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# Federal Register

1–13–09 Tuesday
Vol. 74 No. 8 Jan. 13, 2009

Pages 1583–1870

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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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# Contents

**Federal Register**

Vol. 74, No. 8

Tuesday, January 13, 2009

**Agriculture Department**
*See* Animal and Plant Health Inspection Service
*See* Forest Service
*See* Natural Resources Conservation Service

**Alcohol, Tobacco, Firearms, and Explosives Bureau**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1707–1709

**Animal and Plant Health Inspection Service**
PROPOSED RULES
Official Animal Identification Numbering Systems, 1634–1643

**Centers for Disease Control and Prevention**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1688–1689
Meetings:
Subcommittee on Procedures Reviews, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH), 1689–1690

**Children and Families Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1690

**Commerce Department**
*See* Economic Analysis Bureau
*See* Industry and Security Bureau
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration

**Comptroller of the Currency**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1762–1763

**Department of Transportation**
*See* Pipeline and Hazardous Materials Safety Administration

**Drug Enforcement Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1709

**Economic Analysis Bureau**
RULES
Direct Investment Surveys:
BE–11, Annual Survey of U.S. Direct Investment Abroad, 1590–1591

**Education Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1666–1668

**Energy Department**
*See* Energy Efficiency and Renewable Energy Office
*See* Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board, Idaho National Laboratory, 1668–1669

**Energy Efficiency and Renewable Energy Office**
PROPOSED RULES
Public Meeting and Availability of the Preliminary Technical Support Document:
Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters, 1643–1646

**Environmental Protection Agency**
RULES
Approval and Promulgation of Implementation Plans:
Washington; Interstate Transport of Pollution, 1591–1593
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1679–1682
Meetings:
Board of Scientific Counselors, National Center for Environmental Research Standing Subcommittee Meeting—2009, 1682–1683
Total Coliform Rule/Distribution Systems Advisory Committee Agreement in Principle, 1683–1684

**Equal Employment Opportunity Commission**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1684

**Executive Office of the President**
*See* Presidential Documents

**Federal Aviation Administration**
PROPOSED RULES
Airworthiness Directives:
Airbus Model A318, A319, A320, and A321 Series Airplanes, 1646–1649
Airbus Model A330–200 and –300 Series Airplanes, and A340–200, –300, –500 and –600 Series Airplanes, 1649–1651
Class E Airspace:
Battle Creek, MI, 1652–1653
Omaha, NE, 1651–1652
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1751–1752
Environmental Assessments; Availability, etc.:
Barter Island Airport, Kaktovik, AK, 1752–1753
Petition for Exemption; Summary of Petition Received, 1753–1756
Second Meeting—Special Committee 219—Attitude and Heading Reference Systems (AHRS), 1756

**Federal Communications Commission**
RULES
Closed Captioning of Video Programming:
Closed Captioning Requirements for Digital Television Receivers, 1594–1605

Television Broadcasting Services:
Grand Island, NE, 1593
Hayes Center, NE, 1593–1594
PROPOSED RULES
Closed Captioning of Video Programming, 1654–1661
Television Broadcasting Services:
Cadillac, MI, 1653–1654
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1685
Meetings; Sunshine Act, 1685–1686
Petition for Reconsideration of Action in Rulemaking Proceeding, 1686

**Federal Energy Regulatory Commission**
NOTICES
Combined Notice of Filings, 1669–1679

**Federal Highway Administration**
NOTICES
Environmental Impact Statements; Intent:
Washington State, 1756–1757
Final Federal Agency Actions on a Proposed Highway Project in California, 1757–1758

**Federal Maritime Commission**
NOTICES
Agreement Filed, 1686

**Federal Motor Carrier Safety Administration**
NOTICES
Qualifications of Drivers; Exemption Applications:
Vision, 1758

**Federal Railroad Administration**
RULES
Policy on the Safety of Railroad Bridges, 1605–1607

**Federal Retirement Thrift Investment Board**
NOTICES
Meetings; Sunshine Act, 1687

**Federal Trade Commission**
RULES
Rules of Practice, 1804–1836
NOTICES
Revised Jurisdictional Thresholds for Section 7A of the Clayton Act, 1687–1688
Revised Jurisdictional Thresholds for Section 8 of the Clayton Act, 1688

**Federal Transit Administration**
NOTICES
Continuation of the Early Scoping-Efficient Transportation Decision Making Process for the South Florida East Coast Corridor Transit Analysis, 1758–1760

**Fish and Wildlife Service**
PROPOSED RULES
2008–2009 Refuge-Specific Hunting and Sport Fishing Regulations—Modifications, 1838–1865

**Food and Drug Administration**
NOTICES
Advisory Committees; Tentative Schedule of Meetings for 2009, 1690–1692
Draft Guidance for Industry:
Good Importer Practices; Availability, 1692–1693
Guidance for Industry:
Good Reprint Practices for the Distribution of Medical Journal Articles and Medical or Scientific Reference Publications on Unapproved New Uses of Approved Drugs and Approved or Cleared Medical Devices; Availability, 1694–1695
Participation of Certain Population Subsets in Clinical Drug Trials; Request for Comment, 1695–1697

**Foreign Assets Control Office**
NOTICES
Additional Designation of Entities Pursuant to Executive Order (13382), 1763–1768

**Forest Service**
NOTICES
Meetings:
Ravalli County Resource Advisory Committee, 1662

**General Services Administration**
NOTICES
GSA Bulletins:
Federal Travel Regulation (FTR 09–02), 1688

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Children and Families Administration
*See* Food and Drug Administration
*See* National Institutes of Health

**Homeland Security Department**
NOTICES
Meetings:
Homeland Security Information Network Advisory Committee, 1701–1702
No FEAR Act; Notification Requirements, 1702–1703
Privacy Act; Systems of Records, 1703–1704

**Housing and Urban Development Department**
RULES
Prohibition on Use of Indian Community Development Block Grant Assistance for Employment Relocation Activities, 1868–1869
NOTICES
Redelegation of Authority for Office of Public and Indian Housing, 1704–1705

**Industry and Security Bureau**
NOTICES
Meetings:
Sensors and Instrumentation Technical Advisory Committee, 1662

**Interior Department**
*See* Fish and Wildlife Service
*See* Land Management Bureau

**International Trade Administration**
NOTICES
Applications:
Export Trade Certificate of Review; Association for the Administration of Rice Quotas, Inc., 1662–1663

**International Trade Commission**
NOTICES
Investigations:
Circular Welded Carbon Quality Steel Line Pipe from China, 1706

Refined Brown Aluminum Oxide From China, 1706–1707

**Justice Department**
*See* Alcohol, Tobacco, Firearms, and Explosives Bureau
*See* Drug Enforcement Administration

**Land Management Bureau**
**NOTICES**
Survey Plat Filings:
Wyoming, 1705–1706

**National Highway Traffic Safety Administration**
**NOTICES**
Decision of Inconsequential Noncompliance:
Goodyear Tire & Rubber Co., 1760–1761

**National Institutes of Health**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1697–1698
Meetings:
Eunice Kennedy Shriver National Institute of Child Health & Human Development, 1698
National Center for Research Resources, 1698–1699
National Institute of Allergy and Infectious Diseases, 1701
National Institute of Dental and Craniofacial Research, 1701
National Institute of Diabetes and Digestive and Kidney Diseases, 1700–1701
National Institute on Aging, 1701
National Institute on Drug Abuse, 1699–1700

**National Oceanic and Atmospheric Administration**
**RULES**
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 14, 1621–1631
International Fisheries; Pacific Tuna Fisheries:
Revisions to Regulations for Vessels Authorized to Fish for Tuna and Tuna-like Species in the Eastern Tropical Pacific Ocean and to Requirements for the Submission of Fisheries Certificates of Origin, 1607–1620
Pacific Halibut Fisheries:
Bering Sea and Aleutian Islands King and Tanner Crab Fisheries; Groundfish Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Western Alaska Community Development Quota Program; Recordkeeping and Reporting; Permits; Cor, 1631–1633
**NOTICES**
Draft Guidelines for Use of Pesticide-Treated Wood Products; Availability, 1663–1664
International Whaling Commission; Intersessional Meeting on the Future of the International Whaling Commission; Nominations, 1664–1665
Meetings:
Gulf of Mexico Fishery Management Council; Correction, 1665
Western Pacific Fishery Management Council, 1665
U.S. Climate Change Science Program Draft Unified Synthesis Product Report:
Global Climate Change Impacts in the United States, 1666

**Natural Resources Conservation Service**
**RULES**
Regional Equity, 1587–1590

**Nuclear Regulatory Commission**
**NOTICES**
Environmental Assessment; Availability, etc.:
Hypervelocity Gun Facility, Naval Research Laboratory, Chesapeake Beach, MD, 1710–1712
Facility Operating Licenses, etc.:
Biweekly Notice, 1712–1723
Meetings; Sunshine Act, 1723

**Personnel Management Office**
**NOTICES**
Excepted Service, 1723–1724

**Pipeline and Hazardous Materials Safety Administration**
**RULES**
Hazardous Materials:
Improving the Safety of Railroad Tank Car Transportation of Hazardous Materials, 1770–1802

**Presidential Documents**
**ADMINISTRATIVE ORDERS**
Tom Lantos Block Burmese Junta's Anti-Democratic Efforts (JADE) Act of 2008, Assignment of Function (Memorandum of December 23, 2008), 1585
United Nations/African Union Mission in Darfur Support, Waiver of Reimbursement (Presidential Determination) No. 2009–10 of January 1, 2009, 1583

**Public Health Service**
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* National Institutes of Health

**Securities and Exchange Commission**
*See* Securities and Exchange Commission
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1724–1726
Applications:
Macquarie Global Infrastructure Total Return Fund Inc., et al., 1726–1730
SunAmerica Focused Alpha Growth Fund, Inc., et al., 1730–1734
Meetings; Sunshine Act, 1734
Self-Regulatory Organizations; Proposed Rule Changes:
Boston Stock Exchange, Inc., 1734–1736
Chicago Board Options Exchange, Inc., 1736–1738
Financial Industry Regulatory Authority, Inc., 1738–1740
International Securities Exchange, LLC, 1740–1741
Municipal Securities Rulemaking Board, 1741–1743
NASDAQ Stock Market LLC, 1743–1744
New York Stock Exchange LLC, 1744–1749

**Small Business Administration**
**NOTICES**
Disaster Declarations:
Hawaii, 1749
Maine, 1749–1750
Massachusetts, 1750
Missouri, 1750–1751
New Hampshire, 1751
Meetings:
National Small Business Development Center Advisory Board, 1751

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Highway Administration

*See* Federal Motor Carrier Safety Administration
*See* Federal Railroad Administration
*See* Federal Transit Administration
*See* National Highway Traffic Safety Administration
*See* Pipeline and Hazardous Materials Safety Administration

**Treasury Department**
*See* Comptroller of the Currency
*See* Foreign Assets Control Office
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1761–1762
Meetings:
Debt Management Advisory Committee, 1762

**U.S.–China Economic and Security Review Commission**
**NOTICES**
Public Hearings:
U.S.–China Economic and Security Review Commission, 1768

**Separate Parts In This Issue**

**Part II**
Transportation Department, Pipeline and Hazardous Materials Safety Administration, 1770–1802

**Part III**
Federal Trade Commission, 1804–1836

**Part IV**
Interior Department, Fish and Wildlife Service, 1838–1865

**Part V**
Housing and Urban Development, 1868–1869

**Reader Aids**

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

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## CFR PARTS AFFECTED IN THIS ISSUE

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


**3 CFR**

**Administrative Orders:**

**Memorandums:**

Memorandum of December 23, 2008 ....1585

**Presidential Determinations:**

No. 2009-10 of January 1, 2009 ....1583

**7 CFR**

662 ....1587

**9 CFR**

**Proposed Rules:**

71 ....1634
77 ....1634
78 ....1634
79 ....1634
80 ....1634

**10 CFR**

**Proposed Rules:**

430 ....1643

**14 CFR**

**Proposed Rules:**

39 (2 documents) ....1646, 1649
71 (2 documents) ....1651, 1652

**15 CFR**

806 ....1590

**16 CFR**

3 ....1804
4 ....1804

**24 CFR**

1003 ....1868

**40 CFR**

52 ....1591

**47 CFR**

73 (2 documents) ....1593
79 ....1594

**Proposed Rules:**

73 ....1653
79 ....1654

**49 CFR**

171 ....1770
172 ....1770
173 ....1770
174 ....1770
179 ....1770
213 ....1605

**50 CFR**

216 ....1607
300 ....1607
622 ....1621
679 ....1631

**Proposed Rules:**

32 ....1838

Federal Register
Vol. 74, No. 8
Tuesday, January 13, 2009

# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 2009–10 of January 1, 2009**

## Waiver of Reimbursement Under the United Nations Participation Act to Support the United Nations/African Union Mission in Darfur

**Memorandum for the Secretary of State**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 10(d)(1) of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287e–2(d)(1)), I hereby determine that provision of assistance to the United Nations/African Union Mission in Darfur to support the airlift of equipment for peacekeeping in Darfur without reimbursement from the United Nations is important to the security interests of the United States.

You are authorized and directed to report this determination to the Congress and to arrange for its publication in the *Federal Register*.

THE WHITE HOUSE,
*Washington, January 1, 2009*

[FR Doc. E9–598
Filed 1–12–09; 8:45 am]
Billing code 4710–10–P

Federal Register
Vol. 74, No. 8
Tuesday, January 13, 2009

# Presidential Documents

**Title 3—**

## The President

**Memorandum of December 23, 2008**

## Assignment of Reporting Function Under Section 14(b) of the Tom Lantos Block Burmese Junta's Anti-Democratic Efforts (JADE) Act of 2008

**Memorandum for the Secretary of State**

By virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the function conferred upon the President by section 14(b) of the Tom Lantos Block Burmese Junta's Anti-Democratic Efforts (JADE) Act of 2008 (Public Law 110–286).

You are authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
*Washington, December 23, 2008*

[FR Doc. E9–595
Filed 1–12–09; 8:45 am]
Billing code 4710–10–P

# Rules and Regulations

Federal Register
Vol. 74, No. 8
Tuesday, January 13, 2009

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

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### 7 CFR Part 662

**RIN 0578–AA44**

### Regional Equity

**AGENCY:** Natural Resources Conservation Service, United States Department of Agriculture.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** Section 2703 of Title II of the Food, Conservation, and Energy Act of 2008 (the 2008 Act) (Pub. L. 110–246) reauthorizes the subsection on Regional Equity established under section 1241(d) of the Food Security Act of 1985 (16 U.S.C. 3841(d)), as amended (Regional Equity provision). The purpose of this provision is to give priority to certain states for certain conservation program funding. States eligible to receive funding through the Regional Equity provision are those that have not received, for a given fiscal year, an aggregate allocation of at least $15,000,000 from programs specified in the Regional Equity provision. In addition, States must have approved applications for financial and technical assistance under the specified programs in order to be eligible to receive funding. The Regional Equity programs are all of the conservation programs authorized by subtitle D, Title XII of the Food Security Act of 1985, 16 U.S.C. 3801 *et seq.,* except for the Conservation Reserve Program, the Wetland Reserve Program, and the Conservation Security Program, which are excluded from the conservation programs affected by the Regional Equity provision. This interim final rule sets forth how the Natural Resources Conservation Service (NRCS), an agency of the U.S. Department of Agriculture (USDA), will implement the Regional Equity provision.

**DATES:** *Effective Date:* This rule is effective January 13, 2009.

*Comment Date:* Submit comments on or before March 16, 2009.

**ADDRESSES:** You may send comments (identified by the subject of Regional Equity) using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Agriculture, Natural Resources Conservation Service, Attn: Program Allocations and Management Support Team, Regional Equity Comments, P.O. Box 2890, Room 5212–S, Washington, DC 20013.
- *Fax:* 1–202–690–2378.
- *Hand Delivery:* Room 5212 of the USDA South Office Building, 1400 Independence Avenue, SW., Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Office Building to call 202–720–4527 in order to be escorted into the building.
- This interim final rule may be accessed via the Internet. Users can access the NRCS homepage at *http://www.nrcs.usda.gov/*; select the *Farm Bill* link from the menu; select the *Interim final* link from beneath the *Final and Interim Final Rules Index* title.
- For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**FOR FURTHER INFORMATION CONTACT:** Team Leader, Program Allocations and Management Support Team, NRCS, P.O. Box 2890, Room 5212–S, Washington, DC 20013; telephone (202) 690–0547; submit e-mail to: *RE2008@wdc.usda.gov*, Attention: Regional Equity comments.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The NRCS invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are also invited relating to the economic or environmental impacts that might result from adopting this regulation. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended changes, and include supporting data. Please send two copies of written comments. All comments received will be filed in the docket, as well as a report summarizing each substantive public comment concerning this interim final rule. The docket, including any personal information provided, is made available for public inspection. All comments received on or before the closing date for comments will be considered. The regulation may be changed because of the comments received.

### Regulatory Certifications

*Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this interim final rule is not significant and will not be reviewed by OMB under Executive Order 12866.

*Regulatory Flexibility Act*

It has been determined that the Regulatory Flexibility Act is not applicable to this interim final rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

*Environmental Analysis*

The Regional Equity interim final rule establishes procedures for implementing this provision at part 662 of this title and will not directly impact the environment. This interim final rule falls within the categories of activities that have been determined not to have a significant individual or cumulative effect on the human environment and are excluded from the preparation of environmental assessment or environmental impact statement as set forth in the U.S. Department of Agriculture's (USDA) National Environmental Policy Act regulations in 7 CFR part 1b.3. Regional Equity is an administrative function that relates to the funding of programs and fund disbursements. These activities are categorically excluded based upon 7 CFR part 1b.3(a)(1) and 7 CFR part 1b.3(a)(2) of USDA regulations.

*Paperwork Reduction Act*

Section 2904 of the 2008 Act requires that implementation of programs authorized by Title II of the Act be made without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this interim final rule.

*Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA requires NRCS to prepare a written statement, including a cost benefit assessment, for proposed and final rules with ''Federal mandates'' that may result in such expenditures for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

*Executive Order 12988*

This interim final rule has been reviewed in accordance with Executive Order 12988. The provisions of this interim final rule are not retroactive. Furthermore, the provisions of this interim final rule preempt State and local laws to the extent such laws are inconsistent with this interim final rule.

*Executive Order 13132*

NRCS has considered this interim final rule in accordance with Executive Order 13132, issued August 4, 1999. NRCS has determined that the interim final rule conforms with the Federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. Therefore, NRCS concludes that this interim final rule does not have Federalism implications.

**Background**

The Regional Equity provision (16 U.S.C. 3841(d)) was first introduced in the Farm Security and Rural Investment Act of 2002 (the 2002 Act) (Pub. L. 107–171), which amended the Food Security Act of 1985 (Pub. L. 99–198) to add the provision as section 1241(d), 16 U.S.C. 3841(d). Regional Equity, as established in the 2002 Act, required the Secretary to give priority for funding under certain conservation programs in subtitle D of the Food Security Act of 1985. The conservation programs listed under subtitle D (in the 2002 Act) included: Farm and Ranch Lands Protection Program, Grassland Reserve Program, Environmental Quality Incentives Program, Conservation Innovation Grants, Ground and Surface Water Conservation Program, Conservation of Private Grazing Land, Wildlife Habitat Incentive Program, Grassroots Source Water Protection Program, and Great Lakes Basin Program. The Conservation Reserve Program, the Wetlands Reserve Program, and the Conservation Security Program were excluded from the Regional Equity provision. Under that Regional Equity provision, those States (Regional Equity States) that did not receive an aggregate allocation, from the conservation programs specified in the statute, greater than $12,000,000 were eligible to receive additional funding. The additional funding made available to Regional Equity States, in order to reach the $12,000,000 requirement, was taken from those States that had initial aggregate funding allocations of specified conservation programs greater than $12,000,000. In addition, Regional Equity States were required to have approved applications for the specified conservation programs in order to receive Regional Equity funding. The 2002 Act set an April 1st deadline for Regional Equity States to have priority for the funding. NRCS implemented the Regional Equity provision utilizing multiple funding procedures from fiscal year 2004 through fiscal year 2008.

**Statutory Authority and Interim Final Rule**

The 2008 Act amended the Regional Equity provision. The 2008 Act increased the funding level used to identify Regional Equity States from $12,000,000 to $15,000,000, established new conservation programs under subtitle D that are subject to the Regional Equity provision (Agricultural Water Enhancement Program, Conservation Stewardship Program, Chesapeake Bay Watershed Program, and Voluntary Public Access and Habitat Incentive Program), and added language requiring the consideration of the respective demand in a Regional Equity State. NRCS is developing this regulation to establish consistency and certainty in implementation procedures for the Regional Equity provision.

*Section-by-Section Overview*

Section 662.1 describes the general purpose of the regulations, which is to establish NRCS implementation procedures for the Regional Equity provision. Section 662.2 defines terms used in this part. Section 662.3 describes applicability of the Regional Equity provision.

Finally, section 662.4 outlines the procedures for priority funding and allocation of program funds, in accordance with the Regional Equity provision. The Regional Equity provision requires the Secretary to give priority for funding to approved applications in Regional Equity States. NRCS will give priority for funding to approved applications in Regional Equity States by establishing program-specific drawing accounts for each covered program, sufficient to bring all Regional Equity States to $15,000,000 (funding opportunity). A Regional Equity State can request funds from the program-specific drawing accounts after the State has obligated at least 90 percent of its initial program allocation. This process enables NRCS to monitor the use of drawing account funds and ensure that funds are used in the most effective and timely manner. NRCS used a similar funding allocation procedure in fiscal year 2008. In fiscal year 2008, some Regional Equity States were unable to use all of their Regional Equity funding. By holding Regional Equity funds in program-specific drawing accounts, NRCS was able to reallocate these funds earlier in the fiscal year and was able to identify States that could obligate the funds toward high priority needs. This approach positions the Agency to ensure that program funds are directed to the highest-ranked applications.

The 2008 Act added a requirement that the Secretary consider the respective demand in each Regional Equity State for each program covered by the Regional Equity provision. NRCS will consider the respective demand in each Regional Equity State in each program by having State Conservationists in Regional Equity States cooperatively determine the funding opportunity for each state's program-specific drawing account. State Conservationists will consult with their respective State Technical Committees in evaluating the demand in their State

for funding from the drawing accounts. In evaluating the demand for Regional Equity funding opportunities, State Conservationists will consider how applications address national program priorities; historic trends in program interest; and priority State natural resource concerns. This will enable additional funds to be allocated in a way that meets the natural resource conservation needs of each state's producers, meets the demand of each State's program needs, and helps ensure that States do not receive additional funding when there is insufficient demand.

**List of Subjects in 7 CFR Part 662**

Administrative practice and procedure, Agriculture, Soil conservation.

■ For the reasons stated in the preamble, the Natural Resources Conservation Service is adding a new part 662 in chapter VI of Title 7 of the Code of Federal Regulations to read as follows:

## PART 662—REGIONAL EQUITY

Sec.
662.1 General.
662.2 Definitions.
662.3 Applicability.
662.4 Regional Equity implementation procedure.

**Authority:** 16 U.S.C. 3841(d).

### § 662.1 General.

This part sets forth the procedures that the Natural Resources Conservation Service (NRCS) will use to implement the Regional Equity provision of the Food, Security Act of 1985, 16 U.S.C. 3841(d).

### § 662.2 Definitions.

The following definitions are applicable to this part:

*Chief* means the Chief of the Natural Resources Conservation Service or the person delegated authority to act on behalf of the Chief.

*Contribution programs* means Regional Equity programs that contribute funding to Regional Equity States, as determined by the Chief each fiscal year, consistent with the limitations established in 16 U.S.C. 3841(d).

*Drawing account* means the aggregated amount of contribution program funds required to bring all States to the Regional Equity threshold.

*Funding opportunity* means the amount of funding needed to bring a State to the $15,000,000 Regional Equity threshold for the aggregate of the Regional Equity programs.

*Initial allocation* means the amount of conservation program allocation funding provided to all States through a merit-based, natural resource focused process.

*Obligated* means a specific binding agreement, in writing, for the purpose authorized by law and executed while the funding is available.

*Regional Equity provision* means the statutory requirement to give priority funding before April 1st for approved applications for specific programs within States that have not received a $15,000,000 aggregate level of funding.

*Regional Equity programs* means conservation programs under subtitle D (excluding the Conservation Reserve program, the Wetlands Reserve Program, and the Conservation Security Program) of the Food Security Act of 1985. These programs include: Conservation Stewardship Program, Farm and Ranch Lands Protection Program, Grassland Reserve Program, Environmental Quality Incentives Program, Conservation Innovation Grants, Agricultural Water Enhancement Program, Conservation of Private Grazing Land, Wildlife Habitat Incentive Program, Grassroots Source Water Protection Program, Great Lakes Basin Program, Chesapeake Bay Watershed Program, and the Voluntary Public Access and Habitat Incentive Program. Regional Equity programs will be aggregated to determine whether a State meets the $15,000,000 Regional Equity threshold. However, not all Regional Equity programs will be considered contribution programs.

*Regional Equity threshold* means the $15,000,000 minimum aggregate amount of Regional Equity program funds.

*Regional Equity States* means any State not meeting the Regional Equity threshold of $15,000,000 through the initial allocation for Regional Equity programs.

*Respective demand* means the mix of contribution program funds that each State Conservationist in a Regional Equity state requests to fill that State's funding opportunity.

*State* means all 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Marianna Islands, and the Freely Associated States.

*State Conservationist* means the NRCS employee authorized to implement Regional Equity programs and direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Islands Area.

### § 662.3 Applicability.

The regulation in this part sets forth the policies and procedures for the Regional Equity provision as administered by the NRCS. This regulation applies to the Regional Equity programs defined in this part. The Chief of NRCS will implement the Regional Equity provision by identifying programs that contribute to the establishment of program-specific drawing accounts for priority funding in Regional Equity states.

### § 662.4 Regional Equity implementation procedure.

The following procedures will implement the Regional Equity provision:

(a) *Determine initial allocations.* NRCS will determine initial conservation program funding levels for each State through a merit-based, natural resource focused allocation process, as determined by the Chief.

(b) *Determine the funding opportunity.* The combined initial allocation funding level for Regional Equity programs by State will be compared to the Regional Equity threshold to determine each Regional Equity State's funding opportunity.

(c) *Establish contribution program fund levels.* Subject to availability of funds, contribution program fund levels are determined by:

(1) Identifying which programs contribute funds, as determined by the Chief, consistent with the limitations established in 16 U.S.C. 3841(d); and

(2) Each State's respective demand.

(i) State Conservationists in Regional Equity States, in consultation with State Technical Committees, will evaluate and determine their respective program demands based on the following criteria:

(A) Program applications and how they address national program priorities;

(B) Historic trends in program interest; and

(C) State priority natural resource concerns.

(ii) The State Conservationist's identified respective demand will assist the Chief in determining the composition of contribution program funds within the established drawing account.

(d) *Establish the drawing account.* NRCS will establish a drawing account for each contribution program, as determined in (c)(1) and (c)(2) of this section, and will give priority before April 1st of each fiscal year, for such funds to be used to fund applications in Regional Equity States, sufficient to bring each of the Regional Equity States to the Regional Equity threshold of $15,000,000.

(e) *Access the drawing account.* State Conservationists in Regional Equity

States may request access to that State's assigned portion of the drawing account once that State has obligated at least 90 percent of its initial allocation for that same program.

(f) *Re-allocation of funds.* The program-specific drawing accounts for Regional Equity States will be available until April 1st of each fiscal year, after which date the remaining funds may be re-allocated at the discretion of the Chief.

Dated: January 6, 2009.

**Arlen L. Lancaster,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. E9–492 Filed 1–12–09; 8:45 am]

**BILLING CODE 3410–16–P**

## DEPARTMENT OF COMMERCE

## Bureau of Economic Analysis

## 15 CFR Part 806

**[Docket No. 080731960–81629–02]**

**RIN 0691–AA66**

## Direct Investment Surveys: BE–11, Annual Survey of U.S. Direct Investment Abroad

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends regulations of the Bureau of Economic Analysis, Department of Commerce (BEA) to change the reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad. The BE–11 survey is conducted annually and is a sample survey that obtains financial and operating data covering the overall operations of U.S. parent companies and their foreign affiliates. BEA is making changes in the reporting criteria that will raise the thresholds for reporting on the survey.

**DATES:** This final rule will be effective February 12, 2009.

**FOR FURTHER INFORMATION CONTACT:** David H. Galler, Chief, Direct Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9835 or e-mail (*david.galler@bea.gov*).

**SUPPLEMENTARY INFORMATION:** In the September 11, 2008, **Federal Register**, 73 FR 52802–52804, BEA published a notice of proposed rulemaking setting forth revised reporting criteria for the BE–11, Annual Survey of U.S. Direct Investment Abroad. No comments on the proposed rule were received. Thus, the proposed rule is adopted without change. This final rule amends 15 CFR 806.14 to set forth the reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad.

### Description of Changes

The BE–11 survey is a mandatory survey and is conducted annually by BEA under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' BEA will send the survey to potential respondents in March of each year; responses will be due by May 31.

This final rule changes the reporting criteria on the BE–11 annual survey as follows: (a) The threshold for reporting on the BE–11B(SF) short form and BE–11C form increases from $40 million to $60 million, and (b) the threshold for reporting on the BE–11B(LF) long form increases from $150 million to $225 million. Majority-owned nonbank affiliates with assets, sales or gross operating revenues, or net income (loss) over $60 million but less than or equal to $225 million will be filed on the BE–11B(SF) short form; majority-owned nonbank affiliates with assets, sales or gross operating revenues, or net income (loss) over $225 million will be filed on the BE–11B(LF) long form. Minority-owned nonbank affiliates with assets, sales or gross operating revenues, or net income (loss) over $60 million will be filed on the BE–11C form. Two reporting thresholds remain unchanged—the threshold for reporting on Form BE–11B(FN) remains at $250 million and the threshold for reporting only selected items on Form BE–11A remains at $150 million.

### Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, conducts the BE–11 survey under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' Section 4(a) of the Act requires that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information on international financial flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States.

In Section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibility for performing functions under the Act concerning direct investment to the Secretary of Commerce, who has redelegated it to BEA. The annual survey of U.S. direct investment abroad is a sample survey that collects information on a variety of measures of the overall operations of U.S. parent companies and their foreign affiliates, including total assets, sales, net income, employment and employee compensation, research and development expenditures, and exports and imports of goods. The sample data are used to derive universe estimates in nonbenchmark years from similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is taken every five years. The data are needed to measure the size and economic significance of direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies. The data are disaggregated by country and industry of the foreign affiliate and by industry of the U.S. parent.

### Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

### Executive Order 13132

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

### Paperwork Reduction Act

The collection-of-information in this final rule was submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act (PRA). OMB approved the information collection under control number 0608–0053. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB control number.

The BE–11 survey is expected to result in the filing of reports from approximately 1,550 respondents. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 99.3 hours per response, including time for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent burden of the survey is estimated at 153,850 hours (1,550 respondents times 99.3 hours average burden). Although the amendments to the reporting rules lower respondent burden, the total estimated burden hours are higher than the currently estimated hours of 122,900 for this survey in the OMB inventory, due to growth in the number and size of U.S. parent companies and foreign affiliates since the survey was last cleared.

Written comments regarding the burden-hour estimates or any other aspect of the information-of-collection requirements contained in the final rule should be sent to (1) the Bureau of Economic Analysis via mail to U.S. Department of Commerce, Bureau of Economic Analysis, Office of the Chief, Direct Investment Division, BE–50, Washington, DC 20230; via e-mail at *David.Galler@bea.gov*; or by FAX at 202–606–5311 and (2) the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0053, Attention PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov*, or by FAX at 202–395–7245.

**Regulatory Flexibility Act**

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding the economic impact of the rule. As a result, no final regulatory flexibility analysis was prepared.

**List of Subjects in 15 CFR Part 806**

Economic statistics, Multinational corporations, Penalties, Reporting and recordkeeping requirements, U.S. investment abroad.

Dated: December 16, 2008.

**J. Steven Landefeld,**

*Director, Bureau of Economic Analysis.*

■ For the reasons set forth in the preamble, BEA amends 15 CFR Part 806 as follows:

## PART 806—DIRECT INVESTMENT SURVEYS

■ 1. The authority citation for 15 CFR Part 806 continues to read as follows:

**Authority:** 5 U.S.C. 301; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp., p. 173) and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

■ 2. Section 806.14(f)(3)(ii) introductory text, (f)(3)(ii)(A) and (B), (f)(3)(iv), (f)(3)(v) introductory text, and (f)(3)(v)(A) are revised to read as follows:

**§ 806.14 U.S. direct investment abroad.**

* * * * *

(f) * * *

(3) * * *

(ii) Forms BE–11B(LF), (SF), and (EZ) (Report for Majority-owned Nonbank Foreign Affiliate of Nonbank U.S. Reporter).

(A) A BE–11B(LF)(Long Form) must be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $225 million (positive or negative) at the end of, or for, the affiliate's fiscal year, unless the nonbank foreign affiliate is selected to be reported on Form BE–11B(EZ).

(B) A BE–11B(SF)(Short Form) must be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $60 million (positive or negative), but for which no one of these items was greater than $225 million (positive or negative), at the end of, or for, the affiliate's fiscal year, unless the nonbank foreign affiliate is selected to be reported on Form BE–11B(EZ).

