) of this section (Terms of platform contributions—Presumed to be exclusive). The PCT Payments determined under such transfer pricing method may have to be prorated if the controlled participants can rebut the presumption that the platform contribution is exclusive to the satisfaction of the Commissioner as provided in paragraph (c)(2)(ii) of this section. In the case of a platform contribution that also contributes to lines of business of a PCT Payor that are not reasonably anticipated to involve exploitation of the cost shared intangibles, the need for explicit proration may in some cases be avoided through aggregation of transactions. See paragraph (g)(2)(iv) of this section (Aggregation of transactions).

(B) *Determining the proration of PCT Payments.* Proration will be done on a reasonable basis in proportion to the relative economic value, as of the date of the PCT, reasonably anticipated to be derived from the platform contribution by the CSA Activity as compared to the value reasonably anticipated to be derived from the platform contribution by other business activities. In the case of an aggregate valuation done under the principles of paragraph (g)(2)(iv) of this section that addresses payment for resources, capabilities, or rights used for business activities other than the CSA Activity (for example, the right to exploit an existing intangible without further development), the proration of the aggregate payments may have to reflect the economic value attributable to such resources, capabilities, or rights as well. For purposes of the best method rule under § 1.482–1(c), the reliability of the analysis under a method that requires proration pursuant to this paragraph is reduced relative to the reliability of an analysis under a method that does not require proration.

(3) *Categorization of the PCT.* For purposes of § 1.482–1(b)(1)(ii) and paragraph (a)(2) of this section, a PCT must be identified by the controlled participants as a particular type of transaction (for example, a license for royalty payments). See paragraph (k)(2)(ii)(I) of this section. Such designation must be consistent with the actual conduct of the controlled participants. If the conduct is consistent with different, economically equivalent types of transaction, then the controlled participants may designate the PCT as being any of such types of transaction. If the controlled participants fail to make such designation in their documentation, the Commissioner may make a designation consistent with the principles of paragraph (k)(1)(iv) of this section.

(4) *Certain make-or-sell rights excluded*—(i) *In general.* Any right to exploit an existing intangible without further development, such as the right to make, replicate, license or sell existing products, does not constitute a platform contribution to a CSA, and the arm's length compensation for such rights (make-or-sell rights) does not satisfy the compensation obligation under a PCT.

(ii) *Examples.* The following examples illustrate the principles of this paragraph (c)(4):

Example 1. P and S, which are members of the same controlled group, execute a CSA. Under the CSA, P and S will bear their RAB shares of IDCs for developing the second generation of ABC, a computer software program. Prior to that arrangement, P had incurred substantial costs and risks to develop ABC. Concurrent with entering into the arrangement, P (as the licensor) executes a license with S (as the licensee) by which S may make and sell copies of the existing ABC. Such make-or-sell rights do not constitute a platform contribution to the CSA. The rules of §§ 1.482–1 and 1.482–4 through 1.482–6 must be applied to determine the arm's length consideration in connection with the make-or-sell licensing arrangement. In certain circumstances, this determination of the arm's length consideration may be done on an aggregate basis with the evaluation of compensation obligations pursuant to the PCTs entered into by P and S in connection with the CSA. See paragraph (g)(2)(iv) of this section.

Example 2. (i) P, a software company, has developed and currently exploits software program ABC. P and S enter into a CSA to develop future generations of ABC. The ABC source code is the platform on which future generations of ABC will be built and is therefore a platform contribution of P for which compensation is due from S pursuant to a PCT. Concurrent with entering into the CSA, P licenses to S the make-or-sell rights for the current version of ABC. P has entered into similar licenses with uncontrolled parties calling for sales-based royalty payments at a rate of 20%. The current version of ABC has an expected product life of three years. P and S enter into a contingent payment agreement to cover both the PCT Payments due from S for P's platform contribution and payments due from S for the make-or-sell license. Based on the uncontrolled make-or-sell licenses, P and S agree on a sales-based royalty rate of 20% in Year 1 that declines on a straight line basis to 0% over the 3 year product life of ABC.

(ii) The make-or-sell rights for the current version of ABC are not platform contributions, though paragraph (g)(2)(iv) of this section provides for the possibility that the most reliable determination of an arm's length charge for the platform contribution and the make-or-sell license may be one that values the two transactions in the aggregate. A contingent payment schedule based on the uncontrolled make-or-sell licenses may provide an arm's length charge for the separate make-or-sell license between P and S, provided the royalty rates in the uncontrolled licenses similarly decline, but as a measure of the aggregate PCT and license payments it does not account for the arm's length value of P's platform contributions which include the rights in the source code and future development rights in ABC.

(5) *Examples.* The following examples illustrate the principles of this paragraph (c). In each example, Companies P and S are members of the same controlled group, and execute a CSA providing that each will have the exclusive right to exploit cost shared intangibles in its own territory. See paragraph (b)(4)(ii) of this section (Territorial based divisional interests).

Example 1. Company P has developed and currently markets version 1.0 of a new software application XYZ. Company P and Company S execute a CSA under which they will share the IDCs for developing future versions of XYZ. Version 1.0 is reasonably anticipated to contribute to the development of future versions of XYZ and therefore Company P's rights in version 1.0 constitute a platform contribution from Company P that must be compensated by Company S pursuant to a PCT. Pursuant to paragraph (c)(3) of this section, the controlled participants designate the platform contribution as a transfer of intangibles that would otherwise be governed by § 1.482–4, if entered into by controlled parties. Accordingly, pursuant to paragraph (a)(2) of this section, the applicable method for determining the arm's length value of the compensation obligation under the PCT between Company P and Company S will be governed by § 1.482–4 as supplemented by paragraph (g) of this section. Absent a showing to the contrary by P and S, the platform contribution in this case is presumed to be the exclusive provision of the benefit of all rights in version 1.0, other than the rights described in paragraph (c)(4) of this section (Certain make-or-sell rights excluded). This includes the right to use version 1.0 for purposes of research and the exclusive right in S's territory to exploit any future products that incorporated the technology of version 1.0, and would cover a term extending as long as the controlled participants were to exploit future versions of XYZ or any other product based on the version 1.0 platform. The compensation obligation of Company S pursuant to the PCT will reflect the full value of the platform contribution, as limited by Company S's RAB share.

Example 2. Company P and Company S execute a CSA under which they will share the IDCs for developing Vaccine Z. Company P will commit to the project its research team that has successfully developed a number of other vaccines. The expertise and existing integration of the research team is a unique resource or capability of Company P which is reasonably anticipated to contribute to the development of Vaccine Z. Therefore, P's provision of the capabilities of the research team constitute a platform contribution for

which compensation is due from Company S as part of a PCT. Pursuant to paragraph (c)(3) of this section, the controlled parties designate the platform contribution as a provision of services that would otherwise be governed by § 1.482–9T(a) if entered into by controlled parties. Accordingly, pursuant to paragraph (a)(2) of this section, the applicable method for determining the arm's length value of the compensation obligation under the PCT between Company P and Company S will be governed by § 1.482–9T(a) as supplemented by paragraph (g) of this section. Absent a showing to the contrary by P and S, the platform contribution in this case is presumed to be the exclusive provision of the benefits by Company P of its research team to the development of Vaccine Z. Because the IDCs include the ongoing compensation of the researchers, the compensation obligation under the PCT is only for the value of the commitment of the research team by Company P to the CSA's development efforts net of such researcher compensation. The value of the compensation obligation of Company S for the PCT will reflect the full value of the provision of services, as limited by Company S's RAB share.

(d) *Intangible development costs*—(1) *Determining whether costs are IDCs.* Costs included in IDCs are determined by reference to the scope of the intangible development activity (IDA).

(i) *Definition and scope of the IDA.* For purposes of this section, the IDA means the activity under the CSA of developing or attempting to develop reasonably anticipated cost shared intangibles. The scope of the IDA includes all of the controlled participants' activities that could reasonably be anticipated to contribute to developing the reasonably anticipated cost shared intangibles. The IDA cannot be described merely by a list of particular resources, capabilities, or rights that will be used in the CSA, because such a list would not identify reasonably anticipated cost shared intangibles. Also, the scope of the IDA may change as the nature or identity of the reasonably anticipated cost shared intangibles changes or the nature of the activities necessary for their development become clearer. For example, the relevance of certain ongoing work to developing reasonably anticipated cost shared intangibles or the need for additional work may only become clear over time.

(ii) *Reasonably anticipated cost shared intangible.* For purposes of this section, *reasonably anticipated cost shared intangible* means any intangible, within the meaning of § 1.482–4(b), that, at the applicable point in time, the controlled participants intend to develop under the CSA. Reasonably anticipated cost shared intangibles may change over the course of the CSA. The controlled participants may at any time change the reasonably anticipated cost shared intangibles but must document any such change pursuant to paragraph (k)(2)(ii)(A)(*1*) of this section. Removal of reasonably anticipated cost shared intangibles does not affect the controlled participants' interests in cost shared intangibles already developed under the CSA. In addition, the reasonably anticipated cost shared intangibles automatically expand to include the intended result of any further development of a cost shared intangible already developed under the CSA, or applications of such an intangible. However, the controlled participants may override this automatic expansion in a particular case if they separately remove specified further development of such intangible (or specified applications of such intangible) from the IDA, and document such separate removal pursuant to paragraph (k)(2)(ii)(A)(*3*) of this section.

(iii) *Costs included in IDCs.* For purposes of this section, *IDCs* mean all costs, in cash or in kind (including stock-based compensation, as described in paragraph (d)(3) of this section), but excluding acquisition costs for land or depreciable property, in the ordinary course of business after the formation of a CSA that, based on analysis of the facts and circumstances, are directly identified with, or are reasonably allocable to, the IDA. Thus, IDCs include costs incurred in attempting to develop reasonably anticipated cost shared intangibles regardless of whether such costs ultimately lead to development of those intangibles, other intangibles developed unexpectedly, or no intangibles. IDCs shall also include the arm's length rental charge for the use of any land or depreciable tangible property (as determined under § 1.482–2(c) (Use of tangible property)) directly identified with, or reasonably allocable to, the IDA. Reference to generally accepted accounting principles or Federal income tax accounting rules may provide a useful starting point but will not be conclusive regarding inclusion of costs in IDCs. IDCs do not include interest expense, foreign income taxes (as defined in § 1.901–2(a)), or domestic income taxes.

(iv) *Examples.* The following examples illustrate the principles of this paragraph (d)(1):

Example 1. A contract that purports to be a CSA provides that the IDA to which the agreement applies consists of all research and development activity conducted at laboratories A, B, and C but not at other facilities maintained by the controlled participants. The contract does not describe the reasonably anticipated cost shared intangibles with respect to which research and development is to be undertaken. The contract fails to meet the requirements set forth in paragraph (k)(1)(ii)(B) of this section because it fails to adequately describe the scope of the IDA to be undertaken.

Example 2. A contract that purports to be a CSA provides that the IDA to which the agreement applies consists of all research and development activity conducted by any of the controlled participants with the goal of developing a cure for a particular disease. Such a cure is thus a reasonably anticipated cost shared intangible. The contract also contains a provision that the IDA will exclude any activity that builds on the results of the controlled participants' prior research concerning Enzyme X even though such activity could reasonably be anticipated to contribute to developing such cure. The contract fails to meet the requirement set forth in paragraph (d)(1)(i) of this section that the scope of the IDA include all of the controlled participants' activities that could reasonably be anticipated to contribute to developing reasonably anticipated cost shared intangibles.

(2) *Allocation of costs.* If a particular cost is directly identified with, or reasonably allocable to, a function the results of which will benefit both the IDA and other business activities, the cost must be allocated on a reasonable basis between the IDA and such other business activities in proportion to the relative economic value that the IDA and such other business activities are anticipated to derive from such results.

(3) *Stock-based compensation*—(i) *In general.* As used in this section, the term *stock-based compensation* means any compensation provided by a controlled participant to an employee or independent contractor in the form of equity instruments, options to acquire stock (stock options), or rights with respect to (or determined by reference to) equity instruments or stock options, including but not limited to property to which section 83 applies and stock options to which section 421 applies, regardless of whether ultimately settled in the form of cash, stock, or other property.

(ii) *Identification of stock-based compensation with the IDA.* The determination of whether stock-based compensation is directly identified with, or reasonably allocable to, the IDA is made as of the date that the stock-based compensation is granted. Accordingly, all stock-based compensation that is granted during the term of the CSA and, at date of grant, is directly identified with, or reasonably allocable to, the IDA is included as an IDC under paragraph (d)(1) of this section. In the case of a repricing or other modification of a stock option, the determination of whether the repricing or other modification constitutes the

grant of a new stock option for purposes of this paragraph (d)(3)(ii) will be made in accordance with the rules of section 424(h) and related regulations.

(iii) *Measurement and timing of stock-based compensation IDC*—(A) *In general.* Except as otherwise provided in this paragraph (d)(3)(iii), the cost attributable to stock-based compensation is equal to the amount allowable to the controlled participant as a deduction for federal income tax purposes with respect to that stock-based compensation (for example, under section 83(h)) and is taken into account as an IDC under this section for the taxable year for which the deduction is allowable.

(*1*) *Transfers to which section 421 applies.* Solely for purposes of this paragraph (d)(3)(iii)(A), section 421 does not apply to the transfer of stock pursuant to the exercise of an option that meets the requirements of section 422(a) or 423(a).

(*2*) *Deductions of foreign controlled participants.* Solely for purposes of this paragraph (d)(3)(iii)(A), an amount is treated as an allowable deduction of a foreign controlled participant to the extent that a deduction would be allowable to a United States taxpayer.

(*3*) *Modification of stock option.* Solely for purposes of this paragraph (d)(3)(iii)(A), if the repricing or other modification of a stock option is determined, under paragraph (d)(3)(ii) of this section, to constitute the grant of a new stock option not identified with, or reasonably allocable to, the IDA, the stock option that is repriced or otherwise modified will be treated as being exercised immediately before the modification, provided that the stock option is then exercisable and the fair market value of the underlying stock then exceeds the price at which the stock option is exercisable. Accordingly, the amount of the deduction that would be allowable (or treated as allowable under this paragraph (d)(3)(iii)(A)) to the controlled participant upon exercise of the stock option immediately before the modification must be taken into account as an IDC as of the date of the modification.

(*4*) *Expiration or termination of CSA.* Solely for purposes of this paragraph (d)(3)(iii)(A), if an item of stock-based compensation identified with, or reasonably allocable to, the IDA is not exercised during the term of a CSA, that item of stock-based compensation will be treated as being exercised immediately before the expiration or termination of the CSA, provided that the stock-based compensation is then exercisable and the fair market value of the underlying stock then exceeds the price at which the stock-based compensation is exercisable. Accordingly, the amount of the deduction that would be allowable (or treated as allowable under this paragraph (d)(3)(iii)(A)) to the controlled participant upon exercise of the stock-based compensation must be taken into account as an IDC as of the date of the expiration or termination of the CSA.

(B) *Election with respect to options on publicly traded stock*—(*1*) *In general.* With respect to stock-based compensation in the form of options on publicly traded stock, the controlled participants in a CSA may elect to take into account all IDCs attributable to those stock options in the same amount, and as of the same time, as the fair value of the stock options reflected as a charge against income in audited financial statements or disclosed in footnotes to such financial statements, provided that such statements are prepared in accordance with United States generally accepted accounting principles by or on behalf of the company issuing the publicly traded stock.

(*2*) *Publicly traded stock.* As used in this paragraph (d)(3)(iii)(B), the term *publicly traded stock* means stock that is regularly traded on an established United States securities market and is issued by a company whose financial statements are prepared in accordance with United States generally accepted accounting principles for the taxable year.

(*3*) *Generally accepted accounting principles.* For purposes of this paragraph (d)(3)(iii)(B), a financial statement prepared in accordance with a comprehensive body of generally accepted accounting principles other than United States generally accepted accounting principles is considered to be prepared in accordance with United States generally accepted accounting principles provided that either—

(*i*) The fair value of the stock options under consideration is reflected in the reconciliation between such other accounting principles and United States generally accepted accounting principles required to be incorporated into the financial statement by the securities laws governing companies whose stock is regularly traded on United States securities markets; or

(*ii*) In the absence of a reconciliation between such other accounting principles and United States generally accepted accounting principles that reflects the fair value of the stock options under consideration, such other accounting principles require that the fair value of the stock options under consideration be reflected as a charge against income in audited financial statements or disclosed in footnotes to such statements.

(*4*) *Time and manner of making the election.* The election described in this paragraph (d)(3)(iii)(B) is made by an explicit reference to the election in the written contract required by paragraph (k)(1) of this section or in a written amendment to the CSA entered into with the consent of the Commissioner pursuant to paragraph (d)(3)(iii)(C) of this section. In the case of a CSA in existence on August 26, 2003, the election by written amendment to the CSA may be made without the consent of the Commissioner if such amendment is entered into not later than the latest due date (with regard to extensions) of a federal income tax return of any controlled participant for the first taxable year beginning after August 26, 2003.

(C) *Consistency.* Generally, all controlled participants in a CSA taking options on publicly traded stock into account under paragraph (d)(3)(ii), (d)(3)(iii)(A), or (d)(3)(iii)(B) of this section must use that same method of identification, measurement and timing for all options on publicly traded stock with respect to that CSA. Controlled participants may change their method only with the consent of the Commissioner and only with respect to stock options granted during taxable years subsequent to the taxable year in which the Commissioner's consent is obtained. All controlled participants in the CSA must join in requests for the Commissioner's consent under this paragraph (d)(3)(iii)(C). Thus, for example, if the controlled participants make the election described in paragraph (d)(3)(iii)(B) of this section upon the formation of the CSA, the election may be revoked only with the consent of the Commissioner, and the consent will apply only to stock options granted in taxable years subsequent to the taxable year in which consent is obtained. Similarly, if controlled participants already have granted stock options that have been or will be taken into account under the general rule of paragraph (d)(3)(iii)(A) of this section, then except in cases specified in the last sentence of paragraph (d)(3)(iii)(B)(*4*) of this section, the controlled participants may make the election described in paragraph (d)(3)(iii)(B) of this section only with the consent of the Commissioner, and the consent will apply only to stock options granted in taxable years subsequent to the taxable year in which consent is obtained.

(4) *IDC share.* A controlled participant's IDC share for a taxable year is equal to the controlled participant's

cost contribution for the taxable year, divided by the sum of all IDCs for the taxable year. A controlled participant's cost contribution for a taxable year means all of the IDCs initially borne by the controlled participant, plus all of the CST Payments that the participant makes to other controlled participants, minus all of the CST Payments that the participant receives from other controlled participants.

(5) *Examples.* The following examples illustrate this paragraph (d):

Example 1. Foreign parent (FP) and its U.S. subsidiary (USS) enter into a CSA to develop a better mousetrap. USS and FP share the costs of FP's R&D facility that will be exclusively dedicated to this research, the salaries of the researchers at the facility, and overhead costs attributable to the project. They also share the cost of a conference facility that is at the disposal of the senior executive management of each company. Based on the facts and circumstances, the cost of the conference facility cannot be directly identified with, and is not reasonably allocable to, the IDA. In this case, the cost of the conference facility must be excluded from the amount of IDCs.

Example 2. U.S. parent (USP) and its foreign subsidiary (FS) enter into a CSA to develop intangibles for producing a new device. USP and FS share the costs of an R&D facility, the salaries of the facility's researchers, and overhead costs attributable to the project. Although USP also incurs costs related to field testing of the device, USP does not include those costs in the IDCs that USP and FS will share under the CSA. The Commissioner may determine, based on the facts and circumstances, that the costs of field testing are IDCs that the controlled participants must share.

Example 3. U.S. parent (USP) and its foreign subsidiary (FS) enter into a CSA to develop a new process patent. USP assigns certain employees to perform solely R&D to develop a new mathematical algorithm to perform certain calculations. That algorithm will be used both to develop the new process patent and to develop a new design patent the development of which is outside the scope of the CSA. During years covered by the CSA, USP compensates such employees with cash salaries, stock-based compensation, or a combination of both. USP and FS anticipate that the economic value attributable to the R&D will be derived from the process patent and the design patent in a relative proportion of 75% and 25%, respectively. Applying the principles of paragraph (d)(2) of this section, 75% of the compensation of such employees must be allocated to the development of the new process patent and, thus, treated as IDCs. With respect to the cash salary compensation, the IDC is 75% of the face value of the cash. With respect to the stock-based compensation, the IDC is 75% of the value of the stock-based compensation as determined under paragraph (d)(3)(iii) of this section.

Example 4. Foreign parent (FP) and its U.S. subsidiary (USS) enter into a CSA to develop a new computer source code. FP has an executive officer who oversees a research facility and employees dedicated solely to the IDA. The executive officer also oversees other research facilities and employees unrelated to the IDA, and performs certain corporate overhead functions. The full amount of the costs of the research facility and employees dedicated solely to the IDA can be directly identified with the IDA and, therefore, are IDCs. In addition, based on the executive officer's records of time worked on various matters, the controlled participants reasonably allocate 20% of the executive officer's compensation to supervision of the facility and employees dedicated to the IDA, 50% of the executive officer's compensation to supervision of the facilities and employees unrelated to the IDA, and 30% of the executive officer's compensation to corporate overhead functions. The controlled participants also reasonably determine that the results of the executive officer's corporate overhead functions yield equal economic benefit to the IDA and the other business activities of FP. Applying the principles of paragraph (d)(1) of this section, the executive officer's compensation allocated to supervising the facility and employees dedicated to the IDA (amounting to 20% of the executive officer's total compensation) must be treated as IDCs. Applying the principles of paragraph (d)(2) of this section, half of the executive officer's compensation allocated to corporate overhead functions (that is, half of 30% of the executive officer's total compensation), must be treated as IDCs. Therefore, a total of 35% (20% plus 15%) of the executive officer's total compensation must be treated as IDCs.

(e) *Reasonably anticipated benefits share*—(1) *Definition*—(i) *In general.* A controlled participant's share of reasonably anticipated benefits is equal to its reasonably anticipated benefits divided by the sum of the reasonably anticipated benefits, as defined in paragraph (j)(1)(i) of this section, of all the controlled participants. RAB shares must be updated to account for changes in economic conditions, the business operations and practices of the participants, and the ongoing development of intangibles under the CSA. For purposes of determining RAB shares at any given time, reasonably anticipated benefits must be estimated over the entire period, past and future, of exploitation of the cost shared intangibles, and must reflect appropriate updates to take into account the most reliable data regarding past and projected future results available at such time. A controlled participant's RAB share must be determined by using the most reliable estimate. In determining which of two or more available estimates is most reliable, the quality of the data and assumptions used in the analysis must be taken into account, consistent with § 1.482–1(c)(2)(ii) (Data and assumptions). Thus, the reliability of an estimate will depend largely on the completeness and accuracy of the data, the soundness of the assumptions, and the relative effects of particular deficiencies in data or assumptions on different estimates. If two estimates are equally reliable, no adjustment should be made based on differences between the estimates. The following factors will be particularly relevant in determining the reliability of an estimate of RAB shares:

(A) The basis used for measuring benefits, as described in paragraph (e)(2)(ii) of this section.

(B) The projections used to estimate benefits, as described in paragraph (e)(2)(iii) of this section.

(ii) *Example.* The following example illustrates the principles of this paragraph (e)(1):

Example. (i) USP and FS plan to conduct research to develop Product Lines A and B. USP and FS reasonably anticipate respective benefits from Product Line A of 100X and 200X and respective benefits from Product Line B, respectively, of 300X and 400X. USP and FS thus reasonably anticipate combined benefits from Product Lines A and B of 400X and 600X, respectively.

(ii) USP and FS could enter into a separate CSA to develop Product Line A with respective RAB shares of 33⅓ percent and 66⅔ percent (reflecting a ratio of 100X to 200X), and into a separate CSA to develop Product Line B with respective RAB shares of 42⅞ percent and 57⅐ percent (reflecting a ratio of 300X to 400X). Alternatively, USP and FS could enter into a single CSA to develop both Product Lines A and B with respective RAB shares of 40 percent and 60 percent (in the ratio of 400X to 600X). If the separate CSAs are chosen, then any costs for activities that contribute to developing both Product Line A and Product Line B will constitute IDCs of the respective CSAs as required by paragraphs (d)(1) and (d)(2) of this section.

(2) *Measure of benefits*—(i) *In general.* In order to estimate a controlled participant's RAB share, the amount of each controlled participant's reasonably anticipated benefits must be measured on a basis that is consistent for all such participants. See paragraph (e)(2)(ii)(E) *Example 9* of this section. If a controlled participant transfers a cost shared intangible to another controlled taxpayer, other than by way of a transfer described in paragraph (f) of this section, that controlled participant's benefits from the transferred intangible must be measured by reference to the transferee's benefits, disregarding any consideration paid by the transferee to the controlled participant (such as a royalty pursuant to a license agreement). Reasonably anticipated benefits are measured either on a direct basis, by reference to estimated benefits to be generated by the use of cost shared

intangibles (generally based on additional revenues plus cost savings less any additional costs incurred), or on an indirect basis, by reference to certain measurements that reasonably can be assumed to relate to benefits to be generated. Such indirect bases of measurement of anticipated benefits are described in paragraph (e)(2)(ii) of this section. A controlled participant's reasonably anticipated benefits must be measured on the basis, whether direct or indirect, that most reliably determines RAB shares. In determining which of two bases of measurement is most reliable, the factors set forth in § 1.482–1(c)(2)(ii) (Data and assumptions) must be taken into account. It normally will be expected that the basis that provided the most reliable estimate for a particular year will continue to provide the most reliable estimate in subsequent years, absent a material change in the factors that affect the reliability of the estimate. Regardless of whether a direct or indirect basis of measurement is used, adjustments may be required to account for material differences in the activities that controlled participants undertake to exploit their interests in cost shared intangibles. See *Examples 4* and *7* of paragraph (e)(2)(ii)(E) of this section.

(ii) *Indirect bases for measuring anticipated benefits.* Indirect bases for measuring anticipated benefits from participation in a CSA include the following:

(A) *Units used, produced, or sold.* Units of items used, produced, or sold by each controlled participant in the business activities in which cost shared intangibles are exploited may be used as an indirect basis for measuring its anticipated benefits. This basis of measurement will more reliably determine RAB shares to the extent that each controlled participant is expected to have a similar increase in net profit or decrease in net loss attributable to the cost shared intangibles per unit of the item or items used, produced, or sold. This circumstance is most likely to arise when the cost shared intangibles are exploited by the controlled participants in the use, production, or sale of substantially uniform items under similar economic conditions.

(B) *Sales.* Sales by each controlled participant in the business activities in which cost shared intangibles are exploited may be used as an indirect basis for measuring its anticipated benefits. This basis of measurement will more reliably determine RAB shares to the extent that each controlled participant is expected to have a similar increase in net profit or decrease in net loss attributable to cost shared intangibles per dollar of sales. This circumstance is most likely to arise if the costs of exploiting cost shared intangibles are not substantial relative to the revenues generated, or if the principal effect of using cost shared intangibles is to increase the controlled participants' revenues (for example, through a price premium on the products they sell) without affecting their costs substantially. Sales by each controlled participant are unlikely to provide a reliable basis for measuring RAB shares unless each controlled participant operates at the same market level (for example, manufacturing, distribution, etc.).

(C) *Operating profit.* Operating profit of each controlled participant from the activities in which cost shared intangibles are exploited, as determined before any expense (including amortization) on account of IDCs, may be used as an indirect basis for measuring anticipated benefits. This basis of measurement will more reliably determine RAB shares to the extent that such profit is largely attributable to the use of cost shared intangibles, or if the share of profits attributable to the use of cost shared intangibles is expected to be similar for each controlled participant. This circumstance is most likely to arise when cost shared intangibles are closely associated with the activity that generates the profit and the activity could not be carried on or would generate little profit without use of those intangibles.

(D) *Other bases for measuring anticipated benefits.* Other bases for measuring anticipated benefits may in some circumstances be appropriate, but only to the extent that there is expected to be a reasonably identifiable relationship between the basis of measurement used and additional income generated or costs saved by the use of cost shared intangibles. For example, a division of costs based on employee compensation would be considered unreliable unless there were a relationship between the amount of compensation and the expected additional income generated or costs saved by the controlled participants from using the cost shared intangibles.

(E) *Examples.* The following examples illustrate this paragraph (e)(2)(ii):

Example 1. Controlled parties A and B enter into a CSA to develop product and process intangibles for already existing Product P. Without such intangibles, A and B would each reasonably anticipate revenue, in present value terms, of $100M from sales of Product P until it becomes obsolete. With the intangibles, A and B each reasonably anticipate selling the same number of units each year, but reasonably anticipate that the price will be higher. Because the particular product intangible is more highly regarded in A's market, A reasonably anticipates an increase of $20M in present value revenue from the product intangible, while B reasonably anticipates an increase of only $10M in present value from the product intangible. Further, A and B each reasonably anticipate spending an additional amount equal to $5M in present value in production costs to include the feature embodying the product intangible. Finally, A and B each reasonably anticipate saving an amount equal to $2M in present value in production costs by using the process intangible. A and B reasonably anticipate no other economic effects from exploiting the cost shared intangibles. A's reasonably anticipated benefits from exploiting the cost shared intangibles equal its reasonably anticipated increase in revenue ($20M) plus its reasonably anticipated cost savings ($2M) less its reasonably anticipated increased costs ($5M), which equals $17M. Similarly, B's reasonably anticipated benefits from exploiting the cost shared intangibles equal its reasonably anticipated increase in revenue ($10M) plus its reasonably anticipated cost savings ($2M) less its reasonably anticipated increased costs ($5M), which equals $7M. Thus A's reasonably anticipated benefits are $17M and B's reasonably anticipated benefits are $7M.

Example 2. Foreign Parent (FP) and U.S. Subsidiary (USS) both produce a feedstock for the manufacture of various high-performance plastic products. Producing the feedstock requires large amounts of electricity, which accounts for a significant portion of its production cost. FP and USS enter into a CSA to develop a new process that will reduce the amount of electricity required to produce a unit of the feedstock. FP and USS currently both incur an electricity cost of $2 per unit of feedstock produced and rates for each are expected to remain similar in the future. The new process, if it is successful, will reduce the amount of electricity required by each company to produce a unit of the feedstock by 50%. Switching to the new process would not require FP or USS to incur significant investment or other costs. Therefore, the cost savings each company is expected to achieve after implementing the new process are $1 per unit of feedstock produced. Under the CSA, FP and USS divide the costs of developing the new process based on the units of the feedstock each is anticipated to produce in the future. In this case, units produced is the most reliable basis for measuring RAB shares and dividing the IDCs because each controlled participant is expected to have a similar $1 (50% of current charge of $2) decrease in costs per unit of the feedstock produced.

Example 3. The facts are the same as in *Example 2,* except that currently USS pays $3 per unit of feedstock produced for electricity while FP pays $6 per unit of feedstock produced. In this case, units produced is not the most reliable basis for measuring RAB shares and dividing the IDCs because the participants do not expect to have a similar decrease in costs per unit of the feedstock produced. The Commissioner

determines that the most reliable measure of RAB shares may be based on units of the feedstock produced if FP's units are weighted relative to USS's units by a factor of 2. This reflects the fact that FP pays twice as much as USS for electricity and, therefore, FP's savings of $3 per unit of the feedstock (50% reduction of current charge of $6) would be twice USS's savings of $1.50 per unit of feedstock (50% reduction of current charge of $3) from any new process eventually developed.

Example 4. The facts are the same as in *Example 3*, except that to supply the particular needs of the U.S. market USS manufactures the feedstock with somewhat different properties than FP's feedstock. This requires USS to employ a somewhat different production process than does FP. Because of this difference, USS would incur significant construction costs in order to adopt any new process that may be developed under the cost sharing agreement. In this case, units produced is not the most reliable basis for measuring RAB shares. In order to reliably determine RAB shares, the Commissioner measures the reasonably anticipated benefits of USS and FP on a direct basis. USS's reasonably anticipated benefits are its reasonably anticipated total savings in electricity costs, less its reasonably anticipated costs of adopting the new process. FS's reasonably anticipated benefits are its reasonably anticipated total savings in electricity costs.

Example 5. U.S. Parent (USP) and Foreign Subsidiary (FS) enter into a CSA to develop new anesthetic drugs. USP obtains the right to market any resulting drugs in the United States and FS obtains the right to market any resulting drugs in the rest of the world. USP and FS determine RAB shares on the basis of their respective total anticipated operating profit from all drugs under development. USP anticipates that it will receive a much higher profit than FS per unit sold because the price of the drugs is not regulated in the United States, whereas the price of the drugs is regulated in many non-U.S. jurisdictions. In both controlled participants' territories, the anticipated operating profits are almost entirely attributable to the use of the cost shared intangibles. In this case, the controlled participants' basis for measuring RAB shares is the most reliable.

Example 6. (i) Foreign Parent (FP) and U.S. Subsidiary (USS) manufacture and sell fertilizers. They enter into a CSA to develop a new pellet form of a common agricultural fertilizer that is currently available only in powder form. Under the CSA, USS obtains the rights to produce and sell the new form of fertilizer for the U.S. market while FP obtains the rights to produce and sell the new form of fertilizer in the rest of the world. The costs of developing the new form of fertilizer are divided on the basis of the anticipated sales of fertilizer in the controlled participants' respective markets.

(ii) If the research and development is successful, the pellet form will deliver the fertilizer more efficiently to crops and less fertilizer will be required to achieve the same effect on crop growth. The pellet form of fertilizer can be expected to sell at a price premium over the powder form of fertilizer based on the savings in the amount of fertilizer that needs to be used. This price premium will be a similar premium per dollar of sales in each territory. If the research and development is successful, the costs of producing pellet fertilizer are expected to be approximately the same as the costs of producing powder fertilizer and the same for both FP and USS. Both FP and USS operate at approximately the same market levels, selling their fertilizers largely to independent distributors.

(iii) In this case, the controlled participants' basis for measuring RAB shares is the most reliable.

Example 7. The facts are the same as in *Example 6*, except that FP distributes its fertilizers directly while USS sells to independent distributors. In this case, sales of USS and FP are not the most reliable basis for measuring RAB shares unless adjustments are made to account for the difference in market levels at which the sales occur.

Example 8. Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a CSA to develop materials that will be used to train all new entry-level employees. FP and USS determine that the new materials will save approximately ten hours of training time per employee. Because their entry-level employees are paid on differing wage scales, FP and USS decide that they should not measure benefits based on the number of entry-level employees hired by each. Rather, they measure benefits based on compensation paid to the entry-level employees hired by each. In this case, the basis used for measuring RAB shares is the most reliable because there is a direct relationship between compensation paid to new entry-level employees and costs saved by FP and USS from the use of the new training materials.

Example 9. U.S. Parent (USP), Foreign Subsidiary 1 (FS1), and Foreign Subsidiary 2 (FS2) enter into a CSA to develop computer software that each will market and install on customers' computer systems. The controlled participants measure benefits on the basis of projected sales by USP, FS1, and FS2 of the software in their respective geographic areas. However, FS1 plans not only to sell but also to license the software to unrelated customers, and FS1's licensing income (which is a percentage of the licensees' sales) is not counted in the projected benefits. In this case, the basis used for measuring the benefits of each controlled participant is not the most reliable because all of the benefits received by controlled participants are not taken into account. In order to reliably determine RAB shares, FS1's projected benefits from licensing must be included in the measurement on a basis that is the same as that used to measure its own and the other controlled participants' projected benefits from sales (for example, all controlled participants might measure their benefits on the basis of operating profit).

(iii) *Projections used to estimate benefits*—(A) *In general.* The reliability of an estimate of RAB shares also depends upon the reliability of projections used in making the estimate. Projections required for this purpose generally include a determination of the time period between the inception of the research and development activities under the CSA and the receipt of benefits, a projection of the time over which benefits will be received, and a projection of the benefits anticipated for each year in which it is anticipated that the cost shared intangible will generate benefits. A projection of the relevant basis for measuring anticipated benefits may require a projection of the factors that underlie it. For example, a projection of operating profits may require a projection of sales, cost of sales, operating expenses, and other factors that affect operating profits. If it is anticipated that there will be significant variation among controlled participants in the timing of their receipt of benefits, and consequently benefit shares are expected to vary significantly over the years in which benefits will be received, it normally will be necessary to use the present value of the projected benefits to reliably determine RAB shares. See paragraph (g)(2)(v) of this section for best method considerations regarding discount rates used for this purpose. If it is not anticipated that benefit shares will significantly change over time, current annual benefit shares may provide a reliable projection of RAB shares. This circumstance is most likely to occur when the CSA is a long-term arrangement, the arrangement covers a wide variety of intangibles, the composition of the cost shared intangibles is unlikely to change, the cost shared intangibles are unlikely to generate unusual profits, and each controlled participant's share of the market is stable.

(B) *Examples.* The following examples illustrate the principles of this paragraph (e)(2)(iii):

Example 1. (i) Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a CSA to develop a new car model. The controlled participants plan to spend four years developing the new model and four years producing and selling the new model. USS and FP project total sales of $4 billion and $2 billion, respectively, over the planned four years of exploitation of the new model. The controlled participants determine RAB shares for each year of 66⅔% for USS and 33⅓% for FP, based on projected total sales.

(ii) USS typically begins producing and selling new car models a year after FP begins producing and selling new car models. In order to reflect USS's one-year lag in introducing new car models, a more reliable projection of each participant's RAB share would be based on a projection of all four years of sales for each participant, discounted to present value.

Example 2. U.S. Parent (USP) and Foreign Subsidiary (FS) enter into a CSA to develop new and improved household cleaning

products. Both controlled participants have sold household cleaning products for many years and have stable worldwide market shares. The products under development are unlikely to produce unusual profits for either controlled participant. The controlled participants determine RAB shares on the basis of each controlled participant's current sales of household cleaning products. In this case, the controlled participants' RAB shares are reliably projected by current sales of cleaning products.

Example 3. The facts are the same as in *Example 2*, except that FS's market share is rapidly expanding because of the business failure of a competitor in its geographic area. The controlled participants' RAB shares are not reliably projected by current sales of cleaning products. FS's benefit projections should take into account its growth in market share.

Example 4. Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a CSA to develop synthetic fertilizers and insecticides. FP and USS share costs on the basis of each controlled participant's current sales of fertilizers and insecticides. The market shares of the controlled participants have been stable for fertilizers, but FP's market share for insecticides has been expanding. The controlled participants' projections of RAB shares are reliable with regard to fertilizers, but not reliable with regard to insecticides; a more reliable projection of RAB shares would take into account the expanding market share for insecticides.

(f) *Changes in participation under a CSA*—(1) *In general.* A change in participation under a CSA occurs when there is either a controlled transfer of interests or a capability variation. A change in participation requires arm's length consideration under paragraph (a)(3)(ii) of this section, and as more fully described in this paragraph (f).

(2) *Controlled transfer of interests.* A controlled transfer of interests occurs when a participant in a CSA transfers all or part of its interests in cost shared intangibles under the CSA in a controlled transaction, and the transferee assumes the associated obligations under the CSA. After the controlled transfer of interests occurs, the CSA will still exist if at least two controlled participants still have interests in the cost shared intangibles. In such a case, the transferee will be treated as succeeding to the transferor's prior history under the CSA as pertains to the transferred interests, including the transferor's cost contributions, benefits derived, and PCT Payments attributable to such rights or obligations. A transfer that would otherwise constitute a controlled transfer of interests for purposes of this paragraph (f)(2) shall not constitute a controlled transfer of interests if it also constitutes a capability variation for purposes of paragraph (f)(3) of this section.

(3) *Capability variation.* A capability variation occurs when, in a CSA in which interests in cost shared intangibles are divided as described in paragraph (b)(4)(iv) of this section, the controlled participants' division of interests or their relative capabilities or capacities to benefit from the cost shared intangibles are materially altered. For purposes of paragraph (a)(3)(ii) of this section, a capability variation is considered to be a controlled transfer of interests in cost shared intangibles, in which any controlled participant whose RAB share decreases as a result of the capability variation is a transferor, and any controlled participant whose RAB share thus increases is the transferee of the interests in cost shared intangibles.

(4) *Arm's length consideration for a change in participation.* In the event of a change in participation, the arm's length amount of consideration from the transferee, under the rules of §§ 1.482–1 and 1.482–4 through 1.482–6 and paragraph (a)(3)(ii) of this section, will be determined consistent with the reasonably anticipated incremental change in the returns to the transferee and transferor resulting from such change in participation. Such changes in returns will themselves depend on the reasonably anticipated incremental changes in the benefits from exploiting the cost shared intangibles, IDCs borne, and PCT Payments (if any). However, any arm's length consideration required under this paragraph (f)(4) with respect to a capability variation shall be reduced as necessary to prevent duplication of an adjustment already performed under paragraph (i)(2)(ii)(A) of this section that resulted from the same capability variation. If an adjustment has been performed already under this paragraph (f)(4) with respect to a capability variation, then for purposes of any adjustment to be performed under paragraph (i)(2)(ii)(A) of this section, the controlled participants' projected benefit shares referred to in paragraph (i)(2)(ii)(A) of this section shall be considered to be the controlled participants' respective RAB shares after the capability variation occurred.

(5) *Examples.* The following examples illustrate the principles of this paragraph (f):

Example 1. X, Y, and Z are the only controlled participants in a CSA. The CSA divides interests in cost shared intangibles on a territorial basis as described in paragraph (b)(4)(ii) of this section. X is assigned the territories of the Americas, Y is assigned the territory of the UK and Australia, and Z is assigned the rest of the world. When the CSA is formed, X has a platform contribution T. Under the PCTs for T, Y, and Z are each obligated to pay X royalties equal to five percent of their respective sales. Aside from T, there are no platform contributions. Two years after the formation of the CSA, Y transfers to Z its interest in cost shared intangibles relating to the UK territory, and the associated obligations, in a controlled transfer of interests described in paragraph (f)(2) of this section. At that time the reasonably anticipated benefits from exploiting cost shared intangibles in the UK have a present value of $11M, the reasonably anticipated IDCs to be borne relating to the UK territory have a present value of $3M, and the reasonably anticipated PCT Payments to be made to X relating to sales in the UK territory have a present value of $2M. As arm's length consideration for the change in participation due to the controlled transfer of interests, Z must pay Y compensation with an anticipated present value of $11M, less $3M, less $2M, which equals $6M.

Example 2. As in *Example 2* of paragraph (b)(4)(v) of this section, companies P and S, both members of the same controlled group, enter into a CSA to develop product Z. P and S agree to divide their interest in product Z based on site of manufacturing. P will have exclusive and perpetual rights in product Z manufactured in facilities owned by P. S will have exclusive and perpetual rights to product Z manufactured in facilities owned by S. P and S agree that neither will license manufacturing rights in product Z to any related or unrelated party. Both P and S maintain books and records that allow production at all sites to be verified. Both own facilities that will manufacture product Z and the relative capacities of these sites are known. All facilities are currently operating at near capacity and are expected to continue to operate at near capacity when product Z enters production so that it will not be feasible to shift production between P's and S's facilities. P and S have no plans to build new facilities and the lead time required to plan and build a manufacturing facility precludes the possibility that P or S will build a new facility during the period for which sales of Product Z are expected. When the CSA is formed, P has a platform contribution T. Under the PCT for T, S is obligated to pay P sales-based royalties according to a certain formula. Aside from T, there are no other platform contributions. Two years after the formation of the CSA, owing to a change in plans not reasonably foreseeable at the time the CSA was entered into, S acquires additional facilities F for the manufacture of Product Z. Such acquisition constitutes a capability variation described in paragraph (f)(3) of this section. Under this capability variation, S's RAB share increases from 50% to 60%. Accordingly, there is a compensable change in participation under paragraph (f)(3) of this section.

(g) *Supplemental guidance on methods applicable to PCTs*—(1) *In general.* This paragraph (g) provides supplemental guidance on applying the methods listed in this paragraph (g)(1) for purposes of evaluating the arm's length amount charged in a PCT. Each method will yield a value for the

compensation obligation of each PCT Payor consistent with the product of the combined pre-tax value to all controlled participants of the platform contribution that is the subject of the PCT and the PCT Payor's RAB share. The methods are—

(i) The comparable uncontrolled transaction method described in § 1.482–4(c), or the comparable uncontrolled services price method described in § 1.482–9T(c), as further described in paragraph (g)(3) of this section;

(ii) The income method, described in paragraph (g)(4) of this section;

(iii) The acquisition price method, described in paragraph (g)(5) of this section;

(iv) The market capitalization method, described in paragraph (g)(6) of this section;

(v) The residual profit split method, described in paragraph (g)(7) of this section; and

(vi) Unspecified methods, described in paragraph (g)(8) of this section.

(2) *Best method analysis applicable for evaluation of a PCT pursuant to a CSA*—(i) *In general.* Each method must be applied in accordance with the provisions of § 1.482–1, including the best method rule of § 1.482–1(c), the comparability analysis of § 1.482–1(d), and the arm's length range of § 1.482–1(e), except as those provisions are modified in this paragraph (g).

(ii) *Consistency with upfront contractual terms and risk allocation—the investor model*—(A) *In general.* Although all of the factors entering into a best method analysis described in § 1.482–1(c) and (d) must be considered, specific factors may be particularly relevant in the context of a CSA. In particular, the relative reliability of an application of any method depends on the degree of consistency of the analysis with the applicable contractual terms and allocation of risk under the CSA and this section among the controlled participants as of the date of the PCT, unless a change in such terms or allocation has been made in return for arm's length consideration. In this regard, a CSA involves an upfront division of the risks as to both reasonably anticipated obligations and reasonably anticipated benefits over the reasonably anticipated term of the CSA Activity. Accordingly, the relative reliability of an application of a method also depends on the degree of consistency of the analysis with the assumption that, as of the date of the PCT, each controlled participant's aggregate net investment in the CSA Activity (attributable to platform contributions, operating contributions, as such term is defined in paragraph (j)(1)(i) of this section, operating cost contributions, as such term is defined in paragraph (j)(1)(i) of this section, and cost contributions) is reasonably anticipated to earn a rate of return equal to the appropriate discount rate for the controlled participant's CSA Activity over the entire period of such CSA Activity. If the cost shared intangibles themselves are reasonably anticipated to contribute to developing other intangibles, then the period described in the preceding sentence includes the period, reasonably anticipated as of the date of the PCT, of developing and exploiting such indirectly benefited intangibles.

(B) *Example.* The following example illustrates the principles of this paragraph (g)(2)(ii):

Example. (i) P, a U.S. corporation, has developed a software program, DEF, which applies certain algorithms to reconstruct complete DNA sequences from partially-observed DNA sequences. S is a wholly-owned foreign subsidiary of P. On the first day of Year 1, P and S enter into a CSA to develop a new generation of genetic tests, GHI, based in part on the use of DEF. DEF is therefore a platform contribution of P for which compensation is due from S pursuant to a PCT. S makes no platform contributions to the CSA. Sales of GHI are projected to commence two years after the inception of the CSA and then to continue for eight more years. Based on industry experience, P and S are confident that GHI will be replaced by a new type of genetic testing based on technology unrelated to DEF or GHI and that, at that point, GHI will have no further value. P and S project that that replacement will occur at the end of Year 10.

(ii) For purposes of valuing the PCT for P's platform contribution of DEF to the CSA, P and S apply a type of residual profit split method that is not described in paragraph (g)(7) of this section and which, accordingly, constitutes an unspecified method. See paragraph (g)(7)(i) (last sentence) of this section. The principles of this paragraph (g)(2) apply to any method for valuing a PCT, including the unspecified method used by P and S.

(iii) Under the method employed by P and S, in each year, a portion of the income from sales of GHI in S's territory is allocated to certain routine contributions made by S. The residual of the profit or loss from GHI sales in S's territory after the routine allocation step is divided between P and S pro rata to their capital stocks allocable to S's territory. Each controlled participant's capital stock is computed by capitalizing, applying a capital growth factor to, and amortizing its historical expenditures regarding DEF allocable to S's territory (in the case of P), or its ongoing cost contributions towards developing GHI (in the case of S). The amortization of the capital stocks is effected on a straight-line basis over an assumed four-year life for the relevant expenditures. The capital stocks are grown using an assumed growth factor that P and S consider to be appropriate.

(iv) The assumption that all expenditures amortize on a straight-line basis over four years does not appropriately reflect the principle that as of the date of the PCT regarding DEF, every contribution to the development of GHI, including DEF, is reasonably anticipated to have value throughout the entire period of exploitation of GHI which is projected to continue through Year 10. Under this method as applied by P and S, the share of the residual profit in S's territory that is allocated to P as a PCT Payment from S will decrease every year. After Year 4, P's capital stock in DEF will necessarily be $0, so that P will receive none of the residual profit or loss from GHI sales in S's territory after Year 4 as a PCT Payment.

(v) As a result of this limitation of the PCT Payments to be made by S, the anticipated return to S's aggregate investment in the CSA, over the whole period of S's CSA Activity, is at a rate that is significantly higher than the appropriate discount rate for S's CSA Activity (as determined by a reliable method). This discrepancy is not consistent with the investor model principle that S should anticipate a rate of return to its aggregate investment in the CSA, over the whole period of its CSA Activity, equal to the appropriate discount rate for its CSA Activity. The inconsistency of the method with the investor model materially lessens its reliability for purposes of a best method analysis. See § 1.482–1(c)(2)(ii)(B).

(iii) *Consistency of evaluation with realistic alternatives*—(A) *In general.* The relative reliability of an application of a method also depends on the degree of consistency of the analysis with the assumption that uncontrolled taxpayers dealing at arm's length would have evaluated the terms of the transaction, and only entered into such transaction, if no alternative is preferable. This condition is not met, therefore, where for any controlled participant the total anticipated present value of its income attributable to its entering into the CSA, as of the date of the PCT, is less than the total anticipated present value of its income that could be achieved through an alternative arrangement realistically available to that controlled participant. In principle, this comparison is made on a post-tax basis but, in many cases, a comparison made on a pre-tax basis will yield equivalent results. See also paragraph (g)(2)(v)(B)(*1*) of this section (Discount rate variation between realistic alternatives).

(B) *Examples.* The following examples illustrate the principles of this paragraph (g)(2)(iii):

Example 1. (i) P, a corporation, and S, a wholly owned subsidiary of P, enter into a CSA to develop a personal transportation device (the product). Under the arrangement, P will undertake all of the R&D, and manufacture and market the product in Country X. S will make CST Payments to P for its appropriate share of P's R&D costs, and

manufacture and market the product in the rest of the world. P owns existing patents and trade secrets that are reasonably anticipated to contribute to the development of the product. Therefore the rights in the patents and trade secrets are platform contributions for which compensation is due from S as part of a PCT.

(ii) S's manufacturing and distribution activities under the CSA will be routine in nature, and identical to the activities it would undertake if it alternatively licensed the product from P.

(iii) Reasonably reliable estimates indicate that P could develop the product without assistance from S and license the product outside of Country X for a royalty of 20% of sales. Based on reliable financial projections that include all future development costs and licensing revenue that are allocable to the non-Country X market, and using a discount rate appropriate for the riskiness of P's role as a licensor (see paragraph (g)(2)(v) of this section), the post-tax present value of this licensing alternative to P for the non-Country X market (measured as of the date of the PCT) would be $500 million. Thus, based on this realistic alternative, the anticipated post-tax present value under the CSA to P in the non-Country X market (measured as of the date of the PCT), taking into account anticipated development costs allocable to the non-Country X market, and anticipated CST Payments and PCT Payments from S, and using a discount rate appropriate for the riskiness of P's role as a participant in the CSA, should not be less than $500 million.