* * * * *

(iv) Form BE–11C (Report for Minority-owned Nonbank Foreign Affiliate of Nonbank U.S. Reporter) must be filed for each minority-owned nonbank foreign affiliate of a nonbank U.S. Reporter that is owned at least 20 percent, but not more than 50 percent, directly and/or indirectly, by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $60 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(v) Based on the preceding, an affiliate is exempt from being reported if it meets any one of the following criteria:

(A) For nonbank affiliates of nonbank U.S. Reporters, none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $60 million (positive or negative). However, affiliates that were established or acquired during the year and for which at least one of these items was greater than $10 million but not over $60 million must be listed, and key data items reported, on a supplement schedule on Form BE–11A.

* * * * *

[FR Doc. E9–463 Filed 1–12–09; 8:45 am]

BILLING CODE 3510–06–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R10–OAR–2007–0110; FRL–8760–8]**

### Approval and Promulgation of Implementation Plans; Washington; Interstate Transport of Pollution

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving the action of the Washington State Department of Ecology (Ecology) to address the provisions of Clean Air Act (CAA) section 110(a)(2)(D)(i) for the 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). CAA section 110(a)(2)(D)(i) requires each state to submit a State Implementation Plan (SIP) revision that prohibits emissions that adversely affect another state's air quality through interstate transport. EPA received no comments on its proposal to approve Ecology's SIP revision addressing these provisions. Therefore, EPA is finalizing its proposed approval of this revision for the State of Washington. Because EPA received adverse comments on its proposal to approve the SIP revision from the Idaho Department of Environmental Quality (IDEQ), EPA is not taking final action on the proposed approval for the State of Idaho at this time and will address those comments and take final action on IDEQ's submittal at a later date.

**DATES:** This action is effective on *February 12, 2009.*

**ADDRESSES:** The EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2007–0110. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

electronically through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Donna Deneen, (206) 553–6706, or by e-mail at *deneen.donna@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. Information is organized as follows:

**Table of Contents**

I. What Is the Background of This Rulemaking?
II. What Comments Did We Receive on the Proposed Action?
III. What Is Our Final Action?
IV. Statutory and Executive Order Reviews

## I. What Is the Background of This Rulemaking?

On June 26, 2007, EPA published a direct final rule to approve the actions of IDEQ and Ecology to address the requirements of Clean Air Act section 110(a)(2)(D)(i). 72 FR 35015. This Clean Air Act section requires each state to submit a SIP that prohibits emissions that could adversely affect another state, addressing four key elements. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in another state, (2) interfere with maintenance of the NAAQS by another state, (3) interfere with plans in another state to prevent significant deterioration of air quality, or (4) interfere with efforts of another state to protect visibility.

## II. What Comments Did We Receive on the Proposed Action?

We stated in the direct final rule that if EPA received adverse comment, we would publish a timely withdrawal of the direct final rule. We received adverse comments on the Idaho portion of the direct final rule, and, therefore, we withdrew our direct final rule it its entirety. 72 FR 46157 (August 17, 2007). In a parallel notice of proposed rulemaking, also published on June 26, 2007, we stated that if we received adverse comments we would address all public comments in a subsequent final rule based on the proposed rule. 72 FR 35022. We received no comments on our proposal to approve Ecology's SIP revision addressing section 110(a)(2)(D)(i). Therefore, we are finalizing our proposed approval of this revision for the State of Washington. Because we received adverse comments on our proposal to approve the SIP revision from IDEQ, we are not taking final action on the proposed approval for the State of Idaho at this time and will address those comments and take final action on IDEQ's submittal at a later date.

## III. What Is Our Final Action?

We are finalizing our approval of Ecology's action to address the requirements of Clean Air Act section 110(a)(2)(D)(i). We made a minor change in the organization of the regulatory language contained in the proposal to be consistent with how the regulatory language is organized for similar actions. See, *e.g.*, 73 FR 60955 (October 15, 2008) and 73 FR 75600 (December 12, 2008). We are not taking final action at this time to approve IDEQ's action to address CAA section 110(a)(2)(D)(i).

## IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *March 16, 2009*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 31, 2008.

**Elin D. Miller,**

*Regional Administrator, Region 10.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

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

### Subpart WW—Washington

■ 2. Section 52.2499 is added to read as follows:

**§ 52.2499 Interstate Transport for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.**

On January 17, 2007, the Washington State Department of Ecology submitted a SIP revision to meet the requirements of Clean Air Act section 110(a)(2)(D)(i). EPA is approving this submittal.

[FR Doc. E9–357 Filed 1–12–09; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 09–04; MB Docket No. 08–213; RM–11500]**

### Television Broadcasting Services; Grand Island, NE

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants a petition for rulemaking filed by Hill Broadcasting Company, Inc., permittee of station KTVG–DT, to substitute DTV channel 16 for post-transition DTV channel 19 at Grand Island, Nebraska.

**DATES:** This rule is effective February 12, 2009.

**FOR FURTHER INFORMATION CONTACT:** Adrienne Y. Denysyk, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–213, adopted January 2, 2009, and released January 2, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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

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

Television, Television broadcasting.

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

## PART 73—RADIO BROADCAST SERVICES

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

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

**§ 73.622 [Amended]**

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Nebraska, is amended by adding DTV channel 16 and removing DTV channel 19 at Grand Island.

Federal Communications Commission.

**Clay C. Pendarvis,**

*Associate Chief, Video Division, Media Bureau.*

[FR Doc. E9–508 Filed 1–12–09; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 08–2777; MB Docket No. 08–193; RM–11489]**

### Television Broadcasting Services; Hayes Center, NE

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants a petition for rulemaking filed by Pappas Telecasting of Central Nebraska, L.P., the licensee of station KWNB(TV) and permittee of station KWNB–DT, requesting the substitution of its analog channel, channel 6, for its assigned DTV channel 18 at Hayes Center for post-transition use.

**DATES:** This rule is effective February 12, 2009.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08–193, adopted December 22, 2008, and released December 23, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act

of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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

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

Television, Television broadcasting.

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

## PART 73—RADIO BROADCAST SERVICES

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

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

**§ 73.622 [Amended]**

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Nebraska, is amended by adding DTV channel 6 and removing DTV channel 18 at Hayes Center.

Federal Communications Commission.

**Clay C. Pendarvis,**

*Associate Chief, Video Division, Media Bureau.*

[FR Doc. E9–511 Filed 1–12–09; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 79

**[CG Docket No. 05–231 and ET Docket No. 99–254; FCC 08–255]**

### Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission clarifies several points regarding video programming distributors' obligations to close caption digital programming in light of technological changes inherent in the digital television transition for full-power broadcasting. The Commission also amends the closed captioning rules to provide for more efficient complaint processes and methods for consumers to contact distributors with concerns about closed captioning.

**DATES:** *Effective:* February 12, 2009, except 47 CFR 79.1(g)(1) through (5) and 47 CFR 79.1(i) which contain information collection requirements subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a separate document in the **Federal Register** announcing the effective date for the new and revised information collection requirements. Interested parties (including the general public, OMB, and other Federal agencies) that wish to submit written comments on the PRA information collection requirements must do so on or before March 16, 2009.

**ADDRESSES:** Interested parties may submit PRA comments identified by OMB Control Number 3060–0761, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *E-mail:* Parties who choose to file by e-mail should submit their comments to *PRA@fcc.gov*. Please include CG Docket Number 05–231, ET Docket Number 99–254, and OMB Control Number 3060–0761 in the subject line of the message.
- *Mail:* Parties who choose to file by paper should submit their comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Amelia Brown, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 418–2799 (voice), (202) 418–7804 (TTY), or e-mail at *Amelia.Brown@fcc.gov*. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918, or via the Internet at *PRA@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers,* Declaratory Ruling and Order (*2008 Digital Closed Captioning Declaratory Ruling and Order*), document FCC 08–255, adopted November 3, 2008, and released November 7, 2008, in CG Docket No. 05–231 and ET Docket No. 99–254. Document FCC 08–255 addresses issues arising from the Commission's Report and Order, *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility (Closed Captioning Report and Order),* MM Docket No. 95–176, FCC 97–279, published at 62 FR 48487, September 16, 1997; the Commission's Order on Reconsideration, *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility (Closed Captioning Reconsideration Order),* MM Docket No. 95–176, FCC 98–236, published at 63 FR 55959, October, 20, 1998; the Commission's Report and Order, *Closed Caption Decoder Requirements for Digital Television Receivers, Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility (DTV Closed Captioning Order),* ET Docket No. 99–254, FCC 00–259, published at 65 FR 58467, September 29, 2000; and the Commission's Notice of Proposed Rulemaking, *Closed Captioning of Video Programming, Telecommunications for the Deaf, Inc., Petition for Rulemaking, (2005 Closed Captioning NPRM)*, CG Docket No. 05–231, FCC 05–142, published at 70 FR 56150, November 25, 2005. The full text of document FCC 08–255 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document FCC 08–255 and copies of subsequently filed documents in this matter also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site *www.bcpiweb.com* or by calling 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document FCC 08–255 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/caption.html*.

**Paperwork Reduction Act of 1995 Analysis**

Document FCC 08–255 contains new and modified information collection requirements subject to the PRA of 1995. It will be submitted to OMB for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. Public and agency comments are due March 16, 2009. In addition, the Commission notes pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), that the Commission previously sought specific comment on how it may ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In this document, the Commission assessed the effects of requiring that video programming distributors provide contact information on their Web sites (if they have a Web site) and in bills and phone directories so that consumers can more easily complain about closed captioning concerns. The Commission also assessed the effects of providing this information to the FCC for posting on the FCC's Web site. The Commission has also considered the impact of requiring that distributors forward complaints to the appropriate entity for response, where applicable, and notifying the FCC and the complainant that the complaint has been forwarded. The Commission finds that none of these requirements will pose a substantial burden for businesses with fewer than 25 employees.

**Synopsis**

1. Closed captioning is an assistive technology that provides persons with hearing disabilities access to television programs. Closed captioning displays the audio portion of a television signal as printed words on the television screen. The Television Decoder Circuitry Act of 1990 (TDCA) requires closed captioning capability for all television receivers with screen sizes of 13 inches or larger, manufactured or sold in the United States. As part of the Telecommunications Act of 1996, Congress added a section entitled ''Video Programming Accessibility,'' to the Communications Act. Section 713 requires closed captioning of video programming to ensure access for persons with hearing disabilities. In 1997, the Commission adopted rules and implementation schedules for closed captioning that became effective on January 1, 1998. The implementation schedules for captioning differ, based on whether the programming is analog or digital, Spanish or English, and whether it is pre-rule (*i.e.*, older) or new programming. The dates that determine whether digital programming is pre-rule or new differ from the dates used to determine whether analog programming is pre-rule or new because, when the Commission established the closed captioning rules in 1997, final standards for digital television (DTV) receivers did not yet exist, making it difficult to format captions for such receivers. In July 2000, the Commission adopted technical standards for the display of closed captions on DTV receivers. At the same time, the Commission established July 1, 2002, as the date that determines whether digital programming constitutes new or pre-rule programming, and adopted the same benchmark transition periods for new and pre-rule digital programming that exists for analog programming.

2. In the *Declaratory Ruling,* the Commission clarifies programming distributors' obligations to close caption digital programming. First, although a particular digital channel may be exempt for other reasons pursuant to § 79.1(d) of the Commission's rules, no digital channel, including an HD channel, is automatically exempt from the captioning rules simply because it is being transmitted in digital. Where a digital channel is exempt from the closed captioning rules, the distributor is still obligated to pass through any captioning it receives, but is not obligated to create new digital captions where only analog captions are provided.

3. Second, where an existing broadcaster ceases operations on its current analog channel after the completion of the digital transition for full power television, and commences or continues to air programming on its main digital channel, that broadcaster is required to close caption its main digital channel pursuant to the relevant captioning benchmarks, as if there had been no change. With regard to broadcasters that are currently simulcasting their programming on their analog channel and main digital channel, they must caption the digital channel as well as the analog channel.

4. Third, the ''new network'' exemption under § 79.1(d)(9) of the Commission's rules does not apply to a channel that merely transitions from analog to digital.

5. Fourth, in order for program distributors to count captioned digital programming toward their closed captioning requirements, they must transmit captions that can be decoded by the decoders in analog television sets even after the digital transition on February, 17, 2009.

6. Finally, the Commission reminds MVPDs that provide customer premises equipment (CPE), such as set-top boxes, to their subscribers, that they are responsible for ensuring that this equipment transmits all available captions to the television set, for both analog and digital formatted programs. Failure of the equipment to pass through captions would cause the distributor to be in violation of the pass-through requirement.

7. In the *Order,* the Commission amends the closed captioning rules to provide for more efficient complaint processes and methods for consumers to contact distributors with concerns about closed captioning. The Order addresses certain issues raised in the July 21, 2005, Notice of Proposed Rulemaking (*2005 Closed Captioning NPRM*), which initiated a proceeding to examine the Commission's closed captioning rules.

8. The Order revises the closed captioning rules to permit the filing of closed captioning complaints with either the video programming distributor or the Commission. The Commission will still require closed captioning complaints to be in writing, and filed by e-mail, fax, or letter. Consumers may file their complaint using the FCC Form 2000–C, which will be amended to delete the requirement that closed captioning complaints must first be filed with the distributor, and to add questions eliciting information about the name and type of MVPD, if any, to whom a complainant subscribes.

9. The *Order* amends the time frames associated with filing closed captioning complaints. Regardless of whether the consumer files a complaint with the Commission or a video programming distributor, the consumer must file the complaint within sixty (60) days of the captioning problem. If the complaint is first filed with the Commission, the Commission shall promptly forward complaints that satisfy the complaint criteria to the appropriate video programming distributor. For a complaint forwarded by the Commission, video programming distributors must respond to the complainant in writing within thirty (30) days of receipt of the complaint from the Commission. For a complaint first filed with the video programming distributor, the video programming distributor must respond in writing to the complainant within thirty (30) days after receipt of a closed captioning complaint. If a video programming distributor fails to respond to the

complainant within thirty (30) days, or the response does not satisfy the consumer, the complainant may file the complaint with the Commission within thirty (30) days after the time allotted for the video programming distributor to respond. If a consumer re-files his or her complaint with the Commission (after filing with the distributor), the Commission will forward the complaint to the distributor, and the distributor shall respond to the Commission and the complainant within thirty (30) days of receipt of the complaint from the Commission.

10. A video programming distributor receiving a complaint regarding programming of a broadcast television licensee, or programming over which the video programming distributor does not exercise editorial control, must forward the complaint within seven (7) days to the appropriate party and inform the complainant that it has forwarded the complaint. The video programming distributor also must notify the Commission that it forwarded the complaint. Similar to the time period established for responding to complaints sent to the correct video programming distributor, the entity receiving the forwarded complaint shall respond to the complainant within 30 days of the forwarding date of the complaint.

11. In order to assist consumers in filing closed captioning complaints, and to expedite further the handling of complaints, the Commission encourages consumers to include the following information in their filing: (1) The complainant's contact information, including name, mailing address, daytime phone number, and e-mail address if available; (2) the name of the broadcast station and, if applicable, the name and type of MVPD against whom the complaint is directed; (3) the name of the television program; (4) the date and time the closed captioning problem occurred; and (5) a description of the closed captioning problem. Where it appears from the video programming distributor's response to a complaint, or from other communications with the parties, that an informal complaint has been satisfied, the Commission may, in its discretion, consider the matter resolved, and will so notify the complainant. In all other cases, the Commission shall inform the parties of its review and disposition of the informal complaint. Complaints may also be referred to the Enforcement Bureau.

12. The *Order* also adopts new rules requiring video programming distributors to make their contact information available to consumers. Specifically, the Commission requires video programming distributors to make available two different kinds of contact information—contact information for the receipt and handling of immediate closed captioning concerns by consumers, and contact information for written closed captioning complaints.

13. First, the Commission requires video programming distributors to make available contact information for the receipt and handling of immediate closed captioning concerns raised by consumers (*e.g.*, the captions suddenly disappear or become garbled). To this end, programming distributors must designate a telephone number, fax number, and e-mail address for purposes of receiving and responding immediately to any closed captioning concerns. To the extent that a distributor has personnel available, either onsite or remotely, to address any technical problems that may arise, consumers using this dedicated contact information must be able to reach someone, either directly or indirectly, who can address the consumer's captioning concerns. The Commission is not requiring distributors to alter their hours of operation or the hours during which they have staffing available; at the same time, however, where staff is available to address technical issues that may arise during the course of transmitting programming, they also must be knowledgeable about and able to address closed captioning concerns. In situations where a distributor is not immediately available, any calls or inquiries received, using this dedicated contact information, should be returned or otherwise addressed within 24 hours.

14. Second, the Commission requires video programming distributors to make contact information available for the receipt and handling of written closed captioning complaints filed pursuant to § 79.1(g) of the Commission's rules that do not raise the type of immediate issues that are addressed above. This contact information shall include the name of a person with primary responsibility for captioning issues and who can ensure compliance with the Commission's rules, as well as the person's title or office, telephone number, fax number, postal mailing address, and e-mail address. Distributors shall include the required contact information on their Web sites (assuming the distributor has a Web site), in telephone directories, and in billing statements (to the extent billing statements are issued). Distributors shall keep their contact information current, and when there are changes they must update this information as promptly as possible, and in any event within 10 business days for Web sites, by the next billing cycle for billing statements, and by the next publication of directories.

15. To assist consumers in locating contact information, the Commission shall provide a list of video programming distributors' contact information (*i.e.*, the name of the appropriate person and/or office to contact, telephone numbers, e-mail addresses) on its Web site. To establish this listing, video programming distributors and broadcast services must file the required contact information, for both immediate concerns and written captioning complaints, with the Chief of the Disability Rights Office, Consumer and Governmental Affairs Bureau, or by sending the information to *CLOSEDCAPTIONING_POC@fcc.gov*, within 30 days of the publication in the **Federal Register** of a notice announcing approval by the Office of Management and Budget. After compiling and posting the list on the FCC's Web site, Commission staff shall prepare a Public Notice advising consumers and other interested parties how to obtain access to the contact information. This information shall also be available by telephone inquiry to the Commission's Consumer Center. Distributors shall promptly notify the Commission each time there is a change in any of this required information, and in any event within 10 business days.

**Final Regulatory Flexibility Certification**

16. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making (2005 Closed Captioning NPRM)* in this proceeding. *2005 Closed Captioning NPRM,* 20 FCC Rcd at 13234, published at 70 FR 56150, November 25, 2005. The Commission sought written public comment on the proposals in the *2005 Closed Captioning NPRM,* including comment on the IRFA. The Commission received one comment on the IRFA, and it is discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

**Need for, and Objectives of, the Order**

17. The purpose of this proceeding was to consider the current status of the Commission's closed captioning rules. The rulemaking that was initiated in 2005 followed up on the Commission's prior assurances, made at the time the closed captioning rules were adopted in 1997, that certain captioning provisions would be reviewed and evaluated at a future date. The 2005 rulemaking sought to determine whether any revisions

should be made to enhance the effectiveness of the closed captioning rules.

18. The closed captioning rules that were adopted in 1997 require that all video programming distributors, including over-the-air broadcast television services and all multichannel video programming distributors (''MVPDs'') (including cable television, direct-to-home satellite services, wireless cable systems, satellite master antenna television, and open video systems) increase gradually the amount of captioned programming offered and, generally require that 100 percent of new English language programming be closed captioned as of January 1, 2006, subject to certain exceptions. ''Video programming distributor'' is defined in 47 CFR 79.1(a)(2) as any television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in § 76.1000(e) of the Commission's rules, and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission. New analog programming is defined as analog programs first published or exhibited on or after January 1, 1998. 47 CFR 79.1(a)(5) of the Commission's rules. New digital programming is defined as digital programming first aired after June 30, 2002. *Closed Caption Decoder Requirements for Digital Television Receivers and Converter Boxes, Closed Captioning and Video Description of Video Programming , Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility,* ET Docket No. 99–254, MM Docket No. 95–176, Report and Order, 15 FCC Rcd 16788, 16790–91, paragraph 5 (July 31, 2000) (*DTV Closed Captioning Order*), published at 65 FR 58467, September 29, 2000. Additionally, these rules established a transition period for captioning of pre-rule programming, and required that 75 percent of all pre-rule nonexempt English language programming delivered to consumers during the first quarter of 2008 and thereafter must be captioned. 47 CFR 79.1(b)(2)(ii) of the Commission's rules. Pre-rule analog programming is defined as programs first published or exhibited before January 1, 1998. 47 CFR 79.1(a)(6) of the Commission's rules. Pre-rule digital programming is defined as digital programming first aired before July 1, 2002. *DTV Closed Captioning Order*, 15 FCC Rcd at 16790–91, paragraph 5. The rules also require that, pursuant to an established phase-in schedule, as of January 1, 2010, 100 percent of nonexempt new Spanish language programming be closed captioned, and, as of January 1, 2012, and thereafter, 75 percent of nonexempt Spanish language pre-rule programming be closed captioned. 47 CFR 79.1(b)(3)(iv) and 47 CFR 79.1(b)(4)(ii) of the Commission's rules. The existing rules contain several exemptions, pursuant to which entities or programming that meet the prescribed criteria are exempt from the rules without having to seek Commission approval. 47 CFR 79.1(d) of the Commission's rules. In addition, the existing rules provide a process whereby video programming providers may petition the Commission for an exemption from the rules where it would be an undue burden to require captioning. 47 CFR 79.1(f) of the Commission's rules.

19. The *2005 Closed Captioning NPRM* sought comment on several aspects of the rules. It also sought comment on a Petition for Rulemaking that was filed by Telecommunications for the Deaf, Inc. and several other consumer advocacy groups. It sought comment on, *inter alia,* the possibility that the existing rule would allow for shorter complaint filing and response times, what those time frames should be, and on the possibility that complainants should be permitted to complain directly to the Commission without complaining to the video programming distributor first. Further, the *2005 Closed Captioning NPRM* sought comment on the possibility that video programming distributors would be required to provide contact information to viewers and to give this information to the Commission for posting on the Commission's Web site, in order to assist consumers in having their closed captioning concerns addressed more quickly.

20. The *Order* responds to the proposals made in the *2005 Closed Captioning NPRM* and the Comments submitted thereto. Specifically, the *Order* amends the existing closed captioning rules to shorten the complaint processing times and allows complaints to be filed directly with the FCC. The *Order* also adopts a new requirement that video programming distributors make information available on their Web sites (if they have a Web site) in bills and in directories to make it easier for closed captioning consumers to contact them with closed captioning concerns and complaints. The *Order* also adds a requirement to the rules to ensure that any staff reachable through the above-noted contact information has the capability to immediately respond to and address consumers' concerns.

**Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

21. Media Captioning Services (MCS) filed the only comment in this proceeding responding to the IRFA. *See* Comments of Media Captioning Services (MCS) to Marlene H. Dortch, Secretary, FCC, November 9, 2005. As stated, MCS' comments were the only comments we received regarding the regulatory flexibility analysis. Several other commenters raised concerns regarding the impact of the proposals on small entities, but not in the regulatory flexibility context. Some of these commenters would be considered small businesses. In general, these commenters stated that the proposals set forth in the *2005 Closed Captioning NPRM* could result in increased costs and decreased local programming. For example, Hubbard Broadcasting commented that real-time captioning services are ''disproportionately burdensome'' to smaller broadcasters, and that the suggestions proposed in the *2005 Closed Captioning NPRM* would ''vastly increase the costs of local news production.'' Reply Comments of Hubbard Broadcasting, Inc. at 4–5. MCS commented on many issues raised in the *2005 Closed Captioning NPRM*, as well. Specifically, with regard to the issues raised in the *2005 Closed Captioning NPRM*, MCS commented that, in order to encourage high quality captioning, the FCC should promote tax incentives for video programmers who use very small captioning concerns to meet captioning requirements; should utilize the antitrust laws (presumably to penalize entities that engage in anticompetitive behavior resulting in higher captioning prices); should use the Telecommunications Relay Service fund to compensate very small captioning companies; and should establish a fund from the sale of analog spectrum to compensate very small captioning companies that provide captioning services to video programmers in the DMAs between 26 and 100. MCS also suggested that the Commission require a functional equivalence guideline for real-time captioning and for pre-produced programming. MCS offered specific suggestions for these standards, and MCS also suggested that complaints regarding closed captioning should be directed to the video programming distributor and the FCC, simultaneously.

22. In its comments pertaining to the regulatory flexibility analysis, MCS

noted that the IRFA does not include any discussion of the impact that proposed regulations would have on closed captioning companies. MCS noted that SBA considers companies providing real-time captioning services with annual gross receipts of $6 million or less to be small entities, and considers companies earning $25 million or less from pre-production business to be small entities. MCS asserted that virtually all companies in the closed captioning industry would be classified as small businesses. In its comments, MCS referred to Standard Industry Classification (SIC) codes. However, SIC codes were replaced on August 26, 2008, by North American Industry Classification System (NAICS) codes; accordingly, the FCC must use the NAICS codes. MCS stated that the definitions are deficient since an ''element of the definition of 'small business' is that the entity would not be dominant in its field of operations.'' However, according to MCS, three dominant companies in the industry would be classified as small entities based on the annual gross receipts standards noted above.

23. The Commission appreciates the comments filed by MCS in this regard. The Commission notes that video programming distributors (VPDs) are the entities directly responsible for compliance with closed captioning rules, and may only air programming that is not captioned if the programming is not subject to a captioning benchmark or is exempt from the rules pursuant to §§ 79.1(d) or 79.1(f) of the Commission's rules. Even with regard to programming that is not produced by a video programming distributor, the VPD is responsible for ensuring that the program owner has certified that it or its programming is exempt from the closed captioning rules. Although closed captioning companies play a vital role in the closed captioning regime, they are not the entities that are directly affected by the Commission's requirements that video programming be captioned, because they are not the entities ultimately responsible for compliance with the closed captioning rules. The 2005 IRFA included all multi-channel video programming distributors and broadcasters—these are the entities that are ultimately responsible for closed captioning. In addition to captioners, program owners and producers that are not the video programming distributors were also omitted from the 2005 IRFA, for the same reason—they are merely indirectly affected by the rules and are not ultimately responsible for compliance with the rules. However, in order to better inform the public about our actions and to create a more complete record in this FRFA, the Commission is including captioners as entities affected by the modifications adopted in the *Order* (*see* paragraphs 28–30, *infra*).

**Description and Estimate of the Number of Small Entities Impacted**

24. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. 5 U.S.C. 604(a)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. 5 U.S.C 601(6). Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 5 U.S.C. 632.

25. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002). A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 2002, there were approximately 1.6 million small organizations. Independent Sector, The New Nonprofit Almanac & Desk Reference (2002). The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' 5 U.S.C. 601(5). Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. U.S. Census Bureau, Statistical Abstract of the United States: 2006, § 8, page 272, Table 415. The Commission estimates that, of this total, 84,377 entities were ''small governmental jurisdictions.'' The Commission assumes that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, § 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. Thus, the Commission estimates that most governmental jurisdictions are small.

26. *Wired Telecommunications Carriers.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' U.S. Census Bureau, 2002 NAICS Definitions, ''517110 Wired Telecommunications Carriers''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.* The SBA has developed a small business size standard for wireline firms within the broad economic census category, ''Wired Telecommunications Carriers.'' 13 CFR 121.201, NAICS code 517110. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 2,432 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size: 2002 (Including Legal Form of Organization),'' Table 5, NAICS code 517110 (issued Nov. 2005). Of this total, 2,395 firms had employment of 999 or fewer employees, and 37 firms had employment of 1,000 employees or more. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.'' Thus, under this category and associated small business size standard, the majority of firms can be considered small.

27. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.* The SBA has developed a small business size standard for this category, which is: All

such firms having 1,500 or fewer employees. The NAICS Code associated with this size standard is 517110. To gauge small business prevalence for these cable services, we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Thus, the majority of these firms can be considered small.

28. *Cable Companies and Systems*. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. 47 CFR 76.901(e) of the Commission's rules. The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995), published at 60 FR 35854, July 12, 1995. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. 47 CFR 76.901(c) of the Commission's rules. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have fewer than 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Warren Communications News, *Television & Cable Factbook 2006,* ''U.S. Cable Systems by Subscriber Size,'' page F–2 (data current as of October 2005). The data do not include 718 systems for which classifying data were not available. Thus, under this second size standard, most cable systems are small. Wired Telecommunications Carriers with fewer than 1500 employees are considered to be small. *See* 13 CFR 121.201, NAICS code 517110.

29. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' 47 U.S.C. 43(m)(2); *see* 47 CFR 76.901(f) of the Commission's rules and nn. 1–3. The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. 47 CFR 76.901(f); Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard. The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules.

30. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. As noted, Wired Telecommunications Carriers with fewer than 1500 employees are considered to be small, under the currently applicable SBA classification. NAICS Code 517110. The data presented were acquired when the applicable SBA small business size standard was called Cable and Other Program Distribution, and which referred to all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Thus, under this size standard, the majority of firms can be considered small.

31. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS falls under the SBA definition of ''Wireless Telecommunications Carriers (except satellite)'', which establishes as a small DBS company any DBS company which has less then 1500 employees. 13 CFR 121.201, NAICS Code 517210. The data presented were acquired when the applicable SBA small business size standard was called Cable and Other Program Distribution, and which referred to all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Currently, only four operators hold licenses to provide DBS service, which requires a great investment of capital for operation. All four currently offer subscription services. Two of these four DBS operators, DirecTV and EchoStar Communications Corporation (''EchoStar''), report annual revenues that are in excess of the threshold for a small business. DirecTV is the largest DBS operator and the second largest MVPD, serving an estimated 13.04 million subscribers nationwide. *See* Annual Assessment of Status of

Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report, FCC 05–13, paragraph 55 (released February 4, 2005) (''2005 Cable Competition Report''), published at 60 FR 35854, July 12, 1995. EchoStar, which provides service under the brand name Dish Network, is the second largest DBS operator and the fourth largest MVPD, serving an estimated 10.12 million subscribers nationwide. *See* 2005 Cable Competition Report, paragraph 55. A third operator, Rainbow DBS, is a subsidiary of Cablevision's Rainbow Network, which also reports annual revenues in excess of $13.5 million, and thus does not qualify as a small business. Rainbow DBS, which provides service under the brand name VOOM, reported an estimated 25,000 subscribers. *See* 2005 Cable Competition Report, paragraph 55. The fourth DBS operator, Dominion Video Satellite, Inc. (''Dominion''), offers religious (Christian) programming and does not report its annual receipts. Dominion, which provides service under the brand name Sky Angel, does not publicly disclose its subscribership numbers on an annualized basis. The Commission does not know of any source which provides this information and, thus, the Commission has no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, the Commission believes it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, the Commission acknowledges the possibility that there are entrants in this field that may not yet have generated $13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

32. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' U.S. Census Bureau, 2007 NAICS Definitions, ''515120 Television Broadcasting'' (partial definition); *http://www.census.gov/naics/2007/def/ND515120.HTM#N515120.* The SBA has created the following small business size standard for Television Broadcasting firms: Those having $14 million or less in annual receipts. 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2008). The Commission has estimated the number of licensed commercial television stations to be 1,379. *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2007,'' dated March 18, 2008; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.* In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) had revenues of $13 million or less. The Commission recognizes that BIA's estimate differs slightly from the FCC total given *supra.* The Commission therefore estimates that the majority of commercial television broadcasters are small entities.

33. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 21.103(a)(1). The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

34. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 380. *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2007,'' dated March 18, 2008; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC–280836A1.pdf.* These stations are non-profit, and therefore considered to be small entities. *See generally* 5 U.S.C. 601(4), (6). In addition, there are also 2,295 low power television stations (LPTV). *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2007,'' dated March 18, 2008; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC–280836A1.pdf.*

Given the nature of this service, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

35. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, paragraph 348 (1997), published at 62 FR 16514, April 7, 1997. The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, paragraph 348 (1997). An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, paragraph 348 (1997). The SBA has approved these small business size standards in the context of LMDS auctions. *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998). There were 93 winning bidders

that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses. Because some LMDS services may not have been auctioned, the SBA standard which applies to such services is Wireless Telecommunications Carriers (except satellite), pursuant to which a service is small if it has fewer than 1500 employees. The NAICS Code for this SBA classification is 517110.

36. *Wireless Telecommunications Carriers (except satellite).* NAICS code 517210. Standard for small business is 1500 employees or fewer. Wireless Telecommunications Carriers, except satellite, is a NAICS standard which has a size standard of fewer than 1500 employees. NAICS Code 517210. Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (''BRS''), formerly Multipoint Distribution Service (''MDS''), and the Educational Broadband Service (''EBS''), formerly Instructional Television Fixed Service (''ITFS''), to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. As noted, within the category of Wireless Telecommunications Carriers, except satellite, such firms with fewer than 1500 employees are considered to be small. 13 CFR 121.201, NAICS Code 517210. The data presented were acquired when the applicable SBA small business size standard was called Cable and Other Program Distribution, and which referred to all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS Code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). The SBA small business size standard for the broad census category of Wireless Telecommunications Carriers, which consists of such entities with fewer than 1,500 employees, appears applicable to MDS and ITFS. Other standards also apply, as described.

37. The Commission has defined small MDS (now BRS) entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Wireless Telecommunications Carriers (except satellite). 13 CFR 121.201, NAICS Code 517210. As noted, within the category of Wireless Telecommunications Carriers, such firms with fewer than 1500 employees are considered to be small. 13 CFR 121.201, NAICS Code 517210. The data presented were acquired when the applicable SBA small business size standard was called Cable and Other Program Distribution, and which referred to all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS Code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Information available indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

38. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS). The Commission estimates that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small entities.

39. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. *See* 47 U.S.C. section 573. The data presented were acquired when the applicable SBA small business size standard was called Cable and Other Program Distribution, and which referred to all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS Code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). This standard has been replaced by the Wireless Telecommunications Carriers (except satellite) standard, which considers firms with fewer than 1,500 employees to be small. NAICS Code 517210. The Commission has certified approximately 100 OVS operators to serve 75 areas, and some of these are currently providing service. *See http://www.fcc.gov/csb/ovs/csovscer.html* (current as of June 2004). This data was collected when ''Cable and Other Program Distribution'' was the operative distribution technology. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that

they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that those OVS operators remaining might qualify as small businesses that may be affected by the rules and policies adopted herein.

40. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

41. *Telephone Companies*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5–5 (Feb. 2007). This source uses data that are current as of October 20, 2005.

Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action. The Commission estimates that ten LECs currently provide video programming, and several smaller telephone companies provide the service.

42. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under NCAIS rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5–5 (Feb. 2007). This source uses data that are current as of October 20, 2005. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action. The Commission estimates that ten LECs currently provide video programming, and several smaller telephone companies provide the service.

43. *Closed Captioning Services.* These entities are indirectly affected by our action. The SBA has developed two small business size standards that may be used for closed captioning services. The two size standards track the economic census categories, ''Teleproduction and Other Postproduction Services'' and ''Court Reporting and Stenotype Services.''

44. The first category of *Teleproduction and Other Postproduction Services* ''comprises establishments primarily engaged in providing specialized motion picture or video postproduction services, such as editing, film/tape transfers, subtitling, credits, closed captioning, and animation and special effects.'' The relevant size standard for small businesses in these services is an annual revenue of less than $29.5 million. U.S. Census Bureau, 2002 NAICS Definitions, ''512191 Teleproduction and Other Postproduction Services''; *http://www.census.gov/epcd/naics02/def/NDEF512.HTM*. The size standard is $29.5 million. For this category, Census Bureau data for 2002 show that there were 1,316 firms that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 512191 (issued Nov. 2005). Of this total, 1,301 firms had annual receipts of under $25 million, and 10 firms had receipts of $25 million to $49,999,999. An additional 5 firms had annual receipts of $50 million or more. Consequently, we estimate that the majority of *Teleproduction and Other Postproduction Services* firms are small entities that might be affected by our action.

45. The second category of *Court Reporting and Stenotype Services* ''comprises establishments primarily engaged in providing verbatim reporting and stenotype recording of live legal proceedings and transcribing subsequent recorded materials.'' The size standard for small businesses in these services is an annual revenue of less than $7 million. U.S. Census Bureau, 2002 NAICS Definitions, ''561492 Court Reporting and Stenotype Services''; *http://www.census.gov/epcd/naics02/def/NDEF561.HTM*. The size standard is $7 million. For this category, Census Bureau data for 2002 show that there were 2,487 firms that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Administrative and Support and Waste Management and Remediation Services, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 561492 (issued Nov. 2005). Of this total, 2,461 firms had annual receipts of under $5 million, and 16 firms had receipts of $5 million to $9,999,999. An additional 10 firms had annual receipts of $10 million or more. Consequently, we estimate that the majority of *Court Reporting and Stenotype Services* firms are small entities that might be affected by our action.

**Description of Projected Reporting, Recordkeeping and Other Compliance Requirements**

46. The *Order* revises the Commission's rules to allow complaints concerning an alleged violation of the closed captioning requirements to be filed with the Commission or with the video programming distributor responsible for delivery and exhibition of the video programming within sixty (60) days of the problem with captioning. The *Order* requires that complaints that are filed first with the Commission will be forwarded to the appropriate video programming distributor, and the video programming distributor must respond in writing to the Commission and the complainant within 30 days of the receipt of the complaint from the Commission. The *Order* also requires that, when a complaint is sent to a video programming distributor regarding programming by a television broadcast station or other programming for which the video programming distributor is exempt from closed captioning

responsibility pursuant to § 79.1(e)(9) of the Commission's rules, the video programming distributor shall forward such complaint within seven (7) days of receipt to the entity responsible for closed captioning of the programming at issue. The *Order* requires that the video programming distributor must also notify the complainant and the Commission that it has forwarded the complaint. The *Order* requires that entities receiving forwarded complaints must respond in writing to the complainant within 30 days of the forwarding date of the complaint. The *Order* requires that, if the complaint is filed first with the video programming distributor, and the video programming distributor fails to respond to it within 30 days or a dispute remains following the initial complaint resolution procedures, a complaint may be filed with the Commission within 30 days after the time allotted for the video programming distributor to respond has ended. The *Order* requires that video programming distributors shall respond to the Commission and the complainant within 30 days of receipt of a complaint from the Commission.

47. The *Order* also adopts provisions requiring that video programming distributors make available contact information for the receipt and handling of immediate closed captioning concerns raised by consumers while they are watching a program, as well as contact information for the receipt and handling of written closed captioning complaints that do not raise immediate issues. The *Order* requires that programming distributors must designate a telephone number, fax number, and e-mail address for purposes of receiving and responding immediately to any closed captioning concerns. Video programming distributors should ensure that any staff reachable through this contact information has the capability to immediately respond to and address consumers' concerns. The *Order* requires that, to the extent that a distributor has personnel available, either on site or remotely, to address any technical problems that may arise, consumers using this dedicated contact information must be able to reach someone, either directly or indirectly, who can address the consumer's captioning concerns. This provision does not require that distributors alter their hours of operation or the hours during which they have staffing available; at the same time, however, the *Order* requires that, where staff is available to address technical issues that may arise during the course of transmitting programming, they also must be knowledgeable about and be able to address closed captioning concerns. The *Order* requires that, in situations where a distributor is not immediately available, any calls or inquiries received, using this dedicated contact information, should be returned or otherwise addressed within 24 hours. The *Order* requires that, in those situations where the captioning problem does not reside with the distributor, the staff person receiving the inquiry should refer the matter appropriately for resolution.

48. As noted, the *Order* requires video programming distributors to make contact information available for the receipt and handling of written closed captioning complaints, and this information shall include the name of a person with primary responsibility for captioning issues and who can ensure compliance with the rules, as well as the person's title or office, telephone number, fax number, postal mailing address, and e-mail address. The *Order* requires that distributors include this information on their Web sites (if they have a Web site), in telephone directories, and in billing statements (to the extent the distributor issues billing statements), and that distributors keep this information current and update it within 10 business days for Web sites, by the next billing cycle for billing statements, and by the next publication of directories.

49. The *Order* requires video programming distributors to file the contact information noted above with the Chief of the Disability Rights Office, Consumer and Governmental Affairs Bureau, or by sending the information to *CLOSEDCAPTIONING_POC@fcc.gov*. The *Order* requires the Commission staff to prepare a Public Notice advising consumers and other interested parties how to obtain access to the contact information, once it has been compiled and posted on the FCC's Web site. The *Order* requires that this information also be available by telephone inquiry to the Commission's Consumer Center. Distributors shall notify the Commission each time there is a change in any of this required information within 10 business days.

**Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

50. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' 5 U.S.C. 603(c)(1)–(4).

51. In amending the closed captioning rules, the Commission believes that it has minimized the effect on small entities while making video programming more accessible to persons with hearing disabilities. These efforts are consistent with the Congressional goal of increasing the availability of captioned programming while preserving the diversity of available programming. For instance, in revising the complaint process, the Commission has decreased the timeframes for filing complaints and responding to complaints. This change in filing time periods reasonably accommodates concerns by viewers that the current complaint process allows too much time to pass before a complaint must be addressed and concerns by distributors that they be allowed sufficient time to address captioning problems. Although the Commission considered retaining the former rule, pursuant to which complaints were filed first with the distributor, the dual approach adopted by the *Order* will enhance the complaint process. In addition, the *Order* contains an optional complaint form (FCC Form 2000–C) to assist consumers in the filing of complaints. *Order* at Appendix B. The information requested on the form will facilitate a more efficient complaint process for both complainants and distributors.

52. By requiring that video programming distributors provide contact information in bills, directories, on Web sites (if they have Web sites) and by sending this information to the Commission for placement on the Commission's Web site, the *Order* seeks to remedy concerns by consumers who report confusion about whom to contact about closed captioning concerns and dissatisfaction with the responsiveness of the video programming distributors. The *Order* does not require that distributors create Web sites specifically for the purpose of providing contact information.

53. The *Order* does not require that distributors alter their hours of operation or the hours during which they have staffing available. The *Order* only requires that, where staff is available to address technical issues that

may arise during the course of transmitting programming, the staff must be knowledgeable about and be able to address closed captioning concerns. The *Order* also reminds video programming distributors of the importance of making their organizations accessible to persons with hearing disabilities seeking information about the entity's closed captioning or other matters. As such the *Order* expresses the Commission's expectation that all video programming distributors take measures to readily accommodate incoming calls placed through Telecommunications Relay Service (TRS). In situations where a distributor is not immediately available, any calls or inquiries received, using the dedicated contact information described in the *Order*, should be returned or otherwise addressed within 24 hours.

54. The economic burdens associated with the changes to the closed captioning rules adopted in the *Order* are minimal. The benefits of revising the complaint process, requiring that contact information be available to consumers and requiring that distributors have personnel able to address captioning problems when they are available to address other technical problems outweigh any slight burdens these requirements may impose. Furthermore, there are several provisions of the closed captioning rules that were adopted in 1997 that are intended to address concerns of small businesses. These 1997 provisions are not affected by the *Order*, nor were they addressed in the *2005 Closed Captioning NPRM*. These provisions are intended to provide relief to small businesses who may find closed captioning to be unduly burdensome, and bear mentioning in this FRFA. For instance, the existing closed captioning rules contain several self-implementing exemptions that factor the costs of captioning and/or the financial status of distributors into a determination of whether the entity is exempt from the captioning requirements. The *Order* does not alter the existing exemption that excuses a video programming provider from spending more than 2 percent of its annual gross revenues received from a channel on closed captioning (§ 79.1(d)(11) of the Commission's rules), nor does the *Order* alter the current provision in the rules that exempts video programming providers from closed captioning where the distributor's annual gross revenues for the channel did not exceed $3 million for the previous calendar year (§ 79.1(d)(12) of the Commission's rules). Both of these previously adopted provisions were intended to address the problems of small video programming providers that are not in a position to devote significant resources toward closed captioning. These exemptions relieve small entities of any burdensome obligation to provide closed captioning without significantly reducing the availability of captioning.

55. In addition, another provision in the current rules allows the Commission to grant exemptions to the rules where a petitioner has shown it would be an undue burden (*i.e.*, significant difficulty or hardship) to close caption (§ 79.1(f) of the Commission's rules). This mechanism allows the Commission to address the impact of these rules on individual entities and modify the rules to accommodate individual circumstances. The procedures in § 79.1(f) of the Commission's rules were specifically designed to ameliorate the impact of the closed captioning rules in a manner consistent with the objective of increasing the availability of captioned programming.

**Congressional Review Act**

The Commission will send a copy of the *Declaratory Ruling* and *Order* and, including this FRFA, in a report to be sent to Congress and the U.S. Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Declaratory Ruling* and *Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

**Ordering Clauses**

Pursuant to sections 4(i), 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 613, the *2008 Digital Closed Captioning Declaratory Ruling and Order is adopted* and the Commission's Rules *are hereby amended* as set forth herein.

The *2008 Digital Closed Captioning Declaratory Ruling and Order shall be effective* February 12, 2009, except with regard to the information collection requirements contained in new rule § 79.1(i) and § 79.1(g)(1) through (5), which will become effective upon publication in the **Federal Register** of notice of approval by the Office of Management and Budget of the information collections, and, with respect to § 79.1(i), with which distributors must comply within 30 days thereafter.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *2008 Digital Closed Captioning Declaratory Ruling and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 79**

Cable television operators, Multichannel video programming distributors (MVPDs), Satellite television service providers, Television broadcasters.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

**Rule Changes**

■ For the reasons discussed in the Preamble, the Federal Communications Commission amends 47 CFR Part 79 to read as follows:

## PART 79—CLOSED CAPTIONING OF VIDEO PROGRAMMING

■ 1. The authority citation for Part 79 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 613.

■ 2. Section 79.1 is amended by adding paragraphs (a)(5)(i) and (ii), by revising paragraphs (a)(6)(i) and (ii), and (g)(1) through (5) and by adding paragraph (i) to read as follows:

**§ 79.1 Closed captioning of video programming.**

(a) * * *

(5) * * *

(i) Analog video programming that is first published or exhibited on or after January 1, 1998.

(ii) Digital video programming that is first published or exhibited on or after July 1, 2002.

(6) * * *

(i) Analog video programming that was first published or exhibited before January 1, 1998.

(ii) Digital video programming that was first published or exhibited before July 1, 2002.

* * * * *

(g) * * *

(1) Complaints concerning an alleged violation of the closed captioning requirements of this section shall be filed with the Commission or with the video programming distributor responsible for delivery and exhibition of the video programming within sixty (60) days of the problem with captioning. A complaint must be in writing, must state with specificity the alleged Commission rule violated and must include some evidence of the alleged rule violation.

(2) Complaints filed first with the Commission will be forwarded to the

appropriate video programming distributor. The video programming distributor must respond in writing to the Commission and the complainant within 30 days of the receipt of the complaint from the Commission.

(3) Complaints sent to a video programming distributor regarding programming by a television broadcast station or other programming for which the video programming distributor is exempt from closed captioning responsibility pursuant to paragraph (e)(9) of this section, shall be forwarded by the video programming distributor within seven (7) days of receipt to the entity responsible for closed captioning of the programming at issue. The video programming distributor must also notify the complainant and the Commission that it has forwarded the complaint. Entities receiving forwarded complaints must respond in writing to the complainant within 30 days of the forwarding date of the complaint.

(4) If a complaint is first filed with the video programming distributor, the video programming distributor must respond in writing to the complainant within thirty (30) days after receipt of a closed captioning complaint. If a video programming distributor fails to respond to the complainant within thirty (30) days, or the response does not satisfy the consumer, the complainant may file the complaint with the Commission within thirty (30) days after the time allotted for the video programming distributor to respond. If a consumer re-files the complaint with the Commission (after filing with the distributor), the Commission will forward the complaint to the distributor, and the distributor shall respond to the Commission and the complainant within thirty (30) days of receipt of the complaint from the Commission.

(5) In response to a complaint, a video programming distributor is obligated to provide the Commission with sufficient records and documentation to demonstrate that it is in compliance with the Commission's rules.

* * * * *

(i) *Contact information.* (1) Video programming distributors shall make available contact information for the receipt and handling of immediate closed captioning concerns raised by consumers while they are watching a program. Programming distributors must designate a telephone number, fax number, and e-mail address for purposes of receiving and responding immediately to any closed captioning concerns. Video programming distributors should ensure that any staff reachable through this contact information has the capability to immediately respond to and address consumers' concerns. To the extent that a distributor has personnel available, either on site or remotely, to address any technical problems that may arise, consumers using this dedicated contact information must be able to reach someone, either directly or indirectly, who can address the consumer's captioning concerns. This provision does not require that distributors alter their hours of operation or the hours during which they have staffing available; at the same time, however, where staff is available to address technical issues that may arise during the course of transmitting programming, they also must be knowledgeable about and be able to address closed captioning concerns. In situations where a distributor is not immediately available, any calls or inquiries received, using this dedicated contact information, should be returned or otherwise addressed within 24 hours. In those situations where the captioning problem does not reside with the distributor, the staff person receiving the inquiry should refer the matter appropriately for resolution.

(2) Video programming distributors shall make contact information available for the receipt and handling of written closed captioning complaints that do not raise the type of immediate issues that are addressed in paragraph (i)(1) of this section. The contact information required for written complaints shall include the name of a person with primary responsibility for captioning issues and who can ensure compliance with our rules. In addition, this contact information shall include the person's title or office, telephone number, fax number, postal mailing address, and e-mail address. Distributors shall include this information on their Web sites (if they have a Web site), in telephone directories, and in billing statements (to the extent the distributor issues billing statements). Distributors shall keep this information current and update it within 10 business days for Web sites, by the next billing cycle for billing statements, and by the next publication of directories.

(3) Video programming distributors shall file the contact information described in this section with the Chief of the Disability Rights Office, Consumer and Governmental Affairs Bureau, or by sending the information to *CLOSEDCAPTIONING_POC@fcc.gov*. After compiling and posting the list on the FCC's Web site, Commission staff shall prepare a Public Notice advising consumers and other interested parties how to obtain access to the contact information. This information shall also be available by telephone inquiry to the Commission's Consumer Center. Distributors shall notify the Commission each time there is a change in any of this required information within 10 business days.

[FR Doc. E8–31447 Filed 1–12–09; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Part 213

**[Docket No. FRA–2008–0158]**

## Policy on the Safety of Railroad Bridges

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Amendment to Final Statement of Agency Policy.

**SUMMARY:** FRA is amending its statement of agency policy on the safety of railroad bridges. The policy outlines suggested criteria for railroads to use to ensure the structural integrity of bridges that carry railroad tracks. This amendment adds provisions that will guide railroads in developing their own implementing programs that will ensure conformity with the provisions of this policy.

**DATES:** *Effective Date:* This amendment to the statement of policy is effective February 12, 2009.

**FOR FURTHER INFORMATION CONTACT:** Gordon A. Davids, P.E., Bridge Engineer, Office of Safety Assurance and Compliance, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590 (Telephone: 202–493–6320), or Sarah Grimmer Yurasko, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (Telephone 202–493–6047).

**SUPPLEMENTARY INFORMATION:** FRA published its ''Statement of Agency Policy on the Safety of Railroad Bridges'' (''Policy'') on August 30, 2000 (65 FR 52667). The Policy Statement, included in the Federal Track Safety Standards (Title 49, Code of Federal Regulations, Part 213) as Appendix C, includes non-regulatory guidelines based on good practices which were prevalent in the railroad industry at the time the Policy was issued. This notice amends those guidelines by

incorporating changes proposed by the Rail Safety Advisory Committee (RSAC) on September 10, 2008.

**Railroad Safety Advisory Committee (RSAC) Overview**

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to FRA's Administrator on rulemakings and other safety program issues. The RSAC includes representation from all of the agency's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of RSAC members follows:

American Association of Private Railroad Car Owners (AARPCO);
American Association of State Highway & Transportation Officials (AASHTO);
American Chemistry Council;
American Petrochemical Institute;
American Public Transportation Association (APTA);
American Short Line and Regional Railroad Association (ASLRRA);
American Train Dispatchers Association (ATDA);
Association of American Railroads (AAR);
Association of Railway Museums (ARM);
Association of State Rail Safety Managers (ASRSM);
Brotherhood of Locomotive Engineers and Trainmen (BLET);
Brotherhood of Maintenance of Way Employees Division (BMWED);
Brotherhood of Railroad Signalmen (BRS);
Chlorine Institute;
Federal Transit Administration (FTA)*;
Fertilizer Institute;
High Speed Ground Transportation Association (HSGTA);
Institute of Makers of Explosives;
International Association of Machinists and Aerospace Workers;
International Brotherhood of Electrical Workers (IBEW);
Labor Council for Latin American Advancement (LCLAA)*;
League of Railway Industry Women*;
National Association of Railroad Passengers (NARP);
National Association of Railway Business Women*;
National Conference of Firemen & Oilers;
National Railroad Construction and Maintenance Association;
National Railroad Passenger Corporation (Amtrak);
National Transportation Safety Board (NTSB)*;
Railway Supply Institute (RSI);
Safe Travel America (STA);
Secretaria de Comunicaciones y Transporte*;
Sheet Metal Workers International Association (SMWIA);
Tourist Railway Association Inc.;
Transport Canada*;
Transport Workers Union of America (TWU);
Transportation Communications International Union/BRC (TCIU/BRC);
Transportation Security Administration (TSA); and
United Transportation Union (UTU).
*Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

*Railroad Bridge Working Group*

RSAC agreed with FRA on February 20, 2008, to accept the task of reviewing FRA's railroad bridge safety policies and activities, and to make appropriate recommendations for FRA to improve the bridge safety program. RSAC accordingly established a Railroad Bridge Working Group (RBWG), composed of representatives of the various organizations on the RSAC and including persons with particular expertise in railroad bridge safety and management. The RBWG met on April 24–25, 2008, June 12, 2008, and August 7, 2008. On September 10, 2008, the full RSAC voted on the RBWG's report, and recommended that FRA implement the RBWG's proposal of a set of ''Essential Elements of Railroad Bridge Management Programs,'' (Essential Elements) in FRA's Agency Policy on the Safety of Railroad Bridges.

Developing the Essential Elements composed the bulk of the RBWG's work. The purpose of these Essential Elements is to provide railroad bridge owners with a uniform, comprehensive set of components for recommended inclusion in their bridge management programs. With this information, a bridge owner may develop a single, comprehensive set of instructions, information and data as guidance for his employees who are responsible for the management, inspection, maintenance and safety of railroad bridges.

In the course of developing these Essential Elements, the members of the RBWG combined their experience in determining the items to be included. The RBWG members also recognized that, although most railroads were already performing these functions to varying degrees, it would be useful to have the recommended Essential Elements available in a central location so that all concerned may see the railroad's full program, and also to determine that no essential element is overlooked. FRA agrees with this recommendation by the RSAC, which is the agency's basis for now incorporating the ''Essential Elements of Railroad Bridge Management Programs'' into Appendix C of the Track Safety Standards.

On October 16, 2008, President Bush signed into law, the Railroad Safety Improvement Act of 2008 (Pub. L. 110–423) (Act''). Section 417 of the Act directs FRA to issue, by October 16, 2009, regulations requiring railroad bridge owners to adopt and follow specific procedures to protect the safety of their bridges. FRA plans to conform to that legislative mandate. A close reading and study of the specific requirements of the bridge safety provisions mandated by the Act shows that they closely parallel the Essential Elements of RSAC's September 10, 2008, recommendation. FRA therefore finds that this amendment of the Statement of Agency Policy on the

Safety of Railroad Bridges, which FRA is completing expeditiously as a non-regulatory proceeding, will benefit railroad bridge owners by giving them prompt advice regarding the development of their bridge safety programs, and that the early work to be done railroad bridge owners in conformance with this recommendation will benefit the owners and the public when FRA issues regulations conforming to the legislative mandate.

*Effect of the Amendment to This Statement of Policy*

This amendment to Policy contains guidelines for the development of effective programs for the management and safety of railroad bridges. It is meant to be advisory in nature. It does not have the force of regulations under which FRA ordinarily issues violations and assesses civil penalties. The guidelines contained herein represent the general criteria against which FRA will evaluate each railroad's bridge inspection and management program.

Even without specific bridge safety regulations, FRA maintains authority to perform safety inspections of any railroad facility and to issue emergency orders under 49 U.S.C. 20104, 49 U.S.C. 20107, and 49 CFR part 209. This amendment to the Policy does not change FRA's statutory emergency order authority with respect to railroad bridge safety. This emergency order authority permits FRA, if necessary, to remove from service, or otherwise impose conditions on any railroad operation which, in the judgment of the agency, poses an emergency situation involving a hazard of death or personal injury. FRA will not hesitate to use this authority if circumstances warrant.

**List of Subjects in 49 CFR Part 213**

Penalties, Railroad safety, Railroads.

## PART 213—[AMENDED]

■ 1. The authority citation for part 213 continues to read as follows:

**Authority:** 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

■ 2. Section 14 is added to Appendix C, Part 213 to read as follows:

### Appendix C to Part 213—Statement of Agency Policy on the Safety of Railroad Bridges

* * * * *

*14. Railroad Implementation of Bridge Safety Programs*

FRA recommends that each track owner or other entity which is responsible for the integrity of bridges which support its track adopt and implement an effective and comprehensive program to ensure the safety of its bridges. The bridge safety program should incorporate the following essential elements, applied according to the configuration of the railroad and its bridges. The basis of the program should be in one comprehensive and coherent document which is available to all railroad personnel and other persons who are responsible for the application of any portion of the program.

The program should include:

(a) Clearly defined roles and responsibilities of all persons who are designated or authorized to make designations regarding the integrity of the track owner's bridges. The definitions may be made by position or by individual;

(b) Provisions for a complete inventory of bridges that carry the owner's track, to include the following information on each bridge:

(1) A unique identifier, such as milepost location and a subdivision code;

(2) The location of the bridge by nearest town or station, and geographic coordinates;

(3) The name of the geographic features crossed by the bridge;

(4) The number of tracks on the bridge;

(5) The number of spans in the bridge;

(6) The lengths of the spans; and

(7) Types of construction of:

(i) Substructure;

(ii) Superstructure; and

(iii) Deck;

(8) Overall length of the bridge.

(9) Dates of:

(i) Construction;

(ii) Major renovation; and

(iii) Strengthening;

(10) Identification of entities responsible for maintenance of the bridge or its different components;

(c) Known capacity of its bridges as determined by rating by competent engineer or by design documents;

(d) Procedures for the control of movement of high, wide or heavy loads exceeding the nominal capacity of bridges;

(e) Instructions for the maintenance of permanent records of design, construction, modification, and repair;

(f) Railroad-specific procedures and standards for design and rating of bridges;

(g) Detailed bridge inspection policy, including:

(1) Inspector Qualifications.

(i) Bridge experience or appropriate educational training.

(ii) Training on bridge inspection procedures.

(iii) Training on Railroad Workplace Safety.

(2) Type and frequency of inspection.

(i) Periodic (at least annually).

(ii) Underwater.

(iii) Special.

(iv) Seismic.

(v) Cursory inspections of overhead bridges that are not the responsibility of the railroad.

(3) Inspection schedule for each bridge.

(4) Documentation of inspections.

(i) Date.

(ii) Name of inspector.

(iii) Reporting Format.

(iv) Coherence of information.

(5) Inspection Report Review Process.

(6) Record retention.

(7) Tracking of critical deficiencies to resolution;

(h) Provide for the protection of train operations following an inspection, noting a critical deficiency, repair, modification or adverse event and should

(1) Include a listing of qualifications of personnel permitted to authorize train operations following an adverse event; and

(i) Detailed internal program audit procedures to ensure compliance with the provisions of the program.

Issued in Washington, DC, on January 7, 2009.

**Clifford C. Eby,**

*Acting Administrator.*

[FR Doc. E9–436 Filed 1–12–09; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 216 and 300

**[Docket No. 070717339–81648–02]**

**RIN 0648–AV37**

### International Fisheries; Pacific Tuna Fisheries; Revisions to Regulations for Vessels Authorized to Fish for Tuna and Tuna-like Species in the Eastern Tropical Pacific Ocean and to Requirements for the Submission of Fisheries Certificates of Origin

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to revise regulations governing vessels authorized by the United States to fish for tuna and tuna-like species in the eastern tropical Pacific Ocean (ETP). This final rule updates and clarifies regulations promulgated by NMFS to implement the Marine Mammal Protection Act, the Tuna Conventions Act, the Dolphin Protection Consumer Information Act, and resolutions adopted by the Inter-American Tropical Tuna Commission (IATTC) and by the Parties to the Agreement on the International Dolphin Conservation Program (AIDCP). This rule modifies the procedures and requirements for the Vessel Register, the list of vessels authorized to fish for tuna and tuna-like species in the ETP. Requirements for the submission of certifications by importers are also revised. This rule is intended to clarify the regulations, facilitate management of U.S. vessels,

and update the regulations to be consistent with resolutions adopted by the members of the IATTC and the Parties to the AIDCP.

**DATES:** This final rule is effective February 12, 2009.

**ADDRESSES:** Supporting documents (including the Categorical Exclusion memo, Regulatory Flexibility Act certification memo, and Regulatory Impact Review) regarding this final rule can be found at the Federal eRulemaking Portal Web site at *http://www.regulations.gov*. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Southwest Regional Office, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802, and by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:** Susan Wang, NMFS, Southwest Region, Protected Resources Division, at (562) 980–4199.

**SUPPLEMENTARY INFORMATION:**

## Background

The United States is a member of the IATTC, established in 1949 under the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention). The IATTC provides an international forum to ensure the effective conservation and management of highly migratory species of fish in the Convention Area. The Convention Area is defined to include waters of the ETP bounded by the coast of the Americas, the 40° N. latitude and 40° S. latitude, and the 150° W. longitude (50 CFR 300.21). Resolutions under the IATTC are adopted by consensus and are binding on the members of the IATTC. The Tuna Conventions Act (16 U.S.C. 951 *et seq.*) authorizes the Secretary of Commerce to promulgate regulations implementing IATTC resolutions. The Secretary's authority has been delegated to the Assistant Administrator for Fisheries, NMFS.

The United States is also a Party to the AIDCP. The AIDCP was established in May 1998 when eight nations, including the United States, signed a binding, international agreement to implement the International Dolphin Conservation Program (IDCP). The agreement became effective on February 15, 1999, and provides greater protection to dolphin stocks and enhanced conservation of yellowfin tuna and other living marine resources in the ETP. The IDCP and resolutions adopted by the Parties to the AIDCP are implemented domestically under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*).

Regulations implementing the International Dolphin Conservation Program, Tuna Conventions Act, DPCIA, and resolutions adopted by the IATTC and AIDCP concerning tuna fisheries in the ETP are codified at 50 CFR parts 216 and 300. On July 11, 2008, NMFS published a proposed rule in the **Federal Register** (73 FR 39915), to revise these regulations in order to facilitate management of U.S. vessels authorized to fish for tuna and tuna-like species in the Convention Area and to ensure consistency between the operation of these vessels and resolutions adopted by the IATTC and the IDCP. In that proposed rule, NMFS solicited public comment on revisions to the regulations to require: (1) the collection of a vessel photograph and vessel information from all commercial fishing vessels and commercial passenger fishing vessels (CPFVs) authorized to fish for tuna and tuna-like species in the Convention Area; (2) annual written notification to list a small purse seine vessel as active or inactive; (3) written notification of the intent to transfer a purse seine vessel appearing on the IATTC's Vessel Register to foreign registry and flag; (4) payment of an ETP purse seine vessel operator permit application fee; (5) for vessels authorized to set on dolphins, vessel inspections twice per year and the use of high-intensity floodlights; (6) requests for active status on the IATTC Vessel Register to be treated as frivolous if a purse seine vessel was listed as active but did not fish for tuna at all in the Convention Area; (7) removal of vessels from the Vessel Register if the owner lacks valid vessel documentation, or, for tuna purse seine vessels, if the owner has made a frivolous request or has notified NMFS of the intent to transfer the vessel to foreign registry and flag; (8) submission of certifications by importers to be within 10 days of importing a shipment into the United States, rather than within 30 days; and (9) electronic submissions of certifications to be in Portable Document Format (PDF). Public comment was also solicited on numerous non-substantive modifications and clarifications to the regulations.

In this final rule, NMFS adopts most of the revisions in the proposed rule, as described above. In this final rule, NMFS responds to public comments and makes technical modifications, described in more detail under the section titled ''Changes from the Proposed Rule.''

## Responses to Comments

NMFS solicited public comments on the proposed rule. A public hearing was held on July 28, 2008, and the public comment period closed on August 11, 2008. One comment was received at the public hearing and 4 comments by fax, standard mail, or electronically from representatives of the tuna import and tuna fishing industry, the Marine Mammal Commission (an independent agency of the U.S. government), and non-profit organizations. The key issues and concerns are summarized below and responded to as follows:

### *General Comments on the Purpose of the Proposed Revisions*

*Comment 1:* One commenter asked for additional explanation regarding the need for and appropriateness of the proposed changes, especially those governing the tuna purse seine portion of the Vessel Register, given the low level of participation in the U.S. ETP tuna purse seine fishery. In particular, the commenter noted that: (1) the U.S. ETP purse seine fleet has not come near to approaching its 8,969–metric ton (mt) capacity limit; (2) currently, there are only two purse seine vessels categorized as active on the Vessel Register; and (3) the majority of U.S. Vessels on the IATTC Vessel Register are non-purse seine vessels, but the proposed regulations would have limited effects on the operations of these vessels.

*Response:* Even if our vessel numbers are relatively few, the United States is still obligated by the AIDCP and the Convention to ensure that U.S. vessels and persons operate in compliance with our treaty obligations. Participation of U.S. vessels in the ETP tuna purse seine fishery has fluctuated over the years. Although current participation is low, NMFS recognizes that conditions could change and participation increase again. It is also important to prevent the transfer of capacity to other nations to fulfill our commitment to limiting the total purse seine fleet capacity in the ETP (IATTC Resolution on the capacity of the tuna fleet operating in the eastern Pacific Ocean; C–02–03, June 2002). Finally, the IATTC requires that all vessels (purse seine and non-purse seine) authorized to fish for tuna and tuna-like species in the ETP be listed on the Vessel Register (IATTC Resolution on a Regional Vessel Register; C–00–06, June 2000). The IATTC imposes additional requirements for purse seine vessels listed on the Vessel Register, but not for non-purse seine vessels. Thus, the regulations being revised by this rule focus primarily on the ETP tuna purse seine fleet. The regulations

governing non-purse seine vessels are not being changed at this time and are located at other sections of the CFR.

*Definition of Tuna Product*

*Comment 2:* One commenter opposed the revision to the definition of the term ''tuna product'' that would limit the definition to products intended for human consumption, stating that such a definition would be inconsistent with the intent of Congress in the DPCIA. The commenter recommended that NMFS not adopt the revised definition.

*Response:* Upon consideration of the comment, the definition for the term ''tuna product'' will not be revised and will remain as it is currently defined at 50 CFR 216.3.