Example 2. (i) The facts are the same as in *Example 1*, except that there are no reliable estimates of the value to P from the licensing alternative to the CSA. Further, reasonably reliable estimates indicate that an arm's length return for S's routine manufacturing and distribution activities is a 10% mark-up on total costs of goods sold plus operating expenses related to those activities. Finally, the Commissioner determines that the respective activities undertaken by P and S (other than licensing payments, CST Payments, and PCT Payments) would be identical regardless of whether the arrangement was undertaken as a CSA (CSA Scenario) or as a long-term licensing arrangement (Licensing Scenario). In particular, in both Scenarios, P would perform all research activities and S would undertake routine manufacturing and distribution activities associated with its territory.

(ii) P undertakes an economic analysis that derives S's cost contributions under the CSA, based on reliable financial projections. Based on this and further economic analysis, P determines S's PCT Payment as a certain lump sum amount to be paid as of the date of the PCT (Date D).

(iii) Based on reliable financial projections that include S's cost contributions and that incorporate S's PCT Payment, as computed by P, and using a discount rate appropriate for the riskiness of S's role as a CSA participant (see paragraph (g)(2)(v) of this section), the anticipated post-tax net present value to S in the CSA Scenario (measured as of Date D) is $800 million. Further, based on these same reliable projections (but incorporating S's licensing payments instead of S's cost contributions and PCT Payment), and using a discount rate appropriate for the riskiness of S's role as a long-term licensee, the anticipated post-tax net present value to S in the Licensing Scenario (measured as of Date D) is $100 million. Thus, S's anticipated post-tax net present value is $700 million greater in the CSA Scenario than in the Licensing Scenario. This result suggests that P's anticipated post-tax present value must be significantly less under the CSA Scenario than under the Licensing Scenario. This means that the reliability of P's analysis as described in paragraph (ii) of this *Example 2* is reduced, since P would not be expected to enter into a cost sharing arrangement if its alternative of being a long-term licensor is preferable.

Example 3. (i) The facts are the same as in paragraphs (i) and (ii) of *Example 2*. In addition, based on reliable financial projections that include S's cost contributions and S's PCT Payment, and using a discount rate appropriate for the riskiness of S's role as a CSA participant, the anticipated post-tax net present value to S under the CSA (measured as of the date of the PCT) is $50 million. Also, instead of entering the CSA, S has the realistic alternative of manufacturing and distributing product Z unrelated to the personal transportation device, with the same anticipated 10% mark-up on total costs that it would anticipate for its routine activities in *Example 2*. Under its realistic alternative, at a discount rate appropriate for the riskiness of S's role with respect to product Z, S anticipates a present value of $100 million.

(ii) Because the lump sum PCT Payment made by S results in S having a considerably lower anticipated net present value than S could achieve through an alternative arrangement realistically available to it, the reliability of P's calculation of the lump sum PCT Payment is reduced.

(iv) *Aggregation of transactions.* The combined effect of multiple contemporaneous transactions, consisting either of multiple PCTs, or of one or more PCT and one or more other transactions in connection with a CSA that are not governed by this section (such as transactions involving cross operating contributions or make-or-sell rights), may require evaluation in accordance with the principles of aggregation described in § 1.482–1(f)(2)(i). In such cases, it may be that the multiple transactions are reasonably anticipated, as of the date of the PCT(s), to be so interrelated that the method that provides the most reliable measure of an arm's length charge is a method under this section applied on an aggregate basis for the PCT(s) and other transactions. A section 482 adjustment may be made by comparing the aggregate arm's length charge so determined to the aggregate payments actually made for the multiple transactions. In such a case, it generally will not be necessary to allocate separately the aggregate arm's length charge as between various PCTs or as between PCTs and such other transactions. However, such an allocation may be necessary for other purposes, such as applying paragraph (i)(6) (Periodic adjustments) of this section. An aggregate determination of the arm's length charge for multiple transactions will often yield a payment for a controlled participant that is equal to the aggregate value of the platform contributions and other resources, capabilities, and rights covered by the multiple transactions multiplied by that controlled participant's RAB share. Because RAB shares only include benefits from cost shared intangibles, the reliability of an aggregate determination of payments for multiple transactions may be reduced to the extent that it includes transactions covering resources, capabilities, and rights for which the controlled participants' expected benefit shares differ substantially from their RAB shares.

(v) *Discount rate*—(A) *In general.* The best method analysis in connection with certain methods or forms of payment may depend on a rate or rates of return used to convert projected results of transactions to present value, or to otherwise convert monetary amounts at one or more points in time to equivalent amounts at a different point or points in time. For this purpose, a discount rate or rates should be used that most reliably reflect the market-correlated risks of activities or transactions and should be applied to the best estimates of the relevant projected results, based on all the information potentially available at the time for which the present value calculation is to be performed. Depending on the particular facts and circumstances, the market-correlated risk involved and thus, the discount rate, may differ among a company's various activities or transactions. Normally, discount rates are most reliably determined by reference to market information.

(B) *Considerations in best method analysis of discount rate*—(*1*) *Discount rate variation between realistic alternatives.* Realistic alternatives may involve varying risk exposure and, thus, may be more reliably evaluated using different discount rates. In some circumstances, a party may have less risk as a licensee of intangibles needed in its operations, and so require a lower discount rate, than it would have by entering into a CSA to develop such intangibles, which may involve the party's assumption of additional risk in funding its cost contributions to the

IDA. Similarly, self-development of intangibles and licensing out may be riskier for the licensor, and so require a higher discount rate, than entering into a CSA to develop such intangibles, which would relieve the licensor of the obligation to fund a portion of the IDCs of the IDA.

(*2*) *Discount rate variation between forms of payment.* Certain forms of payment may involve different risks than others. For example, ordinarily a royalty computed on a profits base would be more volatile, and so require a higher discount rate to discount projected payments to present value, than a royalty computed on a sales base.

(*3*) *Post-tax rate.* In general, discount rate estimates that may be inferred from the operations of the capital markets are post-tax discount rates. Therefore, an analysis would in principle apply post-tax discount rates to income net of expense items including taxes (post-tax income). However, in certain circumstances the result of applying a post-tax discount rate to post-tax income is equivalent to the product of—

(*i*) The result of applying a post-tax discount rate to income net of expense items other than taxes (pre-tax income); and

(*ii*) The difference of one minus the tax rate.

Therefore, in such circumstances, calculation of pre-tax income, rather than post-tax income, may be sufficient. See, for example, paragraph (g)(4)(i)(G) of this section.

(C) *Example.* The following example illustrates the principles of this paragraph (g)(2)(v):

Example. (i) P and S form a CSA to develop intangible X, which will be used in product Y. P will develop X, and S will make CST Payments as its cost contributions. At the start of the CSA, P has a platform contribution, for which S commits to make a PCT Payment of 5% of its sales of product Y. As part of the evaluation of whether that PCT Payment is arm's length, the Commissioner considers whether P had a more favorable realistic alternative (see paragraph (g)(2)(iii) of this section). Specifically, the Commissioner compares P's anticipated post-tax discounted present value of the financial projections under the CSA (taking into account S's PCT Payment of 5% of its sales of product Y) with P's anticipated post-tax discounted present value of the financial projections under a reasonably available alternative Licensing Arrangement that consists of developing intangible X on its own and then licensing X to S or to an uncontrolled party similar to S. In undertaking the analysis, the Commissioner determines that, because it would be funding the entire development of the intangible, P undertakes greater risks in the licensing scenario than in the cost sharing scenario (in the cost sharing scenario P would be funding only part of the development of the intangible).

(ii) The Commissioner determines that, as between the two scenarios, all of the components of P's anticipated financial flows are identical, except for the CST and PCT Payments under the CSA, compared to the licensing payments under the Licensing Alternative. Accordingly, the Commissioner concludes that the differences in market-correlated risks between the two scenarios, and therefore the differences in discount rates between the two scenarios, relate to the differences in these components of the financial projections.

(vi) *Financial projections.* The reliability of an estimate of the value of a platform or operating contribution in connection with a PCT will often depend upon the reliability of projections used in making the estimate. Such projections should reflect the best estimates of the items projected (normally reflecting a probability weighted average of possible outcomes). Projections necessary for this purpose may include a projection of sales, IDCs, costs of developing operating contributions, routine operating expenses, and costs of sales. Some method applications directly estimate projections of items attributable to separate development and exploitation by the controlled participants within their respective divisions. Other method applications indirectly estimate projections of items from the perspective of the controlled group as a whole, rather than from the perspective of a particular participant, and then apportion the items so estimated on some assumed basis. For example, in some applications, sales might be directly projected by division, but worldwide projections of other items such as operating expenses might be apportioned among divisions in the same ratio as the divisions' respective sales. Which approach is more reliable depends on which provides the most reliable measure of an arm's length result, considering the competing perspectives under the facts and circumstances in light of the completeness and accuracy of the underlying data, the reliability of the assumptions, and the sensitivity of the results to possible deficiencies in the data and assumptions. For these purposes, projections that have been prepared for non-tax purposes are generally more reliable than projections that have been prepared solely for purposes of meeting the requirements in this paragraph (g).

(vii) *Accounting principles*—(A) *In general.* Allocations or other valuations done for accounting purposes may provide a useful starting point but will not be conclusive for purposes of the best method analysis in evaluating the arm's length charge in a PCT, particularly where the accounting treatment of an asset is inconsistent with its economic value.

(B) *Examples.* The following examples illustrate the principles of this paragraph (g)(2)(vii):

Example 1. (i) USP, a U.S. corporation and FSub, a wholly owned foreign subsidiary of USP, enter into a CSA in Year 1 to develop software programs with application in the medical field. Company X is an uncontrolled software company located in the United States that is engaged in developing software programs that could significantly enhance the programs being developed by USP and FSub. Company X is still in a startup phase, so it has no currently exploitable products or marketing intangibles and its workforce consists of a team of software developers. Company X has negligible liabilities and tangible property. In Year 2, USP purchases Company X as part of an uncontrolled transaction in order to acquire its in-process technology and workforce for purposes of the development activities of the CSA. USP files a consolidated return that includes Company X. For accounting purposes, $50 million of the $100 million acquisition price is allocated to the in-process technology and workforce, and the residual $50 million is allocated to goodwill.

(ii) The in-process technology and workforce of Company X acquired by USP are reasonably anticipated to contribute to developing cost shared intangibles and therefore the rights in the in-process technology and workforce of Company X are platform contributions for which FSub must compensate USP as part of a PCT. In determining whether to apply the acquisition price or another method for purposes of evaluating the arm's length charge in the PCT, relevant best method analysis considerations must be weighed in light of the general principles of paragraph (g)(2) of this section. The allocation for accounting purposes raises an issue as to the reliability of using the acquisition price method in this case because it suggests that a significant portion of the value of Company X's nonroutine contributions to USP's business activities is allocable to goodwill, which is often difficult to value reliably and which, depending on the facts and circumstances, might not be attributable to platform contributions that are to be compensated by PCTs. See paragraph (g)(5)(iv)(A) of this section.

(iii) This paragraph (g)(2)(vii) provides that accounting treatment may be a starting point, but is not determinative for purposes of assessing or applying methods to evaluate the arm's length charge in a PCT. The facts here reveal that Company X has nothing of economic value aside from its in-process technology and assembled workforce. The $50 million of the acquisition price allocated to goodwill for accounting purposes, therefore, is economically attributable to either of, or both, the in-process technology and the workforce. That moots the potential issue under the acquisition price method of the reliability of valuation of assets not to be

compensated by PCTs, since there are no such assets. Assuming the acquisition price method is otherwise the most reliable method, the aggregate value of Company X's in-process technology and workforce is the full acquisition price of $100 million (subject to possible adjustment for differences in tax liabilities of the type described in paragraph (g)(5)(ii) of this section). Accordingly, the aggregate value of the arm's length PCT Payments due from FSub to USP for the platform contributions consisting of the rights in Company X's in-process technology and workforce will equal $100 million (subject to adjustment as per paragraph (g)(5)(ii) of this section) multiplied by FSub's RAB share.

Example 2. (i) The facts are the same as in *Example 1*, except that Company X is a mature software business in the United States with a successful current generation of software that it markets under a recognized trademark, in addition to having the research team and new generation software in process that could significantly enhance the programs being developed under USP's and FSub's CSA. USP continues Company X's existing business and integrates the research team and the in-process technology into the efforts under its CSA with FSub. For accounting purposes, the $100 million price for acquiring Company X is allocated $50 million to existing software and trademark, $25 million to in-process technology and research workforce, and the residual $25 million to goodwill and going concern value.

(ii) In this case an analysis of the facts indicates a likelihood that, consistent with the allocation under the accounting treatment (although not necessarily in the same amount), a significant amount of the nonroutine contributions to the USP's business activities consist of goodwill and going concern value economically attributable to the existing U.S. software business rather than to the platform contributions consisting of the rights in the in-process technology and research workforce. In addition, an analysis of the facts indicates that a significant amount of the nonroutine contributions to USP's business activities consist of the make-or-sell rights under the existing software and trademark, which are not platform contributions and might be difficult to value. Accordingly, further consideration must be given to the extent to which these circumstances reduce the relative reliability of the acquisition price method in comparison to other potentially applicable methods for evaluating the PCT Payment.

Example 3. (i) USP, a U.S. corporation, and FSub, a wholly-owned foreign subsidiary of USP, enter into a CSA in Year 1 to develop Product A. Company Y is an uncontrolled corporation that owns Technology X, which is critical to the development of Product A. Company Y currently markets Product B, which is dependent on Technology X. USP is solely interested in acquiring Technology X, but is only able to do so through the acquisition of Company Y in its entirety for $200 million in an uncontrolled transaction in Year 2. For accounting purposes, the acquisition price is allocated as follows: $120 million to Product B and the underlying Technology X, $30 million to trademark and other marketing intangibles, and the residual $50 million to goodwill and going concern value. After the acquisition of Company Y, Technology X is used to develop Product A. No other part of Company Y is used in any manner. Immediately after the acquisition, product B is discontinued, and, therefore, the accompanying marketing intangibles become worthless. None of the previous employees of Company Y is retained.

(ii) The Technology X of Company Y acquired by USP is reasonably anticipated to contribute to developing cost shared intangibles and is therefore a platform contribution for which FSub must compensate USP as part of a PCT. Although for accounting purposes a significant portion of the acquisition price of Company Y was allocated to items other than Technology X, the facts demonstrate that USP had no intention of using and therefore placed no economic value on any part of Company Y other than Technology X. If USP was willing to pay $200 million for Company Y solely for purposes of acquiring Technology X, then assuming the acquisition price method is otherwise the most reliable method, the value of Technology X is the full $200 million acquisition price. Accordingly, the value of the arm's length PCT Payment due from FSub to USP for the platform contribution consisting of the rights in Technology X will equal the product of $200 million (subject to adjustment as described in paragraph (g)(5)(ii) of this section) and FSub's RAB share.

(viii) *Valuations of subsequent PCTs*—(A) *Date of subsequent PCT.* The date of a PCT may occur subsequent to the inception of the CSA. For example, an intangible initially developed outside the IDA may only subsequently become a platform contribution because that later time is the earliest date on which it is reasonably anticipated to contribute to developing cost shared intangibles within the IDA. In such case, the date of the PCT, and the analysis of the arm's length amount charged in the subsequent PCT, is as of such later time.

(B) *Best method analysis for subsequent PCT.* In cases where PCTs occur on different dates, the determination of the arm's length amount charged, respectively, in the prior and subsequent PCTs must be coordinated in a manner that provides the most reliable measure of an arm's length result. In some circumstances, a subsequent PCT may be reliably evaluated independently of other PCTs, as may be possible for example, under the acquisition price method. In other circumstances, the results of prior and subsequent PCTs may be interrelated and so a subsequent PCT may be most reliably evaluated under the residual profit split method of paragraph (g)(7) of this section. In those cases, for purposes of allocating the present value of nonroutine residual divisional profit or loss, and so determining the present value of the subsequent PCT Payments, in accordance with paragraph (g)(7)(iii)(C) of this section, the PCT Payor's interest in cost shared intangibles, both already developed and in process, are treated as additional PCT Payor operating contributions as of the date of the subsequent PCT.

(ix) *Arm's length range*—(A) *In general.* The guidance in § 1.482–1(e) regarding determination of an arm's length range, as modified by this section, applies in evaluating the arm's length amount charged in a PCT under a transfer pricing method provided in this section (applicable method). Section 1.482–1(e)(2)(i) provides that the arm's length range is ordinarily determined by applying a single pricing method selected under the best method rule to two or more uncontrolled transactions of similar comparability and reliability although use of more than one method may be appropriate for the purposes described in § 1.482–1(c)(2)(iii). The rules provided in § 1.482–1(e) and this section for determining an arm's length range shall not override the rules provided in paragraph (i)(6) of this section for periodic adjustments by the Commissioner. The provisions in paragraphs (g)(2)(ix)(C) and (D) of this section apply only to applicable methods that are based on two or more input parameters as described in paragraph (g)(2)(ix)(B) of this section. For an example of how the rules of this section for determining an arm's length range of PCT Payments are applied, see paragraph (g)(4)(vii) of this section.

(B) *Methods based on two or more input parameters.* An applicable method may determine PCT Payments based on calculations involving two or more parameters whose values depend on the facts and circumstances of the case (input parameters). For some input parameters (market-based input parameters), the value is most reliably determined by reference to data that derives from uncontrolled transactions (market data). For example, the value of the return to a controlled participant's routine contributions, as such term is defined in paragraph (j)(1)(i) of this section, to the CSA Activity (which value is used as an input parameter in the income method described in paragraph (g)(4) of this section) may in some cases be most reliably determined by reference to the profit level of a company with rights, resources, and capabilities comparable to those routine contributions. See § 1.482–5. As another example, the value for the discount rate that reflects the riskiness of a controlled participant's role in the CSA (which

value is used as an input parameter in the income method described in paragraph (g)(4) of this section) may in some cases be most reliably determined by reference to the stock beta of a company whose overall risk is comparable to the riskiness of the controlled participant's role in the CSA.

(C) *Variable input parameters.* For some market-based input parameters (variable input parameters), the parameter's value is most reliably determined by considering two or more observations of market data that have, or with adjustment can be brought to, a similar reliability and comparability, as described in § 1.482–1(e)(2)(ii) (for example, profit levels or stock betas of two or more companies). See paragraph (g)(2)(ix)(B) of this section.

(D) *Determination of arm's length PCT Payment.* For purposes of applying this paragraph (g)(2)(ix), each input parameter is assigned a single most reliable value, unless it is a variable input parameter as described in paragraph (g)(2)(ix)(C) of this section. The determination of the arm's length payment depends on the number of variable input parameters.

(*1*) *No variable input parameters.* If there are no variable input parameters, the arm's length PCT Payment is a single value determined by using the single most reliable value determined for each input parameter.

(*2*) *One variable input parameter.* If there is exactly one variable input parameter, then under the applicable method, the arm's length range of PCT Payments is the interquartile range, as described in § 1.482–1(e)(2)(iii)(C), of the set of PCT Payment values calculated by selecting—

(*i*) Iteratively, the value of the variable input parameter that is based on each observation as described in paragraph (g)(2)(ix)(C) of this section; and

(*ii*) The single most reliable values for each other input parameter.

(3) *More than one variable input parameter.* If there are two or more variable input parameters, then under the applicable method, the arm's length range of PCT Payments is the interquartile range, as described in § 1.482–1(e)(2)(iii)(C), of the set of PCT Payment values calculated iteratively using every possible combination of permitted choices of values for the input parameters. For input parameters other than a variable input parameter, the only such permitted choice is the single most reliable value. For variable input parameters, such permitted choices include any value that is—

(*i*) Based on one of the observations described in paragraph (g)(2)(ix)(C) of this section; and

(*ii*) Within the interquartile range (as described in § 1.482–1(e)(2)(iii)(C)) of the set of all values so based.

(E) *Adjustments.* Section 1.482–1(e)(3), applied as modified by this paragraph (g)(2)(ix), determines when the Commissioner may make an adjustment to a PCT Payment due to the taxpayer's results being outside the arm's length range. Adjustment will be to the median, as defined in § 1.482–1(e)(3). Thus, the Commissioner is not required to establish an arm's length range prior to making an allocation under section 482.

(x) *Valuation undertaken on a pre-tax basis.* PCT Payments in general may increase the PCT Payee's tax liability and decrease the PCT Payor's tax liability. The arm's length amount of a PCT Payment determined under the methods in this paragraph (g) is the value of the PCT Payment itself, without regard to such tax effects. Therefore, the methods under this section must be applied, with suitable adjustments if needed, to determine the PCT Payments on a pre-tax basis. See paragraphs (g)(2)(v)(B)(3), (g)(4)(i)(G), (g)(5)(ii), and (g)(6)(ii) of this section.

(3) *Comparable uncontrolled transaction method.* The comparable uncontrolled transaction (CUT) method described in § 1.482–4(c), and the comparable uncontrolled services price (CUSP) method described in § 1.482–9T(c), may be applied to evaluate whether the amount charged in a PCT is arm's length by reference to the amount charged in a comparable uncontrolled transaction. Although all of the factors entering into a best method analysis described in § 1.482–1(c) and (d) must be considered, comparability and reliability under this method are particularly dependent on similarity of contractual terms, degree to which allocation of risks is proportional to reasonably anticipated benefits from exploiting the results of intangible development, similar period of commitment as to the sharing of intangible development risks, and similar scope, uncertainty, and profit potential of the subject intangible development, including a similar allocation of the risks of any existing resources, capabilities, or rights, as well as of the risks of developing other resources, capabilities, or rights that would be reasonably anticipated to contribute to exploitation within the parties' divisions, that is consistent with the actual allocation of risks between the controlled participants as provided in the CSA in accordance with this section. When applied in the manner described in § 1.482–4(c) or 1.482–9T(c), the CUT or CUSP method will typically yield an arm's length total value for the platform contribution that is the subject of the PCT. That value must then be multiplied by each PCT Payor's respective RAB share in order to determine the arm's length PCT Payment due from each PCT Payor. The reliability of a CUT or CUSP that yields a value for the platform contribution only in the PCT Payor's division will be reduced to the extent that value is not consistent with the total worldwide value of the platform contribution multiplied by the PCT Payor's RAB share.

(4) *Income method*—(i) *In general*—(A) *Equating cost sharing and licensing alternatives.* The income method evaluates whether the amount charged in a PCT is arm's length by reference to a controlled participant's best realistic alternative to entering into a CSA. Under this method, the arm's length charge for a PCT Payment will be an amount such that a controlled participant's present value, as of the date of the PCT, of its cost sharing alternative of entering into a CSA equals the present value of its best realistic alternative. In general, the best realistic alternative of the PCT Payor to entering into the CSA would be to license intangibles to be developed by an uncontrolled licensor that undertakes the commitment to bear the entire risk of intangible development that would otherwise have been shared under the CSA. Similarly, the best realistic alternative of the PCT Payee to entering into the CSA would be to undertake the commitment to bear the entire risk of intangible development that would otherwise have been shared under the CSA and license the resulting intangibles to an uncontrolled licensee. Paragraphs (g)(4)(ii) through (iv) of this section describe specific applications of the income method, but do not exclude other possible applications of this method.

(B) *Cost sharing alternative.* The PCT Payor's cost sharing alternative corresponds to the actual CSA in accordance with this section, with the PCT Payor's obligation to make the PCT Payments to be determined and its commitment for the duration of the IDA to bear cost contributions.

(C) *Licensing alternative.* The licensing alternative is derived on the basis of a functional and risk analysis of the cost sharing alternative, but with a shift of the risk of cost contributions to the licensor. Accordingly, the PCT Payor's licensing alternative consists of entering into a license with an uncontrolled party, for a term extending for what would be the duration of the CSA Activity, to license the make-or-sell

rights in to-be-developed resources, capabilities, or rights of the licensor. Under such license, the licensor would undertake the commitment to bear the entire risk of intangible development that would otherwise have been shared under the CSA. Apart from any difference in the allocation of the risks of the IDA, the licensing alternative should assume contractual provisions with regard to non-overlapping divisional intangible interests, and with regard to allocations of other risks, that are consistent with the actual CSA in accordance with this section. For example, the analysis under the licensing alternative should assume a similar allocation of the risks of any existing resources, capabilities, or rights, as well as of the risks of developing other resources, capabilities, or rights that would be reasonably anticipated to contribute to exploitation within the parties' divisions, that is consistent with the actual allocation of risks between the controlled participants as provided in the CSA in accordance with this section.

(D) *Only one controlled participant with nonroutine platform contributions.* This method involves only one of the controlled participants providing nonroutine platform contributions as the PCT Payee. For a method under which more than one controlled participant may be a PCT Payee, see the application of the residual profit method pursuant to paragraph (g)(7) of this section.

(E) *Income method payment forms.* The income method may be applied to determine PCT Payments in any form of payment (for example, lump sum, royalty on sales, or royalty on divisional profit). For converting to another form of payment, see generally § 1.482–7(h) (Form of payment rules).

(F) *Discount rates appropriate to cost sharing and licensing alternatives.*

(*1*) The present value of the cost sharing and licensing alternatives, respectively, should be determined using the appropriate discount rates in accordance with paragraph (g)(2)(v) of this section. See, for example, § 1.482–7(g)(2)(v)(B)(*1*) (Discount rate variation between realistic alternatives). In circumstances where the market-correlated risks as between the cost sharing and licensing alternatives are not materially different, a reliable analysis may be possible by using the same discount rate with respect to both alternatives.

(*2*) The discount rate for the cost sharing alternative will generally depend on the form of PCT Payments assumed (for example, lump sum, royalty on sales, royalty on divisional profit).