*Vessel Register Requirements*

*Comment 3:* NMFS received one comment that the preamble to the proposed rule incorrectly stated that the capacity limit of the U.S. tuna purse seine fleet under the IATTC capacity resolution is 8,969 mt. The commenter recommended filing an amended **Federal Register** notice with a new public comment period to correct this error. The commenter emphasized that the United States agreed to limit the U.S. tuna purse seine fleet to a capacity of 8,969 mt so long as the June 2002 Resolution on the capacity of the tuna fleet operating in the ETP (Revised; C–02–03) remained in force and was respected by all Parties (referencing a letter written in 2002 by Mary Beth West, U.S. Department of State, to Robin Allen, Director of the IATTC). The commenter contended that the resolution to limit the capacity of the tuna purse seine fleet in the ETP has not been respected by all Parties, and thus the U.S. tuna purse seine fleet should not be bound to the capacity limit of 8,969 mt.

*Response:* We agree with the commenter and clarify here that the U.S. ETP tuna purse seine fleet's capacity limit of 8,969 mt is a self-imposed capacity limit agreed to by the United States, and is not the capacity limit established for the United States in the IATTC's 2002 resolution on capacity (C–02–03). We do not believe it is necessary or required, however, to file an amended **Federal Register** notice with a new public comment period. The regulatory provisions regarding the capacity limit of 8,969 mt were already established in regulation and were not proposed to be revised. The current regulations at 50 CFR 300.22(b)(4)(i)(A) state that ''[t]he cumulative carrying capacity of all vessels categorized as active on the Vessel Register may not exceed 8,969 mt in a given year.'' The current regulations also allow additional U.S. purse seine vessels to be added to the Vessel Register and categorized as active to replace a vessel removed from the active list, ''provided the total carrying capacity of active vessels does not exceed 8,969 mt'' (50 CFR 300.22(b)(7)(ii)). These provisions were adopted in 2005 by notice-and-comment rulemaking (70 FR 19004, April 12, 2005).

*Comment 4:* One commenter stated that the current size categories distinguishing purse seine vessels capable of setting on or encircling dolphins (''large'' vessels exceeding 400 short tons (st) (362.8 mt) carrying capacity) from those that are not capable (''small'' vessels of 400 st (362.8 mt) carrying capacity or less) are no longer valid. The commenter noted that the proposed rule maintains this distinction and does not address the directive in the 2005 Consolidated Appropriations Act (Pub. L. No. 108–447) instructing NMFS to dedicate funding toward revising the definition for a vessel that is not capable of setting on or encircling dolphins. The commenter recommended that NMFS propose a new definition or at least explain what has been done and what NMFS is doing to address the directive from the 2005 Consolidated Appropriations Act.

*Response:* Revising the definition for a purse seine vessel that is not capable of setting on or encircling dolphins is not within the scope of this rulemaking. Researchers at the Southwest Fisheries Science Center (SWFSC), however, have been working on studies to address this issue in response to the directive given in the 2005 Consolidated Appropriations Act. Since 2006, the SWFSC has been contracting with the IATTC staff to sample the landed catch of Class 4 - 5 (''small'') purse seine vessels in international ports. The SWFSC has also been collecting data on various characteristics of the sampled Class 4 5 purse seine vessels (e.g., number of speed boats, presence of a dolphin safety panel) to collect more refined information on what characteristics, beyond size class and horsepower, make a vessel capable of setting on dolphins. The SWFSC examined the catch composition data to try to predict whether tuna sets were made on dolphins or not, based on the idea that yellowfin tuna caught in association with dolphins are larger and generally comprise a much larger percentage of the catch compared to other set types. From the data, the SWFSC can identify tuna sets that do not fit the usual profile of a sample not caught in association with dolphins. The analyses are not final, however, nor do the data provide definitive proof of whether a vessel is setting on dolphins or not. In addition, although funding was set aside to provide for observers on Class 4 - 5 purse seine vessels, no vessels have agreed to participate in the voluntary observer program. Without observer data for these vessels, there is insufficient data to support a finding that vessels of 400 st (362.8 mt) carrying capacity or less have a regular and significant association with dolphins in the fishery.

NMFS will continue to work on addressing this issue. It is important to note, however, that developing a revised definition is but one step in the process. Several aspects of the approval and implementation of a revised definition are beyond the authority of NMFS. For international purposes, revised definitions for purse seine vessels capable of setting on or encircling dolphins (i.e., ''large'' vessels) and for those not capable of setting on or encircling dolphins (i.e., ''small'' vessels) would have to be approved by the Parties to the AIDCP. An example of this would be requiring observer coverage on what are now considered ''small vessels.''

*Comment 5:* One commenter stated that reporting a vessel's fish hold capacity in cubic meters is not currently a requirement under the Pacific Fishery Management Council's (PFMC) Highly Migratory Species (HMS) Fishery Management Plan (FMP), the Western PFMC's Pelagic Fisheries FMP, or the High Seas Fisheries Compliance Act (HSFCA), and that requiring the reporting of this information is unnecessary and burdensome given that there is no IATTC resolution on capacity for these vessels.

*Response:* The IATTC Vessel Register, established in June 2000 by the IATTC Resolution on a Regional Vessel Register (C–00–06), is the list of all vessels authorized by the member nations to fish for tuna and tuna-like species in the Convention Area. As a member of the IATTC, the United States is required to submit specific information on such vessels, in order to update and maintain the Vessel Register. To meet this requirement, the revised regulations would require collection of vessel information from all commercial fishing vessels and CPFVs authorized by the United States to fish for tuna and tuna-like species in the Convention Area. One piece of information required for the Vessel Register is the vessel's fish hold capacity in cubic meters. For vessels authorized to fish for tuna and tuna-like species in the Convention Area under the HMS FMP, the fish hold capacity in cubic meters is already

collected on the Pacific HMS permit application. For all other non-purse seine vessels, NMFS is planning a separate rulemaking action to collect this and other required Vessel Register information through the HSFCA permit application. The commenter is correct that fish hold capacity in cubic meters is not currently collected on the HSFCA permit application. However, as stated above, this information is required to be collected for the purposes of the IATTC Vessel Register.

*Comment 6:* One commenter questioned why the 10–percent surcharge for late payment of the vessel assessment fee would apply to ETP tuna purse seine vessels for which active or inactive status is requested during the calendar year and requested clarification on when the 10–percent surcharge applies.

*Response:* According to the minutes for the 16th Meeting of the Parties to the AIDCP (October 26, 2006), the 10–percent late fee applies to vessels entering the fishery during the course of the year only if the vessel fished in the Convention Area in the previous calendar year. Thus, payment of the vessel assessment fee is considered late and subject to the 10–percent late fee for vessels for which active status is requested: (1) during the calendar year, only if the vessel was listed as active in the previous calendar year and was not listed as inactive at the beginning of the calendar year; or (2) for the following calendar year, only if payment of the fee is received after the applicable dates (September 15 if a dolphin mortality limit (DML) is requested and November 30 if a DML is not requested) and the vessel was listed as active in the year the request was made. The 10–percent late fee would not apply to purse seine vessels for which inactive status is requested or to purse seine vessels licensed under the South Pacific Tuna Treaty (SPTT) that are exercising their option to make a single trip into the ETP per year. The regulatory text has been corrected and revised to clarify when the 10–percent late fee would apply (see the section titled ''Changes from the Proposed Rule'' for more details).

*Comment 7:* One commenter stated that it is unfair to impose a penalty for frivolous requests because there are economic (e.g., fuel prices, fish prices) or other reasons (e.g., ocean conditions) for why a vessel may not land any tuna or why tuna would make up less than 20 percent of its total catch by weight in a given year. The commenter noted that this would be particularly unfair if it applied to small purse seine vessels, longline vessels, and troll vessels.

*Response:* The frivolous request criteria apply only to owners of tuna purse seine vessels who have requested that a vessel be categorized as active on the Vessel Register, but did not fish for tuna at all in the Convention Area in that same year, or when less than 20 percent of the vessel's total landings was comprised of tuna harvested by purse seine in the Convention Area in that same year. The main purpose of the frivolous request determinations is to deter vessel owners who are not planning to actively fish for tuna from requesting active status and occupying a portion of the U.S. fleet's limited capacity. Factors such as those mentioned by the commenter should be taken into account before applying for active status. In addition, the regulations allow for the consideration of extraordinary circumstances, or circumstances beyond the control of the vessel owner, in determining whether a request is frivolous. We also note that, although frivolous requests apply to small purse seine vessels, there would be little to no effects on small purse seine vessels, because they are not required to be categorized as active on the Vessel Register as long as tuna caught in the Convention Area comprise 50 percent or less of the vessel's total landings in a given year.

*Revised Floodlight Requirements for Tuna Purse Seine Vessels with Dolphin Mortality Limits (DMLs)*

*Comment 8:* Two comments were received regarding the revised floodlight requirements for tuna purse seine vessels with DMLs. One commenter requested clarification that these requirements apply only to Class 6 purse seine vessels and not to troll or long line vessels. Another commenter requested that more explanation be added to reiterate that the prohibitions on making sundown sets and on initiating sets at night still apply.

*Response:* The revised floodlight requirements apply only to tuna purse seine vessels greater than 400 st (362.8 mt) carrying capacity to which a DML has been assigned. The floodlight requirements do not alter the prohibition on making sundown sets, codified at 50 CFR 216.24(c)(6)(iii). Instead, the floodlights are required to ensure that dolphins are released successfully from any sets that have not been completed by sundown.

*Fisheries Certificates of Origin and Verification of Dolphin-Safe Labeling Standards*

*Comment 9:* One commenter questioned why NMFS proposed to shorten the maximum time (the deadline) for submitting Fisheries Certificates of Origin (FCOs) from within 30 days to within 10 days of the shipment's entry into U.S. commerce. The commenter asked if there have been enforcement issues that led to this proposed revision and expressed concern that 10 days may not provide sufficient time to submit the certifications.

*Response:* NMFS proposed to reduce the time required for submitting FCOs and associated certifications from within 30 days to within 10 days to aid in enforcement of the regulations. NMFS routinely identifies importers of record that fail to comply with the regulations to submit the FCO form, or that submit incomplete forms. As stated in the preamble of the proposed rule, by 30 days the tuna or products may already be offered for sale, purchased, or consumed before violations of the requirements governing certification are determined. Requiring the submission of FCOs and associated certifications within 10 days of the shipment's import into U.S. commerce would allow NMFS to determine violations of the certification requirements early enough to more effectively respond with any necessary enforcement actions and options (e.g., holding the tuna or tuna products if a violation of dolphin-safe standards has been determined). Regarding whether 10 calendar days is sufficient time for importers to submit the forms to NMFS, we note that importers are already required to submit completed FCOs to U.S. Customs and Border Protection (CBP) upon import of a shipment into the United States. The only additional piece of information required prior to submitting the form to NMFS is the Customs Entry Number and date of entry (required to link the forms to the electronic import data received from CBP). Most importers already submit their forms within 10 days of the shipment's entry into U.S. commerce. The remaining importers currently submit their forms monthly, but should have sufficient time to submit their forms within the 10 day time period.

*Comment 10:* One commenter identified two problems with the regulations at 50 CFR 216.91(a)(2)(i) requiring written certification of the dolphin-safe status of tuna caught by purse seine: (1) the falsification of dolphin-safe verification forms by observers; and (2) the requirement that observers issue or endorse only documents approved by the Parties to the AIDCP (this was identified as a problem, because the Parties to the AIDCP do not recognize United States standards for dolphin-safe tuna). The

commenter recommended holding a workshop to discuss these problems.

*Response:* NMFS recognizes the issues raised by the commenter; however, these issues are beyond the scope of this rule, as well as beyond the authority of NMFS. These issues would be more appropriately addressed by the International Review Panel established by the AIDCP. The AIDCP routinely assesses and evaluates these issues to determine whether any amendments to resolutions should be considered. In addition, the paragraph of the regulations referred to by the commenter at 50 CFR 216.91(a)(2)(i) deals with tuna purse seine vessels operating outside of the ETP. These regulations are not yet applicable because the Assistant Administrator has not determined that a regular and significant association occurs between dolphins and tuna outside of the ETP. However, these regulations provide provisions for dolphin-safe labeling standards should such a determination be made in the future.

*Direct Notification Regarding IATTC Management Recommendations and Resolutions*

*Comment 11:* Two commenters questioned the removal of the requirement at 50 CFR 300.25(a) that the Regional Administrator, Southwest Region, must directly notify owners or agents of U.S. tuna vessels regarding IATTC recommendations. The commenters stated that direct notification is a more effective method of providing notice than publishing the information in the **Federal Register**.

*Response:* The main purpose of the revisions to 50 CFR 300.25(a) is to clarify that the IATTC recommendations and resolutions are implemented through appropriate notice-and-comment rulemaking in the **Federal Register** and that the **Federal Register** document would serve as the public notification. NMFS plans to continue providing direct notification to affected entities regarding IATTC management recommendations and resolutions as a courtesy to these entities, but not as a requirement under the regulations.

*Live Fish Transfers*

*Comment 12:* Two comments were received stating that this rule does not address the issue of the transshipment of tuna caught by purse seine from one vessel to another vessel at sea in the Convention Area. One commenter recommended that this rule should address the prohibition on the transshipment of live tuna.

*Response:* The issue of the transshipment of live tuna at sea in the Convention Area is outside of the scope of this rule. This rule was not intended as the vehicle to deal with this issue. NMFS plans to address this issue in a future rulemaking.

*Additional Updates to the Regulations*

*Comment 13:* One commenter suggested updating the regulations at 50 CFR 300.22(b)(4)(i) by removing the provisions referencing the years 2005 and 2006, because these provisions are no longer applicable.

*Response:* NMFS agrees with the suggested revisions to remove the outdated provisions in 50 CFR 300.22(b)(4)(i). The revisions are included in this final rule and described in more detail in the ''Changes from the Proposed Rule'' section below.

**Changes from the Proposed Rule**

*Definitions for Tuna Product and Tuna Species*

In response to the public comments, the definition of the term ''tuna product'' will not be revised as described in the proposed rule. The definition for ''tuna product'' will remain as defined at 50 CFR 216.3 to mean ''any food product processed for retail sale and intended for human or animal consumption that contains an item listed in § 216.24(f)(2)(i) or (ii), but does not include perishable items with a shelf life of less than 3 days.''

In addition, the proposed rule would have added to 50 CFR 216.3 a definition for ''Bluefin tuna'' to mean the species *Thunnus thynnus*, in order to define the term as used in the Harmonized Tariff Schedule of the United States (HTS). This definition was meant to include both Atlantic and Pacific bluefin tuna, because the HTS uses the general term ''Bluefin tuna'' to refer to both. It was brought to our attention, however, that Atlantic bluefin tuna are referred to as Thunnus thynnus, whereas Pacific bluefin tuna are referred to as *Thunnus orientalis*. In order to include both the Atlantic and Pacific bluefin tuna, this final rule revises the definition of ''Bluefin tuna'' to mean the species *Thunnus thynnus* or *Thunnus orientalis*.

*Clarification on Late Fees for Vessel Assessment Fees*

In 50 CFR 216.24(b)(6)(iii)(F), we clarified under what circumstances payment of the vessel assessment fee would be considered late and would be subject to a 10–percent surcharge. However, the proposed rule contained some errors that are clarified and corrected in this final rule.

In this final rule, we clarify that payment of the vessel assessment fee is considered late and subject to a 10–percent surcharge for purse seine vessels: (1) for which active status is requested to replace a vessel removed from active status on the Vessel Register during the year, if the vessel was listed as active in the previous calendar year and was not listed as inactive at the beginning of the calendar year; or (2) for which active status is requested for the following calendar year, if payment is made after the applicable deadline (September 15 if a DML is requested and November 30 if a DML is not requested) and the vessel was listed as active in the same year the request was made. Payment of the vessel assessment fee is not considered late and not subject to the 10–percent surcharge for purse seine vessels: (1) for which inactive status is requested; (2) for which active status is requested to replace a vessel removed from active status on the Vessel Register during the year, if the vessel was not listed as active in the previous calendar year or the vessel was listed as inactive at the beginning of the calendar year; or (3) for which active status is requested for the following calendar year, if the vessel was not listed as active in that same year the request was made. Payment of the vessel assessment fee is also not considered late and not subject to the 10–percent surcharge for purse seine vessels licensed under the South Pacific Tuna Treaty (SPTT) that exercise their option to make a single trip into the ETP per calendar year. This final rule revises 50 CFR 216.24(b)(6)(iii)(F), 300.22(b)(4)(iii), and 300.22(b)(7) accordingly.

*Additional Non-Substantive Revisions and Updates*

In response to the public comments, this final rule revises 50 CFR 300.22(b)(4)(i) to remove outdated provisions that were established to specify how requests for active status would be handled in 2005 and 2006, because these provisions are no longer applicable. Revisions are made to 50 CFR 300.22(b)(4)(i) to: (1) remove paragraph § 300.22(b)(4)(i)(C), which states that for 2005 only, requests for active status on the purse seine list will be prioritized on a first-come, first-served basis; (2) remove the references to the years 2005 and 2006 in the introductory paragraph of § 300.22(b)(4)(i)(D) and paragraphs § 300.22(b)(4)(i)(D)(1) and (2); and (3) redesignate paragraph § 300.22(b)(4)(i)(D) as paragraph § 300.22(b)(4)(i)(C). This final rule also revises the introductory paragraph to 50 CFR 300.22(b)(4)(ii) to remove the phrase ''Beginning with requests made

for 2005'', because this is an outdated provision.

This final rule also adds to 50 CFR 216.24(f)(2)(i)(D) and 216.24(f)(2)(ii)(D) the HTS number 1604.20.1000 for fish pastes, to clarify that products imported into the United States under this HTS number that contain yellowfin tuna or other tuna must be accompanied by a properly completed FCO. This addition is within the scope of the proposed rule, which clarified at 50 CFR 216.24(f)(2)(i) and 216.24(f)(2)(ii) that all shipments containing tuna or tuna products (except fresh tuna) imported into the United States must be accompanied by an FCO.

This final rule revises 50 CFR 300.22(b)(7)(iv) and 300.22(b)(7)(v) to clarify that a replacement vessel can be categorized as active on the Vessel Register to replace one or more vessels removed from the Vessel Register, rather than just one vessel. The regulatory language at 50 CFR 300.22(b)(7)(iv) and 300.22(b)(7)(v) will be revised to read: ''The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel or vessels being replaced.'' Also, the final rule adds to 50 CFR 300.21 a definition for ''Regional Administrator'' to clarify that the term refers to the Regional Administrator, Southwest Region.

## Classification

### Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866. NMFS prepared a Regulatory Impact Review for the proposed rule, available at the Federal E-Rulemaking Portal Web site at http://www.regulations.gov. No comments were received regarding the Regulatory Impact Review, and no further analyses were conducted for this final rule.

### Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

### Paperwork Reduction Act

This final rule contains new and revised collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under control number 0648–0387. The following collection-of-information requirements have been approved by OMB: (1) collection of a vessel photograph as part of the ETP tuna purse seine vessel permit application; (2) annual written notification to request a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as active on the Vessel Register, including the owner or managing owner's signature and business telephone and fax numbers and the required Vessel Register information (i.e., the vessel name, registration number, and previous name(s) and flag(s); a vessel photograph with the vessel registration number legible; the name and business address of the owner(s) and managing owner(s); port of registry; International Radio Call Sign; where and when built; length, beam, and moulded depth; gross tonnage, fish hold capacity, and carrying capacity; engine horsepower; and type of fishing method(s)); (3) annual written notification to request that a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as inactive on the Vessel Register, including the vessel name, registration number, and vessel owner or managing owner's name, signature, business address, and business telephone and fax numbers; and (4) written notification prior to submitting an application to transfer a purse seine vessel listed on the Vessel Register to foreign registry and flag, including the vessel name and registration number, the estimated submission date of the application, and the vessel owner or managing owner's name and signature. Public reporting burdens per individual response for the new and revised collection-of-information requirements are estimated to average 35 minutes for the ETP tuna purse seine vessel permit application; 35 minutes for the written notification to request active status; 5 minutes for the written notification to request inactive status; and 5 minutes for the written notification of the intent to transfer a vessel to foreign registry and flag. These reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

This final rule also contains a non-substantive change subject to the PRA and which has been approved by OMB under control number 0648–0335. The non-substantive change request submitted to and approved by OMB requires that the CBP importer of record submit a copy of the FCO and associated certifications to NMFS within 10 days of a shipment's entry into U.S. commerce, rather than within 30 days (except when the tuna will be processed in the United States, in which case the forms must be submitted to NMFS after endorsement by the final processor or exporter). The public reporting burden for the revised collection of information requirement would remain the same (estimated to average 20 minutes per individual response), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or by fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

### Endangered Species Act

NMFS prepared a Biological Opinion for an interim final rule (65 FR 30, January 3, 2000) to implement the IDCP in December 1999, and in July 2004 issued an amended Incidental Take Statement after taking into account the revisions made in the 2004 final rule (69 FR 55288, September 13, 2004). In the 1999 Biological Opinion, NMFS concluded that fishing activities conducted under the interim final rule are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This rule would not result in any effects beyond those considered in the 1999 Biological Opinion and 2004 Incidental Take Statement.

### National Environmental Policy Act

NMFS prepared an Environmental Assessment (EA) for a final rule (70 FR 19004, April 12, 2005) to implement resolutions adopted by the IATTC and the IDCP. The Assistant Administrator for Fisheries concluded that fishing activities conducted under the 2004 final rule would not be expected to

result in significant effects on the human environment. This rule would not be expected to result in modifications to fisheries operations or effects on the human environment beyond those considered under the alternatives in the EA. This action has been categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement. A memo to the record was prepared for the proposed rule memorializing this decision and is available at the Federal E-rulemaking Portal Web site: *http://www.regulations.gov*. No comments were received regarding the categorical exclusion memo, and no further analyses were conducted under NEPA for this rule.

Marine Mammal Protection Act

Incidental take of dolphins and other marine mammals may occur during fishing operations by U.S. tuna purse seine vessels in the ETP. The take of dolphins incidental to the operation of the U.S. ETP tuna purse seine fishery is authorized and managed under the IDCP. This rule would not affect the administration of that program, which is implemented under the MMPA.

**List of Subjects**

*50 CFR Part 216*

Fish, Marine mammals, Reporting and recordkeeping requirements.

*50 CFR Part 300*

International fisheries regulations, Pacific tuna fisheries.

Dated: January 7, 2009.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, NMFS amends 50 CFR parts 216 and 300 as follows:

## PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. In § 216.3, add definitions for ''Albacore tuna'', ''Bigeye tuna'', ''Bluefin tuna'', ''Longtail tuna'', ''Skipjack tuna'', ''Southern bluefin tuna'', ''Tuna'', and ''Yellowfin tuna'' in alphabetical order to read as follows:

**§ 216.3 Definitions.**

* * * * *

*Albacore tuna* means the species *Thunnus alalunga*.

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*Bigeye tuna* means the species *Thunnus obesus*.

*Bluefin tuna* means the species *Thunnus thynnus* or *Thunnus orientalis*.

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*Longtail tuna* means the species *Thunnus tonngol*.

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*Skipjack tuna* means the species *Euthynnus (Katsuwonus) pelamis*.

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*Southern bluefin tuna* means the species *Thunnus maccoyii*.

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*Tuna* means any fish of the genus Thunnus and the species *Euthynnus (Katsuwonus) pelamis*.

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*Yellowfin tuna* means the species *Thunnus albacares* (synonomy: *Neothunnus macropterus*).

■ 3. In § 216.24, redesignate paragraph (f)(8)(i)(D)(*3*)(*iii*) as paragraph (f)(8)(ii) and redesignate paragraphs (f)(8)(iv), (f)(8)(v), and (f)(8)(vi) as paragraphs (f)(8)(iii), (f)(8)(iv), and (f)(8)(v); and revise paragraphs (a)(3), (b)(4), (b)(5), (b)(6)(ii), (b)(6)(iii), (c)(3)(viii), (c)(4)(i), (f)(2), (f)(3), (f)(4), (f)(10), and (f)(11), to read as follows:

**§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.**

(a) * * *

(3) Upon written request made in advance of entering the ETP, the limitations in paragraphs (a)(2)(ii) and (e)(1) of this section may be waived by the Administrator, Southwest Region, for the purpose of allowing transit through the ETP. The waiver will provide, in writing, the terms and conditions under which the vessel must operate, including a requirement to report to the Administrator, Southwest Region, the vessel's date of exit from or subsequent entry into the permit area.

(b) * * *

(4) *Application for vessel permit.* ETP tuna purse seine vessel permit application forms and instructions for their completion are available from NMFS. To apply for an ETP vessel permit, a vessel owner or managing owner must complete, sign, and submit the appropriate form via fax to (562) 980–4047, for prioritization purposes as described under § 300.22(b)(4)(i)(D)(*3*) of this title, allowing at least 15 days for processing. To request that a vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active on the Vessel Register under § 300.22(b)(4)(i) of this title in the following calendar year, the owner or managing owner must submit the vessel permit application via fax, payment of the vessel permit application fee, and payment of the vessel assessment fee no later than September 15 for vessels for which a DML is requested for the following year, and no later than November 30 for vessels for which a DML is not requested for the following year.

(5) *Application for operator permit.* An applicant for an operator permit must complete, sign, and submit the appropriate form obtained from NMFS and submit payment of the permit application fee to the Administrator, Southwest Region, allowing at least 45 days for processing. Application forms and instructions for their completion are available from NMFS.

(6) * * *

(ii) *Operator permit fee.* The Assistant Administrator may require a fee to be submitted with an application for an operator permit. The level of such a fee shall be determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

(iii) *Vessel assessment fee.* The vessel assessment fee supports the placement of observers on individual tuna purse seine vessels, and maintenance of the observer program, as established by the IATTC or other approved observer program.

(A) The owner or managing owner of a purse seine vessel for which a DML has been requested must submit the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than September 15 of the year prior to the calendar year for which the DML is requested. Payment of the vessel assessment fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(B) The owner or managing owner of a purse seine vessel for which active or inactive status on the Vessel Register, as defined in § 300.21 of this title, has been requested, but for which a DML has not been requested, must submit payment of the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than November 30 of the year prior to the calendar year in which the vessel will be listed on the Vessel Register. Payment of the vessel assessment fee is required only if the vessel is listed as active and is required to carry an

observer, or if the vessel is listed as inactive and exceeds 400 st (362.8 mt) in carrying capacity. Payment of the vessel assessment fee must be consistent with the vessel's status, either active or inactive, on the Vessel Register in § 300.22(b)(4) of this title.

(C) The owner or managing owner of a purse seine vessel that is licensed under the South Pacific Tuna Treaty must submit the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, prior to obtaining an observer and entering the ETP to fish. Consistent with § 300.22(b)(1)(i) of this title, this class of purse seine vessels is not required to be listed on the Vessel Register under § 300.22(b)(4) of this title in order to purse seine for tuna in the ETP during a single fishing trip per calendar year of 90 days or less. Payment of the vessel assessment fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(D) The owner or managing owner of a purse seine vessel listed as inactive on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the vessel assessment fee associated with active status, less the vessel assessment fee associated with inactive status that was already paid, before NMFS will request the IATTC Director change the status of the vessel from inactive to active. Payment of the vessel assessment fee is required only if the vessel is required to carry an observer.

(E) The owner or managing owner of a purse seine vessel not listed on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the vessel assessment fee associated with active status only if the vessel is required to carry an observer, before NMFS will request the IATTC Director change the status of the vessel to active.

(F) Payments will be subject to a 10 percent surcharge if received under paragraph (b)(6)(iii)(E) of this section for vessels that were listed as active on the Vessel Register in the calendar year prior to the year for which active status was requested; or if received after the dates specified in paragraphs (b)(6)(iii)(A) or (b)(6)(iii)(B) of this section for vessels for which active status is requested if the vessel was listed as active during the year the request was made. Payments will not be subject to a 10 percent surcharge if received under paragraph (b)(6)(iii)(C) or (b)(6)(iii)(D) of this section, or if received under paragraph (b)(6)(iii)(E) of this section for vessels that were not listed as active on the Vessel Register in the calendar year prior to the year for which active status was requested. Payments will also not be subject to a 10 percent surcharge if received after the date specified in paragraph (b)(6)(iii)(B) of this section for vessels for which inactive status is requested, or for vessels for which active status is requested if the vessel was not listed as active during the year the request was made. The Administrator, Southwest Region, will forward all vessel assessment fees described in this section to the IATTC or to the applicable organization approved by the Administrator, Southwest Region.

* * * * *

(c) * * *

(3) * * *

(viii) *Lights.* The vessel must be equipped with long-range, high-intensity floodlights with a sodium lamp of at least 1000 watts, or a multivapour lamp of at least 1500 watts, for use in darkness to ensure sufficient light to observe that procedures for dolphin release are carried out and to monitor incidental dolphin mortality.

(4) *Vessel inspection*—(i) *Twice per year.* At least twice during each calendar year, purse seine nets and other gear and equipment required under § 216.24(c)(3) must be made available for inspection and for a trial set/net alignment by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region, in order to obtain a vessel permit. The first such inspection shall be carried out before the vessel's request for a DML is submitted to the IATTC. The second such inspection shall be carried out before notification of any reallocation of DMLs for vessels with full-year DMLs or during the last quarter of the year for vessels with second-semester DMLs.

* * * * *

(f) * * *

(2) *Imports requiring a Fisheries Certificate of Origin.* Shipments of tuna, tuna products, and certain other fish products identified in paragraphs (f)(2)(i), (f)(2)(ii), and (f)(2)(iii) of this section may not be imported into the United States unless a properly completed Fisheries Certificate of Origin (FCO), NOAA Form 370, is filed with U.S. Customs and Border Protection (CBP) at the time of importation.