(G) *The effect of taxation on determining the arm's length amount.* In principle, the present values of the cost sharing and licensing alternatives should be determined by applying post-tax discount rates to post-tax income (including the post-tax value to the controlled participant of the PCT Payments). If such approach is adopted, then the post-tax value of the PCT Payments must be appropriately adjusted in order to determine the arm's length amount of the PCT Payments on a pre-tax basis. See paragraph (g)(2)(x) of this section. In certain circumstances, post-tax income may be derived as the product of the result of applying a post-tax discount rate to pre-tax income, and a factor equal to one minus the tax rate. See paragraph (g)(2)(v)(B)(*3*) of this section. Moreover, to the extent that a controlled participant's tax rate is not materially affected by whether it enters into the cost sharing or licensing alternative (or reliable adjustments may be made for varying tax rates), the factor (that is, one minus the tax rate) may be cancelled from both sides of the equation of the cost sharing and licensing alternative present values. Accordingly, in such circumstance it is sufficient to apply post-tax discount rates to projections of pre-tax income for the purpose of equating the cost sharing and licensing alternatives. The specific applications of the income method described in paragraphs (g)(4)(ii) through (iv) of this section and the examples set forth in paragraph (g)(4)(vii) of this section assume that such circumstance applies.

(ii) *Evaluation of PCT Payor's cost sharing alternative.* The present value of the PCT Payor's cost sharing alternative is the present value of the stream of the reasonably anticipated residuals over the duration of the CSA Activity of divisional profits or losses, minus operating cost contributions, minus cost contributions, minus PCT Payments.

(iii) *Evaluation of PCT Payor's licensing alternative*—(A) *Evaluation based on CUT.* The present value of the PCT Payor's licensing alternative may be determined using the comparable uncontrolled transaction method, as described in § 1.482–4(c)(1) and (2). In this case, the present value of the PCT Payor's licensing alternative is the present value of the stream, over what would be the duration of the CSA Activity under the cost sharing alternative, of the reasonably anticipated residuals of the divisional profits or losses that would be achieved under the cost sharing alternative, minus operating cost contributions that would be made under the cost sharing alternative, minus the licensing payments as determined under the comparable uncontrolled transaction method.

(B) *Evaluation based on CPM.* The present value of the PCT Payor's licensing alternative may be determined using the comparable profits method, as described in § 1.482–5. In this case, the present value of the licensing alternative is determined as in paragraph (g)(4)(iii)(A) of this section, except that the PCT Payor's licensing payments, as defined in paragraph (j)(1)(i) of this section, are determined to be a lump sum, as of the date of the PCT, equal to the present value (using the discount rate appropriate for the licensing alternative) of the stream, over what would be the duration of the CSA Activity under the cost sharing alternative, of the reasonably anticipated residuals of the divisional profits or losses that would be achieved under the cost sharing alternative, minus operating cost contributions that would be made under the cost sharing alternative, minus market returns for routine contributions, as defined in paragraph (j)(1)(i) of this section.

(iv) *Lump sum payment form.* Where the form of PCT Payment is a lump sum as of the date of the PCT, then, based on paragraphs (g)(4)(i) through (iii) of this section, the PCT Payment equals the difference between—

(A) The present value, using the discount rate appropriate for the cost sharing alternative, of the stream of the reasonably anticipated residuals over the duration of the CSA Activity of divisional profits or losses, minus cost contributions and operating cost contributions; and

(B) The present value of the licensing alternative.

(v) *Best method analysis considerations.* (A) Whether results derived from this method are the most reliable measure of an arm's length result is determined using the factors described under the best method rule in § 1.482–1(c). Thus, comparability and the quality of data, the reliability of the assumptions, and the sensitivity of the results to possible deficiencies in the data and assumptions, must be considered in determining whether this method provides the most reliable measure of an arm's length result.

(B) This method will be more reliable to the extent that the controlled participants' respective tax rates are not materially affected by whether they enter into the cost sharing or licensing alternative. Even if this assumption of invariant tax rates across alternatives does not hold, this method may still be

reliable to the extent that reliable adjustments can be made to reflect the variation in tax rates.

(C) If the licensing alternative is evaluated using the comparable uncontrolled transactions method, as described in paragraph (g)(4)(iii)(A) of this section, any additional comparability and reliability considerations stated in § 1.482–4(c)(2) may apply.

(D) If the licensing alternative is evaluated using the comparable profits method, as described in paragraph (g)(4)(iii)(B) of this section, any additional comparability and reliability considerations stated in § 1.482–5(c) may apply.

(E) This method may be used even if the PCT Payor furnishes significant operating contributions, or commits to assume the risk of significant operating cost contributions, to the PCT Payor's division. However, in such a case, any comparable uncontrolled transactions described in paragraph (g)(4)(iii)(A) of this section, and any comparable transactions used under § 1.482–5(c) as described in paragraphs (g)(4)(iii)(B) of this section, should be consistent with such contributions (or reliable adjustments must be made for material differences).

(vi) *Routine platform and operating contributions.* For purposes of this paragraph (g)(4), any routine contributions that are platform or operating contributions, the valuation and PCT Payments which are determined and made independently of the income method, are treated similarly to cost contributions and operating cost contributions, respectively. Accordingly, wherever used in this paragraph, the term ''routine contributions'' shall not include routine platform or operating contributions, and wherever the terms ''cost contributions'' and ''operating cost contributions'' appear in this paragraph, they shall include net routine platform contributions and net routine operating contributions, respectively. Net routine platform contributions are the value of a controlled participant's total reasonably anticipated routine platform contributions, plus its reasonably anticipated PCT Payments to other controlled participants in respect of their routine platform contributions, minus the reasonably anticipated PCT Payments it is to receive from other controlled participants in respect of its routine platform contributions. Net routine operating contributions are the value of a controlled participant's total reasonably anticipated routine operating contributions, plus its reasonably anticipated arm's length compensation to other controlled participants in respect of their routine operating contributions, minus the reasonably anticipated arm's length compensation it is to receive from other controlled participants in respect of its routine operating contributions.

(vii) *Examples.* The following examples illustrate the principles of this paragraph (g)(4):

Example 1. (i) USP, a software company, has developed version 1.0 of a new software application that it is currently marketing. In Year 1 USP enters into a CSA with its wholly-owned foreign subsidiary, FS, to develop future versions of the software application. Under the CSA, USP will have the rights to exploit the future versions in the United States, and FS will have the rights to exploit them in the rest of the world. The future rights in version 1.0, and USP's development team, are reasonably anticipated to contribute to the development of future versions and therefore the rights in version 1.0 are platform contributions for which compensation is due from FS as part of a PCT. USP does not transfer the current exploitation rights in version 1.0 to FS. FS does not furnish any platform contributions nor does it control any operating intangibles at the inception of the CSA that would be relevant to the exploitation of version 1.0 or future versions of the software. FS agrees to make PCT payments in the form of a single lump sum payment as of the date of the PCT.

(ii) In evaluating the CSA, the Commissioner concludes that the cost sharing alternative represents a riskier alternative for FS than the licensing alternative because, in cost sharing, FS will take on the additional risks associated with CST Payments and of making the PCT payments as a single lump sum. Consequently, the Commissioner concludes that the appropriate discount rate to apply in assessing the licensing alternative, based on discount rates of comparable uncontrolled companies undertaking comparable licensing transactions, would be 13% per year, whereas the appropriate discount rate to apply in assessing the cost sharing alternative would be 15% per year. FS undertakes financial projections and anticipates making no sales during the first two years of the CSA in its territory with sales in Years 3 through Year 8 rapidly increasing to $200 million, $400 million, $600 million, $650 million, $700 million and $750 million, respectively. After year 8, sales in the rest of the world are expected to remain at $750 million per annum for the foreseeable future. Costs including routine costs and operating cost contributions are anticipated to equal 60% of gross sales from Year 3, onwards. FS anticipates its cost contributions will equal $50 million per year for the first four years of the CSA and equal 10% of gross sales in each year, thereafter. The Commissioner accepts the financial projections undertaken by FS. The Commissioner determines that the arm's length rate USP would have charged an uncontrolled licensee for a license of future versions of the software had USP further developed version 1.0 on its own is 35% of the sales price, as determined under the comparable uncontrolled transaction method in § 1.482–4(c). FS also determines that the tax rate applicable to it will be the same in the licensing alternative as in the CSA.

(iii) Based on these projections and applying the appropriate discount rate, the Commissioner determines that under the cost sharing alternative, the present value of its divisional profits (after subtracting the present value of the anticipated operating cost contributions and cost contributions) would be $867 million (for simplicity of calculation in this example, all financial flows are assumed to occur at the beginning of each period). Under the licensing alternative, the present value of the divisional profits and losses minus the operating cost contributions would be $1.592 billion, and the present value of the licensing payments would be $1.393 billion. Therefore, the total value of the licensing alternative would be $199 million. In order for the present value of the cost sharing alternative to equal the present value of the licensing alternative, the present value of the PCT payments must equal $668 million; the arm's length lump sum PCT payment therefore equals $668 million.

Example 2. Arm's length range. (i) The facts are the same as in Example 1. The licensing discount rate (13%) and the CUT licensing rate (35%) used by the Commissioner as input parameters in applying the income method are the median values of comparable uncontrolled discount rates and license rates, respectively. The observations that are in the interquartile range of the respective input parameters are as follows:

Observations that are within interquartile range	Comparable uncontrolled discount rate (percent)
1	11
2	12
3 (Median)	13
4	15
5	17

Observations that are within interquartile range	Comparable uncontrolled licensing rate (percent)
1	30
2	32
3 (Median)	35
4	37
5	40

(ii) The Commissioner concludes that these estimates of the appropriate arm's length discount rates and licensing rates are independent of each other. Accordingly, the Commissioner undertakes 25 different applications of the income method, using each combination of the discount rate and licensing rate parameters. In undertaking this analysis, the Commissioner assumes that the ratio of the median discount rate for the cost sharing alternative to the median discount rate for the licensing alternative (that is, 15% to 13%) is maintained. The results of the 25 applications of the income method, sorted in

ascending order of calculated PCT payment, are as follows:

Income method application no.:	Comparable uncontrolled licensing discount rate (percent)	Comparable uncontrolled CSA discount rate (percent)	Comparable uncontrolled licensing rate (percent)	Calculated lump sum PCT payment	Interquartile range of PCT payments
1	17	19.6	30	291	
2	17	19.6	32	347	
3	15	17.3	30	367	
4	17	19.6	35	431	
5	15	17.3	32	433	
6	13	15	30	469	
7	17	19.6	37	487	LQ = 487
8	15	17.3	35	532	
9	12	13.8	30	535	
10	13	15	32	549	
11	17	19.6	40	571	
12	15	17.3	37	598	
13	11	12.7	30	614	Median = 614
14	12	13.8	32	623	
15	13	15	35	668	
16	15	17.3	40	697	
17	11	12.7	32	712	
18	13	15	37	748	
19	12	13.8	35	755	UQ = 755
20	12	13.8	37	844	
21	11	12.7	35	860	
22	13	15	40	867	
23	11	12.7	37	959	
24	12	13.8	40	976	
25	11	12.7	40	1,107	

(iii) Accordingly, the Commissioner determines that a taxpayer will not be subject to adjustment if its initial (ex ante) determination of the PCT payment is between $487 million and $755 million. In the event that the taxpayer's determination of the appropriate PCT payment falls outside this range, the adjustment made by the Commissioner will ordinarily be to $614.

Example 3. (i) USP, a U.S. software company, has developed version 1.0 of a new software application, employed to store and retrieve complex data sets in certain types of storage media. Version 1.0 is currently being marketed. In Year 1, USP enters into a CSA with its wholly owned foreign subsidiary, FS, to develop future versions of the software application. Under the CSA, USP will have the exclusive rights to exploit the future versions in the U.S., and FS will have the exclusive rights to exploit them in the rest of the world. USP's rights in version 1.0, and its development team, are reasonably anticipated to contribute to the development of future versions of the software application and, therefore, the rights in version 1.0 are platform contributions for which compensation is due from FS as part of a PCT. USP also transfers the current exploitation rights in version 1.0 to FS and the arm's length amount of the compensation for such transfer is determined in the aggregate with the arm's length PCT Payments in this *Example 3.* FS does not furnish any platform contributions to the CSA nor does it control any operating intangibles at the inception of the CSA that would be relevant to the exploitation of version 1.0 or future versions of the software. It is reasonably anticipated that FS will have gross sales of $1000X in its territory for 5 years attributable to its exploitation of version 1.0 and the cost shared intangibles, after which time the software application will be rendered obsolete and unmarketable by the obsolescence of the storage medium technology to which it relates. FS's costs reasonably attributable to the CSA, other than cost contributions and operating cost contributions, are anticipated to be $250X per year. Certain operating cost contributions that will be borne by FS are reasonably anticipated to equal $200X per annum for 5 years. In addition, FS is reasonably anticipated to pay cost contributions of $200X per year as a controlled participant in the CSA.

(ii) FS concludes that its realistic alternative would be to license software from an uncontrolled licensor that would undertake the commitment to bear the entire risk of software development. Applying CPM using the profit levels experienced by uncontrolled licensees with contractual provisions and allocations of risk that are comparable to those of FS's licensing alternative, FS determines that it could, as a licensee, reasonably expect a (pre-tax) routine return equal to 14% of gross sales or $140X per year for 5 years. The remaining net revenue would be paid to the uncontrolled licensor as a license fee of $410X per year. FS determines that the discount rate that would be applied to determine the present value of income and costs attributable to its participation in the licensing alternative would be 12.5% as compared to the 15% discount rate that would be applicable in determining the present valuable of the net income attributable to its participation in the CSA (reflecting the increased risk borne by FS in bearing a share of the R&D costs in the cost sharing alternative and the fact that FS intends to pay the PCT payment as a single lump sum). FS also determines that the tax rate applicable to it will be the same in the licensing alternative as in the CSA.

(iii) On these facts, the present value to FS of entering into the cost sharing alternative equals the present value of the divisional profits ($1,000X minus $250X) minus operating cost contributions ($200X) minus cost contributions ($200X) minus PCT Payments, determined over 5 years by discounting at a discount rate of 15% (for simplicity of calculation in this example, all financial flows are assumed to occur at the beginning of each period). Thus, the present value of the residuals, prior to subtracting the value of the PCT Payments, is $1349X.

(iv) On these facts, the present value to FS of entering into the licensing alternative would be $561X determined by discounting, over 5 years, divisional profits ($1,000X minus $250X) minus operating cost contributions ($200X) and licensing payments ($410X) at a discount rate of 12.5% per annum. The present value of the cost sharing alternative must also equal $561X but equals $1349X prior to subtracting the present value of the PCT payments. Consequently, the PCT payments must have a present value of $788X. Thus, the arm's length lump sum PCT payment made at the time of the PCT will equal $788X.

(5) *Acquisition price method*—(i) *In general.* The acquisition price method applies the comparable uncontrolled transaction method of § 1.482–4(c), or the comparable uncontrolled services price method described in § 1.482–9T(c), to evaluate whether the amount charged in a PCT, or group of PCTs, is arm's length by reference to the amount charged (the acquisition price) for the stock or asset purchase of an entire organization or portion thereof (the target) in an uncontrolled transaction. The acquisition price method is

ordinarily used where substantially all the target's nonroutine contributions, as such term is defined in paragraph (j)(1)(i) of this section, made to the PCT Payee's business activities are covered by a PCT or group of PCTs.

(ii) *Determination of arm's length charge.* Under this method, the arm's length charge for a PCT or group of PCTs covering resources, capabilities, and rights of the target is equal to the adjusted acquisition price, as divided among the controlled participants according to their respective RAB shares. However, an additional adjustment may be necessary to reflect the fact that PCT Payee's tax liability attributable to the purchase from target may differ from the tax liability attributable to the PCT Payments. See paragraph (g)(2)(x) of this section.

(iii) *Adjusted acquisition price.* The adjusted acquisition price is the acquisition price of the target increased by the value of the target's liabilities on the date of the acquisition, other than liabilities not assumed in the case of an asset purchase, and decreased by the value of the target's tangible property on that date and by the value on that date of any other resources, capabilities, and rights not covered by a PCT or group of PCTs.

(iv) *Best method analysis considerations.* The comparability and reliability considerations stated in § 1.482–4(c)(2) apply. Consistent with those considerations, the reliability of applying the acquisition price method as a measure of the arm's length charge for the PCT Payment normally is reduced if—

(A) A substantial portion of the target's nonroutine contributions to the PCT Payee's business activities is not required to be covered by a PCT or group of PCTs, and that portion of the nonroutine contributions cannot reliably be valued;

(B) A substantial portion of the target's assets consists of tangible property that cannot reliably be valued; or

(C) The date on which the target is acquired and the date of the PCT are not contemporaneous.

(v) *Example.* The following example illustrates the principles of this paragraph (g)(5):

Example. USP, a U.S. corporation, and its newly incorporated, wholly-owned foreign subsidiary (FS) enter into a CSA at the start of Year 1 to develop Group Z products. Under the CSA, USP and FS will have the exclusive rights to exploit the Group Z products in the U.S. and the rest of the world, respectively. At the start of Year 2, USP acquires Company X for cash consideration worth $110 million. At this time USP's RAB share is 60% and FS's RAB share is 40%. Company X joins in the filing of a U.S. consolidated income tax return with USP. Under paragraph (j)(2)(i) of this section, Company X and USP are treated as one taxpayer for purposes of this section. Accordingly, the rights in any of Company X's resources and capabilities that are reasonably anticipated to contribute to the development activities of the CSA will be considered platform contributions furnished by USP. Company X's resources and capabilities consist of its workforce, certain technology intangibles, $15 million of tangible property and other assets and $5 million in liabilities. The technology intangibles, as well as Company X's workforce, are reasonably anticipated to contribute to the development of the Group Z products under the CSA and, therefore, the rights in the technology intangibles and the workforce are platform contributions for which FS must make a PCT Payment to USP. None of Company X's existing intangible assets or any of its workforce are anticipated to contribute to activities outside the CSA. For purposes of this example, it is assumed that no additional adjustment on account of tax liabilities (as described in paragraph (g)(5)(ii) of this section) is needed. Applying the acquisition price method, the value of USP's platform contributions is the adjusted acquisition price of $100 million ($110 million acquisition price plus $5 million liabilities less $15 million tangible property and other assets). FS must make a PCT Payment to USP for these platform contributions with a reasonably anticipated present value of $40 million, which is the product of $100 million (the value of the platform contributions) and 40% (FS's RAB share at the time of the PCT).

(6) *Market capitalization method*—(i) *In general.* The market capitalization method applies the comparable uncontrolled transaction method of § 1.482–4(c), or the comparable uncontrolled services price method described in § 1.482–9T(c), to evaluate whether the amount charged in a PCT, or group of PCTs, is arm's length by reference to the average market capitalization of a controlled participant (PCT Payee) whose stock is regularly traded on an established securities market. The market capitalization method is ordinarily used where substantially all of the PCT Payee's nonroutine contributions to the PCT Payee's business are covered by a PCT or group of PCTs.

(ii) *Determination of arm's length charge.* Under the market capitalization method, the arm's length charge for a PCT or group of PCTs covering resources, capabilities, and rights of the PCT Payee is equal to the adjusted average market capitalization, as divided among the controlled participants according to their respective RAB shares. An increase to reflect the fact that a PCT Payment may increase the PCT Payee's tax liability and decrease the PCT Payor's tax liability may be warranted. See paragraph (g)(2)(x) of this section.

(iii) *Average market capitalization.* The average market capitalization is the average of the daily market capitalizations of the PCT Payee over a period of time beginning 60 days before the date of the PCT and ending on the date of the PCT. The daily market capitalization of the PCT Payee is calculated on each day its stock is actively traded as the total number of shares outstanding multiplied by the adjusted closing price of the stock on that day. The adjusted closing price is the daily closing price of the stock, after adjustments for stock-based transactions (dividends and stock splits) and other pending corporate (combination and spin-off) restructuring transactions for which reliable arm's length adjustments can be made.

(iv) *Adjusted average market capitalization.* The adjusted average market capitalization is the average market capitalization of the PCT Payee increased by the value of the PCT Payee's liabilities on the date of the PCT and decreased by the value on such date of the PCT Payee's tangible property and of any other resources, capabilities, or rights of the PCT Payee not covered by a PCT or group of PCTs.

(v) *Best method analysis considerations.* The comparability and reliability considerations stated in § 1.482–4(c)(2) apply. Consistent with those considerations, the reliability of applying the comparable uncontrolled transaction method using the adjusted market capitalization of a company as a measure of the arm's length charge for the PCT Payment normally is reduced if—

(A) A substantial portion of the PCT Payee's nonroutine contributions to its business activities is not required to be covered by a PCT or group of PCTs, and that portion of the nonroutine contributions cannot reliably be valued;

(B) A substantial portion of the PCT Payee's assets consists of tangible property that cannot reliably be valued; or

(C) Facts and circumstances demonstrate the likelihood of a material divergence between the average market capitalization of the PCT Payee and the value of its resources, capabilities, and rights for which reliable adjustments cannot be made.

(vi) *Examples.* The following examples illustrate the principles of this paragraph (g)(6):

Example 1. (i) USP, a publicly traded U.S. company, and its newly incorporated wholly-owned foreign subsidiary (FS) enter into a CSA on Date 1 to develop software. At that

time USP has in-process software but has no software ready for the market. Under the CSA, USP and FS will have the exclusive rights to exploit the software developed under the CSA in the United States and the rest of the world, respectively. On Date 1, USP's RAB share is 70% and FS's RAB share is 30%. USP's assembled team of researchers and its in-process software are reasonably anticipated to contribute to the development of the software under the CSA. Therefore, the rights in the research team and in-process software are platform contributions for which compensation is due from FS. Further, these rights are not reasonably anticipated to contribute to any business activity other than the CSA Activity.

(ii) On Date 1, USP had an average market capitalization of $205 million, tangible property and other assets that can be reliably valued worth $5 million, and no liabilities. Aside from those assets, USP had no assets other than its research team and in-process software. Applying the market capitalization method, the value of USP's platform contributions is $200 million ($205 million average market capitalization of USP less $5 million of tangible property and other assets). The arm's length value of the PCT Payments FS must make to USP for the platform contributions, before any adjustment on account of tax liability as described in paragraph (g)(2)(ii) of this section, is $60 million, which is the product of $200 million (the value of the platform contributions) and 30% (FS's RAB share on Date 1).

Example 2. Aggregation with make-or-sell rights. (i) The facts are the same as in *Example 1*, except that on Date 1 USP also has existing software ready for the market. USP separately enters into a license agreement with FS for make-or-sell rights for all existing software outside the United States. No marketing has occurred, and USP has no marketing intangibles. This license of current make-or-sell rights is a transaction governed by § 1.482–4. However, after analysis, it is determined that the arm's length PCT Payments and the arm's length payments for the make-or-sell license may be most reliably determined in the aggregate using the market capitalization method, under principles described in paragraph (g)(2)(iv) of this section, and it is further determined that those principles are most reliably implemented by computing the aggregate arm's length charge as the product of the aggregate value of the existing and in-process software and FS's RAB share on Date 1.

(ii) Applying the market capitalization method, the aggregate value of USP's platform contributions and the make-or-sell rights in its existing software is $250 million ($255 million average market capitalization of USP less $5 million of tangible property and other assets). The total arm's length value of the PCT Payments and license payments FS must make to USP for the platform contributions and current make-or-sell rights, before any adjustment on account of tax liability as described in paragraph (g)(2)(ii) of this section, is $75 million, which is the product of $250 million (the value of the platform contributions and the make-or-sell rights) and 30% (FS's RAB share on Date 1).

Example 3. Reduced reliability. The facts are the same as in *Example 1* except that USP also has significant nonroutine assets that will be used solely in a nascent business division that is unrelated to the subject of the CSA and that cannot themselves be reliably valued. Those nonroutine contributions are not platform contributions and accordingly are not required to be covered by a PCT. The reliability of using the market capitalization method to determine the value of USP's platform contributions to the CSA is significantly reduced in this case because that method would require adjusting USP's average market capitalization to account for the significant nonroutine contributions that are not required to be covered by a PCT.

(7) *Residual profit split method*—(i) *In general.* The residual profit split method evaluates whether the allocation of combined operating profit or loss attributable to one or more platform contributions subject to a PCT is arm's length by reference to the relative value of each controlled participant's contribution to that combined operating profit or loss. The combined operating profit or loss must be derived from the most narrowly identifiable business activity (relevant business activity) of the controlled participants for which data are available that include the CSA Activity. The residual profit split method may not be used where only one controlled participant makes significant nonroutine contributions (including platform or operating contributions) to the CSA Activity. The provisions of § 1.482–6 shall apply to CSAs only to the extent provided and as modified in this paragraph (g)(7). Any other application to a CSA of a residual profit method not described in paragraphs (g)(7)(ii) and (iii) will constitute an unspecified method for purposes of sections 482 and 6662(e) and the regulations under those sections.

(ii) *Appropriate share of profits and losses.* The relative value of each controlled participant's contribution to the success of the relevant business activity must be determined in a manner that reflects the functions performed, risks assumed, and resources employed by each participant in the relevant business activity, consistent with the best method analysis described in § 1.482–1(c) and (d). Such an allocation is intended to correspond to the division of profit or loss that would result from an arrangement between uncontrolled taxpayers, each performing functions similar to those of the various controlled participants engaged in the relevant business activity. The profit allocated to any particular controlled participant is not necessarily limited to the total operating profit of the group from the relevant business activity. For example, in a given year, one controlled participant may earn a profit while another controlled participant incurs a loss. In addition, it may not be assumed that the combined operating profit or loss from the relevant business activity should be shared equally, or in any other arbitrary proportion.

(iii) *Profit split*—(A) *In general.* Under the residual profit split method, the present value of each controlled participant's residual divisional profit or loss attributable to nonroutine contributions (nonroutine residual divisional profit or loss) is allocated between the controlled participants that each furnish significant nonroutine contributions (including platform or operating contributions) to the relevant business activity in that division.

(B) *Determine nonroutine residual divisional profit or loss.* The present value of each controlled participant's nonroutine residual divisional profit or loss must be determined to reflect the most reliable measure of an arm's length result. The present value of nonroutine residual divisional profit or loss equals the present value of the stream of the reasonably anticipated residuals over the duration of the CSA Activity of divisional profit or loss, minus market returns for routine contributions, minus operating cost contributions, minus cost contributions, using a discount rate appropriate to such residuals in accordance with paragraph (g)(2)(v) of this section.

(C) *Allocate nonroutine residual divisional profit or loss*—(*1*) *In general.* The present value of nonroutine residual divisional profit or loss in each controlled participant's division must be allocated among all of the controlled participants based upon the relative values, determined as of the date of the PCTs, of the PCT Payor's as compared to the PCT Payee's nonroutine contributions to the PCT Payor's division. For this purpose, the PCT Payor's nonroutine contribution consists of the sum of the PCT Payor's nonroutine operating contributions and the PCT Payor's RAB share of the PCT Payor's nonroutine platform contributions. For this purpose, the PCT Payee's nonroutine contribution consists of the PCT Payor's RAB share of the PCT Payee's nonroutine platform contributions.

(*2*) *Relative value determination.* The relative values of the controlled participants' nonroutine contributions must be determined so as to reflect the most reliable measure of an arm's length result. Relative values may be measured by external market benchmarks that reflect the fair market value of such nonroutine contributions. Alternatively, the relative value of nonroutine

contributions may be estimated by the capitalized cost of developing the nonroutine contributions and updates, as appropriately grown or discounted so that all contributions may be valued on a comparable dollar basis as of the same date. If the nonroutine contributions by a controlled participant are also used in other business activities (such as the exploitation of make-or-sell rights described in paragraph (c)(4) of this section), an allocation of the value of the nonroutine contributions must be made on a reasonable basis among all the business activities in which they are used in proportion to the relative economic value that the relevant business activity and such other business activities are anticipated to derive over time as the result of such nonroutine contributions.

(*3*) *Determination of PCT Payments.* Any amount of the present value of a controlled participant's nonroutine residual divisional profit or loss that is allocated to another controlled participant represents the present value of the PCT Payments due to that other controlled participant for its platform contributions to the relevant business activity in the relevant division. For purposes of paragraph (j)(3)(ii) of this section, the present value of a PCT Payor's PCT Payments under this paragraph shall be deemed reduced to the extent of the present value of any PCT Payments owed to it from other controlled participants under this paragraph (g)(7). The resulting remainder may be converted to a fixed or contingent form of payment in accordance with paragraph (h) (Form of payment rules) of this section.

(*4*) *Routine platform and operating contributions.* For purposes of this paragraph (g)(7), any routine platform or operating contributions, the valuation and PCT Payments for which are determined and made independently of the residual profit split method, are treated similarly to cost contributions and operating cost contributions, respectively. Accordingly, wherever used in this paragraph (g)(7), the term ''routine contributions'' shall not include routine platform or operating contributions, and wherever the terms ''cost contributions'' and ''operating cost contributions'' appear in this paragraph (g)(7), they shall include net routine platform contributions and net routine operating contributions, respectively, as defined in paragraph (g)(4)(vi) of this section.

(iv) *Best method analysis considerations*—(A) *In general.* Whether results derived from this method are the most reliable measure of the arm's length result is determined using the factors described under the best method rule in § 1.482–1(c). Thus, comparability and quality of data, reliability of assumptions, and sensitivity of results to possible deficiencies in the data and assumptions, must be considered in determining whether this method provides the most reliable measure of an arm's length result. The application of these factors to the residual profit split in the context of the relevant business activity of developing and exploiting cost shared intangibles is discussed in paragraphs (g)(7)(iv)(B), (C) and (D) of this section.

(B) *Comparability.* The derivation of the present value of nonroutine residual divisional profit or loss includes a carveout on account of market returns for routine contributions. Thus, the comparability considerations that are relevant for that purpose include those that are relevant for the methods that are used to determine market returns for the routine contributions.

(C) *Data and assumptions.* The reliability of the results derived from the residual profit split is affected by the quality of the data and assumptions used to apply this method. In particular, the following factors must be considered:

(*1*) The reliability of the allocation of costs, income, and assets between the relevant business activity and the controlled participants' other activities that will affect the reliability of the determination of the divisional profit or loss and its allocation among the controlled participants. See § 1.482–6(c)(2)(ii)(C)(*1*).

(*2*) The degree of consistency between the controlled participants and uncontrolled taxpayers in accounting practices that materially affect the items that determine the amount and allocation of operating profit or loss affects the reliability of the result. See § 1.482–6(c)(2)(ii)(C)(*2*).

(*3*) The reliability of the data used and the assumptions made in estimating the relative value of the nonroutine contributions by the controlled participants. In particular, if capitalized costs of development are used to estimate the relative value of nonroutine contributions, the reliability of the results is reduced relative to the reliability of other methods that do not require such an estimate. This is because, in any given case, the costs of developing a nonroutine contribution may not be related to its market value and because the calculation of the capitalized costs of development may require the allocation of indirect costs between the relevant business activity and the controlled participant's other activities, which may affect the reliability of the analysis.

(D) *Other factors affecting reliability.* Like the methods described in §§ 1.482–3 through 1.482–5 and § 1.482–9T(c), the carveout on account of market returns for routine contributions relies exclusively on external market benchmarks. As indicated in § 1.482–1(c)(2)(i), as the degree of comparability between the controlled participants and uncontrolled transactions increases, the relative weight accorded the analysis under this method will increase. In addition, to the extent the allocation of nonroutine residual divisional profit or loss is not based on external market benchmarks, the reliability of the analysis will be decreased in relation to an analysis under a method that relies on market benchmarks. Finally, the reliability of the analysis under this method may be enhanced by the fact that all the controlled participants are evaluated under the residual profit split. However, the reliability of the results of an analysis based on information from all the controlled participants is affected by the reliability of the data and the assumptions pertaining to each controlled participant. Thus, if the data and assumptions are significantly more reliable with respect to one of the controlled participants than with respect to the others, a different method, focusing solely on the results of that party, may yield more reliable results.

(v) *Examples.* The following examples illustrate the principles of this paragraph (g)(7):

Example 1. (i) USP, a U.S. electronic data storage company, has partially developed technology for a type of extremely small compact storage devices (nanodisks) which are expected to provide a significant increase in data storage capacity in various types of portable devices such as cell phone, MP3 players, laptop computers and digital cameras. At the same time, USP's wholly-owned subsidiary, FS, has developed significant marketing intangibles outside the United States in the form of customer lists, ongoing relations with various OEMs, and trademarks that are well recognized by consumers due to a long history of marketing successful data storage devices and other hardware used in various types of consumer electronics. At the beginning of Year 1, USP enters into a CSA with FS to develop nanodisk technologies for eventual commercial exploitation. Under the CSA, USP will have the right to exploit nanodisks in the United States, while FS will have the right to exploit nanodisks in the rest of the world. The partially developed nanodisk technologies owned by USP are reasonably anticipated to contribute to the development of commercially exploitable nanodisks and therefore the rights in the nanodisk technologies constitute platform contributions of USP for which compensation is due under PCTs. FS does

not own any intangible assets that constitute platform contributions for the CSA. Due to the fact that nanodisk technologies have yet to be incorporated into any commercially available product, neither USP nor FS transfers rights to make or sell current products in conjunction with the CSA.

(ii) Because only in FS's territory do both controlled participants make significant nonroutine contributions, USP and FS determine that they need to determine the relative value of their respective contributions to operating profit or loss attributable to the CSA only in FS's territory (that is, to FS's divisional profit or loss). FS anticipates making no nanodisk sales during the first year of the CSA in its territory with revenues in Year 2 reaching $200 million. Revenues through Year 5 are reasonably anticipated to increase by 50% per year. The annual growth rate for revenues is then expected to decline to 30% per annum in Years 6 and 7, 20% per annum in Years 8 and 9 and 10% per annum in Year 10. Revenues are then expected to start to decline; declining 10% in Year 11 and 5% per annum, thereafter. The routine costs (costs other than cost contributions, operating cost contributions, routine platform and operating contributions, and nonroutine contributions) that are allocable to this revenue in calculating FS's divisional profit or loss, are anticipated to equal 45% of gross sales from Year 2, onwards. FS undertakes routine distribution activities in its markets that constitute routine contributions to the relevant business activity of exploiting NanoBuild. USP and FS estimate that the total market return on these routine contributions will amount to 6% of the routine costs. FS anticipates that its operating cost contributions will equal $40 million per annum for the first two years of the CSA and $65 and $70 million in Years 3 and 4. Thereafter, operating cost contributions are expected to equal 7% of revenue in each year. FS expects its cost contributions to be $60 million in Year 1, rise to $100 million in Years 2 and 3, and then decline again to $60 million. Thereafter, FS's cost contributions are expected to equal 10% of revenues.

(iii) USP and FS determine the present value of the stream of the reasonably anticipated residuals in FS's territory over the duration of the CSA Activity of the divisional profit or loss (revenues minus routine costs), minus the market returns for routine contributions, the operating cost contributions, and the cost contributions. USP and FS determine, based on the considerations discussed in paragraph (g)(2)(v) of this section, that the appropriate discount rate is 17.5% per annum (for simplicity of calculation in this example, all financial flows are assumed to occur at the beginning of each period). Therefore, the present value of the nonroutine residual divisional profit is $1.319 billion.

(iv) After analysis, USP and FS determine that the relative value of the nanodisk technologies contributed by USP to CSA (giving effect only to its value in FS's territory) is roughly 150% of the value of FS's marketing intangibles (which only have value in FS's territory). Consequently, 60% of the nonroutine residual divisional profit is attributable to USP's platform contribution. Therefore, FS's PCT payments should have an expected present value equal to $792 million (.6 × $1.319 billion).

Example 2. (i) USP is a U.S. automobile manufacturing company that has completed significant research on the development of diesel-electric hybrid engines that, if they could be successfully manufactured, would result in providing a significant increased fuel economy for a wide variety of motor vehicles. Successful commercialization of the diesel-electric hybrid engine will require the development of a new class of advanced battery that will be light, relatively cheap to manufacture and yet capable of holding a substantial electric charge. FS, a foreign subsidiary of USP, has completed significant research on developing lithium-ion batteries that appear likely to have the requisite characteristics. At the beginning of Year 1, USP enters into a CSA with FS to further develop diesel-electric hybrid engines and lithium-ion battery technologies for eventual commercial exploitation. Under the CSA, USP will have the right to exploit the diesel-electric hybrid engine and lithium-ion battery technologies in the United States, while FS will have the right to exploit such technologies in the rest of the world. The partially developed diesel-electric hybrid engine and lithium-ion battery technologies owned by USP and FS, respectively, are reasonably anticipated to contribute to the development of commercially exploitable automobile engines and therefore the rights in both these technologies constitute platform contributions of USP and of FS for which compensation is due under PCTs. At the time of inception of the CSA, USP owns operating intangibles in the form of self-developed marketing intangibles which have significant value in the United States, but not in the rest of the world, and that are relevant to exploiting the cost shared intangibles. Similarly, FS owns self-developed marketing intangibles which have significant value in the rest of the world, but not in the United States, and that are relevant to exploiting the cost shared intangibles. Although the new class of diesel-electric hybrid engine using lithium-ion batteries is not yet ready for commercial exploitation, components based on this technology are beginning to be incorporated in current-generation gasoline-electric hybrid engines and the rights to make and sell such products are transferred from USP to FS and vice-versa in conjunction with the inception of the CSA.

(ii) USP's estimated RAB share is 66.7 percent. During Year 1, it is anticipated that sales in USP's territory will be $1000X in Year 1. Sales in FS's territory are anticipated to be $500X. Thereafter, as revenue from the use of components in gasoline-electric hybrids is supplemented by revenues from the production of complete diesel-electric hybrid engines using lithium-ion battery technology, anticipated sales in both territories will increase rapidly at a rate of 50% per annum through Year 4. Anticipated sales are then anticipated to increase at a rate of 40% per annum for another 4 years. Sales are then anticipated to increase at a rate of 30% per annum through Year 10. Thereafter, sales are anticipated to decrease at a rate of 5% per annum for the foreseeable future as new automotive drivetrain technologies displace diesel-electric hybrid engines and lithium-ion batteries. Total operating expenses attributable to product exploitation (including operating cost contributions) equal 40% of sales per year for both USP and FS. USP and FS estimate that the total market return on their routine contributions to the CSA will amount to 6% of the operating expenses. USP is expected to bear ⅔s of the total cost contributions for the foreseeable future. Cost contributions are expected to total $375X in Year 1 (of which $250X are borne by USP) and increase at a rate of 25% per annum through Year 6. In Years 7 through 10, cost contributions are expected to increase 10% a year. Thereafter, cost contributions are expected to decrease by 5% a year for the foreseeable future.

(iii) USP and FS determine the present value of the stream of the reasonably anticipated divisional profit or loss (revenues minus operating costs), minus the market returns for routine contributions, minus cost contributions. USP and FS determine, based on the considerations discussed in paragraph (g)(2)(v) of this section, that the appropriate discount rate is 12% per year. Therefore, the present value of the nonroutine residual divisional profit in USP's territory is $41,115X and in CFC's territory is $20,557X (for simplicity of calculation in this example, all financial flows are assumed to occur at the beginning of each period).

(iv) After analysis, USP and FS determine that, in the United States the relative value of the technologies contributed by USP and FS to the CSA and of the operating intangibles used by USP in the exploitation of the cost shared intangibles (reported as equaling 100 in total), equals: USP's platform contribution (59.5); FS's platform contribution (25.5); and USP's operating intangibles (15). Consequently, the present value of the arm's length amount of the PCT payments that USP should pay to FS for FS's platform contribution is $10,484X (.255 × $41,115X). Similarly, USP and FS determine that, in the rest of the world, the relative value of the technologies contributed by USP and FS to the CSA and of the operating intangibles used by FS in the exploitation of the cost shared intangibles can be divided as follows: USP's platform contribution (63); FS's platform contribution (27); and FS's operating intangibles (10). Consequently, the present value of the arm's length amount of the PCT payments that FS should pay to USP for USP's platform contribution is $12,951X (.63 × $20,557X). Therefore, FS is required to make a net payment to USP with a present value of $2,467X ($12,951X − 10,484X).

(8) *Unspecified methods.* Methods not specified in paragraphs (g)(3) through (7) of this section may be used to evaluate whether the amount charged for a PCT is arm's length. Any method used under this paragraph (g)(8) must be applied in accordance with the provisions of § 1.482–1 and of paragraph (g)(2) of this section. Consistent with the specified methods, an unspecified method should take into account the

general principle that uncontrolled taxpayers evaluate the terms of a transaction by considering the realistic alternatives to that transaction, and only enter into a particular transaction if none of the alternatives is preferable to it. Therefore, in establishing whether a PCT achieved an arm's length result, an unspecified method should provide information on the prices or profits that the controlled participant could have realized by choosing a realistic alternative to the CSA. See paragraph (k)(2)(ii)(J) of this section. As with any method, an unspecified method will not be applied unless it provides the most reliable measure of an arm's length result under the principles of the best method rule. See § 1.482–1(c) (Best method rule). In accordance with § 1.482–1(d) (Comparability), to the extent that an unspecified method relies on internal data rather than uncontrolled comparables, its reliability will be reduced. Similarly, the reliability of a method will be affected by the reliability of the data and assumptions used to apply the method, including any projections used.

(h) *Form of payment rules*—(1) *CST Payments.* CST Payments may not be paid in shares of stock in the payor (or stock in any member of the controlled group that includes the controlled participants).

(2) *PCT Payments*—(i) *In general.* The consideration under a PCT for a platform contribution may take one or a combination of both of the following forms:

(A) Payments of a fixed amount (fixed payments), either paid in a lump sum payment or in installment payments spread over a specified period, with interest calculated in accordance with § 1.482–2(a) (Loans or advances).

(B) Payments contingent on the exploitation of cost shared intangibles by the PCT Payor (contingent payments).

(ii) *No PCT Payor Stock.* PCT Payments may not be paid in shares of stock in the PCT Payor (or stock in any member of the controlled group that includes the controlled participants).

(iii) *Specified form of payment*—(A) *In general.* The form of payment selected (subject to the rules of this paragraph (h)) for any PCT, including, in the case of contingent payments, the contingent base and structure of the payments as set forth in paragraph (h)(2)(iii)(B) of this section, must be specified no later than the due date of the applicable tax return (including extensions) for the later of the taxable year of the PCT Payor or PCT Payee that includes the date of that PCT.

(B) *Contingent payments.* In accordance with paragraph (k)(1)(iv)(A) of this section, a provision of a written contract described in paragraph (k)(1) of this section, or of the additional documentation described in paragraph (k)(2) of this section, that provides for payments for a PCT (or group of PCTs) to be contingent on the exploitation of cost shared intangibles will be respected as consistent with economic substance only if the allocation between the controlled participants of the risks attendant on such form of payment is determinable before the outcomes of such allocation that would have materially affected the PCT pricing are known or reasonably knowable. A contingent payment provision must clearly and unambiguously specify the basis on which the contingent payment obligations are to be determined. In particular, the contingent payment provision must clearly and unambiguously specify the events that give rise to an obligation to make PCT Payments, the royalty base (such as sales or revenues), and the computation used to determine the PCT Payments. The royalty base specified must be one that permits verification of its proper use by reference to books and records maintained by the controlled participants in the normal course of business (for example, books and records maintained for financial accounting or business management purposes).

(C) *Examples.* The following examples illustrate the principles of this paragraph (h)(2)(iii).

Example 1. A CSA provides that PCT payments with respect to a particular platform contribution shall be contingent payments equal to 15% of the revenues from sales of products that incorporate cost shared intangibles. The terms further permit (but do not require) the controlled participants to adjust such contingent payments in accordance with a formula set forth in the arrangement so that the 15% rate is subject to adjustment by the controlled participants at their discretion on an after-the-fact, uncompensated basis. The Commissioner may impute payment terms that are consistent with economic substance with respect to the platform contribution because the contingent payment provision does not specify the computation used to determine the PCT Payments.

Example 2. Taxpayer, an automobile manufacturer, is a controlled participant in a CSA that involves research and development to perfect certain manufacturing techniques necessary to the actual manufacture of a state-of-the-art, hybrid fuel injection system known as DRL337. The arrangement involves the platform contribution of a design patent covering DRL337. Pursuant to paragraph (h)(2)(iii)(B) of this section, the CSA provides for PCT payments with respect to the platform contribution of the patent in the form of royalties contingent on sales of automobiles that contain the DRL337 system. However, Taxpayer's system of book- and record-keeping does not enable Taxpayer to track which automobile sales involve automobiles that contain the DRL337 system. Because Taxpayer has not complied with paragraph (h)(2)(iii)(B) of this section, the Commissioner may impute payment terms that are consistent with economic substance and susceptible to verification by the Commissioner.

(iv) *Conversion from fixed to contingent form of payment.* With regard to a conversion of a fixed present value to a contingent form of payment, see paragraphs (g)(2)(v) (Discount rate) and (g)(2)(vi) (Financial projections) of this section.

(3) *Coordination of best method rule and form of payment.* A method described in paragraph (g)(1) of this section evaluates the arm's length amount charged in a PCT in terms of a form of payment (method payment form). For example, the method payment form for the acquisition price method described in paragraph (g)(5) of this section, and for the market capitalization method described in paragraph (g)(6) of this section, is fixed payment. Applications of the income method provide different method payment forms. See paragraphs (g)(4)(i)(E) and (g)(4)(iv) of this section. The method payment form may not necessarily correspond to the form of payment specified pursuant to paragraphs (h)(2)(iii) and (k)(2)(ii)(l) of this section (specified payment form). The determination under § 1.482–1(c) of the method that provides the most reliable measure of an arm's length result is to be made without regard to whether the respective method payment forms under the competing methods correspond to the specified payment form. If the method payment form of the method determined under § 1.482–1(c) to provide the most reliable measure of an arm's length result differs from the specified payment form, then the conversion from such method payment form to such specified payment form will be made to the satisfaction of the Commissioner.

(i) *Allocations by the Commissioner in connection with a CSA*—(1) *In general.* The Commissioner may make allocations to adjust the results of a controlled transaction in connection with a CSA so that the results are consistent with an arm's length result, in accordance with the provisions of this paragraph (i).

(2) *CST allocations*—(i) *In general.* The Commissioner may make allocations to adjust the results of a CST so that the results are consistent with an

arm's length result, including any allocations to make each controlled participant's IDC share, as determined under paragraph (d)(4) of this section, equal to that participant's RAB share, as determined under paragraph (e)(1) of this section. Such allocations may result from, for purposes of CST determinations, adjustments to—

(A) Redetermine IDCs by adding any costs (or cost categories) that are directly identified with, or are reasonably allocable to, the IDA, or by removing any costs (or cost categories) that are not IDCs;

(B) Reallocate costs between the IDA and other business activities;

(C) Improve the reliability of the selection or application of the basis used for measuring benefits for purposes of estimating a controlled participant's RAB share;

(D) Improve the reliability of the projections used to estimate RAB shares, including adjustments described in paragraph (i)(2)(ii) of this section; and

(E) Allocate among the controlled participants any unallocated interests in cost shared intangibles.

(ii) *Adjustments to improve the reliability of projections used to estimate RAB shares*—(A) *Unreliable projections.* A significant divergence between projected benefit shares and benefit shares adjusted to take into account any available actual benefits to date (adjusted benefit shares) may indicate that the projections were not reliable for purposes of estimating RAB shares. In such a case, the Commissioner may use adjusted benefit shares as the most reliable measure of RAB shares and adjust IDC shares accordingly. The projected benefit shares will not be considered unreliable, as applied in a given taxable year, based on a divergence from adjusted benefit shares for every controlled participant that is less than or equal to 20% of the participant's projected benefits share. Further, the Commissioner will not make an allocation based on such divergence if the difference is due to an extraordinary event, beyond the control of the controlled participants, which could not reasonably have been anticipated at the time that costs were shared. The Commissioner generally may adjust projections of benefits used to calculate benefit shares in accordance with the provisions of § 1.482–1. In particular, if benefits are projected over a period of years, and the projections for initial years of the period prove to be unreliable, this may indicate that the projections for the remaining years of the period are also unreliable and thus should be adjusted. For purposes of this paragraph (i)(2)(ii)(A), all controlled participants that are not U.S. persons are treated as a single controlled participant. Therefore, an adjustment based on an unreliable projection of RAB shares will be made to the IDC shares of foreign controlled participants only if there is a matching adjustment to the IDC shares of controlled participants that are U.S. persons. Nothing in this paragraph (i)(2)(ii)(A) prevents the Commissioner from making an allocation if a taxpayer did not use the most reliable basis for measuring anticipated benefits. For example, if the taxpayer measures its anticipated benefits based on units sold, and the Commissioner determines that another basis is more reliable for measuring anticipated benefits, then the fact that actual units sold were within 20% of the projected unit sales will not preclude an allocation under this section.

(B) *Foreign-to-foreign adjustments.* Adjustments to IDC shares based on an unreliable projection also may be made among foreign controlled participants if the variation between actual and projected benefits has the effect of substantially reducing U.S. tax.

(C) *Correlative adjustments to PCTs.* Correlative adjustments will be made to any PCT Payments of a fixed amount that were determined based on RAB shares that are subsequently adjusted on a finding that they were based on unreliable projections. No correlative adjustments will be made to contingent PCT Payments regardless of whether RAB shares were used as a parameter in the valuation of those payments.

(D) *Examples.* The following examples illustrate the principles of this paragraph (i)(2)(ii):

Example 1. U.S. Parent (USP) and Foreign Subsidiary (FS) enter into a CSA to develop new food products, dividing costs on the basis of projected sales two years in the future. In Year 1, USP and FS project that their sales in Year 3 will be equal, and they divide costs accordingly. In Year 3, the Commissioner examines the controlled participants' method for dividing costs. USP and FS actually accounted for 42% and 58% of total sales, respectively. The Commissioner agrees that sales two years in the future provide a reliable basis for estimating benefit shares. Because the differences between USP's and FS's adjusted and projected benefit shares are less than 20% of their projected benefit shares, the projection of future benefits for Year 3 is reliable.

Example 2. The facts are the same as in *Example 1*, except that in Year 3 USP and FS actually accounted for 35% and 65% of total sales, respectively. The divergence between USP's projected and adjusted benefit shares is greater than 20% of USP's projected benefit share and is not due to an extraordinary event beyond the control of the controlled participants. The Commissioner concludes that the projected benefit shares were unreliable, and uses adjusted benefit shares as the basis for an adjustment to the cost shares borne by USP and FS.

Example 3. U.S. Parent (USP), a U.S. corporation, and its foreign subsidiary (FS) enter into a CSA in Year 1. They project that they will begin to receive benefits from cost shared intangibles in Years 4 through 6, and that USP will receive 60% of total benefits and FS 40% of total benefits. In Years 4 through 6, USP and FS actually receive 50% each of the total benefits. In evaluating the reliability of the controlled participants' projections, the Commissioner compares the adjusted benefit shares to the projected benefit shares. Although USP's adjusted benefit share (50%) is within 20% of its projected benefit share (60%), FS's adjusted benefit share (50%) is not within 20% of its projected benefit share (40%). Based on this discrepancy, the Commissioner may conclude that the controlled participants' projections were unreliable and may use adjusted benefit shares as the basis for an adjustment to the cost shares borne by USP and FS.