(i) *Imports requiring a Fisheries Certificate of Origin, subject to yellowfin tuna embargo.* All shipments containing yellowfin tuna or yellowfin tuna products (other than fresh tuna) imported into the United States must be accompanied by an FCO, including, but not limited to, those imported under the following Harmonized Tariff Schedule of the United States (HTS) numbers. Updated HTS numbers can be identified by referencing the most current HTS in effect at the time of importation, available at www.usitc.gov. The scope of yellowfin tuna embargoes and procedures for attaining an affirmative finding are described under paragraphs (f)(6) and (f)(8) of this section, respectively.

| | |
|---|---|
| (A) *Frozen*: (products containing Yellowfin). | |
| 0303.42.0020 | Yellowfin tunas, whole, frozen. |
| 0303.42.0040 | Yellowfin tunas, head-on, frozen, except whole. |
| 0303.42.0060 | Yellowfin tunas frozen, except whole, head-on, fillets, livers and roes. |
| 0304.29.6097 | Tuna fish fillets, frozen, Not elsewhere specified or indicated (NESOI). |
| 0304.99.1090 | Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each, NESOI. |
| (B) *Airtight Containers:* (products containing Yellowfin). | |
| 1604.14.1010 | Tunas and skipjack, in oil, in airtight containers, in foil or other flexible containers weighing with their contents not more than 6.8 kg each. |
| 1604.14.1099 | Tunas and skipjack, in oil, in airtight containers, NESOI. |
| 1604.14.2291 | Other tunas and skipjack, no oil, in foil/flexible airtight containers, not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year. |

| | |
|---|---|
| 1604.14.2299 | Tunas, NESOI and skipjack, not in oil, in other airtight containers not over 7 kg, 4.8% of U.S. consumption of canned tuna during preceding year. |
| 1604.14.3091 | Tunas and skipjack, NESOI, not in oil, in foil or other flexible airtight containers, weighing with their contents not more than 6.8 kg each. |
| 1604.14.3099 | Other tunas and skipjack, not in oil, in airtight containers, NESOI. |
| (C) *Loins:* (products containing Yellowfin). | |
| 1604.14.4000 | Tunas and skipjacks, prepared or preserved, not in airtight containers, not in oil, in bulk or immediate containers with their contents over 6.8 kg each. |
| 1604.14.5000 | Tunas and skipjack, prepared or preserved, not in airtight containers, NESOI. |
| (D) *Other:* (products containing Yellowfin). | |
| 1604.20.1000 | Fish pastes. |
| 1604.20.2500 | Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each. |
| 1604.20.3000 | Fish balls, cakes and puddings, NESOI. |

(ii) *Imports requiring a Fisheries Certificate of Origin, not subject to yellowfin tuna embargo.* All shipments containing tuna or tuna products (other than fresh tuna or yellowfin tuna identified in paragraph (f)(2)(i) of this section) imported into the United States must be accompanied by an FCO, including, but not limited to, those imported under the following HTS numbers. Updated HTS numbers can be identified by referencing the most current HTS in effect at the time of importation, available at *www.usitc.gov*.

| | |
|---|---|
| (A) *Frozen*: (other than Yellowfin). | |
| 0303.41.0000 | Albacore or longfinned tunas, frozen, except fillets, livers and roes. |
| 0303.43.0000 | Skipjack tunas or stripe-bellied bonito, frozen, except fillets, livers and roes. |
| 0303.44.0000 | Bigeye tunas, frozen, except fillets, livers and roes. |
| 0303.45.0000 | Bluefin tunas, frozen, except fillets, livers and roes. |
| 0303.46.0000 | Southern bluefin tunas, frozen, except fillets, livers and roes. |
| 0303.49.0100 | Tunas, frozen, except fillets, livers and roes, NESOI. |
| 0304.29.6097 | Tuna fish fillets, frozen, NESOI. |
| 0304.99.1090 | Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each, NESOI. |
| (B) *Airtight Containers:* (other than Yellowfin). | |
| 1604.14.1010 | Tunas and skipjack, in oil, in airtight containers, in foil or other flexible containers weighing with their contents not more than 6.8 kg each. |
| 1604.14.1091 | Tunas, albacore, in oil, in airtight containers, NESOI. |
| 1604.14.1099 | Tunas and skipjack, in oil, in airtight containers, NESOI. |
| 1604.14.2251 | Albacore tuna, not in oil, in foil/flexible airtight containers, weighing not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year. |
| 1604.14.2259 | Albacore tuna, not in oil, in airtight containers weighing not over 7 kg, NESOI, 4.8% of U.S. consumption of canned tuna during preceding year. |
| 1604.14.2291 | Other tunas and skipjack, no oil, in foil/flexible airtight containers, not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year. |
| 1604.14.2299 | Tunas, NESOI and skipjack, not in oil, in other airtight containers, not over 7 kg, 4.8% of U.S. consumption of canned tuna during preceding year. |
| 1604.14.3051 | Tuna, albacore not in oil, in foil or other flexible airtight containers, weighing with contents not more than 6.8 kg each, NESOI. |
| 1604.14.3059 | Tuna, albacore not in oil, in airtight containers, NESOI. |
| 1604.14.3091 | Tunas and skipjack, NESOI, not in oil, in foil or other flexible airtight containers, weighing with their contents not more than 6.8 kg each. |
| 1604.14.3099 | Other tunas and skipjack, not in oil, in airtight containers, NESOI. |
| (C) *Loins:* (other than Yellowfin). | |
| 1604.14.4000 | Tunas and skipjacks, prepared or preserved, not in airtight containers, not in oil, in bulk or immediate containers with their contents over 6.8 kg each. |
| 1604.14.5000 | Tunas and skipjack, prepared or preserved, not in airtight containers, NESOI. |
| (D) *Other:* (only if the product contains tuna). | |
| 1604.20.1000 | Fish pastes. |
| 1604.20.2500 | Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each. |
| 1604.20.3000 | Fish balls, cakes and puddings, NESOI. |

(iii) *Exports from driftnet nations only, requiring a Fisheries Certificate of Origin and official certification.* The following HTS numbers identify categories of fish and shellfish, in addition to those identified in paragraphs (f)(2)(i) and (f)(2)(ii) of this section, known to have been harvested using a large-scale driftnet and imported into the United States. Shipments exported from a large-scale driftnet nation, as identified under paragraph (f)(7) of this section, and imported into the United States, including but not limited to those imported into the United States under any of the HTS numbers listed in paragraph (f)(2) of this section, must be accompanied by an FCO and the official statement described in paragraph (f)(4)(xiii) of this section.

| | |
|---|---|
| (A) *Frozen*:. | |
| 0303.19.0012 | Chinook (King) salmon (*Oncorhynchus tschawytscha*), frozen, except fillets, livers and roes. |
| 0303.19.0022 | Chum (dog) salmon (*Oncorhynchus keta*), frozen, except fillets, livers and roes. |
| 0303.19.0032 | Pink (humpie) salmon (*Oncorhynchus gorbuscha*), frozen, except fillets, livers and roes. |
| 0303.19.0052 | Coho (silver) salmon (*Oncorhynchus kisutch*), frozen, except fillets, livers and roes. |
| 0303.19.0062 | Pacific salmon (*Oncorhynchus masou, Oncorhynchus rhodurus*), frozen, except fillets, livers and roes, NESOI. |
| 0303.21.0000 | Trout (*Salmo trutta; Oncorhynchus mykiss, clarki, aguabonita, gilae, apache, and chrysogaster*), frozen, except fillets, livers and roes. |
| 0303.22.0000 | Atlantic salmon (*Salmo salar*) and Danube salmon (*Hucho hucho*), frozen, except fillets, livers and roes. |
| 0303.29.0000 | Salmonidae, frozen, except fillets, livers and roes, NESOI. |
| 0303.61.0010 | Swordfish steaks, frozen, except fillets. |
| 0303.61.0090 | Swordfish, frozen, except steaks, fillets, livers and roes. |
| 0303.75.0010 | Dogfish (Squalus spp.), frozen, except fillets, livers and roes. |
| 0303.75.0090 | Sharks, frozen, except dogfish, fillets, livers and roes. |
| 0303.79.0079 | Fish, frozen, except fillets, livers and roes, NESOI. |
| 0304.21.0000 | Swordfish fillets, frozen, NESOI. |
| 0304.29.2066 | Fish fillets, skinned, frozen blocks weighing over 4.5 kg each, to be minced, ground or cut into pieces of uniform weights and dimensions, NESOI. |
| 0304.29.6006 | Atlantic Salmonidae (Salmo salar) fillets, frozen, NESOI. |
| 0304.29.6008 | Salmonidae fillets, frozen, except Atlantic salmon, NESOI. |
| 0304.29.6099 | Fish fillets, frozen, NESOI. |
| 0307.49.0010 | Squid fillets, frozen. |
| (B) *Canned*:. | |
| 1604.11.2020 | Pink (humpie) salmon, whole or in pieces, but not minced, in oil, in airtight containers. |
| 1604.11.2030 | Sockeye (red) salmon, whole or in pieces, but not minced, in oil, in airtight containers. |
| 1604.11.2090 | Salmon NESOI, whole or in pieces, but not minced, in oil, in airtight containers. |
| 1604.11.4010 | Chum (dog) salmon, not in oil, canned. |
| 1604.11.4020 | Pink (humpie) salmon, not in oil, canned. |
| 1604.11.4030 | Sockeye (red) salmon, not in oil, canned. |
| 1604.11.4040 | Salmon, NESOI, not in oil, canned. |
| 1604.11.4050 | Salmon, whole or in pieces, but not minced, NESOI. |
| 1604.19.2000 | Fish, NESOI, not in oil, in airtight containers. |
| 1604.19.3000 | Fish, NESOI, in oil, in airtight containers. |
| 1605.90.6050 | Loligo squid, prepared or preserved. |
| 1605.90.6055 | Squid except Loligo, prepared or preserved. |
| (C) Other:. | |
| 0305.30.6080 | Fish fillets, dried, salted or in brine, but not smoked, NESOI. |
| 0305.41.000 | Pacific salmon (*Oncorhynchus* spp.), Atlantic salmon (*Salmo salar*), and Danube salmon (*Hucho hucho*), including fillets, smoked. |
| 0305.49.4040 | Fish including fillets, smoked, NESOI. |
| 0305.59.2000 | Shark fins, dried, whether or not salted but not smoked. |
| 0305.59.4000 | Fish, dried, whether or not salted but not smoked, NESOI. |
| 0305.69.4000 | Salmon, salted but not dried or smoked; in brine. |
| 0305.69.5000 | Fish in immediate containers weighing with their contents 6.8 kg or less each, salted but not dried or smoked; in brine, NESOI. |
| 0305.69.6000 | Fish, salted but not dried or smoked; in brine, NESOI. |
| 0307.49.0022 | Squid, *Loligo opalescens*, frozen (except fillets), dried, salted or in brine. |
| 0307.49.0024 | Squid, *Loligo pealei*, frozen (except fillets), dried, salted or in brine. |
| 0307.49.0029 | Loligo squid, frozen (except fillets), dried, salted or in brine, NESOI. |
| 0307.49.0050 | Squid, frozen (except fillets), dried, salted or in brine, except Loligo squid. |
| 0307.49.0060 | Cuttle fish (*Sepia officinalis, Rossia macrosoma, Sepiola* spp.), frozen, dried, salted or in brine. |

(3) *Disposition of Fisheries Certificates of Origin.* The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at *http://swr.nmfs.noaa.gov/noaa370.htm*.

(i) A properly completed FCO and its attached certificates as described in § 216.91(a), if applicable, must accompany the required CBP entry documents that are filed at the time of import.

(ii) FCOs and associated certifications as described in § 216.91(a), if any, that accompany imported shipments of tuna must be submitted by the importer of record to the Tuna Tracking and Verification Program, Southwest Region, within 10 calendar days of the shipment's entry into the commerce of the United States. FCOs submitted via mail should be sent to the Tuna Tracking and Verification Program, Southwest Region, P.O. Box 32469, Long Beach, CA 90832–2469. Copies of the documents may be submitted electronically using a secure file transfer protocol (FTP) site. Importers of record interested in submitting FCOs and associated certifications via FTP may contact a representative of the Tuna Tracking and Verification Program at the following email address: SWRTuna.Track@noaa.gov. The Tuna Tracking and Verification Program will facilitate secure transfer and protection of certifications by assigning a separate electronic folder for each importer. Access to the electronic folder will require a user identification and password. The Tuna Tracking and Verification Program will assign each importer a unique user identification and password. Safeguarding the confidentiality of the user identification and password is the responsibility of the importer to whom they are assigned. Copies of the documents may also be submitted via mail either on compact disc or as hard copies. All electronic submissions, whether via FTP or on compact disc, must be in Portable Document Format (PDF).

(iii) FCOs that accompany imported shipments of tuna destined for further processing in the United States must be endorsed at each change in ownership and submitted to the Administrator, Southwest Region, by the last endorser when all required endorsements are completed.

(iv) Importers and exporters are required to retain their records, including FCOs, import or export documents, invoices, and bills of lading for 2 years, and such records must be made available within 30 days of a request by the Secretary or the Administrator, Southwest Region.

(4) *Contents of Fisheries Certificate of Origin.* An FCO, certified to be accurate by the exporter(s) of the accompanying shipment, must include the following information:

(i) CBP entry identification;

(ii) Date of entry;

(iii) Exporter's full name and complete address;

(iv) Importer's or consignee's full name and complete address;

(v) Species description, product form, and HTS number;

(vi) Total net weight of the shipment in kilograms;

(vii) Ocean area where the fish were harvested (ETP, western Pacific Ocean, south Pacific Ocean, north Pacific Ocean, eastern Atlantic Ocean, western Atlantic Ocean, Caribbean Sea, Indian Ocean, or other);

(viii) Type of fishing gear used to harvest the fish (purse seine, longline, baitboat, large-scale driftnet, gillnet, pole and line/hook and line, or other);

(ix) Country under whose laws the harvesting vessel operated based upon the flag of the vessel or, if a certified charter vessel, the country that accepted responsibility for the vessel's fishing operations;

(x) Dates on which the fishing trip began and ended;

(xi) The name of the harvesting vessel;

(xii) Dolphin-safe condition of the shipment, described by checking the appropriate statement on the form and attaching additional certifications as described in § 216.91(a) if required;

(xiii) For shipments containing fish or fish products exported from, or harvested on the high seas by vessels of a nation known to use large-scale driftnets, as determined by the Secretary pursuant to paragraph (f)(7) of this section, the High Seas Driftnet Certification contained on the FCO must be dated and signed by a responsible government official of the large-scale driftnet nation, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; and

(xiv) Each importer, exporter, or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describes the shipment of fish that they accompany.

* * * * *

(10) *Fish refused entry.* If fish is denied entry under paragraph (f)(2) of this section, the Port Director of CBP shall refuse to release the fish for entry into the United States.

(11) *Disposition of fish refused entry into the United States.* Fish that is denied entry under paragraph (f)(2) of this section and that is not exported under CBP supervision within 90 days shall be disposed of under CBP laws and regulations at the importer's expense. Provided, however, that any disposition shall not result in an introduction into the United States of fish caught in violation of the MMPA.

* * * * *

■ 4. In § 216.91, revise paragraphs (a)(2)(i), (a)(2)(ii), and (a)(4) to read as follows:

**§ 216.91 Dolphin-safe labeling standards.**

(a) * * *

(2) * * *

(i) In a fishery in which the Assistant Administrator has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the ETP), unless such products are accompanied as described in § 216.24(f)(3) by a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) In any other fishery unless the products are accompanied as described in § 216.24(f)(3) by a written statement executed by the Captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna was harvested;

* * * * *

(4) *Other fisheries.* By a vessel in a fishery other than one described in paragraphs (a)(1) through (a)(3) of this section that is identified by the Assistant Administrator as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied as described in § 216.24(f)(3) by a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Assistant Administrator determines that such an observer statement is necessary.

* * * * *

■ 5. In § 216.92, revise paragraph (b)(2)(ii) and the introductory text of paragraph (b)(2)(iii) to read as follows:

**§ 216.92 Dolphin-safe requirements for tuna harvested in the ETP by large purse seine vessels.**

* * * * *

(b) * * *

(2) * * *

(ii) The tuna or tuna products are accompanied as described in § 216.24(f)(3) by a properly completed FCO; and

(iii) The tuna or tuna products are accompanied as described in § 216.24(f)(3) by valid documentation signed by a representative of the appropriate IDCP member nation, containing the harvesting vessel names and tuna tracking form numbers represented in the shipment, and certifying that:

* * * * *

■ 6. In § 216.93, revise paragraphs (c)(5), (e), and (f)(2) to read as follows:

**§ 216.93 Tracking and verification program.**

* * * * *

(c) * * *

(5) The handling of TTFs and the tracking and verification of tuna caught in the Convention Area by a U.S. purse seine vessel greater than 400 st (362.8 mt) carrying capacity shall be conducted consistent with the international tuna tracking and verification program adopted by the Parties to the Agreement on the IDCP.

* * * * *

(e) *Tracking imports.* All tuna products, except fresh tuna, that are imported into the United States must be accompanied as described in § 216.24(f)(3) by a properly certified FCO as required by § 216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications must be submitted by the importer of record to the Administrator, Southwest Region, within 10 calendar days of the shipment's entry into the commerce of the United States as required by § 216.24 (f)(3)(ii).

(f) * * *

(2) *Record submission.* Within 10 calendar days of receiving a shipment of tuna or tuna products, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must submit to the Administrator, Southwest Region, all corresponding FCOs and required certifications for those tuna or tuna products.

* * * * *

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

### Subpart C—Pacific Tuna Fisheries

■ 7. The authority citation for part 300, subpart C, continues to read as follows:

**Authority:** 16 U.S.C. 951–961 *et seq.*

■ 8. In § 300.21, remove the definition for ''Vessel Register'' and add definitions for ''Commercial passenger fishing vessel'', ''Regional Administrator'', ''Regional Vessel Register'', and ''Tuna'' in alphabetical order to read as follows:

**§ 300.21 Definitions.**

* * * * *

*Commercial passenger fishing vessel* means any vessel licensed for commercial passenger fishing purposes within the State out of which it is operating and from which, while under charter or hire, persons are legally permitted to conduct sportfishing activities.

* * * * *

*Regional Administrator* means the Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

*Regional Vessel Register (hereafter referred to as Vessel Register)* means the regional register of vessels authorized to fish for tuna and tuna-like species in the Convention Area, as established by the Inter-American Tropical Tuna Commission in June 2000.

* * * * *

*Tuna* means any fish of the genus Thunnus and the species *Euthynnus (Katsuwonus) pelamis*.

■ 9. In § 300.22, revise the section heading and paragraphs (a), (b) introductory text, and (b)(2), (b)(3), (b)(4), (b)(5)(iv), and (b)(7); and add new paragraphs (b)(5)(vi), (b)(5)(vii), (b)(5)(viii), and (b)(8) to read as follows:

**§ 300.22 Eastern Pacific fisheries recordkeeping and written reports.**

(a) The master or other person in charge of a commercial fishing vessel or commercial passenger fishing vessel (CPFV) authorized to fish for tuna and tuna-like species in the Convention Area, or a person authorized in writing to serve as the agent for either person, must keep an accurate log of operations conducted from the fishing vessel. For vessels greater than 400 st (362.8 mt) carrying capacity that are authorized to purse seine for tuna in the Convention Area, the log must include for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish on board, by species. The record and bridge log maintained and submitted at the request of the IATTC shall be sufficient to comply with this paragraph, provided the items of information specified by the IATTC are accurately entered in the log. For purse seine vessels of 400 st (362.8 mt) carrying capacity or less and for non-purse seine vessels, maintaining and submitting any logbook required by existing state or federal regulation shall be sufficient to comply with this paragraph.

(b) *Vessel Register.* The Vessel Register shall include, consistent with resolutions of the IATTC, all commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the Convention Area. Except as provided under paragraph (b)(1) of this section, tuna purse seine vessels must be listed on the Vessel Register and categorized as active under paragraph (b)(4)(i) of this section in order to fish for tuna and tuna-like species in the Convention Area.

* * * * *

(2) *Requirements for inclusion of purse seine vessels on the vessel register.* The tuna purse seine portion of the Vessel Register shall include, consistent with resolutions of the IATTC, only vessels that fished in the Convention Area prior to June 28, 2002. Inclusion on the tuna purse seine portion of the Vessel Register is valid through December 31 of each year. New tuna purse seine vessels may be added to the Vessel Register at any time to replace those previously removed by the Regional Administrator, provided that the total capacity of the replacement vessel or vessels does not exceed that of the tuna purse seine vessel or vessels being replaced.

(3) *Vessel information.* Information on each commercial fishing vessel or CPFV authorized to use purse seine, longline, drift gillnet, harpoon, troll, rod and reel, or pole and line fishing gear to fish for tuna and tuna-like species in the Convention Area for sale shall be collected by the Regional Administrator to conform to IATTC resolutions governing the Vessel Register. This information initially includes, but is not limited to, the vessel name and registration number; the name and business address of the owner(s) and managing owner(s); a photograph of the vessel with the registration number legible; previous vessel name(s) and previous flag (if known and if any); port of registry; International Radio Call Sign; vessel length, beam, and moulded depth; gross tonnage, fish hold capacity in cubic meters, and carrying capacity

in metric tons; engine horsepower; date and place where built; and type of fishing method or methods used. The required information shall be collected as part of existing information collections as described in this and other parts of the CFR.

(4) *Purse seine vessel register status.* For a purse seine vessel to be listed on the Vessel Register and to be categorized as either ''active'' or ''inactive'' in the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator the required permit applications, written notifications, and fees as described under § 216.24(b) of this title and under paragraphs (b)(4)(i) and (b)(4)(iii) of this section.

(i) *Active status.* As early as August 1 of each year, vessel owners or managing owners may request that a purse seine vessel qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as active for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator the vessel permit application and payment of the permit application fee and vessel assessment fee. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator written notification including, but not limited to, a vessel photograph, the vessel information as described under paragraph (b)(3) of this section, and the owner or managing owner's signature and business telephone and fax numbers. If a purse seine vessel of 400 st (362.8 mt) carrying capacity or less is required by the Agreement on the IDCP to carry an observer, the vessel owner or managing owner must also submit payment of the vessel assessment fee to the Regional Administrator. Vessel permit applications and written notifications must be submitted by fax to (562) 980–4047. The Regional Administrator must receive the vessel permit application or written notification and payment of the permit application fee and vessel assessment fee no later than September 15 for vessels for which a DML was requested for the following year and no later than November 30 for vessels for which a DML was not requested for the following year. Submission of the vessel permit application or written notification and payment of the vessel assessment fee and permit application fee will be interpreted by the Regional Administrator as a request for a vessel to be categorized as active. The following restrictions apply to active status:

(A) The cumulative carrying capacity of all purse seine vessels categorized as active on the Vessel Register may not exceed 8,969 mt in a given year;

(B) A purse seine vessel may not be added to active status on the Vessel Register unless the captain of the vessel has obtained a valid operator permit under § 216.24(b)(2) of this title;

(C) Requests for active status will be prioritized according to the following hierarchy:

(*1*) Requests received for vessels that were categorized as active in the previous year, unless the request for active status was determined to be frivolous by the Regional Administrator under paragraph (b)(4)(ii) of this section;

(*2*) Requests received for vessels that were categorized as inactive under paragraph (b)(4)(iii) of this section in the previous year;

(*3*) Requests for vessels not described in paragraphs (b)(4)(i)(C)(1) or (2) of this section will be prioritized on a first-come, first-served basis according to the date and time stamp printed by the incoming fax machine upon receipt, provided that the associated vessel assessment fee is paid by the applicable deadline described in § 216.24(b)(6)(iii) of this title; and

(*4*) Requests received from owners or managing owners of vessels that were determined by the Regional Administrator to have made a frivolous request for active status under paragraph (b)(4)(ii) of this section.

(ii) *Frivolous requests for active status.* A request for active status under paragraph (b)(4)(i) of this section will be considered frivolous, unless as a result of force majeure or other extraordinary circumstances as determined by the Regional Administrator if, for a vessel categorized as active in a given calendar year,

(A) Less than 20 percent of the vessel's total landings, by weight, in that same year is comprised of tuna harvested by purse seine in the Convention Area; or

(B) The vessel did not fish for tuna at all in the Convention Area in that same year.

(iii) *Inactive status.* From August 1 through November 30 of each year, vessel owners or managing owners may request that purse seine vessels qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator payment of the associated vessel assessment fee. Payment of the vessel assessment fee consistent with inactive status will be interpreted by the Regional Administrator as a request for the vessel to be categorized as inactive. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit by mail to the Regional Administrator a written notification including, but not limited to, the vessel name and registration number and the vessel owner or managing owner's name, signature, business address, and business telephone and fax numbers. Payment of the vessel assessment fee is not required for vessels of 400 st (362.8 mt) carrying capacity or less to be categorized as inactive. At any time during the year, a vessel owner or managing owner may request that a purse seine vessel qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the remainder of the calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the Regional Administrator payment of the associated vessel assessment fee. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the Regional Administrator written notification as described in this paragraph (payment of the vessel assessment fee is not required).

(5) * * *

(iv) For failure to pay a penalty or for default on a penalty payment agreement resulting from a final agency action for a violation;

* * * * *

(vi) If the vessel does not have a valid state registration or U.S. Coast Guard certificate of documentation;

(vii) For tuna purse seine vessels, upon receipt of written notification from the owner or managing owner of the intent to transfer the vessel to foreign registry and flag, as described in paragraph (b)(8) of this section; or

(viii) For tuna purse seine vessels, if the request for active status on the

Vessel Register has been determined to be a frivolous request.

* * * * *

(7) *Procedures for replacing purse seine vessels removed from the Vessel Register.*

(i) A purse seine vessel in excess of 400 st (362.8 mt) carrying capacity that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the owner or managing owner of the vessel pays the vessel assessment fee associated with inactive status. A purse seine vessel of 400 st (362.8 mt) carrying capacity or less that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the owner or managing owner of the vessel submits written notification as described in paragraph (b)(4)(iii) of this section.

(ii) A purse seine vessel may be added to the Vessel Register and categorized as active in order to replace a vessel removed from active status under paragraph (b)(5) of this section, provided the total carrying capacity of the active vessels does not exceed 8,969 mt and the owner submits a complete request under paragraph (b)(7)(iv) or (b)(7)(v) of this section.

(iii) After a purse seine vessel categorized as active is removed from the Vessel Register, the Regional Administrator will notify owners or managing owners of vessels categorized as inactive that replacement capacity is available on the active list of the Vessel Register. In the event that owners of inactive vessels do not request to replace a removed vessel, the Regional Administrator will notify owners of vessels eligible for, but not included on, the Vessel Register that replacement capacity is available on the active list of the Vessel Register.

(iv) Vessel owners or managing owners may request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as active to replace a vessel or vessels removed from the Vessel Register by submitting to the Regional Administrator written notification as described in paragraph (b)(4)(i) of this section and, only if the vessel is required by the Agreement on the IDCP to carry an observer, payment of the vessel assessment fee within 10 business days after submission of the faxed written notification. The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel or vessels being replaced. Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

(v) Vessel owners or managing owners may request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active to replace a vessel or vessels removed from the Vessel Register by submitting to the Regional Administrator the vessel permit application as described under § 216.24(b) of this title and payment of the vessel assessment fee and permit application fee within 10 business days after submission of the faxed vessel permit application for the replacement vessel. The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel or vessels being replaced, and the captain of the replacement vessel possesses an operator permit under § 216.24(b) of this title. Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

(vi) The Regional Administrator will forward requests to replace vessels removed from the Vessel Register within 15 days of receiving each request.

(8) The owner or managing owner of a purse seine vessel listed on the Vessel Register must provide written notification to the Regional Administrator prior to submitting an application for transfer of the vessel to foreign registry and flag. Written notification must be submitted by mail and received by the Regional Administrator at least 10 business days prior to submission of the application for transfer. The written notification must include the vessel name and registration number; the expected date that the application for transfer will be submitted; and the vessel owner or managing owner's name and signature. Vessels that require approval by the U.S. Maritime Administration prior to transfer of the vessel to foreign registry and flag will not be subject to the notification requirement described in this paragraph.

■ 10. In § 300.23, revise the section heading to read as follows:

**§ 300.23 Eastern Pacific fisheries – Persons and vessels exempted.**

* * * * *

■ 11. In § 300.24, remove the semicolons at the end of paragraphs (b), (e), (f), and (g) and replace them with periods; remove ''; or'' at the end of paragraph (h) and replace it with a period; and add a new paragraph (j) to read as follows:

**§ 300.24 Prohibitions.**

* * * * *

(j) Fail to provide written notification as described under § 300.22(b)(8) to the Regional Administrator at least 10 business days prior to submission of an application to transfer a purse seine vessel listed on the Vessel Register to foreign registry and flag, unless transfer of the vessel requires approval by the U.S. Maritime Administration.

■ 12. In § 300.25, revise paragraph (a), the heading for paragraph (e) and revise paragraph (e)(1) to read as follows:

**§ 300.25 Eastern Pacific fisheries management.**

(a) *Notification of IATTC recommendations and resolutions.* Fishery management resolutions made by the IATTC and approved by the Department of State will be promulgated in the **Federal Register** via appropriate rulemaking. The publication in the **Federal Register** will summarize the fishery management resolutions and respond to any public comments received by NMFS.

* * * * *

(e) *Bycatch reduction measures*—(1) All purse seine vessels must retain on board and land all bigeye, skipjack, and yellowfin tuna brought on board the vessel after a set, except fish deemed unfit for human consumption for other than reason of size. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire fish catch brought on board.

* * * * *

[FR Doc. E9–499 Filed 1–12–09; 8:45 am]

BILLING CODE 3510–22–S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 080225283–81561–02]**

**RIN 0648–AU28**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 14

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 14 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This rule establishes eight marine protected areas (MPAs) in which fishing for or possession of South Atlantic snapper-grouper are prohibited. The prohibition on possession does not apply to a person aboard a vessel that is in transit with fishing gear appropriately stowed. The proposal in Amendment 14 to prohibit shark bottom longlines within these MPAs has been implemented by NMFS in a separate rulemaking. The intended effects of this final rule are to protect a portion of the population and habitat of long-lived, slow growing, deepwater snapper-grouper from fishing pressure to achieve a more natural sex ratio, age, and size structure within the proposed MPAs, while minimizing adverse social and economic effects.

**DATES:** This final rule is effective on February 12, 2009.

**ADDRESSES:** Copies of the Final Regulatory Flexibility Analysis (FRFA) may be obtained from Kate Michie, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

**FOR FURTHER INFORMATION CONTACT:** Kate Michie, 727–824–5305.

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On June 6, 2008, NMFS published a notice of availability of Amendment 14 and requested public comment (73 FR 32281). On July 16, 2008, NMFS published the proposed rule to implement Amendment 14 and request public comment on the proposed rule (73 FR 40824). NMFS approved Amendment 14 on September 2, 2008. The rationale for the measures contained in Amendment 14 is provided in the amendment and the preamble to the proposed rule and is not repeated here. Because the Atlantic shark fishery is managed by NMFS under the Consolidated Highly Migratory Species Fishery Management Plan, the Council's proposed prohibition on the use of shark bottom longlines in the MPAs was implemented by NMFS' Highly Migratory Species (HMS) Division in a separate final rule published June 24, 2008 (72 FR 35778).

### Comments and Responses

NMFS received 12 comments on Amendment 14 and the proposed rule, 9 of which opposed proposed actions or suggested alternate management measures. Following is a summary of the comments and NMFS' responses.

*Comment 1*: Three commenters stated opposition to the establishment of the St. Lucie Hump MPA, otherwise known as Seabass Rocks. Two of the three commenters are concerned this MPA was designated based on the input of one commercial fisherman rather than through a consensus-based approach. These commenters also believe best available science was not used in the decision making process. Another commenter opposed to the St. Lucie Hump MPA indicated the claim that the area contains ''prime habitat and spawning area for snapper-grouper populations'' is simply not true and, therefore, no snapper-grouper species would benefit from its closure.

*Response*: NMFS believes the St. Lucie Hump MPA has the potential to contain snapper-grouper species, based on documentation of the presence of suitable habitat by the Southeast Area Monitoring and Assessment Program and public testimony that speckled hind, snowy grouper, and Warsaw grouper are present in the area. The supporting Environmental Impact Statement (EIS) was reviewed by the Southeast Fisheries Science Center and found to be based in the best scientific information available. Establishing the St. Lucie Hump MPA is expected to protect these species from fishing pressure within its borders and, over the long-term, promote a more natural sex ratio, age, and size structure. Additionally, loggerhead and leatherback sea turtles may occur in this area and would, therefore, benefit from localized protection from incidental hook-and-line capture.

*Comment 2*: Protected areas ''can create undue stress on the environment'', and the MPAs will not solve the overall problem. The commenter also states opposition to the MPAs based on the perceived cost of their enforcement, and believes those costs would outweigh the biological benefits associated with MPAs.

*Response*: The Council's goal in establishing these deepwater MPAs was to develop a management measure that would complement existing management measures and add further protection to deepwater snapper-grouper. The Council does not consider the MPAs a stand-alone means of management for the snapper-grouper fishery, but considers them a logical extension of protective measures already in place.

Effective enforcement of MPAs is critical to their success in achieving biological objectives and the maintenance of a positive public attitude toward them. For the MPAs to be an effective management tool, local compliance and self monitoring will be necessary. After considering all potential effects including costs of enforcement, the Council voted to approve the establishment of designated MPA sites based in part on the expectation that biological benefits will outweigh costs associated with enforcement in the long-term.

*Comment 3*: One commenter opposed the establishment of MPAs based on the perceived overburdened work environment of the United States Coast Guard and the Department of Homeland Security, stating that these agencies should be utilized to patrol U.S. waters for illegal immigrants and illegal drug trafficking activities rather than enforcement of MPAs.

*Response*: NMFS agrees that United States Coast Guard and the Department of Homeland Security resources should be directed toward enforcement efforts their department administrators believe are most appropriate at any given time. Furthermore, NMFS realizes that self monitoring and local compliance within and around the MPAs will be essential for their long-term success.

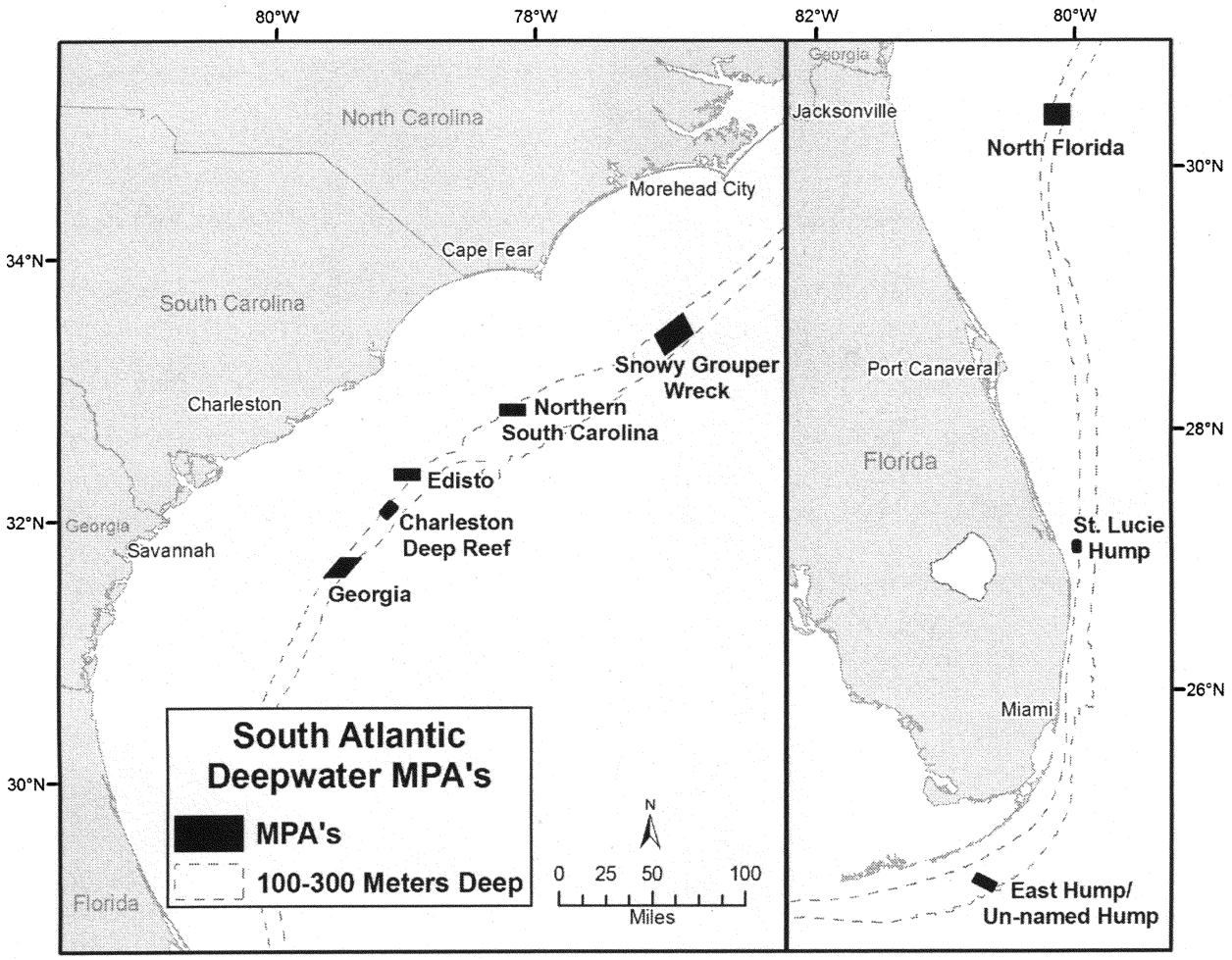
*Comment 4*: The closure would be ''devastating to all communities along the coast of Florida, especially here in the Keys...if such a great area were shut off to fishing.'' This commenter also stated the comment period for such a closure was too short.

*Response*: It is NMFS' understanding that several fishery participants may have interpreted the depth-contour line, shown on the map illustrating the MPA

boundaries in the Fishery Bulletin and the proposed rule, as the area to be designated as one large MPA. This is not the case however, and NMFS has taken steps to clarify the map illustrating the small areas that do represent the designated MPA sites, as shown in Figure 1.

The comment periods for the Draft Environment Impact Statement (DEIS), the Final Environmental Impact Statement (FEIS), Amendment 14 and the proposed rule are dictated by the National Environmental Policy Act, and the Magnuson-Stevens Act. All comment periods for this action were created in accordance with those requirements.

Figure 1. Type 2 deepwater MPAs off North Carolina, South Carolina, Georgia, and east Florida. Sizes of these MPAs




range from 2 by 4 nautical miles (nm), or 8 square nm, to approximately 15 by 10 nm, or approximately 143 square nm.

*Comment 5*: One commenter stated general opposition to any management measures that would further restrict recreational hook-and-line fishing for deepwater snapper-grouper species in Federal waters of the South Atlantic.

*Response*: NMFS recognizes the many restrictions placed on recreational fishermen in the South Atlantic region, however, it is the agency's responsibility to protect fishery resources and associated habitat, with an emphasis on protecting those that are overfished, undergoing overfishing or approaching an overfished condition. A consensus-based approach involving a multi-stakeholder group was used to determine the MPA sites with an effort to chose locations that would provide optimal biological benefits while limiting, to the extent practicable, any adverse economic effects on the fishery. The MPAs being implemented through this rule are expected to yield long-term

benefits for several species that are currently overfished, undergoing overfishing and/or approaching an overfished condition, in keeping with the goals and objectives of the FMP for the Snapper-Grouper Fishery of the South Atlantic Region.

*Comment 6*: The No Action Alternatives for each action were not analyzed in the Initial Regulatory Flexibility Analysis (IRFA), nor was the increasing price of fuel and its effect on enforcement of the MPAs. The commenter also stated there was a failure to describe the economic impacts of the MPA alternatives on recreational fishermen and associated community businesses, and the economic analysis relied on questionable trip data from 2005–2007 for South Carolina. Two commenters asked why establishing more near-shore and off-shore man-made fishing reefs to counteract economic impacts of Amendment 14 had not been considered.

*Response*: A No Action Alternative does not have economic impacts beyond the status quo, i.e. the fishery without the MPA. However, if recent increases in fuel prices have caused some commercial and/or charter fishing operators to permanently move out of areas to be designated as MPAs, the displacement of fishermen caused by the MPAs and the associated adverse economic impact will be less than the displacement and adverse economic impact caused by MPAs prior to the price-induced displacement.

The RFA is concerned with the expected direct effects of regulatory action on small entities and defines three types of small entities: small businesses, small organizations, and small government jurisdictions. While the businesses that support the recreational fishing industry may be small business entities, recreational anglers do not qualify as small entities under any of the classifications defined by the RFA. Further, no associated community businesses would be directly affected by the proposed rule. Consequently, the IRFA was correct in not including recreational anglers or associated community businesses in the analysis. The small entities that could be directly affected by this rule are small businesses in the commercial fishing and for-hire industries with permits to fish for and possess South Atlantic snapper-grouper species in the EEZ. These entities have been identified and included in the analysis.

Regarding the use of South Carolina trip data from 2005–2007, neither the IRFA nor Regulatory Impact Review (RIR) used or relied on that trip data to estimate and compare the economic impacts of the alternatives for this amendment.

The Council did vote to establish an experimental deepwater artificial reef MPA called the Charleston Deep Artificial Reef MPA. The establishment of this deep artificial reef will facilitate research studies focused on answering questions about the practicability and effectiveness of deepwater artificial reefs. Once more research is conducted on this and other offshore artificial reefs, deploying additional materials to establish deepwater artificial reefs may be considered in a future amendment.

*Comment 7*: One commenter provided three suggestions to improve management of the snapper-grouper fishery in lieu of MPAs. The first suggestion is to impose trip limits on all fish that have a quota. The second is to do away with all size limits to avoid wasting the resource. The third suggestion is to require every fisherman to declare whether they are part of the recreational or commercial sector in order to reduce instances of recreational fishermen selling bag limit caught fish and, thus, counting those fish against the commercial quota.

*Response*: Commercial trip limits have been implemented for several snapper-grouper species in the South Atlantic such as greater amberjack, red porgy, snowy grouper, and golden tilefish. Adjustment to current trip limits and additional trip limits may be considered in future actions.

Minimum size limits are generally used to maximize the yield of each fish recruited to the fishery and to protect a portion of a stock from fishing mortality. The idea behind maximizing yield is to identify the size that best balances the benefits of harvesting fish at larger, more commercially valuable sizes against losses due to natural mortality. Protecting immature and newly mature fish from fishing mortality provides them increased opportunities to reproduce and replace themselves before they are captured. If the size limit chosen is larger than the size at first reproduction for the species in question, then a sufficient pool of spawners could be retained even if fishing pressure is heavy. There are many negative aspects of size limits too, but the benefits of any management measure depends on the species. NMFS uses a broad range of management measures for snapper-grouper species because of the diversity of species and habitats.

Sale of bag limit quantities of snapper-grouper is being addressed through Amendment 15B to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region. In Amendment 15B the Preferred Alternative under ''Modifications to Sales Provisions'' states: ''A South Atlantic Snapper-Grouper harvested in the EEZ on board a vessel that does not have a valid Federal commercial permit for South Atlantic snapper-grouper, or a South Atlantic snapper-grouper possessed under the bag limits, may not be sold or purchased. A person aboard a vessel with both a for-hire vessel permit and a Federal commercial snapper-grouper permit is considered to be fishing as a charter when fishing as described in 50 CFR 622.2. Snapper-grouper caught on such a trip may not be sold or purchased.'' Amendment 15B is under review and, if approved, would be expected to be implemented in 2009.

*Comment 8*: One commenter stated general support of the establishment of the MPAs in the South Atlantic region.

*Response*: NMFS agrees that the establishment of these MPAs is likely to protect a portion of the population (including spawning aggregations) and habitat of long-lived, slow-growing, deepwater snapper-grouper species from directed fishing pressure to achieve a more natural sex ratio, age, and size structure within the proposed MPAs, while minimizing adverse social and economic effects.

*Comment 9*: One agency issued a letter of support for the action but also urged NMFS to develop a detailed plan for specific research and monitoring actions and enforcement and outreach/education objectives for each of the MPAs.

*Response*: The effects of the Type II MPAs will be monitored through the assessment of spawning aggregations, tracking fish movement, identifying fish population demographics, and by determining age distribution, nursery grounds, migratory patterns, and mortality rates for dominant harvested fish stocks. Furthermore, the Council's web site will be expanded to provide comprehensive education and outreach products on MPAs (e.g., regulations, publications, research and monitoring information, law enforcement activities, news releases, high resolution video and photographs, maps, etc.).

*Comment 10*: One agency asked whether the MPAs would be established for a set term, indeterminately, or if they would exist until monitoring demonstrates recovery, and whether or not the MPA sites are adaptable to incorporate any identified modifications. The agency also noted that the ''Dear Reviewer'' letter accompanying the FEIS, sent out to interested parties, was dated June 2, 2008, but the amendment itself was dated July 2007, and requested clarification on this discrepancy.

*Response*: The MPAs will exist unless and/or until future actions to modify or eliminate one or all of them are implemented through the amendment process. If new information becomes available, suggesting an MPA should be altered in any way, such changes would be addressed through the amendment process as well.

The ''Dear reviewer'' letter sent to interested parties and commenters was attached to a copy of the FEIS and was dated June 2, 2008, while the finalized amendment is dated July 2007. This discrepancy stemmed from the action to prohibit the use of shark bottom longline gear within the MPAs. The HMS Division manages the shark bottom longline fishery and, therefore, implemented the action to prohibit the gear in the MPAs in their Amendment 2 to the Consolidated HMS FMP. However, the Council approved Amendment 14 before HMS Amendment 2 was finalized and chose to move forward by submitting Amendment 14 for Secretarial review in July of 2007. In an effort to implement compatible regulations with Amendment 2 to the Consolidated HMS FMP on the same timeline, NMFS waited to disseminate the Amendment 14 FEIS until after the notice of availability (NOA) for Amendment 2 FEIS was published. Subsequently, the process of Secretarial review for Amendment 14 was not initiated until June of 2008 when the ''Dear reviewer'' letter was issued.

**Classification**

The Administrator, Southeast Region, NMFS determined that Amendment 14 is necessary for the conservation and management of the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

NMFS prepared an FRFA for this action. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A summary of the analyses follows.

In summary, this final rule will establish eight Type II MPAs in the South Atlantic EEZ. The objective of this rule is to assist in the recovery of overfished stocks and persistence of healthy fish stocks, fisheries and habitats.

Four issues associated with the economic analysis were raised through public comment on the proposed rule. Additional comments were received which did not pertain to the economic analysis. A complete summary of these comments and NMFS' responses is provided in the Comments and Responses section of this rule. No changes were made to the final rule as a result of public comment. The first issue raised on the economic analysis was that the IRFA did not include an economic analysis. Although an analysis of the expected economic effects of the proposed rule and significant alternatives was conducted, the IRFA did not contain a description of the analysis conducted or provide an in-depth presentation of the results. Because of the absence of harvest and effort data at the small areal scale necessary to quantitatively assess harvests in the specific areas of the proposed MPAs, the analysis of the expected social and economic effects of the proposed rule relied upon the results of an iterative survey methodology called a modified Delphi method. Under this methodology, individuals familiar with the various fishing sectors and areas under consideration were surveyed to identify the potential effects of MPAs and determine an ordinal ranking system that was used to compare the economic impacts of the various MPA alternatives. This FRFA corrects the omission in the IRFA by including an explanation of why the Delphi method was used, providing a description of the Delphi process, and reporting the resulting forecasts of the expected adverse economic impacts of the various alternatives.

The second issue raised on the economic analysis was that the analysis of the No Action Alternatives did not include consideration of the effects of the recent increases in fuel prices, which have caused some fishermen to relocate from the deep-water areas, including areas to be designated as MPAs, to areas closer to shore. The comment stated that the displacement of fishing pressure has reduced catch and revenues from these future MPAs and, therefore, the No Action Alternatives would have adverse economic impacts that have not been evaluated. NMFS agrees that increasing fuel prices have impacted fishing practices in both the recreational and commercial sectors, affecting both the number of trips fishermen take and the location of their fishing activity. NMFS disagrees, however, that the IRFA analysis is deficient because an assessment of the economic effects of increasing fuel costs for the No Action Alternatives was not explicitly conducted. This comment suggests a misunderstanding of the no action baseline and the analytical objective of the analysis. The no action baseline consists of an assessment of what the relevant fisheries and entities would be like if the rule is not adopted, otherwise known as the status quo. The analytical objective of the analysis is to determine the effects a rule or alternative is expected to have relative to the baseline. Thus, the analytical objective in evaluating the expected effects of an action is not to identify the absolute level of economic performance, but, rather, to identify the expected amount and direction (gain or loss) of change. Although increasing fuel prices may alter fishing behavior and reduce the profitability of small businesses in the fishing industry, such effects would continue to occur under the No Action Alternatives. As a result, because the No Action Alternatives would not impose any new restrictions on the fisheries, they would not result in any additional economic impacts beyond those expected to occur under the status quo, which includes the snapper-grouper fishery without the MPAs, but with rising fuel costs, and other economic pressures. Thus, while knowledge of baseline conditions (status quo) is important to identifying the effects of alternatives to the status quo, the No Action Alternatives would not result in any change in these baseline conditions. It should also be noted that, due to the methodology employed, neither fuel costs nor any other cost considerations, were explicitly used in the effects analysis. However, such effects were assumed to be implicitly factored into the determinations of potential effects of the MPAs and resultant ordinal ranking of alternatives. Because of their experience and knowledge of the fisheries and areas under consideration, the participants in the modified Delphi process were assumed to be cognizant of current fishing costs, travel distances, and other appropriate fishing factors and trends, and are assumed to have included these considerations in their determination of the effects of the alternative MPAs. Finally, from a practical perspective, it should be noted that if recent fuel price increases have caused fishermen to permanently move out of areas that will be designated as MPAs, the additional displacement and associated adverse economic effects as a result of MPA designation will be less than the effects which would occur absent any fuel price-induced

displacement because an MPA would not displace effort that no longer exists.

The third issue raised on the economic analysis was that the analysis failed to describe the economic impacts of the MPA alternatives on recreational fishermen and associated community businesses. The RFA is concerned with the expected direct effects of regulatory action on small entities and defines three types of small entities: small businesses, small organizations, and small government jurisdictions. While the businesses that support the recreational fishing industry may be small business entities, recreational anglers do not qualify as small entities under any of the classifications defined by the RFA. Further, no associated community businesses would be directly affected by the proposed rule. Consequently, the IRFA was correct in not including recreational anglers or associated community businesses in the analysis. The small entities that could be directly affected by this rule are small businesses in the commercial fishing and for-hire industries with permits to fish for and possess South Atlantic snapper-grouper species in the EEZ. These entities have been identified and included in the analysis.

The fourth issue raised on the economic analysis was that the economic analysis utilized faulty assumptions of fishing pressure. The comment implied, using 2005 through 2007 data for South Carolina, that the analysis assumed all trips occurring in Federal waters constituted pressure on the snapper-grouper fishery. NMFS disagrees with this comment. When evaluating the expected economic effects of a proposed rule, NMFS uses a measure of directed effort and not total effort. Proxies for directed effort include target trips (trips that target a particular species), catch trips (trips that catch a particular species), or harvest trips (trips that harvest a particular species but do not include catch and release trips). These measures of directed effort typically constitute a small portion of total effort. For example, for the snapper-grouper fishery from 1999 through 2003, catch trips comprised the largest portion of total trips, yet equaled only approximately 15 percent of total trips. Additionally, because the analysis of the expected economic effects of the alternative MPAs used the modified Delphi methodology, as described above, rather than a traditional quantitative analysis, neither the IRFA nor the RIR used or relied on specific trip data to estimate and compare the economic impacts of the alternatives for this amendment.

No duplicative, overlapping, or conflicting Federal rules have been identified.

This rule will regulate commercial fishermen and for-hire fishing operators who fish for snapper-grouper species in eight areas to be designated as Type II MPAs in the South Atlantic EEZ. These eight MPAs are the Snowy Grouper Wreck, Northern South Carolina, Edisto, Georgia, North Florida, St. Lucie Hump, East Hump, and Charleston Deep Artificial Reef Type II MPAs.

Current regulations require commercial vessels to have a Federal permit in order for persons aboard to possess South Atlantic snapper-grouper species in the South Atlantic EEZ in excess of the recreational bag limit (50 CFR 622.4). For-hire vessels that fish for snapper-grouper in the EEZ, which are subject to recreational bag limits, are also required to have a Federal permit. As of August 18, 2008, 771 commercial fishing vessels had active South Atlantic snapper-grouper permits, 142 of which were trip-limited and 629 of which were unlimited. Similarly, there were 1,513 charter-fishing vessels with an active permit for South Atlantic snapper-grouper species.

The Small Business Administration (SBA) defines a small business in the finfish fishing or charter-fishing industry as one that is independently owned and operated, is not dominant in its field of operation, and has annual receipts not in excess of $4 million for finfish fishing (NAICS 114111) or $6.5 million in charter fishing (NAICS 487210). It is assumed for this analysis that each permit represents a small business. Thus, it is estimated that there are 771 small businesses in finfish fishing and 1,513 in charter-fishing that catch South Atlantic snapper-grouper species in the South Atlantic EEZ.

The U.S. Atlantic EEZ is divided into statistical areas referred to herein as grids. The eight MPAs will be located within nine grids with one of the MPAs, Snowy Grouper Wreck, occurring in two grids and the others located in single grids. Of the seven MPAs to be contained within single grids, the size of the respective MPAs represents from 0.25 percent to 3.26 percent of the area of the grid where it is located. The one MPA contained within two grids comprises 2.48 percent of the combined area of the two grids.

Under current regulations, all fishermen with a Federal commercial permit to catch South Atlantic snapper-grouper species are required to maintain a fishing logbook and submit a trip report for every fishing trip related to that permit. Among the information that is required is the vessel name and identification number, gear used, pounds caught and sold of each species, and the numeric code of the grid where the majority of the catch of each species was made. Fishermen are not required to report the longitudes and latitudes where the snapper-grouper species were caught within a grid, so the smallest unit of fishing area is the grid.

The initial analysis of the expected economic impacts of the MPA alternatives considered quantifying the expected effects by identifying the total snapper-grouper catch in the respective grid containing the MPA or any portion of the MPA and assuming that the catch originating from the MPA was between 0 to 100 percent of the total catch in the grid. This approach would have established upper and lower bounds on the potential level of catch affected by each MPA designation. For example, the Preferred Alternative for the Edisto MPA (Alternative 1) is contained within grid 3279. This approach would have estimated that 0 to 100 percent of the vessels with recorded fishing activities in that grid and 0 to 100 percent of the landings of snapper-grouper species recorded from that grid would be affected by the MPA. However, all of the MPAs considered comprised relatively small portions of their respective grids. The Preferred Alternative for the Edisto MPA, for example, represents only 1.65 percent of the total area within the grid in which it lies. As a result, this approach would not have produced meaningful estimates of the expected effects of the alternative MPAs and was rejected.

The second approach to quantifying the expected economic impacts considered assuming that the vessel participation and harvest from each alternative MPA was proportional to the percentage of area of the MPA relative to the total area in the grid. For example, because the Preferred Alternative for the Edisto MPA represents 1.65 percent of the area of grid 3279, this approach would have assumed that the designation of this area as an MPA would affect 1.65 percent of the snapper-grouper vessels that reported landings in that grid and reduce the total snapper-grouper landings in that grid by 1.65 percent. This method, however, was rejected because it assumed each grid was a homogeneous area of physical, chemical and biological characteristics or habitat resulting in identical types and rates of fishing effort and harvest everywhere within the grid, conditions which are known with certainty not to be true. Consequently, it was decided that an adequate quantitative evaluation of the

economic impacts using traditional techniques was not possible.

Because the empirical data do not exist at the spatial scale necessary to quantify the number of small entities that would be affected and adverse economic impacts of the various MPAs, a second best alternative, a modified Delphi approach, was developed to assess the expected socioeconomic effects of each of the proposed alternatives and support ranking of the alternatives. The Delphi method has been applied in the management of other natural resources and advocated for use in fishery management.

The Delphi method is an experiment in group communication among a panel of experts with expertise representative of diverse geographic areas. It involves repetitive response, discussion and judgment among a panel of diverse experts with the purpose of resulting in a sound collective opinion. The technique allows experts to deal systematically with a complex problem or task where relevant empirical data is lacking. The particular Delphi experiment developed for this amendment was a modified Delphi, which consisted of three rounds: a Policy Delphi, a traditional iterative Delphi, and a cross-impact analysis.

Twelve experts, representing expertise from the Carolinas to the Florida Keys, participated in the Delphi experiment. They were selected based on a spectrum of fishing and researching backgrounds with different perspectives on the policy issue of MPAs, including stakeholders with commercial, for-hire, and recreational fishing interests, as well as others with expertise covering marine resources administration, anthropology, biology, economics, enforcement, and protected marine resources. This was a priority in order to represent contrasting viewpoints of different stakeholders. Their viewpoints were treated as expert testimony and systematically disseminated to the rest of the panel of experts so that each panelist could consider other viewpoints and discuss them.

The first phase was a Policy Delphi, which culminated in a comprehensive list of positive and negative effects (i.e. benefits and costs, advantages and disadvantages) of implementing a Type II MPA in general. Although the diversity of experts created instances of divergence regarding the direction (positive, negative, or neutral) of individual effects during Round One, the panel generally displayed strong majority support on the direction and level of impacts resulting from the implementation of Type II MPAs.

This and the following four paragraphs identify and describe the economic impacts of Type II MPAs in general, which were identified and described by the expert panelists during Round One of the Delphi experiment. According to the panelists, negative impacts on small businesses would be realized mainly in the form of displacement costs on commercial and for-hire vessels that currently, but would no longer be able to, fish in areas designated as Type II MPAs. These displacement costs were divided into the following categories: catch and landings changes, trip-level search and associated costs, crowding and congestion costs, and personal safety costs.

The most obvious and direct displacement cost would be the cost to commercial and charter-fishing vessels that historically catch snapper-grouper species in the areas designated as MPAs. These vessels would lose the revenues that come from sales of species caught in those areas and customer trips to those areas. To reduce the loss of catch and associated revenue, vessels would have to travel to new fishing locations, maybe target new species, or even learn new types of fishing. These new trip-level decisions would have a direct impact on trip-related variable costs as well as time-related opportunity costs. In particular, fuel usage and costs would likely change. The immediate search for profitable alternative fishing grounds could result in additional fuel expenditures and lost opportunities to fish, especially if those grounds require vessels to travel greater distances and avoid traveling through closed areas in order not to be caught with snapper-grouper species in the MPAs. However, vessels could actually use less fuel if the new fishing grounds were closer to shore. If displaced fishermen purchase new gear or modify existing gear and lack experience with the new/modified gear, it could take time for them to become proficient and improve profits.

Related displacement costs could be congestion, increased harvest and user conflicts in areas outside an MPA, and decreased personal safety. Additional fishing pressure in areas surrounding an MPA might further stress already overfished species, and vessels may experience lower catch rates per unit of effort as they compete for the limited biomass in the open fishing areas. This could create incentives for additional capital expenditures, such as for fish finding equipment. Additionally, user conflicts may develop and gear may be lost due to entanglement. The panel suggested that the farther displaced vessels had to move inshore, the more conflict could result with recreational vessels. MPA regulations could cause fishermen to incur extra risk to personal safety as they seek new and unfamiliar fishing grounds or employ unfamiliar fishing techniques. However, if the MPAs were in deepwater areas, there could be a decrease in personal risk to crew and paying passengers if vessels moved closer to shore. The short-term revenue losses could translate into long-term income gains and reduced variability of revenue. In the long run, benefits could be realized if spillover effects are assumed to affect aggregate harvest levels in the remaining fishable areas as stocks become healthier. Increased protection of the spawning stock biomass may lead to more natural population structures with older and larger individuals and greater genetic diversity. As a result, there could be increased harvestable biomass, increased dispersal, and greater recruitment to the remaining open areas in the fishery. These attributes likely would lead to a reduction in the annual variation in the biomass of deepwater stocks and the resulting harvests and revenues. If spillover occurs, then the abundance and harvest levels in surrounding areas will become less variable. The amount of economic benefit that would eventually be derived due to spillover effects from the MPA depends on a myriad of biological and economic factors specific to species in question and the vessels that target them. Future harvest increases may not be realized exclusively by the fishermen who were displaced by designation of an MPA.

Round Two of the Delphi experiment required panelists to group and rank the effects listed in the previous round. A time dimension was introduced to distinguish immediate (less than one year) impacts of implementing a Type II MPA from medium (one to five years) and long-term (over five years) impacts. The results were groupings of effects ranked on their expected overall impacts throughout various time periods after implementation of Type II MPAs In General.

The primary objective of Round Three was to differentiate the socioeconomic consequences of the alternatives for each proposed MPA in Amendment 14. A weighted scoring system was used based on the results from the previous rounds. In Delphi method terminology, this scoring system is an impact analysis. Each panelist was asked to estimate the impact of each group of effects in each time period on a scale from negative three to plus three, with a score of zero representing a neutral impact. Negative 3 represented a high

adverse economic impact, negative two a moderate adverse economic impact, and negative 1 a minimal adverse economic impact. Similarly, 3 represented a high beneficial economic impact, 2 a moderate beneficial economic impact, and 1 a minimal beneficial economic impact. A score of zero represented neutral or no impact. One of the groups of effects was impact on commercial, charter-fishing and recreational fishermen. Overall impact scores for each grouping of effects in each time period were calculated with a probabilistic consensus model that enabled a test for agreement in responses among panelists. Relative weights based on the rankings of effects from Round Two were used to calculate the overall weighted impact scores in each time period that were employed to compare the alternatives associated with the Amendment 14 MPA sites. The Wilcoxon Signed-Rank Test produces a nonparametric statistic that was used to formally test for differences in scores among the alternatives. The No Action alternative was not explicitly evaluated by the panelists and was defined to have a score of zero because it represented no change from baseline (or status quo) economic conditions.

**Snowy Grouper Wreck Type II MPA Alternatives**

Alternative 1, the Preferred Alternative, will establish the Type II Snowy Grouper Wreck MPA located off North Carolina in the area that is bound by the following coordinates: The northwest corner at 33°25'N, 77°4.75'W; northeast corner at 33°34.75'N, 76°51.3'W; southwest corner at 33°15.75'N, 77°0'W; and the southeast corner at 33°25.5'N, 76°46.5'W. It comprises an area approximately 143 square nautical miles and is located approximately 55 nautical miles southeast of Southport, North Carolina.

Alternative 2, a rejected alternative, would have established a Type II MPA that protects the Snowy Grouper Wreck off North Carolina in the area that is bound by the following coordinates: The northwest corner at 33°23.35'N, 77°4'W; northeast corner at 33°33.25'N, 76°50.5'W; southwest corner at 33°14.1'N, 76°59.35'W; and the southeast corner at 33°24'N, 76°45.75'W. The MPA would have comprised an area approximately 144 square nautical miles and been located approximately 57 nautical miles southeast of Southport.

Alternative 3, another rejected alternative, was the No Action Alternative and would not have established the Type II Snowy Grouper Wreck MPA. It would not generate any economic impacts beyond the baseline. Alternative 3 would not protect the fish that are still present on the snowy grouper wreck and other wrecks and natural bottom sites within the area from directed fishing pressure. By allowing fishing to continue as is, it is less likely that the natural size and age structure of the deepwater stocks will be restored, which reduces the long-term benefits of increased catches and associated revenues.

The MPA created by Preferred Alternative 1 is situated a little further inshore than the MPA created by rejected Alternative 2 and contains more hard-bottom habitat than Alternative 2. The MPAs created by Alternative 1 and Alternative 2 include an area ranging from 150 meters (492 feet) to 300 meters (984 feet) deep. Alternative 1 also includes a shallow area ranging from 60 meters (197 feet) to 100 meters (328 feet), and Alternative 2 includes a deeper area exceeding 300 meters (984 feet) in depth. Both of the alternatives contain a wreck that was once the site of a known aggregation of snowy grouper, which was believed to be targeted heavily by a few individuals in the late 1990s and fished down.

According to the commercial fishing industry, the areas of Alternatives 1 and 2 hold many snowy grouper, speckled hind, gag, and red porgy. It is reported that red grouper, graysby, and hogfish have also been caught at the snowy grouper wreck. Information from public hearings indicates that the snowy grouper wreck is mostly fished by commercial snapper-grouper fishermen out of Little River, SC, and the ports of Carolina Beach and Southport, NC. This area is also heavily fished by fishermen who troll for tuna, marlin, dolphin, and wahoo during certain times of the year.

The charter fishing industry may also be impacted by Alternatives 1 and 2 because they would have to target these bottom snapper-grouper species in other areas, potentially increasing fishing pressure on other sites. It may also have a negative effect because these longer trips are usually built into the annual round of these boats, designated for specialized fishermen.

The results of the Delphi experiment forecast moderate to minimal adverse economic impacts from either Preferred Alternative 1 or rejected Alternative 2, with impacts ranging from immediate, moderate, adverse impacts of -1.94 to -1.57 to less than minimal adverse impacts of -0.14 after 5 years.

The Delphi approach forecasts higher adverse economic impacts of Preferred Alternative 1 than those of Alternative 2 due to greater displacement effects. This result corroborated expert testimony from Round One that suggested Preferred Alternative 1 encroaches into the mid-shelf region and would affect more fishing operations than Alternative 2. Commercial activity in the outer continental shelf of Alternative 2 is relatively light (about 6 boats) while more than 12 additional commercial vessels and an unknown number of charter-fishing operators regularly fish for snapper and shallow-water groupers in the mid-shelf region of Preferred Alternative 1. Expert testimony revealed that no significant recreational effort exists within the Snowy Grouper Wreck MPA alternatives. Although the Delphi results forecast the same long-term adverse economic impacts for Alternatives 1 and 2, the Council expects the biological benefits of Preferred Alternative 1 would be greater than those of Alternative 2.

**Northern South Carolina Type II MPA Alternatives**

Preferred Alternative 2 will establish a Type II MPA in the area bounded by the following coordinates: The northwest corner at 32°53.5' N, 78°16.75' W; the northeast corner at 32°53.5' N, 78°4.75' W; the southwest corner at 32°48.5'N, 78°16.75' W; and the southeast corner at 32°48.5' N, 78°4.75' W. It comprises an area approximately 50 square nautical miles and is located approximately 54 nautical miles from Murrells Inlet, SC.

Alternative 1, a rejected alternative, would have established a Type II MPA in the area bounded by the following coordinates: The northwest corner at 33°8.5'N, 77°54'W; the northeast corner at 33°8.5'N, 77°42'W; the southwest corner at 33°3.5'N, 77°54'W; and the southeast corner at 33°3.5'N, 77°42'W. The MPA would have had an area approximately 50 square nautical miles and been located approximately 61 nautical miles from Murrells Inlet.

Alternative 3, another rejected alternative, would have established a Type II MPA in the area bounded by the following coordinates: The northwest corner at 33°2.75'N, 79°52.75'W; the northeast corner at 33°9.25'N, 77°43.5'W; the southwest corner at 32°58.83'N, 77°48.83'W; and the southeast corner at 33°5.3'N, 77°39.9'W. The MPA would have been located approximately 65 nautical miles from Murrells Inlet and been approximately 50 square nautical miles in size.

Alternative 4, the rejected No Action Alternative, would have not established a Type II MPA off northern South Carolina. It would generate no economic impacts beyond the baseline.

The MPAs of Preferred Alternative 2 and rejected Alternatives 1 and 3 are areas of low relief that were previously heavily trawled by roller rigs before they were prohibited in 1989 through Snapper Grouper Amendment 1 (SAFMC 1988). Fishermen refer to the area as ''smurfville'' because it holds many small vermilion snapper. Information received during the public input process indicates that this area is fished mostly in the winter and that it holds deepwater species like snowy grouper and speckled hind as well as other snapper-grouper species such as red porgy, triggerfish, and gag.

The MPAs of rejected Alternative 1 and Preferred Alternative 2 run east to west, while rejected Alternative 3 runs parallel to shore. Alternatives 1 and 3 share an area ranging in depth from 70 to 140 meters (230 to 460 feet). The MPA that would have been created by Alternative 1 would have included more shallow water ranging from 40 to 80 meters (131 to 262 feet) deep, while that of Alternative 3 would have included a greater area of deep water (100–150 meters (328–492 feet)). Waters in the MPA created by Preferred Alternative 2 are from 50 to 180 meters (164 to 591 feet) deep. The depth profiles of Alternatives 1 and 2 are similar, but the MPA created by Preferred Alternative 2 is located farther offshore and includes deeper water than Alternative 1.

Southeast Area Monitoring and Assessment Program (SEAMAP) data indicate the presence of hard bottom within Alternatives 1 through 3, with Preferred Alternative 2 and rejected Alternative 1 having the highest occurrence of known hard bottom. These data show that snowy grouper can be found in all the alternatives while speckled hind have only been found in Alternative 2. Marine Resources Monitoring, Assessment, and Prediction (MARMAP) program data indicate many mid-shelf snapper-grouper species such as gray triggerfish, red porgy, knobbed porgy, and vermilion snapper are also found within all three alternatives for this MPA. Many mid-shelf species including vermilion snapper have been found in spawning condition in these areas.

The results of the Delphi experiment forecast Preferred Alternative 2 would have the largest immediate and medium-term adverse economic impacts due to the largest displacement costs. Rejected Alternative 3 is inferior to Preferred Alternative 2 and Alternative 1 in the long-term because it would have adverse economic impacts as compared to the others' beneficial economic impacts in the long-term. Although Preferred Alternative 2 is forecast to have larger adverse economic impacts than Alternatives 1 and 3 and smaller beneficial economic impacts than Alternative 1, it is expected to have greater biological benefit because it has more hard-bottom habitat and spawning areas for snowy grouper, golden grouper and blueline tilefish.

**Edisto Type II MPA Alternatives**

Preferred Alternative 1 will establish a Type II MPA in the area bounded by the following coordinates: The northwest corner at 32°24'N, 79°6'W; the northeast corner at 32°24'N, 78°54'W; the southwest corner at 32°18.5'N, 79°6'W; and the southeast corner at 32°18.5'N, 78°54'W. It will be oriented perpendicular to the coast and located approximately 45 nautical miles southeast of the Charleston, SC, harbor. Its area is approximately 50 square nautical miles. According to public testimony, it is heavily fished by commercial and headboat fishermen.