Example 4. Three controlled taxpayers, USP, FS1, and FS2 enter into a CSA. FS1 and FS2 are foreign. USP is a domestic corporation that controls all the stock of FS1 and FS2. The controlled participants project that they will share the total benefits of the cost shared intangibles in the following percentages: USP 50%; FS1 30%; and FS2 20%. Adjusted benefit shares are as follows: USP 45%; FS1 25%; and FS2 30%. In evaluating the reliability of the controlled participants' projections, the Commissioner compares these adjusted benefit shares to the projected benefit shares. For this purpose, FS1 and FS2 are treated as a single controlled participant. The adjusted benefit share received by USP (45%) is within 20% of its projected benefit share (50%). In addition, the non-U.S. controlled participant's adjusted benefit share (55%) is also within 20% of their projected benefit share (50%). Therefore, the Commissioner concludes that the controlled participant's projections of future benefits were reliable, despite the fact that FS2's adjusted benefit share (30%) is not within 20% of its projected benefit share (20%).

Example 5. The facts are the same as in *Example 4.* In addition, the Commissioner determines that FS2 has significant operating losses and has no earnings and profits, and that FS1 is profitable and has earnings and profits. Based on all the evidence, the Commissioner concludes that the controlled participants arranged that FS1 would bear a larger cost share than appropriate in order to reduce FS1's earnings and profits and thereby reduce inclusions USP otherwise would be deemed to have on account of FS1 under subpart F. Pursuant to paragraph (i)(2)(ii)(B) of this section, the Commissioner may make an adjustment solely to the cost shares borne by FS1 and FS2 because FS2's projection of future benefits was unreliable and the variation between adjusted and projected benefits had the effect of substantially reducing USP's U.S. income tax liability (on account of FS1 subpart F income).

Example 6. (i)(A) Foreign Parent (FP) and U.S. Subsidiary (USS) enter into a CSA in 1996 to develop a new treatment for baldness. USS's interest in any treatment developed is the right to produce and sell the treatment in the U.S. market while FP retains rights to produce and sell the treatment in the rest of the world. USS and FP measure their anticipated benefits from the CSA based on their respective projected future sales of the baldness treatment. The following sales projections are used:

SALES

[In millions of dollars]

Year	USS	FP
1	5	10
2	20	20
3	30	30
4	40	40
5	40	40
6	40	40
7	40	40
8	20	20
9	10	10
10	5	5

(B) In Year 1, the first year of sales, USS is projected to have lower sales than FP due to lags in U.S. regulatory approval for the baldness treatment. In each subsequent year, USS and FP are projected to have equal sales. Sales are projected to build over the first three years of the period, level off for several years, and then decline over the final years of the period as new and improved baldness treatments reach the market.

(ii) To account for USS's lag in sales in the Year 1, the present discounted value of sales over the period is used as the basis for measuring benefits. Based on the risk associated with this venture, a discount rate of 10 percent is selected. The present discounted value of projected sales is determined to be approximately $154.4 million for USS and $158.9 million for FP. On this basis USS and FP are projected to obtain approximately 49.3% and 50.7% of the benefit, respectively, and the costs of developing the baldness treatment are shared accordingly.

(iii)(A) In Year 6, the Commissioner examines the CSA. USS and FP have obtained the following sales results through Year 5:

SALES

[In millions of dollars]

Year	USS	FP
1	0	17
2	17	35
3	25	41
4	38	41
5	39	41

(B) USS's sales initially grew more slowly than projected while FP's sales grew more quickly. In each of the first three years of the period, the share of total sales of at least one of the parties diverged by over 20% from its projected share of sales. However, by Year 5 both parties' sales had leveled off at approximately their projected values. Taking into account this leveling off of sales and all the facts and circumstances, the Commissioner determines that it is appropriate to use the original projections for the remaining years of sales. Combining the actual results through Year 5 with the projections for subsequent years, and using a discount rate of 10%, the present discounted value of sales is approximately $141.6 million for USS and $187.3 million for FP. This result implies that USS and FP obtain approximately 43.1% and 56.9%, respectively, of the anticipated benefits from the baldness treatment. Because these adjusted benefit shares are within 20% of the benefit shares calculated based on the original sales projections, the Commissioner determines that, based on the difference between adjusted and projected benefit shares, the original projections were not unreliable. No adjustment is made based on the difference between adjusted and projected benefit shares.

Example 7. (i) The facts are the same as in *Example 6*, except that the actual sales results through Year 5 are as follows:

SALES

[In millions of dollars]

Year	USS	FP
1	0	17
2	17	35
3	25	44
4	34	54
5	36	55

(ii) Based on the discrepancy between the projections and the actual results and on consideration of all the facts, the Commissioner determines that for the remaining years the following sales projections are more reliable than the original projections:

SALES

[In millions of dollars]

Year	USS	FP
6	36	55
7	36	55
8	18	28
9	9	14
10	4.5	7

(iii) Combining the actual results through Year 5 with the projections for subsequent years, and using a discount rate of 10%, the present discounted value of sales is approximately $131.2 million for USS and $229.4 million for FP. This result implies that USS and FP obtain approximately 35.4% and 63.6%, respectively, of the anticipated benefits from the baldness treatment. These adjusted benefit shares diverge by greater than 20% from the benefit shares calculated based on the original sales projections, and the Commissioner determines that, based on the difference between adjusted and projected benefit shares, the original projections were unreliable. The Commissioner adjusts cost shares for each of the taxable years under examination to conform them to the recalculated shares of anticipated benefits.

(iii) *Timing of CST allocations.* If the Commissioner makes an allocation to adjust the results of a CST, the allocation must be reflected for tax purposes in the year in which the IDCs were incurred. When a CST payment is owed by one controlled participant to another controlled participant, the Commissioner may make appropriate allocations to reflect an arm's length rate of interest for the time value of money, consistent with the provisions of § 1.482–2(a) (Loans or advances).

(3) *PCT allocations.* The Commissioner may make allocations to adjust the results of a PCT so that the results are consistent with an arm's length result in accordance with the provisions of the applicable sections of the regulations under section 482, as determined pursuant to paragraph (a)(2) of this section.

(4) *Allocations regarding changes in participation under a CSA.* The Commissioner may make allocations to adjust the results of any controlled transaction described in paragraph (f) of this section if the controlled participants do not reflect arm's length results in relation to any such transaction.

(5) *Allocations when CSTs are consistently and materially disproportionate to RAB shares.* If a controlled participant bears IDC shares that are consistently and materially greater or lesser than its RAB share, then the Commissioner may conclude that the economic substance of the arrangement between the controlled participants is inconsistent with the terms of the CSA. In such a case, the Commissioner may disregard such terms and impute an agreement that is consistent with the controlled participants' course of conduct, under which a controlled participant that bore a disproportionately greater IDC share received additional interests in the cost shared intangibles. See § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms) and § 1.482–4(f)(3)(ii) (Identification of owner). Such additional interests will consist of partial undivided interests in the other controlled participant's interest in the cost shared intangible. Accordingly, that controlled participant must receive arm's length consideration from any controlled participant whose IDC share is less than its RAB share over time, under the provisions of §§ 1.482–1 and 1.482–4 through 1.482–6 to provide compensation for the latter controlled

participants' use of such partial undivided interest.

(6) *Periodic adjustments*—(i) *In general.* Subject to the exceptions in paragraph (i)(6)(vi) of this section, the Commissioner may make periodic adjustments for an open taxable year (the Adjustment Year) and for all subsequent taxable years for the duration of the CSA Activity with respect to all PCT Payments, if the Commissioner determines that, for a particular PCT (the Trigger PCT), a particular controlled participant that owes or owed a PCT Payment relating to that PCT (such controlled participant being referred to as the PCT Payor for purposes of this paragraph (i)(6)) has realized an Actually Experienced Return Ratio (AERR) that is outside the Periodic Return Ratio Range (PRRR). The satisfaction of the condition stated in the preceding sentence is referred to as a Periodic Trigger. See paragraphs (i)(6)(ii) through (vi) of this section regarding the PRRR, the AERR, and periodic adjustments. In determining whether to make such adjustments, the Commissioner may consider whether the outcome as adjusted more reliably reflects an arm's length result under all the relevant facts and circumstances, including any information known as of the Determination Date. The Determination Date is the date of the relevant determination by the Commissioner. The failure of the Commissioner to determine for an earlier taxable year that a PCT Payment was not arm's length will not preclude the Commissioner from making a periodic adjustment for a subsequent year. A periodic adjustment under this paragraph (i)(6) may be made without regard to whether the taxable year of the Trigger PCT or any other PCT remains open for statute of limitations purposes or whether a periodic adjustment has previously been made with respect to any PCT payment.

(ii) *PRRR.* Except as provided in the next sentence, the *PRRR* will consist of return ratios that are not less than .667 nor more than 1.5. Alternatively, if the controlled participants have not substantially complied with the documentation requirements referenced in paragraph (k) of this section, as modified, if applicable, by paragraphs (m)(2) and (3) of this section, the PRRR will consist of return ratios that are not less than .8 nor more than 1.25.

(iii) *AERR*—(A) *In general.* The *AERR* is the Present Value of Total Profits (PVTP) divided by the Present Value of Investment (PVI). In computing PVTP and PVI, present values are computed using the Applicable Discount Rate (ADR), and all information available as of the Determination Date is taken into account.

(B) *PVTP.* The *PVTP* is the present value, as of the CSA Start Date, as defined in section (j)(1)(i) of this section, of the PCT Payor's actually experienced divisional profits or losses from the CSA Start Date through the end of the Adjustment Year.

(C) *PVI.* The *PVI* is the present value, as of the CSA Start Date, of the PCT Payor's investment associated with the CSA Activity, defined as the sum of its cost contributions and its PCT Payments, from the CSA Start Date through the end of the Adjustment Year. For purposes of computing the PVI, PCT Payments means all PCT Payments due from a PCT Payor before netting against PCT Payments due from other controlled participants pursuant to paragraph (j)(3)(ii) of this section.

(iv) *ADR*—(A) *In general.* Except as provided in paragraph (i)(6)(iv)(B) of this section, the ADR is the discount rate pursuant to paragraph (g)(2)(v) of this section, subject to such adjustments as the Commissioner determines appropriate.

(B) *Publicly traded companies.* If the PCT Payor meets the conditions of paragraph (i)(6)(iv)(C) of this section, the ADR is the PCT Payor WACC as of the date of the Trigger PCT. However, if the Commissioner determines, or the controlled participants establish to the satisfaction of the Commissioner, that a discount rate other than the PCT Payor WACC better reflects the degree of risk of the CSA Activity as of such date, the ADR is such other discount rate.

(C) *Publicly traded.* A PCT Payor meets the conditions of this paragraph (i)(6)(iv)(C) if—

(*1*) Stock of the PCT Payor is publicly traded; or

(*2*) Stock of the PCT Payor is not publicly traded, provided—

(*i*) The PCT Payor is included in a group of companies for which consolidated financial statements are prepared; and

(*ii*) A publicly traded company in such group owns, directly or indirectly, stock in PCT Payor. Stock of a company is publicly traded within the meaning of this paragraph (i)(6)(iv)(C) if such stock is regularly traded on an established United States securities market and the company issues financial statements prepared in accordance with United States generally accepted accounting principles for the taxable year.

(D) *PCT Payor WACC.* The *PCT Payor WACC* is the WACC, as defined in paragraph (j)(1)(i) of this section, of the PCT Payor or the publicly traded company described in paragraph (i)(6)(iv)(C)(*2*)(*ii*) of this section, as the case may be.

(E) *Generally accepted accounting principles.* For purposes of paragraph (i)(6)(iv)(C) of this section, a financial statement prepared in accordance with a comprehensive body of generally accepted accounting principles other than United States generally accepted accounting principles is considered to be prepared in accordance with United States generally accepted accounting principles provided that the amounts of debt, equity, and interest expense are reflected in any reconciliation between such other accounting principles and United States generally accepted accounting principles required to be incorporated into the financial statement by the securities laws governing companies whose stock is regularly traded on United States securities markets.

(v) *Determination of periodic adjustments.* In the event of a Periodic Trigger, subject to paragraph (i)(6)(vi) of this section, the Commissioner may make periodic adjustments with respect to all PCT Payments between all PCT Payors and PCT Payees for the Adjustment Year and all subsequent years for the duration of the CSA Activity pursuant to the residual profit split method as provided in paragraph (g)(7) of this section, subject to the further modifications in this paragraph (i)(6)(v). A periodic adjustment may be made for a particular taxable year without regard to whether the taxable years of the Trigger PCT or other PCTs remain open for statute of limitation purposes.

(A) *In general.* Periodic adjustments are determined by the following steps:

(*1*) First, determine the present value, as of the date of the Trigger PCT, of the PCT Payments under paragraph (g)(7)(iii)(C)(*3*) of this section pursuant to the Adjusted RPSM as defined in paragraph (i)(6)(v)(B) of this section (first step result).

(*2*) Second, convert the first step result into a stream of contingent payments on a base of reasonably anticipated divisional profits or losses over the entire duration of the CSA Activity, using a level royalty rate (second step rate). See paragraph (h)(2)(iv) of this section (Conversion from fixed to contingent form of payment). This conversion is made based on all information known as of the Determination Date.

(*3*) Third, apply the second step rate to the actual divisional profit or loss for taxable years preceding and including the Adjustment Year to yield a stream of contingent payments for such years, and convert such stream to a present

value as of the CSA Start Date under the principles of paragraph (g)(2)(v) of this section (third step result). For this purpose, the second step rate applied to a loss for a particular year will yield a negative contingent payment for that year.

(*4*) Fourth, convert any actual PCT Payments up through the Adjustment Year to a present value as of the CSA Start Date under the principles of paragraph (g)(2)(v) of this section. Then subtract such amount from the third step result. Determine the nominal amount in the Adjustment Year that would have a present value as of the CSA Start Date equal to the present value determined in the previous sentence to determine the periodic adjustment in the Adjustment Year.

(*5*) Fifth, apply the second step rate to the actual divisional profit or loss for each taxable year after the Adjustment Year up to and including the taxable year that includes the Determination Date to yield a stream of contingent payments for such years. For this purpose, the second step rate applied to a loss will yield a negative contingent payment for that year. Then subtract from each such payment any actual PCT Payment made for the same year to determine the periodic adjustment for such taxable year.

(*6*) For each taxable year subsequent to the year that includes the Determination Date, the periodic adjustment for such taxable year (which is in lieu of any PCT Payment that would otherwise be payable for that year under the taxpayer's position) equals the second step rate applied to the actual divisional profit or loss for that year. For this purpose, the second step rate applied to a loss for a particular year will yield a negative contingent payment for that year.

(*7*) If the periodic adjustment for any taxable year is a positive amount, then it is an additional PCT Payment owed from the PCT Payor to the PCT Payee for such year. If the periodic adjustment for any taxable year is a negative amount, then it is an additional PCT Payment owed by the PCT Payee to the PCT Payor for such year.

(B) *Adjusted RPSM as of Determination Date.* The Adjusted RPSM is the residual profit split method pursuant to paragraph (g)(7) of this section applied to determine the present value, as of the date of the Trigger PCT, of the PCT Payments under paragraph (g)(7)(iii)(C)(*3*) of this section, with the following modifications.

(*1*) Actual results up through the Determination Date shall be substituted for what otherwise were the projected results over such period, as reasonably anticipated as of the date of the Trigger PCT.

(*2*) Projected results for the balance of the CSA Activity after the Determination Date, as reasonably anticipated as of the Determination Date, shall be substituted for what otherwise were the projected results over such period, as reasonably anticipated as of the date of the Trigger PCT.

(*3*) The requirement in paragraph (g)(7)(i) of this section, that at least two controlled participants make significant nonroutine contributions, does not apply.

(vi) *Exceptions to periodic adjustments*—(A) *Controlled participants establish periodic adjustment not warranted.* No periodic adjustment will be made under paragraphs (i)(6)(i) and (i)(6)(v) of this section if the controlled participants establish to the satisfaction of the Commissioner that all the conditions described in one of paragraphs (i)(6)(vi)(A)(*1*) through (*4*) of this section apply with respect to the Trigger PCT.

(*1*) *Transactions involving the same platform contribution as in the Trigger PCT.*

(*i*) The same platform contribution is furnished to an uncontrolled taxpayer under substantially the same circumstances as those of the relevant Trigger PCT and with a similar form of payment as the Trigger PCT;

(*ii*) This transaction serves as the basis for the application of the comparable uncontrolled transaction method described in paragraph (g)(3) of this section, in the first year and all subsequent years in which substantial PCT Payments relating to the Trigger PCT were required to be paid; and

(*iii*) The amount of those PCT Payments in that first year was arm's length.

(*2*) *Results not reasonably anticipated.* The differential between the AERR and the nearest bound of the PRRR is due to extraordinary events beyond the control of the controlled participants that could not reasonably have been anticipated as of the date of the Trigger PCT.

(*3*) *Reduced AERR does not cause Periodic Trigger.* The Periodic Trigger would not have occurred had the PCT Payor's divisional profits or losses used to calculate its PVTP excluded those profits or losses attributable to the PCT Payor's routine contributions to its exploitation of cost shared intangibles, attributable to its operating cost contributions, and attributable to its nonroutine contributions to the CSA Activity.

(*4*) *Increased AERR does not cause Periodic Trigger*—(*i*) The Periodic Trigger would not have occurred had the divisional profits or losses of the PCT Payor used to calculate its PVTP included its reasonably anticipated divisional profits or losses after the Adjustment Year from the CSA Activity, including from its routine contributions, its operating cost contributions, and its nonroutine contributions to that activity, and had the cost contributions and PCT Payments of the PCT Payor used to calculate its PVI included its reasonably anticipated cost contributions and PCT Payments after the Adjustment Year. The reasonably anticipated amounts in the previous sentence are determined based on all information available as of the Determination Date.

(*ii*) For purposes of this paragraph (i)(6)(vi)(A)(*4*), the controlled participants may, if they wish, assume that the average yearly divisional profits or losses for all taxable years prior to and including the Adjustment Year, in which there has been substantial exploitation of cost shared intangibles resulting from the CSA (exploitation years), will continue to be earned in each year over a period of years equal to 15 minus the number of exploitation years prior to and including the Determination Date.

(B) *Circumstances in which Periodic Trigger deemed not to occur.* No Periodic Trigger will be deemed to have occurred at the times and in the circumstances described in paragraph (i)(6)(vi)(B)(*1*) or (*2*) of this section.

(*1*) *10-year period.* In any year subsequent to the 10-year period beginning with the first taxable year in which there is substantial exploitation of cost shared intangibles resulting from the CSA, if the AERR determined is within the PRRR for each year of such 10-year period.

(*2*) *5-year period.* In any year of the 5-year period beginning with the first taxable year in which there is substantial exploitation of cost shared intangibles resulting from the CSA, if the AERR falls below the lower bound of the PRRR.

(vii) *Examples.* The following examples illustrate the rules of this paragraph (i)(6):

Example 1. (i) At the beginning of Year 1, USP, a publicly traded U.S. company, and FS, its wholly-owned foreign subsidiary, enter into a CSA to develop new technology for cell phones. USP has a platform contribution, the rights for an in-process technology that when developed will improve the clarity of calls, for which compensation is due from FS. FS has no platform contributions to the CSA, no operating contributions, and no operating cost contributions. USP and FS agree to fixed

PCT payments of $40 million in Year 1 and $10 million per year for Years 2 through 10. At the beginning of Year 1, the weighted average cost of capital of the controlled group that includes USP and FS is 15%. In Year 9, the Commissioner audits Years 5 through 7 of the CSA and considers whether any periodic adjustments should be made. USP and FS have substantially complied with the documentation requirements of paragraph (k) of this section.

(ii) FS experiences the results reported in the following table from its participation in the CSA through Year 7. In the table, all present values (PV) are reported as of the CSA Start Date, which is the same as the date of the PCT (and reflect a 15% discount rate as discussed in paragraph (iii) of this *Example 1*). Thus, in any year the present value of the cumulative investment is PVI and of the cumulative divisional profit or loss is PVTP. All amounts in this table and the tables that follow are reported in millions of dollars and cost contributions are referred to as ''CCs'' (for simplicity of calculation in this *Example 1*, all financial flows are assumed to occur at the beginning of the year).

a	b	c	d	e	f	g	h
Year	Sales	Non-CC costs	CCs	PCT payments	Investment (d+e)	Divisional profit or loss (b–c)	AERR (PVTP/PVI) (g/f)
1	0	0	15	40	55	0	
2	0	0	17	10	27	0	
3	0	0	18	10	28	0	
4	680	662	20	10	30	18	
5	836	718	22	10	32	118	
6	1,023	680	24	10	34	343	
7	1,079	747	27	10	37	332	
PV through Year 5	925	846	69	69	138	79	.58
PV through Year 6	1,434	1,184	81	74	155	250	1.62
PV through Year 7	1,900	1,507	93	78	171	393	2.31

(iii) Because USP is publicly traded in the United States and is a member of the controlled group to which FS (the PCT Payor) belongs, for purposes of calculating the AERR for FS, the present values of its PVTP and PVI are determined using an ADR of 15%, the weighted average cost of capital of the controlled group. (It is assumed that no other rate was determined or established, under paragraph (i)(6)(iv)(B) of this section, to better reflect the relevant degree of risk.) At a 15% discount rate, the PVTP, calculated as of Year 1, and based on actual profits realized by FS through Year 7 from exploiting the new cell phone technology developed by the CSA, is $393 million. The PVI, based on FS's cost contributions and its PCT Payments, is $171 million. The AERR for FS is equal to its PVTP divided by its PVI, $393 million/$171 million, or 2.31. There is a Periodic Trigger because FS's AERR of 2.31 falls outside the PRRR of .67 to 1.5, the applicable PRRR for controlled participants complying with the documentation requirements of this section.

(iv) At the time of the Determination Date, it is determined that the first Adjustment Year in which a Periodic Trigger occurred was Year 6, when the AERR of FS was determined to be 1.62. It is also determined that for Year 6 none of the exceptions to periodic adjustments described in paragraph (i)(6)(vi) of this section applies. The Commissioner exercises its discretion under paragraph (i)(6)(i) of this section to make periodic adjustments using Year 6 as the Adjustment Year. Therefore, the arm's length PCT Payments from FS to USP shall be determined for each taxable year using the adjusted residual profit split method described in paragraphs (g)(7)(v)(B) and (i)(6)(v)(B) of this section. Periodic adjustments will be made for each year to the extent the PCT Payments actually made by FS differ from the PCT Payment calculation under the adjusted residual profit split method.

(v) It is determined, as of the Determination Date, that the cost shared intangibles will be exploited through Year 10. FS's return for routine functions (determined by the Commissioner, based on the return for comparable routine functions undertaken by comparable uncontrolled companies, to be 10% of non-CC costs), and its actual and projected results, are described in the following table.

a	b	c	d	e	f	g
Year	Sales	Non-CC costs	Divisional profits or loss (b–c)	CCs	Routine return	Residual profit (d–e–f)
1	0	0	0	15	0	−15
2	0	0	0	17	0	−17
3	0	0	0	18	0	−18
4	680	662	18	20	66	−68
5	836	718	118	22	72	24
6	1,023	680	343	24	68	251
7	1,079	747	332	27	75	230
8	1,138	822	316	29	82	205
9	1,200	894	306	32	89	185
10	1.265	974	291	35	97	159
Cumulative PV through Year 10 as of CSA Start Date	3,080	2,385	695	124	238	332

(vi) The periodic adjustments are calculated in a series of steps set out in paragraph (i)(6)(v)(A) of this section. First, a lump sum for the PCT Payment is determined using the adjusted residual profit split method. Under the method, based on the considerations discussed in paragraph (g)(2)(v) of this section, the appropriate discount rate is 15% per year. The non-routine residual divisional profit or loss described in paragraph (g)(7)(iii)(B) of this section is $332 million. Further under paragraph (g)(7)(iii)(C) of this section, the entire nonroutine residual divisional profit constitutes the PCT Payment because only USP has nonroutine contributions.

(vii) In step two, the first step result ($332 million) is converted into a level royalty rate

based on the reasonably anticipated divisional profits or losses of the CSA Activity, the PV of which is reported in the table above (net PV of divisional profit or loss for Years 1 through 10 is $695 million). Consequently, the step two result is a level royalty rate of 47.8% ($332/$694) of the divisional profit in Years 1 through 10.

(viii) In step three, the Commissioner calculates the PCT Payments due through Year 6 by applying the step two royalty rate to the actual divisional profits for each year and then determines the aggregate PV of these PCT Payments as of the CSA Start Date ($120 million as reported in the following table). In step four, the PCT Payments actually made through Year 6 are similarly converted to PV as of the CSA Start Date ($74 million) and subtracted from the amount determined in step three ($120 million – $74 million = $46 million). That difference of $46 million, representing a net PV as of the CSA Start Date, is then converted to a nominal amount, as of the Adjustment Year, of equivalent present value (again using a discount rate of 15%). That nominal amount is $93 million (not shown in the table), and is the periodic adjustment in Year 6.

a	b	c	d	e
Year	Divisional profit	Royalty rate	Nominal royalty due under adjusted RPSM (b*c)	Nominal payments made
Year 1	0	47.8%	$0	$40
Year 2	0	47.8	0	10
Year 3	0	47.8	0	10
Year 4	18	47.8	9	10
Year 5	118	47.8	56	10
Year 6	343	47.8	164	10
Cumulative PV as of Year 1			120	74

(ix) Under step five, the royalties due from FS to USP for Year 7 (the year after the Adjustment Year) through Year 9 (the year including the Determination Date) are determined. (These determinations are made for Years 8 and 9 after the divisional profit for those years becomes available.) For each year, the periodic adjustment is a PCT Payment due in addition to the $10 million PCT Payment that must otherwise be paid under the CSA as described in paragraph (i) of this *Example 1*. That periodic adjustment is calculated as the product of the step two royalty rate and the divisional profit, minus the $10 million that was otherwise paid for that year. The calculations are shown in the following table:

a	b	c	d	E	f
Year	Divisional profit	Royalty rate	Royalty due (b*c)	PCT payments otherwise paid	Periodic adjustment (d–e)
7	332	47.8%	$159	$10	$149
8	316	47.8	151	10	141
9	306	47.8	146	10	136

(x) Under step six, the periodic adjustment for Year 10 (the only exploitation year after the year containing the Determination Date) will be determined by applying the step two royalty rate to the divisional profit. This periodic adjustment is a PCT Payment payable from FS to USP, and is in lieu of the $10 payment otherwise due. The calculations are shown in the following table, based on a divisional profit of $291 million. USP and FS experienced the following results in Year 10.

Year	Divisional profit	Royalty rate	Royalty due	PCT payment called for under original agreement but not made	Periodic adjustment
10	291	47.8%	$139	$10 (not paid)	$139

Example 2. The facts are the same as *Example 1* (i) through (iii). At the time of the Determination Date, it is determined that the first Adjustment Year in which a Periodic Trigger occurred was Year 6, when the AERR of FS was determined to be 1.62. Upon further investigation as to what may have caused the high return in FS's market, the Commissioner learns that, in Years 4 through 6, USP's leading competitors experienced severe, unforeseen disruptions in their supply chains resulting in a significant increase in USP's and FS's market share for cell phones. Further analysis determines that without this unforeseen occurrence the Periodic Trigger would not have occurred. Based on paragraph (i)(6)(vi)(A)(*2*) of this section, the Commissioner determines to his satisfaction that no adjustments are warranted.

(j) *Definitions and special rules*—(1) *Definitions*—(i) *In general*. For purposes of this section—

Term	Definition	Main cross references
Acquisition price		§ 1.482–7T(g)(5)(i).
Adjusted acquisition price		§ 1.482–7T(g)(5)(iii).
Adjusted average market capitalization		§ 1.482–7T(g)(6)(iv).
Adjusted benefit shares		§ 1.482–7T(i)(2)(ii)(A).
Adjusted RPSM		§ 1.482–7T(i)(6)(v)(B).

Term	Definition	Main cross references
Adjustment Year	.....	§ 1.482–7T(i)(6)(i).
ADR	.....	§ 1.482–7T(i)(6)(iv).
AERR	.....	§ 1.482–7T(i)(6)(iii).
Applicable Method	.....	§ 1.482–7T(g)(2)(ix)(A).
Average market capitalization	.....	§ 1.482–7T(g)(6)(iii).
Benefits	*Benefits* means the sum of additional revenue generated, plus cost savings, minus any cost increases from exploiting cost shared intangibles.	§ 1.482–7T(e)(1)(i).
Capability variation	.....	§ 1.482–7T(f)(3).
Change in participation under a CSA	.....	§ 1.482–7T(f).
Consolidated group	.....	§ 1.482–7T(j)(2)(i).
Contingent payments	.....	§ 1.482–7T(h)(2)(i)(B).
Controlled participant	*Controlled participant* means a controlled taxpayer, as defined under § 1.482–1(i)(5), that is a party to the contractual agreement that underlies the CSA, and that reasonably anticipates that it will derive benefits, as defined in paragraph (e)(1)(i) of this section, from exploiting one or more cost shared intangibles.	§ 1.482–7T(a)(1).
Controlled transfer of interests	.....	§ 1.482–7T(f)(2).
Cost contribution	.....	§ 1.482–7T(d)(4).
Cost shared intangible	*Cost shared intangible* means any intangible, within the meaning of § 1.482–4(b), that is developed by the IDA, including any portion of such intangible that reflects a platform contribution. Therefore, an intangible developed by the IDA is a cost shared intangible even though the intangible was not always or was never a reasonably anticipated cost shared intangible.	§ 1.482–7T(b).
Cost sharing alternative	.....	§ 1.482–7T(g)(4)(i)(B).
Cost sharing arrangement or CSA	.....	§ 1.482–7T(a), (b).
Cost sharing transactions or CSTs	.....	§ 1.482–7T(a)(1), (b)(1)(i).
Cross operating contributions	A *cross operating contribution* is any resource or capability or right, other than a platform contribution, that a controlled participant has developed, maintained, or acquired prior to the CSA Start Date that is reasonably anticipated to contribute to the CSA Activity within another controlled participant's division.	§ 1.482–7T(a)(3)(iii), (g)(2)(iv).
CSA Activity	*CSA Activity* is the activity of developing and exploiting cost shared intangibles.	§ 1.482–7T(c)(2)(i).
CSA Start Date	The earliest date that any IDC described in paragraph (d)(1) of this section occurred.	§ 1.482–7T(i)(6)(iii)(B).
CST Payments	.....	§ 1.482–7T(b)(1).
Date of PCT	.....	§ 1.482–7T(b)(3).
Determination Date	.....	§ 1.482–7T(i)(6)(i).
Division	*Division* means the territory or other division that serves as the basis of the division of interests under the CSA in the cost shared intangibles pursuant to § 1.482–7T(b)(4).	See definitions of divisional profit or loss, operating contribution, and operating cost contribution.
Divisional interest	.....	§ 1.482–7T(b)(1)(iii), (b)(4).
Divisional profit or loss	*Divisional profit or loss* means the operating profit or loss as separately earned by each controlled participant in its division from the CSA Activity, determined before any expense (including amortization) on account of cost contributions, operating cost contributions, routine platform and operating contributions, nonroutine contributions (including platform and operating contributions), and tax.	§ 1.482–7T(g)(4)(iii).
Fixed payments	.....	§ 1.482–7T(h)(2)(i)(A).
IDC share	.....	§ 1.482–7T(d)(4).
Input parameters	.....	§ 1.482–7T(g)(2)(ix)(B).
Intangible development activity or IDA	.....	§ 1.482–7T(d)(1).
Intangible development costs or IDCs	.....	§ 1.482–7T(a)(1), (d)(1).
Licensing alternative	.....	§ 1.482–7T(g)(4)(i)(C).
Licensing payments	*Licensing payments* means payments pursuant to the licensing obligations under the licensing alternative.	§ 1.482–7T(g)(4)(iii).

Term	Definition	Main cross references
Make-or-sell rights	.....	§ 1.482–7T(c)(4), (g)(2)(iv).
Market-based input parameter	.....	§ 1.482–7T(g)(2)(ix)(B).
Market returns for routine contributions	*Market returns for routine contributions* means returns determined by reference to the returns achieved by uncontrolled taxpayers engaged in activities similar to the relevant business activity in the controlled participant's division, consistent with the methods described in §§ 1.482–3, 1.482–4, 1.482–5, or § 1.482–9T(c).	§ 1.482–7T(g)(4), (g)(7).
Method payment form	.....	§ 1.482–7T(h)(3).
Nonroutine contributions	*Nonroutine contributions* means a controlled participant's contributions to the relevant business activities that are not routine contributions. Nonroutine contributions ordinarily include both nonroutine platform contributions and nonroutine operating contributions used by controlled participants in the commercial exploitation of their interests in the cost shared intangibles (for example, marketing intangibles used by a controlled participant in its division to sell products that are based on the cost shared intangible).	§ 1.482–7T(g).
Nonroutine residual divisional profit or loss	.....	§ 1.482–7T(g)(7)(iii).
Operating contributions	*An operating contribution* is any resource or capability or right, other than a platform contribution, that a controlled participant has developed, maintained, or acquired prior to the CSA Start Date that is reasonably anticipated to contribute to the CSA Activity within the controlled participant's division.	§ 1.482–7T(g)(2)(ii), (g)(4)(v)(E), (g)(7)(iii)(A) & (C).
Operating cost contributions	*Operating cost contributions* means all costs in the ordinary course of business on or after the CSA Start Date that, based on analysis of the facts and circumstances, are directly identified with, or are reasonably allocable to, developing resources, capabilities, or rights (other than reasonably anticipated cost shared intangibles) that are reasonably anticipated to contribute to the CSA Activity within the controlled participant's division.	§ 1.482–7T(g)(2)(ii), (g)(4)(iii), (g)(7)(iii)(B).
PCT Payee	.....	§ 1.482–7T(b)(1)(ii).
PCT Payment	.....	§ 1.482–7T(b)(1)(ii).
PCT Payor	.....	§ 1.482–7T(b)(1)(ii), (i)(6)(i).
PCT Payor WACC	.....	§ 1.482–7T(i)(6)(iv)(D).
Periodic adjustments	.....	§ 1.482–7T(i)(6)(i).
Periodic Trigger	.....	§ 1.482–7T(i)(6)(i).
Platform contribution transaction or PCT	.....	§ 1.482–7T(a)(2), (b)(1)(ii).
Platform contributions	.....	§ 1.482–7T(c)(1).
Post-tax income	.....	§ 1.482–7T(g)(2)(v)(B)(*3*), (g)(4)(i)(G).
Pre-tax income	.....	§ 1.482–7T(g)(2)(v)(B)(*3*), (g)(4)(i)(G).
Projected benefit shares	.....	§ 1.482–7T(i)(2)(ii)(A).
PRRR	.....	§ 1.482–7T(i)(6)(ii).
PVI	.....	§ 1.482–7T(i)(6)(iii)(C).
PVTP	.....	§ 1.482–7T(i)(6)(iii)(B).
Reasonably anticipated benefits	A controlled participant's *reasonably anticipated benefits* means the benefits that reasonably may be anticipated to be derived from exploiting cost shared intangibles. For purposes of this definition, benefits mean the sum of additional revenue generated, plus cost savings, minus any cost increases from exploiting cost shared intangibles.	§ 1.482–7T(e)(1).
Reasonably anticipated benefits or RAB shares	.....	§ 1.482–7T(a)(1), (e)(1).
Reasonably anticipated cost shared intangible	.....	§ 1.482–7T(d)(1)(ii).
Relevant business activity	.....	§ 1.482–7T(g)(7)(i).

Term	Definition	Main cross references
Routine contributions	*Routine contributions* means a controlled participant's contributions to the relevant business activities that are of the same or similar kind to those made by uncontrolled taxpayers involved in similar business activities for which it is possible to identify market returns. Routine contributions ordinarily include contributions of tangible property, services and intangibles that are generally owned by uncontrolled taxpayers engaged in similar activities. A functional analysis is required to identify these contributions according to the functions performed, risks assumed, and resources employed by each of the controlled participants.	§ 1.482–7T(g)(4), (g)(7).
Routine platform and operating contributions, and net routine platform and operating contributions.		§ 1.482–7T(g)(4)(vi), 1.482–7(g)(7)(iii)(C)(*4*).
Specified payment form		§ 1.482–7T(h)(3).
Stock-based compensation		§ 1.482–7T(d)(3).
Stock options		§ 1.482–7T(d)(3)(i).
Subsequent PCT		§ 1.482–7T(g)(2)(viii).
Target		§ 1.482–7T(g)(5)(i).
Trigger PCT		§ 1.482–7T(i)(6)(i).
Variable input parameter		§ 1.482–7T(g)(2)(ix)(C).
WACC	*WACC* means weighted average cost of capital.	§ 1.482–7T(i)(6)(iv)(D).

(ii) *Examples.* The following examples illustrate certain definitions in paragraph (j)(1)(i) of this section:

Example 1. Controlled participant. Foreign Parent (FP) is a foreign corporation engaged in the extraction of a natural resource. FP has a U.S. subsidiary (USS) to which FP sells supplies of this resource for sale in the United States. FP enters into a CSA with USS to develop a new machine to extract the natural resource. The machine uses a new extraction process that will be patented in the United States and in other countries. The CSA provides that USS will receive the rights to exploit the machine in the extraction of the natural resource in the United States, and FP will receive the rights in the rest of the world. This resource does not, however, exist in the United States. Despite the fact that USS has received the right to exploit this process in the United States, USS is not a controlled participant because it will not derive a benefit from exploiting the intangible developed under the CSA.

Example 2. Controlled participants. (i) U.S. Parent (USP), one foreign subsidiary (FS), and a second foreign subsidiary constituting the group's research arm (R+D) enter into a CSA to develop manufacturing intangibles for a new product line A. USP and FS are assigned the exclusive rights to exploit the intangibles respectively in the United States and the rest of the world, where each presently manufactures and sells various existing product lines. R+D is not assigned any rights to exploit the intangibles. R+D's activity consists solely in carrying out research for the group. It is reliably projected that the RAB shares of USP and FS will be 66⅔% and 33⅓%, respectively, and the parties' agreement provides that USP and FS will reimburse 66⅔% and 33⅓%, respectively, of the IDCs incurred by R+D with respect to the new intangible.

(ii) R+D does not qualify as a controlled participant within the meaning of paragraph (j)(1)(i) of this section, because it will not derive any benefits from exploiting cost shared intangibles. Therefore, R+D is treated as a service provider for purposes of this section and must receive arm's length consideration for the assistance it is deemed to provide to USP and FS, under the rules of paragraph (a)(3) of this section and §§ 1.482–4(f)(3)(iii), 1.482–4T(f)(4), and 1.482–9T, as appropriate. Such consideration must be treated as IDCs incurred by USP and FS in proportion to their RAB shares (that is, 66⅔% and 33⅓%, respectively). R+D will not be considered to bear any share of the IDCs under the arrangement.

Example 3. Cost shared intangible, reasonably anticipated cost shared intangible. U.S. Parent (USP) has developed and currently exploits an antihistamine, XY, which is manufactured in tablet form. USP enters into a CSA with its wholly-owned foreign subsidiary (FS) to develop XYZ, a new improved version of XY that will be manufactured as a nasal spray. Work under the CSA is fully devoted to developing XYZ, and XYZ is developed. During the development period, XYZ is a reasonably anticipated cost shared intangible under the CSA. Once developed, XYZ is a cost shared intangible under the CSA.

Example 4. Cost shared intangible. The facts are the same as in Example 3, except that in the course of developing XYZ, the controlled participants by accident discover ABC, a cure for disease D. ABC is a cost shared intangible under the CSA.

Example 5. Reasonably anticipated benefits. Controlled parties A and B enter into a cost sharing arrangement to develop product and process intangibles for an already existing Product P. Without such intangibles, A and B would each reasonably anticipate revenue, in present value terms, of $100M from sales of Product P until it became obsolete. With the intangibles, A and B each reasonably anticipate selling the same number of units each year, but reasonably anticipate that the price will be higher. Because the particular product intangible is more highly regarded in A's market, A reasonably anticipates an increase of $20M in present value revenue from the product intangible, while B reasonably anticipates only an increase of $10M. Further, A and B each reasonably anticipate spending an extra $5M present value in production costs to include the feature embodying the product intangible. Finally, A and B each reasonably anticipate saving $2M present value in production costs by using the process intangible. A and B reasonably anticipate no other economic effects from exploiting the cost shared intangibles. A's reasonably anticipated benefits from exploiting the cost shared intangibles equal its reasonably anticipated increase in revenue ($20M) plus its reasonably anticipated cost savings ($2M) minus its reasonably anticipated increased costs ($5M), which equals $17M. Similarly, B's reasonably anticipated benefits from exploiting the cost shared intangibles equal its reasonably anticipated increase in revenue ($10M) plus its reasonably anticipated cost savings ($2M) minus its reasonably anticipated increased costs ($5M), which equals $7M. Thus A's reasonably anticipated benefits are $17M and B's reasonably anticipated benefits are $7M.

(2) *Special rules*—(i) *Consolidated group.* For purposes of this section, all members of the same consolidated group shall be treated as one taxpayer. For these purposes, the term *consolidated group* means all members of a group of controlled entities created

or organized within a single country and subjected to an income tax by such country on the basis of their combined income.

(ii) *Trade or business.* A participant that is a foreign corporation or nonresident alien individual will not be treated as engaged in a trade or business within the United States solely by reason of its participation in a CSA. See generally § 1.864–2(a).

(iii) *Partnership.* A CSA, or an arrangement to which the Commissioner applies the rules of this section, will not be treated as a partnership to which the rules of subchapter K of the Internal Revenue Code apply. See § 301.7701–1(c) of this chapter.

(3) *Character*—(i) *CST Payments.* CST Payments generally will be considered the payor's costs of developing intangibles at the location where such development is conducted. For these purposes, IDCs borne directly by a controlled participant that are deductible are deemed to be reduced to the extent of any CST Payments owed to it by other controlled participants pursuant to the CSA. Each cost sharing payment received by a payee will be treated as coming pro rata from payments made by all payors and will be applied pro rata against the deductions for the taxable year that the payee is allowed in connection with the IDCs. Payments received in excess of such deductions will be treated as in consideration for use of the land and tangible property furnished for purposes of the CSA by the payee. For purposes of the research credit determined under section 41, CST Payments among controlled participants will be treated as provided for intra-group transactions in § 1.41–6(i). Any payment made or received by a taxpayer pursuant to an arrangement that the Commissioner determines not to be a CSA will be subject to the provisions of §§ 1.482–1, 1.482–4 through 1.482–6 and 1.482–9T. Any payment that in substance constitutes a cost sharing payment will be treated as such for purposes of this section, regardless of its characterization under foreign law.

(ii) *PCT Payments.* A PCT Payor's payment required under paragraph (b)(1)(ii) of this section is deemed to be reduced to the extent of any payments owed to it under such paragraph from other controlled participants. Each PCT Payment received by a PCT Payee will be treated as coming pro rata out of payments made by all PCT Payors. PCT Payments will be characterized consistently with the designation of the type of transaction pursuant to paragraphs (c)(3) and (k)(2)(ii)(H) of this section. Depending on such designation, such payments will be treated as either consideration for a transfer of an interest in intangible property or for services.

(iii) *Examples.* The following examples illustrate this paragraph (j)(3):

Example 1. U.S. Parent (USP) and its wholly owned Foreign Subsidiary (FS) form a CSA to develop a miniature widget, the Small R. Based on RAB shares, USP agrees to bear 40% and FS to bear 60% of the costs incurred during the term of the agreement. The principal IDCs are operating costs incurred by FS in Country Z of 100X annually, and costs incurred by USP in the United States also of 100X annually. Of the total costs of 200X, USP's share is 80X and FS's share is 120X so that FS must make a payment to USP of 20X. The payment will be treated as a reimbursement of 20X of USP's costs in the United States. Accordingly, USP's Form 1120 will reflect an 80X deduction on account of activities performed in the United States for purposes of allocation and apportionment of the deduction to source. The Form 5471 ''Information Return of U.S. Persons With Respect to Certain Foreign Corporations'' for FS will reflect a 100X deduction on account of activities performed in Country Z and a 20X deduction on account of activities performed in the United States.

Example 2. The facts are the same as in *Example 1*, except that the 100X of costs borne by USP consist of 5X of costs incurred by USP in the United States and 95X of arm's length rental charge, as described in paragraph (d)(1)(iii) of this section, for the use of a facility in the United States. The depreciation deduction attributable to the U.S. facility is 7X. The 20X net payment by FS to USP will first be applied in reduction pro rata of the 5X deduction for costs and the 7X depreciation deduction attributable to the U.S. facility. The 8X remainder will be treated as rent for the U.S. facility.

Example 3. (i) Four members A, B, C, and D of a controlled group form a CSA to develop the next generation technology for their business. Based on RAB shares, the participants agree to bear shares of the costs incurred during the term of the agreement in the following percentages: A 40%; B 15%; C 25%; and D 20%. The arm's length values of the platform contributions they respectively own are in the following amounts for the taxable year: A 80X; B 40X; C 30X; and D 30X. The provisional (before offsets) and final PCT Payments among A, B, C, and D are shown in the table as follows:

[All amounts stated in X's]

	A	B	C	D
Payments	<40>	<21>	<37.5>	<30>
Receipts	48	34	22.5	24
Final	8	13	<15>	<6>

(ii) The first row/first column shows A's provisional PCT Payment equal to the product of 100X (sum of 40X, 30X, and 30X) and A's RAB share of 40%. The second row/first column shows A's provisional PCT receipts equal to the sum of the products of 80X and B's, C's, and D's RAB shares (15%, 25%, and 20%, respectively). The other entries in the first two rows of the table are similarly computed. The last row shows the final PCT receipts/payments after offsets. Thus, for the taxable year, A and B are treated as receiving the 8X and 13X, respectively, pro rata out of payments by C and D of 15X and 6X, respectively.

(k) *CSA administrative requirements.* A controlled participant meets the requirements of this paragraph if it substantially complies, respectively, with the CSA contractual, documentation, accounting, and reporting requirements of paragraphs (k)(1), (k)(2), (k)(3), and (k)(4) of this section.

(1) *CSA contractual requirements*—(i) *In general.* A CSA must be recorded in writing in a contract that is contemporaneous with the formation (and any revision) of the CSA and that includes the contractual provisions described in this paragraph (k)(1).

(ii) *Contractual provisions.* The written contract described in this paragraph (k)(1) must include provisions that—

(A) List the controlled participants and any other members of the controlled group that are reasonably anticipated to benefit from the use of the cost shared intangibles, including the address of each domestic entity and the country of organization of each foreign entity;

(B) Describe the scope of the IDA to be undertaken and each reasonably anticipated cost shared intangible or class of reasonably anticipated cost shared intangibles;

(C) Specify the functions and risks that each controlled participant will undertake in connection with the CSA;

(D) Divide among the controlled participants all divisional interests in

cost shared intangibles and specify each controlled participant's divisional interest in the cost shared intangibles, as described in paragraphs (b)(1)(iii) and (b)(4) of this section, that it will own and exploit without any further obligation to compensate any other controlled participant for such interest;

(E) Provide a method to calculate the controlled participants' RAB shares, based on factors that can reasonably be expected to reflect the participants' shares of anticipated benefits, and require that such RAB shares must be updated, as described in paragraph (e)(1) of this section (see also paragraph (k)(2)(ii)(F) of this section);

(F) Enumerate all categories of IDCs to be shared under the CSA;

(G) Specify that the controlled participant must use a consistent method of accounting to determine IDCs and RAB shares, as described in paragraphs (d) and (e) of this section, respectively, and must translate foreign currencies on a consistent basis;

(H) Require the controlled participant to enter into CSTs covering all IDCs, as described in paragraph (b)(1)(i) of this section, in connection with the CSA;

(I) Require the controlled participants to enter into PCTs covering all platform contributions, as described in paragraph (b)(1)(ii) of this section, in connection with the CSA;

(J) Specify the form of payment due under each PCT (or group of PCTs) in existence at the formation (and any revision) of the CSA, including information and explanation that reasonably supports an analysis of applicable provisions of paragraph (h) of this section; and

(K) Specify the date on which the CSA is entered into and the duration of the CSA, the conditions under which the CSA may be modified or terminated, and the consequences of a modification or termination (including consequences described under the rules of paragraph (f) of this section).

(iii) *Meaning of contemporaneous*—(A) *In general.* For purposes of this paragraph (k)(1), a written contractual agreement is contemporaneous with the formation (or revision) of a CSA if, and only if, the controlled participants record the CSA, in its entirety, in a document that they sign and date no later than 60 days after the first occurrence of any IDC described in paragraph (d) of this section to which such agreement (or revision) is to apply.

(B) *Example.* The following example illustrates the principles of this paragraph (k)(1)(iii):

Example. Companies A and B, both of which are members of the same controlled group, commence an IDA on March 1, Year 1. Company A pays the first IDCs in relation to the IDA, as cash salaries to A's research staff, for the staff's work during the first week of March, Year 1. A and B, however, do not sign and date any written contractual agreement until August 1, Year 1, whereupon they execute a ''Cost Sharing Agreement'' that purports to be ''effective as of'' March 1 of Year 1. The arrangement fails the requirement that the participants record their arrangement in a written contractual agreement that is contemporaneous with the formation of a CSA. The arrangement has failed to meet the requirements set forth in paragraph (b)(2) of this section and, pursuant to paragraph (b) of this section, cannot be a CSA.

(iv) *Interpretation of contractual provisions*—(A) *In general.* The provisions of a written contract described in this paragraph (k)(1) and of the additional documentation described in paragraph (k)(2) of this section must be clear and unambiguous. The provisions will be interpreted by reference to the economic substance of the transaction and the actual conduct of the controlled participants. See § 1.482–1(d)(3)(ii)(B) (discussing interpretation of contractual terms in assessing the comparability of controlled and uncontrolled transactions). Accordingly, the Commissioner may impute contractual terms in a CSA consistent with the economic substance of the CSA and may disregard contractual terms that lack economic substance. An allocation of risk between controlled participants after the outcome of such risk is known or reasonably knowable lacks economic substance. See § 1.482–1(d)(3)(iii)(B). A contractual term that is disregarded due to a lack of economic substance does not satisfy a contractual requirement set forth in this paragraph (k)(1) or documentation requirement set forth in paragraph (k)(2) of this section. See paragraph (b)(5) of this section for the treatment of an arrangement among controlled taxpayers that fails to comply with the requirements of this section.

(B) *Examples.* The following examples illustrate the principles of this paragraph (k)(1)(iv). In each example, it is assumed that the Commissioner will exercise the discretion granted pursuant to paragraph (b)(5)(ii) of this section to apply the provisions of this section to the arrangement that purports to be a CSA.

Example 1. The contractual provisions recorded upon formation of an arrangement that purports to be a CSA provide that PCT payments with respect to a particular external contribution will consist of payments contingent on sales. Contrary to the contractual provisions, the PCT payments actually made are contingent on profits. Because the controlled participants' actual conduct is different from the contractual terms, the Commissioner may determine, based on the facts and circumstances, that—

(i) The actual payments have economic substance and, therefore, impute payment terms in the CSA consistent with the actual payments; or

(ii) The contract terms reflect the economic substance of the arrangement and, therefore, the actual payments must be adjusted to conform to the terms.