Alternative 2, a rejected alternative, would have established a Type II MPA in the area bounded by the following coordinates: The northwest corner at 32°17'N, 79°3'W; the northeast corner at 32°24.75'N, 78°54.2'W; the southwest corner at 32°13.5'N, 78°59.5'W; and the southeast corner at 32°21'N, 78°50.83'W. It would have oriented the MPA along the shelf break and been 50 nautical miles southeast of Charleston, SC, harbor. The MPA would have had an area of 50 square nautical miles.

Alternative 3, the rejected No Action Alternative, would not have established a Type II MPA off central South Carolina. It would generate no economic impacts beyond the baseline.

The MPAs of Preferred Alternative 1 and rejected Alternative 2 include an area ranging in depth from 80 meters (262 feet) to 140 meters (459 feet). The MPA created by Alternative 1 is perpendicular to the shoreline and includes more shallow water ranging from 45 to 80 meters (148 to 262 feet) deep. Alternative 2 would have created an MPA that runs parallel to the shoreline and includes additional water 60–150 meters (197–492 feet) deep.

The Delphi results forecast minimal to moderate adverse economic impacts during the first year of implementation of either Preferred Alternative 1 or rejected Alternative 2 due to immediate displacement costs. After the first year, these displacement effects would lessen to zero to minimal and after 5 years there would be beneficial economic impacts. Preferred Alternative 1 would have larger adverse economic impacts during the first 5 years of implementation and larger beneficial economic impacts after 5 years. Although Preferred Alternative 1 is forecast to have larger adverse economic impacts than Alternative 2 for the first 5 years, it is expected to have a larger biological benefit because it has more hard-bottom habitat than Alternative 2.

**Georgia Type II MPA Alternatives**

Preferred Alternative 1 will establish a Type II MPA off Georgia in the area bounded by the following coordinates: The northwest corner at 31°43'N, 79°31'W; the northeast corner at 31°43'N, 79°21'W; the southwest corner at 31°34'N, 79°39'W; and the southeast corner at 31°34'N, 79°29'W. It is located approximately 69 nautical miles southeast of the mouth of Wassaw Sound, GA, and has an area of approximately 100 square nautical miles.

Alternative 2, a rejected alternative, would have established a Type II MPA off the Georgia coast in the area that is bounded by the following coordinates: The northwest corner at 31 38'N, 79 41'W; the northeast corner at 31 38'N, 79 31'W; the southwest corner at 31 28'N, 79 41'W; and the southeast corner at 31 28'N, 79 31'W. It would have located the MPA approximately 65 nautical miles southeast of Wassaw Sound and, like the Preferred Alternative, have had an area of 100 square nautical miles.

Alternative 3, the rejected No Action Alternative would have not established a Type II MPA off the Georgia coast. It would not generate any economic impacts beyond the baseline.

Preferred Alternative 1 runs parallel to shore and includes waters ranging from 90 to 300 meters (295 to 984 feet) deep, while Alternative 2 includes an area with a wider depth range from 65 to 380 meters (213 to 1,247 feet) deep. Input received from the public hearing process indicates that golden tilefish are often caught within both Preferred Alternative 1 and rejected Alternative 2. The vast majority of fishing that occurs in the area of Alternatives 1 and 2 is trolling for pelagic species such as tuna and dolphin. The area is occasionally fished commercially for snapper grouper species, but lies east of an area called Triple Ledge that is an important area for the finfish fishing industry.

The Delphi results forecast minimal to moderate immediate adverse economic impacts from Preferred Alternative 1 and rejected Alternative 2, with slightly larger adverse impacts caused by Alternative 2. Similarly, Alternative 2 would have larger adverse economic impacts in the medium-term and smaller beneficial impacts after 5 years than the preferred alternative. The Council expects larger biological benefit

from Preferred Alternative 1 because it has more hard-bottom habitat than Alternative 2.

**North Florida Type II MPA Alternatives**

Preferred Alternative 4 will establish a Type II MPA off north Florida in the area bounded by the following coordinates: The northwest corner at 30°29'N, 80°14'W; the northeast corner at 30°29'N, 80°2' W; the southwest corner at 30°19'N, 80°14'W; and the southeast corner at 30°19'N, 80°2'W. It is located approximately 60 nautical miles off the mouth of the St. Johns's River near Jacksonville, FL, and is approximately 100 square nautical miles in size. Alternative 1, a rejected alternative, would have established a Type II MPA off the north Florida coast in the area that is bounded by the following coordinates: The northwest corner at 30 29'N, 80 18'W; the northeast corner at 30 29'N, 80 8'W; the southwest corner at 30 19'N, 80 18'W; and the southeast corner at 30 19'N, 80 8'W. It would have located the MPA approximately 57 nautical miles off the mouth of the St. John's River and is about 100 square nautical miles in size.

Rejected Alternative 2 would have established a Type II MPA off the north Florida coast in the area that is bounded by the following coordinates: The northwest corner at 30 5'N, 80 25'W; the northeast corner at 30 5'N, 80 15'W; the southwest corner at 29 55'N, 80 25'W; and the southeast corner at 29 55'N, 80 15'W. It would have located the MPA approximately 47 nautical miles east of St. Augustine, FL, and would have been about 100 square nautical miles in size.

Alternative 3, a rejected alternative, would have established a Type II MPA off the north Florida coast in the area that is bounded by the following coordinates: The northwest corner at 29 36.3'N, 80 12.5'W; the northeast corner at 29 40'N, 79 50'W; the southwest corner at 29 17.3'N, 80 8.3'W; and the southeast corner at 29 21.3'N, 79 45.5'W. The MPA would have been approximately 506 square nautical miles in size and located approximately 43 nautical miles off New Smyrna Beach, FL.

Rejected Alternative 5 would have established a Type II MPA off north Florida in the area bounded by the following coordinates: The northwest corner at 30§ 5' N, 80§ 16' W; the northeast corner at 30§ 5' N, 80§ 6' W; the southwest corner at 29§ 55' N, 80§ 16' W; the southeast corner at 30§ 55' N, 80§ 6' W. Similar to Alternative 2, the MPA would have been located approximately 55 nautical miles east of St. Augustine, and like Preferred Alternative 1 and rejected Alternatives 2 and 4, the MPA would have been about 100 square nautical miles in size.

Alternative 6, another rejected alternative, would have established a Type II MPA off north Florida in the area bounded by the following coordinates: The northwest corner at 29§ 36.3' N, 80§ 15' W; the northeast corner at 29§ 40' N, 79§ 52.5' W; the southwest corner at 29§ 17.3' N, 80§ 10.8' W; the southeast corner at 29§ 21.3' N, 79§ 48' W. Like Alternative 3, it would have located the MPA off New Smyrna Beach, but about 45 nautical miles from that location. Also, like Alternative 3, the MPA would have been about 506 square nautical miles in size.

The rejected No Action Alternative, Alternative 7, would have not established a Type II MPA off north Florida. It would not generate any economic impacts beyond the baseline.

The Delphi results forecast moderate to high adverse economic impacts in the first year for Preferred Alternative 4 and rejected Alternatives 1, 2, and 5 and minimal to moderate immediate adverse impacts for rejected Alternatives 3 and 6. From 1 to 5 years, minimal to moderate adverse impacts would be incurred from Alternatives 1, 2, 4 and 6, with zero to minimal adverse impacts caused by Alternatives 3 and 6. None of the alternatives were forecast to have positive long-term economic impacts, and Alternatives 1 through 5 were forecast to generate zero to minimal adverse economic impacts after 5 years.

Alternatives 1 and 2 were proposed to the Council by the Habitat Advisory Panel. Input received during the public scoping and meeting process indicated that these alternatives are heavily fished both commercially and recreationally for mid-shelf snapper-grouper species and that there are few deepwater species found in either area. Alternatives 4 and 5 were modifications suggested by the Council to capture a greater amount of deepwater habitat. Alternative 6 is similar to Alternative 3 but located closer to shore. Alternative 3 is a site proposed at a public hearing held in the affected area. Although Alternatives 3 and 6 have smaller adverse economic impacts than Preferred Alternative 4, the preferred alternative is expected to yield a larger biological benefit.

**St. Lucie Hump Type II MPA Alternatives**

Preferred Alternative 1 will establish a Type II MPA protecting St. Lucie Hump in the area bounded by the following coordinates: The northwest corner at 27°8'N, 80°W; the northeast corner at 27°8'N, 79°58'W; the southwest corner at 27°4'N, 80°W; and the southeast corner at 27°4'N, 79°58'W. The MPA will be located approximately 9 nautical miles southeast of St. Lucie, FL, and have a size of 8 square nautical miles. It is located in water 66 to 69 meters (216 to 234 feet) deep.

The No Action Alternative, rejected Alternative 2, would have not established the St. Lucie Hump Type II MPA. It would not generate any economic impacts beyond the baseline.

According to input received from the Council's advisors and through the public scoping and hearing process, the MPA created by Alternative 1 represents an area that is very habitat rich with many speckled hind, juvenile snowy grouper, Warsaw grouper, and mid-shelf species such as sea bass, red porgy, and red snapper present. The MPA will be located between two inlets that make the area less popular to fish than other hard-bottom areas such as Pushbutton Hill. However, it is heavily targeted by fishermen who troll for pelagic species. The Council considered other possible sites, but only Alternative 1 came out of the public process used to identify potential sites.

The results of the Delphi experiment forecast minimal to moderate adverse economic impacts during the first year of implementation, followed by zero to minimal adverse impacts in the medium-term and zero to minimal beneficial economic impacts after 5 years.

**East Hump Type II MPA Alternatives**

Preferred Alternative 1 will establish a Type II MPA protecting the East Hump in the area bounded by the following coordinates: The northwest corner at 24°36.5'N, 80°45.5'W; the northeast corner at 24°32'N, 80°36'W; the southwest corner at 24°32.5'N, 80°48'W; and the southeast corner at 24°27.5'N, 80°38.5'W. The MPA will be located approximately 13 nautical miles southeast of Long Key, FL, and about 50 square nautical miles in size.

The No Action Alternative, rejected Alternative 2, would not have established an MPA in this area. It would not generate any economic impacts beyond the baseline.

The East Hump MPA is an area of very rich habitat. The MPA is located in waters that are 194 to 296 meters (636 to 971 feet) deep, while the tops of the humps are 155 to 165 meters (509 to 541 feet) deep. The Council considered other possible sites, such as the Islamorada Hump, but only Alternative 1 came out of the public process used to identify potential sites. The Islamorada Hump site is a much more

popular fishing site. According to expert testimony, an MPA directly off the coast of the so-called ''Fishing Capital of the World'' would have led to extensive displacement costs to the fishing industry.

The results of the Delphi experiment forecast zero to minimal adverse economic impacts from Preferred Alternative 1 during the first year of implementation, followed by beneficial economic impacts after the first year. After 5 years, there would be a minimal to moderate beneficial economic impact.

The following insights from the panel reflect the possible dynamics associated with the East Hump MPA. There are ample fishing opportunities in the Florida Keys. Initially, increased search and learning costs might be incurred by displaced commercial and charter fishing fishermen. Over time the abundance of fishing opportunities in the Keys would allow them to regain their level of past fishing catch, likely targeting the same species. Some congestion effects might take place in nearby areas. However, bottom fishermen should benefit from stock rejuvenation in the long term.

**Charleston Deep Artificial Reef Type II MPA Alternatives**

Preferred Alternative 1 will establish an experimental artificial reef Type II MPA off the Coast of South Carolina in the area identified by the following boundaries: The northwest corner at 32°4' N, 79°12'W; the northeast corner at 32°8.5'N, 79°7.5'W; the southwest corner at 32°1.5'N, 79°9.3'W; and the southeast corner at 32°6'N, 79°5'W. The MPA will be located about 50 nautical miles southeast of Charleston Harbor, SC. It will have an area of 21 square nautical miles and be in waters from 100 to 150 meters (328 to 492 feet) deep.

The No Action Alternative, rejected Alternative 2, would have not established a Charleston Deep Artificial Reef MPA. It would not generate any economic impacts beyond the baseline.

Throughout the many rounds of public meetings the Council held regarding MPAs, one of the most common sentiments from members of the public was that the Council use artificial reefs instead of natural habitat as MPAs and/or build more artificial reefs to mitigate for the loss of natural bottom that has been designated as an MPA. Preferred Alternative 1 was developed by Council staff and biologists from the State of South Carolina who looked to avoid hard-bottom habitat from SEAMAP data while locating the site just offshore where other artificial reefs were being studied.

The results of the Delphi experiments forecast no adverse economic impacts and zero to minimal beneficial economic impacts from Preferred Alternative 1.

**Summary of Impacts of Preferred Type II Alternatives**

This rule will establish eight Type II MPAs: Snowy Grouper Wreck MPA, Northern South Carolina MPA, Edisto MPA, Georgia MPA, North Florida MPA, St. Lucie Hump MPA, East Hump MPA, and Charleston Deep Artificial Reef MPA. Fishing for or possession of any snapper-grouper species within any of the MPAs will be prohibited. It will regulate commercial fishers and charter-fishing operators who fish for snapper-grouper species in the eight areas of the South Atlantic EEZ to be designated as Type II MPAs. Four of the MPAs that will be established by this rule, Snowy Grouper Wreck, Northern South Carolina, Edisto, and North Florida, are expected to have significant adverse economic impacts during their first year after implementation. However, no significant adverse economics impacts are expected after the first year for any of the eight MPAs.

In an attempt to minimize the adverse economic impacts of the rule, all MPAs considered were identified by a process that extensively involved scientists, fishermen, and the public. A Habitat Advisory Panel, consisting of scientists and fishermen, assembled available data to identify locations that would provide the greatest biological benefit to snapper-grouper species. Experts on MPAs traveled throughout the South Atlantic region and discussed the benefits of MPAs with the public. Public input during the scoping process and the public hearings revealed that closure of certain sites would generate intense public disapproval. The Council realized the implementation of those sites would create a degree of controversy that would impede implementation of the closures and compliance. Following public input, the Council employed a bottom-up process where stakeholders proposed sites that would reduce potential adverse social and economic effects yet still achieve the biological objectives. As an example, the Council worked with fishermen in the Florida Keys following the Council's proposed placement of an MPA on the popular location referred to as the Islamorada Hump. The proposal generated intense controversy due to the popularity of fishing at this site. The Council worked with the local fishing community to propose a nearby site that would achieve the biological objectives of the MPA designation, invoke less controversy, and have lower adverse economic impact than the originally proposed site. This approach was replicated, where necessary, for all the MPAs that will be established by this final rule.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: January 7, 2009

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.2, the definition of ''MPA'' is added in alphabetical order to read as follows:

**§ 622.2 Definitions and acronyms.**

* * * * *

*MPA* means marine protected area.

* * * * *

■ 3. In § 622.35, paragraph (i) is added to read as follows:

**§ 622.35 Atlantic EEZ seasonal and/or area closures.**

* * * * *

(i) *MPAs.* (1) No person may fish for a South Atlantic snapper-grouper in an MPA, and no person may possess a South Atlantic snapper-grouper in an MPA. However, the prohibition on possession does not apply to a person aboard a vessel that is in transit with fishing gear appropriately stowed as specified in paragraph (i)(2) of this section. In addition to these restrictions, see § 635.21(d)(1)(iii) of this chapter regarding restrictions applicable within these MPAs for any vessel issued a permit under part 635 of this chapter that has longline gear on board. MPAs consist of deepwater areas as follows:

(i) *Snowy Grouper Wreck MPA* is bounded by rhumb lines connecting, in order, the following points:

| Point | North lat. | West long. |
|---|---|---|
| A | 33°25′ | 77°04.75′ |
| B | 33°34.75′ | 76°51.3′ |
| C | 33°25.5′ | 76°46.5′ |

| Point | North lat. | West long. |
|---|---|---|
| D | 33°15.75′ | 77°00.0′ |
| A | 33°25′ | 77°04.75′ |

(ii) *Northern South Carolina MPA* is bounded on the north by 32°53.5′ N. lat.; on the south by 32°48.5′ N. lat.; on the east by 78°04.75′ W. long.; and on the west by 78°16.75′ W. long.

(iii) *Edisto MPA* is bounded on the north by 32°24′ N. lat.; on the south by 32°18.5′ N. lat.; on the east by 78°54.0′ W. long.; and on the west by 79°06.0′ W. long.

(iv) *Charleston Deep Artificial Reef MPA* is bounded by rhumb lines connecting, in order, the following points:

| Point | North lat. | West long. |
|---|---|---|
| A | 32°04′ | 79°12′ |
| B | 32°08.5′ | 79°07.5′ |
| C | 32°06′ | 79°05′ |
| D | 32°01.5′ | 79°09.3′ |
| A | 32°04′ | 79°12′ |

(v) *Georgia MPA* is bounded by rhumb lines connecting, in order, the following points:

| Point | North lat. | West long. |
|---|---|---|
| A | 31°43′ | 79°31′ |
| B | 31°43′ | 79°21′ |
| C | 31°34′ | 79°29′ |
| D | 31°34′ | 79°39′ |
| A | 31°43′ | 79°31′ |

(vi) *North Florida MPA* is bounded on the north by 30°29' N. lat.; on the south by 30°19' N. lat.; on the east by 80°02' W. long.; and on the west by 80°14' W. long.

(vii) *St. Lucie Hump MPA* is bounded on the north by 27°08' N. lat.; on the south by 27°04' N. lat.; on the east by 79°58' W. long.; and on the west by 80°00' W. long.

(viii) *East Hump MPA* is bounded by rhumb lines connecting, in order, the following points:

| Point | North lat. | West long. |
|---|---|---|
| A | 24°36.5′ | 80°45.5′ |
| B | 24°32′ | 80°36′ |
| C | 24°27.5′ | 80°38.5′ |
| D | 24°32.5′ | 80°48′ |
| A | 24°36.5′ | 80°45.5′ |

(2) For the purpose of paragraph (i)(1) of this section, transit means direct, non-stop progression through the MPA. Fishing gear appropriately stowed means—

(i) A longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(ii) A trawl or try net may remain on deck, but trawl doors must be disconnected from such net and must be secured.

(iii) A gillnet, stab net, or trammel net must be left on the drum. Any additional such nets not attached to the drum must be stowed below deck.

(iv) Terminal gear (i.e., hook, leader, sinker, flasher, or bait) used with an automatic reel, bandit gear, buoy gear, handline, or rod and reel must be disconnected and stowed separately from such fishing gear. A rod and reel must be removed from the rod holder and stowed securely on or below deck.

(v) A crustacean trap, golden crab trap, or sea bass pot cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

[FR Doc. E9–497 Filed 1–12–09; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 080302360–7686–03]**

**RIN 0648–AT91**

## Pacific Halibut Fisheries; Bering Sea and Aleutian Islands King and Tanner Crab Fisheries; Groundfish Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Western Alaska Community Development Quota Program; Recordkeeping and Reporting; Permits; Correction

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

**ACTION:** Final rule, correction.

**SUMMARY:** This action corrects the regulatory text of a final rule published on December 15, 2008 (73 FR 76136). Among its measures, the final rule will implement new recordkeeping and reporting requirements; a new electronic groundfish catch reporting system, the Interagency Electronic Reporting System, and its data entry component, eLandings. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law.

**DATES:** Effective January 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

### Background

NMFS manages the U.S. groundfish fisheries of the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (collectively, FMPs). General provisions governing fishing by U.S. vessels in accordance with the FMPs appear at subpart H of 50 CFR part 600.

### Need for Corrections

In FR Doc. E8–29625, published in the **Federal Register** on December 15, 2008 (73 FR 76136), the following errors occur in §§ 679.4 and 679.5. This document corrects those errors.

NMFS is correcting the heading for the table in § 679.4(a)(1) by removing the phrase ''If program permit or card type is:'' and replacing it with ''If program permit type is:''. This correction is necessary because, as described in the supplemental proposed rule, NMFS no longer issues permit cards.

Section 679.4(e)(2) was revised in the final rule, but NMFS inadvertently deleted the phrase ''legible copy of'' a permit and replaced it with ''copy of'' a permit. In a final rule published May 19, 2008 (73 FR 28733), NMFS no longer required an original permit onboard a vessel or onsite at a shoreside facility, but required a ''legible copy'' of a permit. However, NMFS inadvertently omitted the word ''legible'' in the supplemental proposed rule.

Section 679.5(c)(1)(vi)(B)(*3*) is an in-text table and describes the distribution of the yellow logsheet of the daily cumulative production logbooks (DCPLs). This correction removes check marks from the columns for catcher/processor longline or pot gear, catcher/processor trawl gear, and motherships that were mistakenly included in the supplemental proposed rule and the

final rule. With the advent of eLandings, the quarterly submittal of the yellow logsheets is no longer required and NMFS did not intend to require these processors to submit the logsheet. By removing the checkmarks, this correction shows that these processors are not required to submit the yellow logsheets to NMFS, because these processors use eLandings to report production and discard/disposition data.

Check-in and check-out requirements for catcher/processors, motherships, shoreside processors, and stationary floating processors are in regulations at § 679.5(h). Among other regulatory actions, the supplemental proposed and final rules reformatted check-in and check-out requirements from text to table format. The regulatory text for both check-in and check-out reports was combined. Paragraph (h)(4) describes requirements for both the check-in and check-out reports. Paragraph (h)(5) describes information that must be submitted in both the check-in and check-out reports. Paragraph (h)(5)(xiv) states to indicate either YES or NO if the report is a check-out report. NMFS unintentionally failed to include in the supplemental proposed and final rules a follow-up question to any ''YES'' response in paragraph (h)(5)(xiv) to record the date the facility ceased to receive or process groundfish. NMFS is correcting these unintended errors by adding a new paragraph (h)(5)(xv) to read ''if YES, record the date the facility ceased to receive or process groundfish'' and by placing requirements to record fish and fish products into a separate paragraph (h)(5)(xvi) to read ''Indicate product weight of all fish or fish products (including non-groundfish) remaining at the facility (other than public cold storage) by species code and product code. Indicate if recorded to the nearest pound or to the nearest 0.001 mt.''

## Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries finds good cause to waive prior notice and opportunity for public comment otherwise required by the section. NOAA finds that prior notice and opportunity for public comment are unnecessary because the changes made by this rule are non-substantive. It was not the intention under the final rule to replace language NMFS intended to retain or to impose requirements that are incorrect. The need to immediately correct published in-text tables for this regulation eliminates potential confusion and constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment, as such procedures would be unnecessary and contrary to the public interest.

The rule does not make any substantive change in the rights and obligations of fishermen managed under the groundfish regulations that NMFS intended to impose in the final rule. No aspect of this action is controversial and no change in operating practices in the fishery is required.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply.

Because this action only makes non-substantive changes to part 679 described above, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d).

## Corrections

■ Accordingly, the final rule, FR Doc. E8–29625, published on December 15, 2008, at 73 FR 76136, to be effective January 14, 2009, is corrected as follows:

■ 1a. On page 76143, in paragraph (a)(1), correct the entry for the table heading to read as follows:

**§ 679.4 Permits.**

| If program permit type is: | Permit is in effect from issue date through the end of: | For more information, see . . . |
|---|---|---|
| * * * | * * * | * * * |

* * * * *

**§ 679.4 [Corrected]**

■ 1b. On page 76144, in the third column, paragraph (e)(2), correct the phrase ''copy of'' in the fourth line to read ''legible copy of''.

■ 2a. On page 76147, paragraph (c)(1)(vi)(B)(*3*) is corrected to read as follows:

**§ 679.5 Recordkeeping and reporting (R&R).**

* * * * *

(c) * * *

(1) * * *

(vi) * * *

(B) * * *

LOGSHEET DISTRIBUTION AND SUBMITTAL

| If logsheet color is . . . | Logsheet found in these logbooks | | | | | Submit to . . . | Time limit |
|---|---|---|---|---|---|---|---|
| | CV lgl | CV trw | CP lgl | CP trw | MS | | |
| * | * | | * | | | * * | * * |
| (*3*) Yellow ..... | X | X | ..... | ..... | ..... | Must submit quarterly to: NOAA Fisheries Office for Law Enforcement Alaska Region Logbook Program, P.O. Box 21767, Juneau, AK 99802–1767 Telephone: 907–586–7225. | On the following schedule: *1st quarter* by May 1 of that fishing year. *2nd quarter* by August 1 of that fishing year. *3rd quarter* by November 1 of that fishing year. *4th quarter* by February 1 of the following fishing year. |
| * | * | | * | | | * * | * * |

* * * * *

■ 2b. On page 76164, paragraphs (h)(5)(xv) is corrected and paragraph (h)(5)(xvi) is added to read as follows:

**§ 679.5 Recordkeeping and reporting (R&R).**

* * * * *

(h) * * *

(5) * * *

| Required information | Check-in report | | | Check-out report | | |
|---|---|---|---|---|---|---|
| | MS | C/P | SS, SFP | MS | C/P | SS, SFP |
| * * * * | * | | * | | * | |
| (xv) If YES, enter date facility ceased to receive or process groundfish | ..... | ..... | ..... | ..... | ..... | X |
| (xvi) Indicate product weight of all fish or fish products (including non groundfish) remaining at the facility (other than public cold storage) by species code and product code. Indicate if recorded to the nearest pound or to the nearest 0.001 mt. | ..... | ..... | X | ..... | ..... | X |

* * * * *

Dated: January 8, 2009.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator, for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. E9–489 Filed 1–12–09; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 74, No. 8
Tuesday, January 13, 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 AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Parts 71, 77, 78, 79, and 80

**[Docket No. APHIS–2007–0096]**

**RIN 0579–AC72**

## Official Animal Identification Numbering Systems

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the domestic livestock regulations to require that when animal identification numbers (AINs) are used, only those numbers beginning with the 840 prefix will be recognized as official for use on all AIN tags applied to animals 1 year or more after the date on which this proposed rule is finalized. In addition, we are proposing to require that all new premises identification numbers (PINs) that are issued on or after the effective date of this rule use the seven-character alphanumeric code format. Official eartags that use a premises based numbering system issued after a 1-year phase-in period will be required to use the seven-character alphanumeric code format as well. Further, we are proposing several changes pertaining to the use of the U.S. shield on official eartags, numbering systems that use such eartags, and the correlation of those numbering systems with the PIN. These proposed changes are intended to achieve greater standardization and uniformity of official numbering systems and eartags used in animal disease programs and to enhance animal traceability, as discussed in previous **Federal Register** documents pertaining to the National Animal Identification System.

**DATES:** We will consider all comments that we receive on or before March 16, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0096* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0096, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0096.

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

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

**FOR FURTHER INFORMATION CONTACT:** Dr. John Wiemers, Senior Staff Officer, National Animal Identification Staff, VS, APHIS, 2100 S. Lake Storey Rd., Galesburg, IL 61401; (309) 344–1942.

**SUPPLEMENTARY INFORMATION:**

### Background

As part of its ongoing efforts to safeguard animal health, the U.S. Department of Agriculture (USDA) has launched a series of initiatives to provide national standards for animal disease traceability. These include the National Animal Identification System (NAIS), a cooperative State/Federal/industry program administered by the USDA's Animal and Plant Health Inspection Service (APHIS).

In an interim rule effective and published in the **Federal Register** on November 8, 2004 (69 FR 64644–64651, Docket No. 04–052–1), we amended the regulations to recognize additional numbering systems for the identification of animals in interstate commerce and State/Federal/industry cooperative disease control and eradication programs. Additionally, the interim rule amended the regulations to authorize the use of a numbering system to identify premises where animals are managed or held. Specifically, the interim rule recognized the animal identification number (AIN) for the identification of individual animals, the group/lot identification number (GIN) for the identification of groups or lots of animals, and the premises identification number (PIN) for the identification of premises. These numbering systems are important national standards for improved animal disease traceability and are key elements in the NAIS.

On July 18, 2007, APHIS adopted that interim rule as a final rule (72 FR 39301–39307, Docket No. 04–052–2) [1] with several changes. Neither the interim rule nor the final rule required the use of the AIN, the GIN, or the PIN.

### Standardization of the AIN

The regulations established by the November 2004 interim rule and the July 2007 final rule describe the AIN as a number containing 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording. APHIS decided to recognize as official AINs beginning with the letters USA or a manufacturer's code in order to avoid placing an excessive burden on producers who were already using either of those two numbering systems for identifying their animals. Only recognizing AINs with the country code 840 would have required producers to retag their animals.

Moving to one uniform, standardized, technology-neutral numbering system for the identification of livestock, however, is essential to achieving more efficient and effective animal disease traceability. Therefore, in the Supplementary Information section of our July 2007 final rule, we noted that we viewed the USA and manufacturer's code numbering systems as transitional. We anticipated phasing them out as we focused our efforts on moving toward a single system whereby APHIS would recognize as official only the AIN with the 840 prefix to the extent practical. We further indicated that we would

[1] To view the interim rule, the comments we received, and the subsequent final rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2004-0018*.

provide additional information about the transition process in future rulemaking.

We are now proposing to amend the regulations to recognize as official only AINs beginning with 840 for use on all AIN tags applied to animals 1 year or more after the date of the finalization of this proposed rule. AINs with USA and manufacturer's code prefixes imprinted on eartags would not be recognized as official identification numbers for animals born on or after the date upon which the proposed requirement becomes effective. We would amend the definitions of *animal identification number (AIN)* and *official eartag* in 9 CFR 71.1, 77.2, 78.1, 79.1, and 80.1 accordingly. We believe that requiring the 840 AIN format for AIN tags applied to animals 1 year or more after this proposed rule is finalized would provide enough advance notice to inform and educate producers, allow them to work through existing inventories of eartags, and make the transition achievable on a large scale. Since this proposed requirement would apply only to animals tagged 1 year or more after the finalization of this proposed rule, it would not be necessary to retag animals that had been officially identified prior to that date.

The entire transition period, i.e., the time it would take for all animals with AIN eartags to have AINs with the 840 prefix, would likely last for many years. Breeding beef cattle, for instance, typically live 10 years or more. Young calves selected for breeding and identified in the fall of 2008 could conceivably still be wearing eartags with USA or manufacturer's code AINs in 2018 and beyond. It is not our intent at this time to set a date by which AIN eartags in adult animals must conform to the 840 standard.

As was the case with the November 2004 interim rule and the July 2007 final rule, this proposed rule would not require the use of the AIN. Other animal identification numbering systems currently recognized in the regulations for use on official eartags, such as the National Uniform Eartagging System and premises-based numbering systems that combine a PIN with a producer's livestock production numbering system, would continue to be so recognized. If the AIN is used, however, on an official eartag or other device (currently, it is only used on eartags and implants), only the format with the 840 prefix would be acceptable for use on animals tagged 1 year or more after the date on which this proposed rule is finalized.

**Standardization of the PIN**

While premises-based numbering systems that employ the PIN may be used for the identification of individual animals, the fundamental purpose of a PIN is to identify locations in the United States where livestock and/or poultry are housed or kept. Premises identification has value in and of itself, even if the animals on a given premises are not identified individually. When animal health officials know where at-risk animals and locations are and have accurate, up-to-date contact information for their owners, they can respond quickly and strategically to prevent disease spread.

The existing regulations recognize two types of PINs. The first consists of the two-letter postal abbreviation of the State in which the premises is located, followed by a number assigned to the premises by a State animal health official. The second is a seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm. The latter format is the newer one of the two, having been recognized as official in the November 2004 interim rule. As of September 2008, more than 480,000 PINs using the 7-character alphanumeric format had been issued.

Because the use of a single numbering system to represent premises in all animal-health data systems would help to standardize information and to enhance existing disease-tracing and emergency-response capabilities, we are proposing to remove the PIN format that uses the State postal abbreviation and are proposing to create a single national format for the PIN by requiring that all PINs issued on or after the date on which this proposed rule becomes effective would have to use the seven-character alphanumeric code format. We would amend the definitions of *premises identification number (PIN)* in §§ 71.1, 77.2, 79.1, and 80.1 accordingly.

When the change becomes effective, the postal-code PIN format would no longer be recognized as official for the identification of locations where livestock or poultry are housed or kept. Locations that are currently identified with a postal-code PIN will need to obtain a seven-character PIN for use when the assignment of a numbered location identifier is required by APHIS.

Identification eartags, as well as other devices or means of official identification, such as backtags and tattoos, that employ a premises-based numbering system that includes a PIN could not be applied to animals 1 year or later after the date on which this proposed rule is finalized if the PIN does not employ the seven-character format. As is the case with our proposed requirement for standardizing the AIN, we believe that the 1-year phase-in period for requiring the seven-character PIN on eartags and other devices using premises-based numbering systems would provide enough advance notice to inform and educate producers, allow them to work through inventories of eartags that employ postal-code PINs as a means of identifying animals, and make this transition achievable on a large scale. Animals that are currently identified with a premises-based numbering system that uses a postal-code PIN would not have to be retagged, however, as the proposed requirement is intended to be applied going forward. If the owner of the premises has obtained a new seven-character PIN, older eartags employing the postal-code PIN as a means of identifying animals would be cross-referenced with the seven-character PIN in the premises registration system maintained by the State that issued the postal-code PIN.

**Official Eartags**

To help us achieve our goals of increased standardization and enhanced animal traceability and to codify some identification methods that are currently in use, we are proposing a number of changes to the requirements for official eartags. These proposed changes pertain to the use of the U.S. shield on official eartags, numbering systems that may be used on such eartags, and the correlation of those numbering systems with the PIN.

Previously, the regulations required that all official eartags had to bear the U.S. shield. The shield is useful for traceback purposes because it provides a readily visible means of recognizing official animal identification devices. In the July 2007 final rule, however, we amended the definition of *official eartag* to require that only official eartags displaying an 840 AIN bear the U.S. shield. We narrowed the shield requirement at that time in order to allow producers using AINs beginning with USA or manufacturers' code prefixes to continue to use their existing tags rather than having to retag their animals.