Example 2. An arrangement that purports to be a CSA provides that PCT payments with respect to a particular external contribution shall be contingent payments equal to 10% of sales of products that incorporate cost shared intangibles. The contract terms further provide that the controlled participants must adjust such contingent payments in accordance with a formula set forth in the terms. During the first three years of the arrangement, the controlled participants fail to make the adjustments required by the terms with respect to the PCT payments. The Commissioner may determine, based on the facts and circumstances, that—

(i) The contingent payment terms with respect to the external contribution do not have economic substance because the controlled participants did not act in accordance with their upfront risk allocation; or

(ii) The contract terms reflect the economic substance of the arrangement and, therefore, the actual payments must be adjusted to conform to the terms.

(2) *CSA documentation requirements*—(i) *In general.* The controlled participants must timely update and maintain sufficient documentation to establish that the participants have met the CSA contractual requirements of paragraph (k)(1) of this section and the additional CSA documentation requirements of this paragraph (k)(2).

(ii) *Additional CSA documentation requirements.* The controlled participants to a CSA must timely update and maintain documentation sufficient to—

(A) Describe the current scope of the IDA and identify—

(*1*) Any additions or subtractions from the list of reasonably anticipated cost shared intangibles reported pursuant to paragraph (k)(1)(ii)(B) of this section;

(*2*) Any cost shared intangible, together with each controlled participant's interest therein; and

(*3*) Any further development of intangibles already developed under the CSA or of specified applications of such intangibles which has been removed from the IDA (see paragraphs (d)(1)(ii) and (j)(1)(i) of this section (definitions of reasonably anticipated cost shared intangible, cost shared intangible)) and the steps (including any accounting classifications and allocations) taken to implement such removal.

(B) Establish that each controlled participant reasonably anticipates that it will derive benefits from exploiting cost shared intangibles;

(C) Describe the functions and risks that each controlled participant has undertaken during the term of the CSA;

(D) Provide an overview of each controlled participant's business segments, including an analysis of the economic and legal factors that affect CST and PCT pricing;

(E) Establish the amount of each controlled participant's IDCs for each taxable year under the CSA, including all IDCs attributable to stock-based compensation, as described in paragraph (d)(3) of this section (including the method of measurement and timing used in determining such IDCs, and the data, as of the date of grant, used to identify stock-based compensation with the IDA);

(F) Describe the method used to estimate each controlled participant's RAB share for each year during the course of the CSA, including—

(*1*) All projections used to estimate benefits;

(*2*) All updates of the RAB shares in accordance with paragraph (e)(1) of this section; and

(*3*) An explanation of why that method was selected and why the method provides the most reliable measure for estimating RAB shares;

(G) Describe all platform contributions;

(H) Designate the type of transaction involved for each PCT or group of PCTs;

(I) Specify, within the time period provided in paragraph (h)(2)(iii) of this section, the form of payment due under each PCT or group of PCTs, including information and explanation that reasonably supports an analysis of applicable provisions of paragraph (h) of this section;

(J) Describe and explain the method selected to determine the arm's length payment due under each PCT, including—

(*1*) An explanation of why the method selected constitutes the best method, as described in § 1.482–1(c)(2), for measuring an arm's length result;

(*2*) The economic analyses, data, and projections relied upon in developing and selecting the best method, including the source of the data and projections used;

(*3*) Each alternative method that was considered, and the reason or reasons that the alternative method was not selected;

(*4*) Any data that the controlled participant obtains, after the CSA takes effect, that would help determine if the controlled participant's method selected has been applied in a reasonable manner;

(*5*) The discount rate or rates, where applicable, used for purposes of evaluating PCT Payments, including information and explanation that reasonably supports an analysis of applicable provisions of paragraph (g)(2)(v) of this section;

(*6*) The estimated arm's length values of any platform contributions as of the dates of the relevant PCTs, in accordance with paragraph (g)(2)(ii) of this section;

(*7*) A discussion, where applicable, of why transactions were or were not aggregated under the principles of paragraph (g)(2)(iv) of this section;

(*8*) The method payment form and any conversion made from the method payment form to the specified payment form, as described in paragraph (h)(3) of this section; and

(*9*) If applicable under paragraph (i)(6)(iv) of this section, the WACC of the parent of the controlled group that includes the controlled participants.

(iii) *Coordination rules and production of documents*—(A) *Coordination with penalty regulations.* See § 1.6662–6(d)(2)(iii)(D) regarding coordination of the rules of this paragraph (k) with the documentation requirements for purposes of the accuracy-related penalty under section 6662(e) and (h).

(B) *Production of documentation.* Each controlled participant must provide to the Commissioner, within 30 days of a request, the items described in this paragraph (k)(2) and paragraph (k)(3) of this section. The time for compliance described in this paragraph (k)(2)(iii)(B) may be extended at the discretion of the Commissioner.

(3) *CSA accounting requirements*—(i) *In general.* The controlled participants must maintain books and records (and related or underlying data and information) that are sufficient to—

(A) Establish that the controlled participants have used (and are using) a consistent method of accounting to measure costs and benefits;

(B) Permit verification that the amount of any contingent PCT Payments due have been (and are being) properly determined;

(C) Translate foreign currencies on a consistent basis; and

(D) To the extent that the method of accounting used materially differs from U.S. generally accepted accounting principles, explain any such material differences.

(ii) *Reliance on financial accounting.* For purposes of this section, the controlled participants may not rely solely upon financial accounting to establish satisfaction of the accounting requirements of this paragraph (k)(4) of this section. Rather, the method of accounting must clearly reflect income. *Thor Power Tools Co.* v. *Commissioner*, 439 U.S. 522 (1979).

(4) *CSA reporting requirements*—(i) *CSA Statement.* Each controlled participant must file with the Internal Revenue Service, in the manner described in this paragraph (k)(4), a ''Statement of Controlled Participant to § 1.482–7T Cost Sharing Arrangement'' (CSA Statement) that complies with the requirements of this paragraph (k)(5).

(ii) *Content of CSA Statement.* The CSA Statement of each controlled participant must—

(A) State that the participant is a controlled participant in a CSA;

(B) Provide the controlled participant's taxpayer identification number;

(C) List the other controlled participants in the CSA, the country of organization of each such participant, and the taxpayer identification number of each such participant;

(D) Specify the earliest date that any IDC described in paragraph (d)(1) of this section occurred; and

(E) Indicate the date on which the controlled participants formed (or revised) the CSA and, if different from such date, the date on which the controlled participants recorded the CSA (or any revision) contemporaneously in accordance with paragraphs (k)(1)(i) and (iii) of this section.

(iii) *Time for filing CSA Statement*—(A) *90-day rule.* Each controlled participant must file its original CSA Statement with the Internal Revenue Service Ogden Campus, no later than 90 days after the first occurrence of an IDC to which the newly-formed CSA applies, as described in paragraph (k)(1)(iii)(A) of this section, or, in the case of a taxpayer that became a controlled participant after the formation of the CSA, no later than 90 days after such taxpayer became a controlled participant. A CSA Statement filed in accordance with this paragraph (k)(4)(iii)(A) must be dated and signed, under penalties of perjury, by an officer of the controlled participant who is duly authorized (under local law) to sign the statement on behalf of the controlled participant.

(B) *Annual return requirement*—(*1*) *In general.* Each controlled participant must attach to its U.S. income tax return, for each taxable year for the duration of the CSA, a copy of the original CSA Statement that the controlled participant filed in accordance with the 90-day rule of

paragraph (k)(4)(iii)(A) of this section. In addition, the controlled participant must update the information reflected on the original CSA Statement annually by attaching a schedule that documents changes in such information over time.

(*2*) *Special filing rule for annual return requirement.* If a controlled participant is not required to file a U.S. income tax return, the participant must ensure that the copy or copies of the CSA Statement and any updates are attached to Schedule M of any Form 5471, any Form 5472 ''Information Return of a Foreign Owned Corporation'', or any Form 8865 ''Return of U.S. Persons With Respect to Certain Foreign Partnerships'', filed with respect to that participant.

(iv) *Examples.* The following examples illustrate this paragraph (k)(4). In each example, Companies A and B are members of the same controlled group.

Example 1. A and B, both of which file U.S. tax returns, agree to share the costs of developing a new chemical formula in accordance with the provisions of this section. On March 30, Year 1, A and B record their agreement in a written contract styled, ''Cost Sharing Agreement.'' The contract applies by its terms to IDCs occurring after March 1, Year 1. The first IDCs to which the CSA applies occurred on March 15, Year 1. To comply with paragraph (k)(4)(iii)(A) of this section, A and B individually must file separate CSA Statements no later than 90 days after March 15, Year 1 (June 13, Year 1). Further, to comply with paragraph (k)(4)(iii)(B) of this section, A and B must attach copies of their respective CSA Statements to their respective Year 1 U.S. income tax returns.

Example 2. The facts are the same as in *Example 1*, except that a year has passed and C, which files a U.S. tax return, joined the CSA on May 9, Year 2. To comply with the annual filing requirement described in paragraph (k)(4)(iii)(B) of this section, A and B must each attach copies of their respective CSA Statements (as filed for Year 1) to their respective Year 2 income tax returns, along with a schedule updated appropriately to reflect the changes in information described in paragraph (k)(4)(ii) of this section resulting from the addition of C to the CSA. To comply with both the 90-day rule described in paragraph (k)(4)(iii)(A) of this section and the annual filing requirement described in paragraph (k)(4)(iii)(B) of this section, C must file a CSA Statement no later than 90 days after May 9, Year 2 (August 7, Year 2), and must attach a copy of such CSA Statement to its Year 2 income tax return.

(l) *Effective/applicability date.* This section applies on January 5, 2009.

(m) *Transition rule*—(1) *In general.* An arrangement in existence on January 5, 2009 will be considered a CSA, as described under paragraph (b) of this section, if, prior to such date, it was a qualified cost sharing arrangement under the provisions of § 1.482–7 (as contained in the 26 CFR part 1 edition revised as of January 1, 1996, hereafter referred to as ''former § 1.482–7''), but only if the written contract, as described in paragraph (k)(1) of this section, is amended, if necessary, to conform with, and only if the activities of the controlled participants substantially comply with, the provisions of this section, as modified by paragraphs (m)(2) and (m)(3) of this section, by July 6, 2009.

(2) *Transitional modification of applicable provisions.* For purposes of this paragraph (m), conformity and substantial compliance with the provisions of this section shall be determined with the following modifications:

(i) CSTs and PCTs occurring prior to January 5, 2009 shall be subject to the provisions of former § 1.482–7 rather than this section.

(ii) Except to the extent provided in paragraph (m)(3) of this section, PCTs that occur under a CSA that was a qualified cost sharing arrangement under the provisions of former § 1.482–7 and remained in effect on January 5, 2009, shall be subject to the periodic adjustment rules of § 1.482–4(f)(2) rather than the rules of paragraph (i)(6) of this section.

(iii) Paragraphs (b)(1)(iii) and (b)(4) of this section shall not apply.

(iv) Paragraph (k)(1)(ii)(D) of this section shall not apply.

(v) Paragraphs (k)(1)(ii)(H) and (k)(1)(ii)(I) of this section shall be construed as applying only to transactions entered into on or after January 5, 2009.

(vi) The deadline for recordation of the revised written contractual agreement pursuant to paragraph (k)(1)(iii) of this section shall be no later than July 6, 2009.

(vii) Paragraphs (k)(2)(ii)(G) through (J) of this section shall be construed as applying only with reference to PCTs entered into on or after January 5, 2009.

(viii) Paragraph (k)(4)(iii)(A) of this section shall be construed as requiring a CSA Statement with respect to the revised written contractual agreement described in paragraph (m)(3)(vi) of this section no later than September 2, 2009.

(ix) Paragraph (k)(4)(iii)(B) of this section shall be construed as only applying for taxable years ending after the filing of the CSA Statement described in paragraph (m)(2)(viii) of this section.

(3) *Special rule for certain periodic adjustments.* The periodic adjustment rules in paragraph (i)(6) of this section (rather than the rules of § 1.482–4(f)(2)) shall apply to PCTs that occur on or after the date of a material change in the scope of the CSA from its scope as of January 5, 2009. A material change in scope would include a material expansion of the activities undertaken beyond the scope of the intangible development area, as described in former § 1.482–7(b)(4)(iv). For this purpose, a contraction of the scope of a CSA, absent a material expansion into one or more lines of research and development beyond the scope of the intangible development area, does not constitute a material change in scope of the CSA. Whether a material change in scope has occurred is determined on a cumulative basis. Therefore, a series of expansions, any one of which is not a material expansion by itself, may collectively constitute a material expansion.

(n) *Expiration date.* The applicability of this section expires on or before December 30, 2011.

■ **Par. 13.** Section 1.482–8 is amended by revising paragraph (b) *Examples 10, 11*, and *12* and adding *Examples 13, 14, 15, 16, 17* and *18* at the end of paragraph (b) to read as follows:

§ 1.482–8 Examples of the best method rule.

* * * * *

(b) * * *

Examples 10 through *18.* [Reserved]. For further guidance, see § 1.482–8T(b) *Examples 10* through *18.*

■ **Par. 14.** Section 1.482–8T is amended by:

■ 1. Adding *Examples 13, 14, 15, 16, 17* and *18* at the end of paragraph (b).

■ 2. Revising paragraph (c).

The additions and revision reads as follows:

§ 1.482–8T Examples of the best method rule (temporary).

* * * * *

(b) * * *

Example 13. Preference for acquisition price method. (i) USP develops, manufacturers, and distributes pharmaceutical products. USP and FS, USP's wholly-owned subsidiary, enter into a CSA to develop a new oncological drug, Oncol. Immediately prior to entering into the CSA, USP acquires Company X, an unrelated U.S. pharmaceutical company. Company X is solely engaged in oncological pharmaceutical research, and its only significant resources and capabilities are its workforce and its sole patent, which is associated with Compound X, a promising molecular compound derived from a rare plant, which USP reasonably anticipates will contribute to developing Oncol. All of Company X researchers will be engaged solely in research that is reasonably anticipated to contribute to developing Oncol as well. The rights in the Compound X and the commitment of Company X's researchers to the development of Oncol are platform

contributions for which compensation is due from FS as part of a PCT.

(ii) In this case, the acquisition price method, based on the lump sum price paid by USP for Company X, is likely to provide a more reliable measure of an arm's length PCT Payment due to USP than the application of any other method. See §§ 1.482–4(c)(2) and 1.482–7T(g)(5)(iv)(A).

Example 14. Preference for market capitalization method. (i) Company X is a publicly traded U.S. company solely engaged in oncological pharmaceutical research and its only significant resources and capabilities are its workforce and its sole patent, which is associated with Compound Y, a promising molecular compound derived from a rare plant. Company X has no marketable products. Company X enters into a CSA with FS, a newly-formed foreign subsidiary, to develop a new oncological drug, Oncol, derived from Compound Y. Compound Y is reasonably anticipated to contribute to developing Oncol. All of Company X researchers will be engaged solely in research that is reasonably anticipated to contribute to developing Oncol under the CSA. The rights in Compound Y and the commitment of Company X's researchers are platform contributions for which compensation is due from FS as part of a PCT.

(ii) In this case, given that Company X's platform contributions covered by PCTs relate to its entire economic value, the application of the market capitalization method, based on the market capitalization of Company X, provides a reliable measure of an arm's length result for Company X's PCTs to the CSA. See §§ 1.482–4(c)(2) and 1.482–7T(g)(6)(v)(A).

Example 15. Preference for market capitalization method. (i) MicroDent, Inc. (MDI) is a publicly traded company that developed a new dental surgical microscope ScopeX–1, which drastically shortens many surgical procedures. On January 1 of Year 1, MDI entered into a CSA with a wholly-owned foreign subsidiary (FS) to develop ScopeX–2, the next generation of ScopeX–1. In the CSA, divisional interests are divided on a territorial basis. The rights associated with ScopeX–1, as well as MDI's research capabilities are reasonably anticipated to contribute to the development of ScopeX–2 and are therefore platform contributions for which compensation is due from FS as part of a PCT. At the time of the PCT, MDI's only product was the ScopeX–1 microscope, although MDI was in the process of developing ScopeX–2. Concurrent with the CSA, MDI separately transfers exclusive and perpetual exploitation rights associated with ScopeX–1 to FS in the same territory as assigned to FS in the CSA.

(ii) Although the transactions between MDI and FS under the CSA are distinct from the transactions between MDI and FS relating to the exploitation rights for ScopeX–1, it is likely to be more reliable to evaluate the combined effect of the transactions than to evaluate them in isolation. This is because the combined transactions between MDI and FS relate to all of the economic value of MDI (that is, the exploitation rights and research rights associated with ScopeX–1, as well as the research capabilities of MDI). In this case, application of the market capitalization method, based on the enterprise value of MDI on January 1 of Year 1, is likely to provides a reliable measure of an arm's length payment for the aggregated transactions. See §§ 1.482–4(c)(2) and 1.482–7T(g)(6)(v)(A).

(iii) Notwithstanding that the market capitalization method provides the most reliable measure of the aggregated transactions between MDI and FS, see § 1.482–7T(g)(2)(iv) for further considerations of when further analysis may be required to distinguish between the remuneration to MDI associated with PCTs under the CSA (for research rights and capabilities associated with ScopeX–1) and the remuneration to MDI for the exploitation rights associated with ScopeX–1.

Example 16. Income method (applied using CPM) preferred to acquisition price method. The facts are the same as *Example 13*, except that the acquisition occurred significantly in advance of formation of the CSA, and reliable adjustments cannot be made for this time difference. In addition, Company X has other valuable molecular patents and associated research capabilities, apart from Compound X, that are not reasonably anticipated to contribute to the development of Oncol and that cannot be reliably valued. The CSA divides divisional interests on a territorial basis. Under the terms of the CSA, USP will undertake all R&D (consisting of laboratory research and clinical testing) and manufacturing associated with Oncol, as well as the distribution activities for its territory (the United States). FS will distribute Oncol in its territory (the rest of the world). FS's distribution activities are routine in nature, and the profitability from its activities may be reliably determined from third-party comparables. FS does not furnish any platform contributions. At the time of the PCT, reliable (ex ante) financial projections associated with the development of Oncol and its separate exploitation in each of USP's and FSub's assigned geographical territories are undertaken. In this case, application of the income method using CPM is likely to provide a more reliable measure of an arm's length result than application of the acquisition price method based on the price paid by USP for Company X. See § 1.482–7T(g)(4)(v) and (g)(5)(iv)(C).

Example 17. Evaluation of alternative methods. (i) The facts are the same as *Example 13*, except that the acquisition occurred sometime prior to the CSA, and Company X has some areas of promising research that are not reasonably anticipated to contribute to developing Oncol. For purposes of this example, the CSA is assumed to divide divisional interests on a territorial basis. In general, the Commissioner determines that the acquisition price data is useful in informing the arm's length price, but not necessarily determinative. Under the terms of the CSA, USP will undertake all R&D (consisting of laboratory research and clinical testing) and manufacturing associated with Oncol, as well as the distribution activities for its territory (the United States). FS will distribute Oncol in its territory (the rest of the world). FS's distribution activities are routine in nature, and the profitability from its activities may be reliably determined from third-party comparables. At the time of the PCT, financial projections associated with the development of Oncol and its separate exploitation in each of USP's and FSub's assigned geographical territories are undertaken.

(ii) Under the facts, it is possible that the acquisition price method or the income method using CPM might reasonably be applied. Whether the acquisition price method or the income method provides the most reliable evidence of the arm's length price of USP's contributions depends on a number of factors, including the reliability of the financial projections, the reliability of the discount rate chosen, and the extent to which the acquisition price of Company X can be reliably adjusted to account for changes in value over the time period between the acquisition and the formation of the CSA and to account for the value of the in-process research done by Company X that does not constitute platform contributions to the CSA. See § 1.482–7T(g)(4)(v) and (g)(5)(iv)(A) and (C).

Example 18. Evaluation of alternative methods. (i) The facts are the same as *Example 17*, except that FS has a patent on Compound Y, which the parties reasonably anticipate will be useful in mitigating potential side effects associated with Compound X and thereby contribute to the development of Oncol. The rights in Compound Y constitute a platform contribution for which compensation is due from USP as part of a PCT. The value of FS's platform contribution cannot be reliably measured by market benchmarks.

(ii) Under the facts, it is possible that either the acquisition price method and the income method together or the residual profit split method might reasonably be applied to determine the arm's length PCT Payments due between USP and FS. Under the first option the PCT Payment for the platform contributions related to Company X's workforce and Compound X would be determined using the acquisition price method referring to the lump sum price paid by USP for Company X. Because the value of these platform contributions can be determined by reference to a market benchmark, they are considered routine platform contributions. Accordingly, under this option, the platform contribution related to Compound Y would be the only nonroutine platform contribution and the relevant PCT Payment is determined using the income method. Under the second option, rather than looking to the acquisition price for Company X, all the platform contributions are considered nonroutine and the RPSM is applied to determine the PCT Payments for each platform contribution. Under either option, the PCT Payments will be netted against each other.

(iii) Whether the acquisition price method together with the income method or the residual profit split method provides the most reliable evidence of the arm's length price of the platform contributions of USP and FS depends on a number of factors, including the reliability of the determination of the relative values of the platform

contributions for purposes of the RPSM, and the extent to which the acquisition price of Company X can be reliably adjusted to account for changes in value over the time period between the acquisition and the formation of the CSA and to account for the value of the rights in the in-process research done by Company X that does not constitute platform contributions to the CSA. In these circumstances, it is also relevant to consider whether the results of each method are consistent with each other, or whether one or both methods are consistent with other potential methods that could be applied. See § 1.482–7T(g)(4)(v), (g)(5)(iv), and (g)(7)(iv).

(c) *Effective/applicability date*—(1) *In general.* Paragraphs (a) and (b) *Examples 10* through *12* of this section are generally applicable for taxable years beginning after December 31, 2006. Paragraph (b) *Examples 13* through *18* of this section are generally applicable on January 5, 2009.

(2) *Election to apply regulation to earlier taxable years.* A person may elect to apply the provisions of paragraph (b) *Examples 10* through *12* of this section to earlier taxable years in accordance with rules set forth in § 1.482–9T(n)(2).

(3) *Expiration date.* The applicability of paragraphs (a) and (b) *Examples 10* through *12* of this section expires on or before July 31, 2009. The applicability of paragraph (b) *Examples 13* through *18* of this section expires on or before December 30, 2011.

■ **Par. 15.** Section 1.482–9T is amended by revising paragraph (m)(3), the heading for paragraph (n) and paragraph (n)(3) to read as follows:

§ 1.482–9T Methods to determine taxable income in connection with a controlled services transaction (temporary).

* * * * *

(m) * * *

(3) *Coordination with rules governing cost sharing arrangements.* Section 1.482–7T provides the specific methods to be used to determine arm's length results of controlled transactions in connection with a cost sharing arrangement. This section provides the specific methods to be used to determine arm's length results of a controlled service transaction, including in an arrangement for sharing the costs and risks of developing intangibles other than a cost sharing arrangement covered by § 1.482–7T. In the case of such an arrangement, consideration of the principles, methods, comparability, and reliability considerations set forth in § 1.482–7T is relevant in determining the best method, including an unspecified method, under this section, as appropriately adjusted in light of the differences in the facts and circumstances between such arrangement and a cost sharing arrangement.

* * * * *

(n) *Effective/applicability dates.*

* * *

(3) *Expiration dates.* The applicability of this section expires on July 31, 2009, except paragraph (m)(3) of this section, which expires on December 30, 2011.

■ **Par. 16.** Section 1.861–17 is amended by revising paragraph (c)(3)(iv) to read as follows:

§ 1.861–17 Allocation and apportionment of research and experimental expenditures.

* * * * *

(c) * * *

(3) * * *

(iv) *Effect of cost sharing arrangements.* If the corporation controlled by the taxpayer has entered into a cost sharing arrangement, in accordance with the provisions of § 1.482–7T, with the taxpayer for the purpose of developing intangible property, then that corporation shall not reasonably be expected to benefit from the taxpayer's share of the research expense.

* * * * *

■ **Par. 17.** Section 1.6662–6 is amended by:

■ 1. Removing the third and fourth sentences from paragraph (d)(2)(i).

■ 2. Adding a new paragraph (d)(2)(iii)(D).

The addition reads as follows:

§ 1.6662–6 Transaction between persons described in section 482 and net section 482 transfer price adjustments.

* * * * *

(d) * * *

(2) * * *

(iii) * * *

(D) Satisfaction of the documentation requirements described in § 1.482–7T(k)(2) for the purpose of complying with the rules for CSAs under § 1.482–7T also satisfies all of the documentation requirements listed in paragraph (d)(2)(iii)(B) of this section, except the requirements listed in paragraphs (d)(2)(iii)(B)(*2*) and (*10*) of this section, with respect to CSTs and PCTs described in § 1.482–7T(b)(1)(i) and (ii), provided that the documentation also satisfies the requirements of paragraph (d)(2)(iii)(A) of this section.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 18.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 19.** Section 301.7701–1 is amended by revising paragraphs (c) and (f) to read as follows:

§ 301.7701–1 Classification of organizations for Federal tax purposes.

* * * * *

(c) *Cost sharing arrangements.* A cost sharing arrangement that is described in § 1.482–7T of this chapter, including any arrangement that the Commissioner treats as a CSA under § 1.482–7T(b)(5) of this chapter, is not recognized as a separate entity for purposes of the Internal Revenue Code. See § 1.482–7T of this chapter for the rules regarding CSAs.

* * * * *

(f) *Effective/applicability dates.* Except as provided in the following sentence, the rules of this section are applicable as of January 1, 1997. The rules of paragraph (c) of this section are applicable on January 5, 2009.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 20.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 21.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control no.
* * * * * * *	
1.482–7T	1545–1364
* * * * * * *	

L.E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–30715 Filed 12–31–08; 11:15 am]

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