In keeping with our intentions to phase out the use of those types of AINs and to achieve greater standardization in numbering systems and means and methods of animal identification, we are now proposing to revert to the earlier requirement that all official eartags bear the U.S. shield. The requirement would apply to official eartags issued 1 year or more after the date of the finalization of

this proposed rule. This proposed change would be complemented by another, also aimed at achieving greater standardization: We would amend the definition of *official identification device or method* in §§ 71.1, 78.1, and 79.1 to state that, going forward, the U.S. shield would be reserved only for use on official identification devices approved by APHIS, i.e., that it could not be used on any unofficial identification devices. As is the case with our proposed 840 AIN requirement, the 1-year phase-in period is intended to allow producers adequate time to work through existing inventories of eartags.

Our proposed definition of *official eartag* would also require such eartags, including those that use the National Uniform Eartagging System, if issued or distributed in conjunction with a Federal disease program, to be correlated with the PINs of the premises to which they are issued, by means of the Animal Identification Number Management System (AINMS) or other recordkeeping systems approved by the Administrator. (Both the National Uniform Eartagging System and the AINMS are discussed in greater detail later in this document.) For this proposed requirement to be met, official eartags used in animal disease programs could only be issued, going forward, to registered premises that have PINs. In sections of the regulations that apply to sheep and goats, *e.g.*, in § 79.1, the proposed definition would also indicate that official eartags for those species would have to be approved by APHIS for use in accordance with the scrapie regulations. Official eartags used on sheep and goats in the National Scrapie Eradication Program (NSEP) would have to be correlated with the PINs of the owner's premises and, where applicable, a flock identification number (FIN) in the National Scrapie Database. Correlating eartags with PINs would aid in tracing animals back to their farms of origin in the event of disease outbreaks.

Our proposed definition of *official eartag* would also require that when AIN eartags are used, the AINs would have to be correlated with the PINs of the premises to which they are issued, meaning that AIN eartags could only be issued to registered premises that have PINs. AINs would be correlated with PINs using the AINMS, which we would define in §§ 71.1, 77.2, 79.1, and 80.1 as a Web-based system maintained by APHIS to keep records of authorized AIN devices, the allocation of AINs to authorized manufacturers of AIN devices, the distribution of AIN devices to premises, and the termination of AIN tags. The definition would further state that the system could also be used to track the disposition of other official identification devices. (Further information regarding the AINMS can be found at *http://animalid.aphis.usda.gov/nais/animal_id/ain_mngt_sys.shtml*.) AINs used on official eartags attached to sheep and goats in the NSEP would also have to be correlated with PINs and, where applicable, FINs in the National Scrapie Database.

Additionally, in § 79.1, the proposed definition of *official eartag* would codify two identification numbering systems that are currently being used in the NSEP but that are not defined in the existing regulations. The change would recognize the current practice of employing the FIN, which is discussed in greater detail below, on official eartags for sheep and goats if used in conjunction with a producer's livestock production numbering system to provide a unique identification number. The proposed definition of *official eartag* in § 79.1 would also recognize a unique eight-character number, already in use in the NSEP, composed of the State postal abbreviation followed by two letters and four numbers for use on official eartags for sheep and goats. With either of these numbering systems, the letters ''I,'' ''O,'' or ''Q'' could only be used in the State postal abbreviation due to the possibility that they could be confused with the numbers ''0'' or ''1.''

Finally, while the existing definition of *official eartag* allows for the use of the National Uniform Eartagging System on such tags, it does not specify the format to be used. Because either an eight- or nine-character format may be employed, as discussed below, the definitions of *official eartag* that would appear in the different parts covered by this proposed rule vary slightly, with each specifying the National Uniform Eartagging System format to be used, where use of the system is applicable, for the particular species and the particular animal disease program that are the subject of the part.

**Flock Identification Number**

At this time, the NSEP furnishes eartags to sheep and goat producers that bear a numbering system that is somewhat similar to the premises-based numbering system (a PIN combined with the producer's livestock production numbering system) discussed above. In lieu of a PIN, however, these eartags are imprinted with a unique FIN. This number, unlike the PIN, represents an animal group that is associated with one or more locations rather than a designator for a location. The FIN serves the sheep and goat industries well in their disease control and eradication efforts. The existing regulations, however, while allowing for the use of the FIN on eartags for sheep and goats in the NSEP, do not define the term as they do other types of identification numbers, such as the AIN and the PIN. Therefore, to codify current practices and help ensure uniformity and consistency in the use of flock identification numbering, we are proposing to add a definition of *flock identification number (FIN)* to the general requirements for interstate movement in 9 CFR part 71, to the scrapie-related requirements in part 79, and to the Johne's disease requirements in part 80. Specifically, in §§ 71.1, 79.1, and 80.1, we would define *flock identification number (FIN)* as a nationally unique number assigned by a State or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership. The definition would state that the FIN must begin with the State postal abbreviation, must have no more than nine alphanumeric characters, and must not contain the characters ''I'',''O'', or ''Q'' other than as part of the State postal abbreviation. As noted earlier, the restriction on the use of those letters is intended to prevent errors that could result from confusing them with the numbers ''0'' and ''1.'' The proposed definition would further note that FINs would be linked in the National Scrapie Database to one or more PINs and could be used in conjunction with an animal number unique within the flock to provide a distinctive official identification number for an animal, or could be used in conjunction with the date and a sequence number to provide a GIN for a group of animals when group identification is allowed. As noted above, we would also amend the definition of *official eartag* in §§ 71.1, 79.1, and 80.1 so that it would include the FIN on the list of numbering systems that may be used on official eartags, thereby codifying the existing practice.

**National Uniform Eartagging System**

The definition of *official eartag* in §§ 71.1, 77.2, 78.1, 79.1, and 80.1 currently recognizes the National Uniform Eartagging System as a means of identifying individual animals in commerce. The system has been in use for many years, but the existing regulations do not define the term or specify a particular format. To codify existing practices, thereby helping to ensure greater standardization and uniformity in the use of this numbering system, we are proposing to add a

definition of *National Uniform Eartagging System* to the sections cited above, with the exception of § 79.1, since that numbering system is not used in the NSEP. (The definition of *official eartag* in § 79.1 would be amended to remove the option of using the National Uniform Eartagging System in the NSEP.) We would define *National Uniform Eartagging System* as a numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. An eight- or nine-character alphanumeric format, consisting of a two-number State or territory code, followed by two or three letters and four additional numbers, would be required. (The eight-character format is generally reserved for use in small livestock, such as sheep and goats, though not, as noted above, in the NSEP.) The proposed definition would also note that individual APHIS disease control programs may specify which National Uniform Eartagging System format to use.

**Removal of Official Identification Devices**

Current § 71.22, which was added to the regulations in the November 2004 interim rule, states that official identification devices are intended to provide permanent identification of livestock and to ensure the ability to find the source of animal disease outbreaks and prohibits the intentional removal of such devices except at the time of slaughter.

We are proposing to allow for removal of official identification devices not only at slaughter but also at other points of termination, such as rendering facilities or diagnostic laboratories. We would also allow for removal of official identification devices in compliance with Food Safety and Inspection Service (FSIS) regulations regarding the collection of all manmade animal identification and the correlation of such with carcasses through final inspection and for removal as otherwise authorized by the Administrator. These proposed changes would simply codify existing practices and would not negatively affect animal traceability.

**Miscellaneous**

Current § 71.19(b)(7) states that slaughter swine and feeder swine may be identified by means of an eartag or tattoo bearing a PIN. We are proposing to amend that paragraph to distinguish between the identification required for each type of swine. Tattoos are a less effective means of identifying adult slaughter swine than are eartags because the vast majority of such animals are skinned as part of the preparation of the animal carcass for meat processing. We are therefore proposing to amend § 71.19(b)(7) to require that, after a 1-year phase-in period, when the PIN is used to identify adult slaughter swine, the swine would have to be identified by an APHIS-approved eartag bearing the U.S. shield. The identification requirements for feeder swine would not change, however, since tattooing has proved to be a very reliable method of identification for those animals.

**Executive Order 12866 and Regulatory Flexibility Act**

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

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the potential effects of the proposed changes on small entities. We do not currently have all the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the potential costs to eartag manufacturers and livestock producers.

This proposed rule would amend the regulations to achieve greater standardization and uniformity of official numbering systems and eartags and to codify certain existing identification methods. We propose to remove the option of using AINs that begin with the alpha characters USA or a manufacturer's code and only recognize as official those that begin with an 840 prefix. This change would apply to AINs imprinted on AIN tags applied to animals 1 year or more after the date on which this proposed rule is finalized. In addition, we are proposing to require that all new PINs issued on or after the effective date of this rule use the seven-character alphanumeric code format. Official eartags using a premises-based numbering system employing a PIN that are issued after a 1-year phase-in period will be required to use the seven-character alphanumeric code format as well. We are also proposing to require that, after a 1-year phase-in period, all official eartags applied to animals must bear the U.S. shield, and we would specify that the shield could only be used on official identification devices approved by APHIS. We would also add to the regulations definitions of *flock identification number (FIN), National Uniform Eartagging System*, and the *AINMS*. We do not expect that the addition of the AINMS to the regulations will cause any significant economic burden to any entities that may be affected by this rulemaking. The AINMS has been used successfully, and without causing difficulty for users, to record the distribution of over 10 million official tags by industry cooperators.

By requiring the use of only the 840 prefix in the AIN for AIN tags applied to animals 1 year or more after the date on which this proposed rule is finalized, we anticipate there would be enough advance notice to allow the transition to take place without placing a significant economic burden on livestock producers or on manufacturers of eartags using the AIN. Since it is not the intent of this proposed rule to set a date by which AIN eartags for all adult animals must conform to the 840 format, there should be few, if any, animals that would need to be retagged. As noted earlier, it is expected to be many years before all animals have an AIN with the 840 prefix. For instance, breeding beef cattle typically live for 10 years or more before they are slaughtered.

Requiring the use of the 840 prefix for the AIN is not expected to have significant economic effects on the livestock industry. Potential costs would include reformatting expenses for eartag manufacturers as the USA and manufacturer's code numbering systems are eliminated. Additionally, there may be obsolete inventory costs in the form of stocked eartags that were imprinted with one of the eliminated numbering systems. These potential costs may be passed on to livestock producers that purchase the new eartags. We do not have data to quantitatively estimate these potential costs at this time, and welcome public comment from affected entities with this information. However, we would not expect these potential costs to be large, because most adult animals would not need to be retagged, unless a tag is lost and needs to be replaced, and because the use of the AIN would not be required and other animal identification numbering systems currently recognized in the regulations for use on official eartags, such as the National Uniform Eartagging System and one of the premises-based numbering systems, would continue to be recognized as official. Moreover, transitioning to the use of standardized AINs would enhance APHIS' animal disease response capabilities, which would benefit livestock industries.

The current regulations recognize two forms of PINs for the official

identification of premises where livestock or poultry are housed. One consists of a postal code prefix of the State in which the premises is located, followed by a number assigned to the premises by a State animal health official. A second, more recent format utilizes a seven-character alphanumeric code that was developed through discussions with industry and producer representatives. At this time, more than 480,000 PINs using the 7-character alphanumeric format have been issued, while the older format is being phased out. The use of a single numbering system to identify premises is essential in enhancing and contributing to the effectiveness of USDA's disease-tracing and emergency response capabilities. Therefore, we are proposing to require that all PINs issued on or after the effective date of this rule use the newer seven-character alphanumeric format. This action is not expected to have a significant economic effect on producers of livestock or poultry, as it is just a change in program operations, and would require minimal expenditures on the part of producers. For example, some producers who are transitioning from postal-code to seven-character PINs may have to buy additional tattoo digits, depending upon what tattoo digits they already have, but that expense, if any, would be very small. Additionally, as with the standardization of the AINs, there may be minimal costs associated with the transition away from the postal-code eartags for those producers who use a premises-based numbering system to identify their animals.

We would also require that, after a 1-year phase-in period, all official eartags would have to bear the U.S. shield. It is possible that there could be some reformatting costs for tag manufacturers as a result of this requirement, though it is important to note that eartags imprinted with the 840 prefix already bear the U.S. shield. We do not have data to quantitatively estimate these potential costs at this time. We do not anticipate costs to producers resulting from this proposed requirement, but we welcome comments and information from the public on this issue.

Currently, the NSEP furnishes eartags to sheep and goat producers that use a numbering system that is similar to the premises-based numbering system (a PIN combined with the producer's livestock production numbering system). However, in place of the PIN, NSEP imprints these eartags with a unique FIN. We are proposing to add a definition of f*lock identification number (FIN)* to the regulations and amend the definition of *official eartag* to include the FIN on the list of numbering systems that may be used on official eartags. Because these proposed changes simply incorporate current practices into the regulations, we do not expect them to have an economic effect on the sheep and goat industries.

The definition of *official eartag* currently allows for the use of the National Uniform Eartagging System as a means of identifying individual animals in commerce. However, existing regulations do not define the term or specify the format. To provide for greater standardization and uniformity, we are proposing to add a definition of *National Uniform Eartagging System,* as discussed above. Because this proposed change, like the addition of the FIN definition, simply incorporates current practices into the regulations, we do not expect that there will be any economic impact on entities potentially affected by this proposed rule.

We expect that all the proposed changes discussed above would benefit affected entities by allowing for greater flexibility in some instances while enhancing traceability in the event of a disease outbreak.

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their rules on small entities. Entities that could be economically affected by this proposed rule include eartag manufacturers, slaughtering or animal processing establishments, and livestock producers.

The proposed rule may have an effect on manufacturers of animal eartags. The U.S. Small Business Administration's (SBA's) small-entity size standard for North American Industry Classification System (NAICS) code 326199, which comprises plastic product manufacturers not otherwise identified by NAICS code, is 500 or fewer employees.[2] According to the 2002 Economic Census, there were 7,892 establishments in this category engaged in the manufacturing of plastic products, with over 492,000 paid employees.[3] Of these 7,892 establishments, we know neither the number of operations engaged in the manufacture of plastic eartags, nor the size of these operations as it pertains to SBA size standards.

In addition, there could be some indirect effects on producers of livestock in the event that any potential costs to the manufacturers of eartags are passed on to producers in the form of higher eartag prices. In 2006, there were a total of 971,400 cattle operations, 65,540 hog and pig operations, and 69,090 sheep and lamb operations.[4] The overwhelming majority of these operations would be considered small entities according to SBA standards.[5]

All of the changes contained in this proposed rule are intended to strengthen USDA's ability to respond effectively in the event of a disease outbreak or other animal health event. The alternative to the proposed rule would have been to leave the regulations unchanged, thereby limiting the effectiveness of USDA's disease control programs. This was not considered a viable option; therefore, the no-action alternative was rejected.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

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

**List of Subjects**

*9 CFR Part 71*

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

[2] Table of Size Standards based on NAICS 2002. Washington, DC: U.S. Small Business Administration, effective October 1, 2007. Note: NAICS code 326199 comprises establishments primarily engaged in manufacturing plastic products (except film, sheet, bags, profile shapes, pipes, pipe fittings, laminates, foam products, bottles, plumbing fixtures, and resilient floor coverings).

[3] *2002 Economic Census—Manufacturing Series.* Washington, DC: U.S. Census Bureau, December 2004.

[4] USDA–NASS, 2007 *Agricultural Statistics, Tables 7–18, 7–26, and 7–53.* Washington, DC: National Agricultural Statistics Service.

[5] The small entity definition for livestock producers (*NAICS codes:* 112111, 112120, 112210, 112410, and 112420) is one that has $750,000 or less in annual receipts, according to the SBA's Table of Size Standards.

*9 CFR Part 77*

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

*9 CFR Part 78*

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

*9 CFR Part 79*

Animal diseases, Quarantine, Sheep, Transportation.

*9 CFR Part 80*

Animal diseases, Livestock, Transportation.

Accordingly, we propose to amend 9 CFR parts 71, 77, 78, 79, and 80 as follows:

## PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. Section 71.1 is amended by revising the definitions of *animal identification number (AIN), official eartag, official identification device or method,* and *premises identification number (PIN)* and adding definitions of *Animal Identification Number Management System (AINMS), flock identification number (FIN),* and *National Uniform Eartagging System* in alphabetical order to read as follows:

### § 71.1 Definitions.

* * * * *

*Animal identification number (AIN).* A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording. Only the AIN beginning with the 840 prefix will be recognized as official for use on AIN tags applied to animals on or after [*Insert date 1 year after effective date of final rule*].

*Animal Identification Number Management System (AINMS).* A Web-based system maintained by APHIS to keep records of authorized AIN devices, the allocation of AINs to authorized manufacturers of AIN devices, the distribution of AIN devices to premises, and the termination of AIN tags. The AINMS may also be used for tracking the disposition of other official identification devices.

* * * * *

*Flock identification number (FIN).* A nationally unique number assigned by a State or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership. The FIN must begin with the State postal abbreviation, must have no more than nine alphanumeric characters, and must not contain the letters ''I,'' ''O,'' or ''Q'' other than as part of the State postal abbreviation. FINs will be linked in the National Scrapie Database to one or more premises identification numbers and may be used in conjunction with an animal number unique within the flock to provide a distinctive official identification number for an animal, or may be used in conjunction with the date and a sequence number to provide a group/lot identification number for a group of animals when group identification is permitted.

* * * * *

*National Uniform Eartagging System.* A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The National Uniform Eartagging System employs an eight- or nine-character alphanumeric format, consisting of a two-number State or territory code, followed by two or three letters and four additional numbers. Official APHIS disease control programs may specify which format to employ.

* * * * *

*Official eartag.* An identification tag approved by APHIS to provide unique identification for individual animals. Beginning [*Insert date 1 year after effective date of final rule*], all official eartags applied to animals must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal. A record of all official eartags issued or distributed to premises in conjunction with a Federal disease program must be maintained by the State where the premises to which they are issued are located. The record must adequately correlate each official eartag number with the premises identification number (PIN) to which it is issued or distributed. Such correlation must be done using the Animal Identification Number Management System (AINMS) or other recordkeeping systems approved by the Administrator. Specific requirements for the distribution of official eartags bearing the Animal identification number (AIN) are provided in paragraph (2) below. Official eartags for sheep and goats must be approved for use in the scrapie program in accordance with § 79.2(f) of this subchapter. Numbers applied to official eartags must adhere to one of the following numbering systems:

(1) National Uniform Eartagging System.

(2) Animal identification number (AIN). AIN eartags attached to any animals on or after [*Insert date 1 year after effective date of final rule*] must display an AIN with an 840 prefix. These numbers must be correlated with the premises identification number of the premises to which they are issued using the AINMS.

(3) Premises-based number system. The premises-based number system combines a premises identification number (PIN), as defined in this section, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag. Official eartags using a premises-based numbering system that are issued on or after [*Insert date 1 year after effective date of final rule*] must employ the seven-character alphanumeric PIN format.

(4) Flock-based number system. The flock-based number system combines a flock identification number (FIN), as defined in this section, with a producer's livestock production numbering system to provide a unique identification number. The FIN and the production number must both appear and be distinct on the official tag and may not include the letters ''I,'' ''O,'' or ''Q'' other than as part of a State postal abbreviation.

(5) Any other numbering system approved by the Administrator for the identification of animals in commerce.

*Official identification device or method.* A means of officially identifying an animal or group of animals using devices or methods approved by the Administrator, including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of inspection from a recognized brand inspection authority. The U.S. shield is reserved only for use on official identification devices approved by APHIS and may not be used on any other devices.

* * * * *

*Premises identification number (PIN).* A nationally unique number assigned by

a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority, a geographically distinct location from other premises. The premises identification number is associated with an address, geospatial coordinates, and/or location descriptors which provide a verifiably unique location. The premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. It may also be used as a component of a group/lot identification number. Premises identification numbers issued on or after [*Insert effective date of final rule*] shall consist of a seven character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

* * * * *

3. In § 71.19, paragraph (b)(7) is revised to read as follows:

**§ 71.19 Identification of swine in interstate commerce.**

* * * * *

(b) * * *

(7) For adult swine moving directly to slaughter, an eartag bearing the premises identification number assigned by the State animal health official to the premises on which the swine originated, provided the eartag has been approved by APHIS and, beginning [*Insert date 1 year after effective date of final rule*], bears the U.S. shield. For feeder swine, an eartag or tattoo bearing the premises identification number assigned by the State animal health official to the premises on which the swine originated; and

* * * * *

4. Section 71.22 is revised to read as follows:

**§ 71.22 Removal and loss of official identification devices.**

Official identification devices are intended to provide permanent identification of livestock and to ensure the ability to find the source of animal disease outbreaks. Removal of these devices, including devices applied to imported animals in their countries of origin and recognized by the Administrator as official, is prohibited except at the time of slaughter; at other points of termination, such as rendering facilities or diagnostic laboratories; in compliance with Food Safety and Inspection Service regulations regarding the collection of all manmade identification and the correlation of such with carcasses through final inspection; or as otherwise authorized by the Administrator. If an official identification device is lost and it is necessary to retag an animal with a new official number, every effort should be made to correlate the new official number with the previous official number of the animal. Official identification devices are not to be sold or otherwise transferred from the premises to which they were originally issued to another premises without authorization by APHIS.

## PART 77—TUBERCULOSIS

5. The authority citation for part 77 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

6. Section 77.2 is amended by revising the definitions of *animal identification number (AIN), official eartag,* and *premises identification number (PIN)* and adding definitions of *Animal Identification Number Management System (AINMS)* and *National Uniform Eartagging System* in alphabetical order to read as follows:

**§ 77.2 Definitions.**

* * * * *

*Animal identification number (AIN).* A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording. Only the AIN beginning with the 840 prefix will be recognized as official for use on AIN tags applied to animals on or after [*Insert date 1 year after effective date of final rule*].

*Animal Identification Number Management System (AINMS).* A Web-based system maintained by APHIS to keep records of authorized AIN devices, the allocation of AINs to authorized manufacturers of AIN devices, the distribution of AIN devices to premises, and the termination of AIN tags. The AINMS may also be used for tracking the disposition of other official identification devices.

* * * * *

*National Uniform Eartagging System.* A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The National Uniform Eartagging System employs an eight-or nine-character alphanumeric format, consisting of a two-number State or territory code, followed by two or three letters and four additional numbers. Official APHIS disease control programs may specify which format to employ.

*Official eartag.* An identification tag approved by APHIS to provide unique identification for individual animals. Beginning [*Insert date 1 year after effective date of final rule*], all official eartags applied to animals must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal. All official eartags used in Federal disease programs must be correlated with the premises identification number of the premises to which they are issued using the Animal Identification Number Management System (AINMS) or other recordkeeping systems approved by the Administrator. Numbers applied to official eartags must adhere to one of the following numbering systems:

(1) *National Uniform Eartagging System.* The tuberculosis program requires the use of the nine-character format for cattle and bison.

(2) *Animal identification number (AIN).* AIN eartags attached to any animals on or after [*Insert date 1 year after effective date of final rule*] must display an AIN with an 840 prefix. These numbers must be correlated with the premises identification number of the premises to which they are issued using the AINMS.

(3) *Premises-based number system.* The premises-based number system combines a premises identification number (PIN), as defined in this section, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag. Official eartags using a premises-based numbering system that are issued on or after [*Insert date 1 year after effective date of final rule*] must employ the seven-character alphanumeric PIN format.

(4) Any other numbering system approved by the Administrator for the identification of animals in commerce.

* * * * *

*Premises identification number (PIN).* A nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority, a geographically distinct location from other premises. The premises identification number is associated with

an address, geospatial coordinates, and/or location descriptors which provide a verifiably unique location. The premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. It may also be used as a component of a group/lot identification number. Premises identification numbers issued on or after [*Insert effective date of final rule*] shall consist of a seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

* * * * *

## PART 78—BRUCELLOSIS

7. The authority citation for part 78 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

8. Section 78.1 is amended by revising the definitions of *animal identification number (AIN), official eartag,* and *official identification device or method* and adding definitions of *Animal Identification Number Management System (AINMS)* and *National Uniform Eartagging System* in alphabetical order to read as follows:

### § 78.1 Definitions.

* * * * *

*Animal identification number (AIN).* A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording. Only the AIN beginning with the 840 prefix will be recognized as official for use on AIN tags applied to animals on or after [*Insert date 1 year after effective date of final rule*].

*Animal Identification Number Management System (AINMS).* A Web-based system maintained by APHIS to keep records of authorized AIN devices, the allocation of AINs to authorized manufacturers of AIN devices, the distribution of AIN devices to premises, and the termination of AIN tags. The AINMS may also be used for tracking the disposition of other official identification devices.

* * * * *

*National Uniform Eartagging System.* A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The National Uniform Eartagging System employs an eight-or nine-character alphanumeric format, consisting of a two-number State or territory code, followed by two or three letters and four additional numbers. Official APHIS disease control programs may specify which format to employ.

* * * * *

*Official eartag.* An identification tag approved by APHIS to provide unique identification for individual animals. Beginning [*Insert date 1 year after effective date of final rule*], all official eartags applied to animals must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal. All official eartags used in Federal disease programs must be correlated with the premises identification number of the premises to which they are issued using the Animal Identification Number Management System (AINMS) or other recordkeeping systems approved by the Administrator. Numbers applied to official eartags must adhere to one of the following numbering systems:

(1) National Uniform Eartagging System. The brucellosis program requires the use of the nine-character format for cattle.

(2) Animal identification number (AIN). AIN eartags attached to any animals on or after [*Insert date 1 year after effective date of final rule*] must display an AIN with an 840 prefix. These numbers must be correlated with the premises identification number of the premises to which they are issued using the AINMS.

(3) Premises-based number system. The premises-based number system combines an official premises identification number (PIN), as defined in § 71.1 of this chapter, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag. Official eartags using a premises-based numbering system that are issued on or after [*Insert date 1 year after effective date of final rule*] must employ the seven-character alphanumeric PIN format.

(4) Any other numbering system approved by the Administrator for the identification of animals in commerce.

*Official identification device or method.* A means of officially identifying an animal or group of animals using devices or methods approved by the Administrator, including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of inspection from a recognized brand inspection authority. The U.S. shield is reserved only for use on official identification devices approved by APHIS and may not be used on any other devices.

* * * * *

## PART 79—SCRAPIE IN SHEEP AND GOATS

9. The authority citation for part 79 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

10. Section 79.1 is amended by revising the definitions of *animal identification number (AIN), official eartag, official identification device or method,* and *premises identification number (PIN)* and adding definitions of *Animal Identification Number Management System (AINMS)* and *flock identification number (FIN)* in alphabetical order to read as follows:

### § 79.1 Definitions.

* * * * *

*Animal identification number (AIN).* A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording. Only the AIN beginning with the 840 prefix will be recognized as official for use on AIN tags applied to animals on or after [*Insert date 1 year after effective date of final rule*].

*Animal Identification Number Management System (AINMS).* A Web-based system maintained by APHIS to keep records of authorized AIN devices, the allocation of AINs to authorized manufacturers of AIN devices, the distribution of AIN devices to premises, and the termination of AIN tags. The AINMS may also be used for tracking the disposition of other official identification devices.

* * * * *

*Flock identification number (FIN).* A nationally unique number assigned by a State or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and

are under the same ownership. The FIN must begin with the State postal abbreviation, must have no more than nine alphanumeric characters, and must not contain the letters ''I,'' ''O,'' or ''Q'' other than as part of the State postal abbreviation. FINs will be linked in the National Scrapie Database to one or more premises identification numbers and may be used in conjunction with an animal number unique within the flock to provide a unique official identification number for an animal, or may be used in conjunction with the date and a sequence number to provide a group/lot identification number for a group of animals when group identification is permitted.

* * * * *

*Official eartag.* An identification tag approved for use on sheep and/or goats by APHIS in accordance with § 79.2(f). Beginning [*Insert date 1 year after effective date of final rule*], all official eartags applied to animals must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal. Numbers to be applied to official eartags for sheep and goats must be correlated with the corresponding premises identification number and, where applicable, flock identification number in the National Scrapie Database. The numbers must adhere to one of the following numbering systems:

(1) Animal identification number (AIN). AIN eartags attached to any animals on or after [*Insert date 1 year after effective date of final rule*] must display an AIN with an 840 prefix. These numbers must be correlated with the premises identification number of the premises to which they are issued using the Animal Identification Number Management System (AINMS) and, if applicable, the flock identification number in the National Scrapie Database.

(2) Premises-based number system. The premises-based number system combines a premises identification number (PIN), as defined in this section, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear and be distinct on the official tag. PINs or production numbers that contain the letters ''I'' or ''O'' may not be used as the primary identifier on official sheep or goat eartags. Official eartags using a premises-based numbering system that are issued on or after [*Insert date 1 year after effective date of final rule*] must employ the seven-character alphanumeric PIN format.

(3) A flock identification number (FIN), as defined in this section, is used in conjunction with a producer's livestock production numbering system to provide a unique identification number. The FIN and the production number must both appear and be distinct on the official tag and may not include the letters ''I,'' ''O,'' or ''Q'' other than as part of a State postal abbreviation. The FIN must be correlated in the National Scrapie Database with one or more PINs.

(4) A unique eight-character number composed of the State postal abbreviation followed by two alphanumeric characters (not including the letters ''I,'' ''O,'' or ''Q'') and four numbers.

(5) Any other numbering system approved by the Administrator for the identification of sheep and goats in commerce.

* * * * *

*Official identification device or method.* A means of officially identifying an animal or group of animals using devices or methods approved by the Administrator, including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of inspection from a recognized brand inspection authority. The U.S. shield is reserved only for use on official identification devices approved by APHIS and may not be used on any other devices.

* * * * *

*Premises identification number (PIN).* A nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority, a geographically distinct location from other premises. The premises identification number is associated with an address, geospatial coordinates, and/or location descriptors which provide a verifiably unique location. The premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. It may also be used as a component of a group/lot identification number. Premises identification numbers issued on or after [*Insert effective date of final rule*] shall consist of a seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

* * * * *

## PART 80—JOHNE'S DISEASE IN DOMESTIC ANIMALS

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

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

12. Section 80.1 is amended by revising the definitions of *animal identification number (AIN), official eartag,* and *premises identification number (PIN)* and adding definitions of *Animal Identification Number Management System (AINMS), Flock Identification Number (FIN),* and *National Uniform Eartagging System* in alphabetical order to read as follows:

* * * * *

### § 80.1 Definitions.

* * * * *

*Animal identification number (AIN).* A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording. Only the AIN beginning with the 840 prefix will be recognized as official for use on AIN tags applied to animals on or after [*Insert date 1 year after effective date of final rule*].

*Animal Identification Number Management System (AINMS).* A Web-based system maintained by APHIS to keep records of authorized AIN devices, the allocation of AINs to authorized manufacturers of AIN devices, the distribution of AIN devices to premises, and the termination of AIN tags. The AINMS may also be used for tracking the disposition of other official identification devices.

* * * * *

*Flock identification number (FIN).* A nationally unique number assigned by a State or Federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership. The FIN must begin with the State postal abbreviation, must have no more than nine alphanumeric characters, and must not contain the letters ''I,'' ''O,'' or ''Q'' other than as part of the State postal abbreviation. FINs will be linked in the National Scrapie Database to one or more premises identification numbers

and may be used in conjunction with an animal number unique within the flock to provide a unique official identification number for an animal, or may be used in conjunction with the date and a sequence number to provide a group/lot identification number for a group of animals when group identification is permitted.

* * * * *

*National Uniform Eartagging System.* A numbering system for the official identification of individual animals in the United States providing a nationally unique identification number for each animal. The National Uniform Eartagging System employs an eight- or nine-character alphanumeric format, consisting of a two-number State or territory code, followed by two or three letters and four additional numbers. Official APHIS disease programs may specify which format to employ.

*Official eartag.* An identification tag approved by APHIS to provide unique identification for individual animals. Beginning [*Insert date 1 year after effective date of final rule*], all official eartags applied to animals must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the Administrator. The official eartag must be tamper-resistant and have a high retention rate in the animal. All official eartags used in Federal disease programs must be correlated with the premises identification number of the premises to which they are issued using the Animal Identification Number Management System (AINMS) or other recordkeeping systems approved by the Administrator. Official eartags for sheep and goats must be approved for use in the National Scrapie Eradication Program in accordance with § 79.2(f) of this subchapter. Numbers applied to official eartags must adhere to one of the following numbering systems:

(1) National Uniform Eartagging System. The Johne's program requires the use of the nine-character format for cattle.

(2) Animal identification number (AIN). AIN eartags attached to any animals on or after [*Insert date 1 year after effective date of final rule*] must display an AIN with an 840 prefix. These numbers must be correlated with the premises identification number of the premises to which they are issued using the AINMS.

(3) Premises-based number system. The premises-based number system combines a premises identification number (PIN), as defined in this section, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag. Official eartags using a premises-based numbering system that are issued on or after [*Insert date 1 year after effective date of final rule*] must employ the seven-character alphanumeric PIN format.

(4) A flock identification number (FIN), as defined in this section, used in conjunction with a producer's livestock production numbering system to provide a unique identification number. The FIN and the production number must both appear and be distinct on the official tag and may not include the letters ''I,'' ''O,'' or ''Q'' other than as part of a State postal abbreviation.

(5) In the case of sheep and goats, a unique eight-digit number composed of the State postal abbreviation followed by two letters (not including ''I,'' ''O,'' or ''Q'') and four numbers.

(6) Any other numbering system approved by the Administrator for the identification of animals in commerce.

* * * * *

*Premises identification number (PIN).* A nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority, a geographically distinct location from other premises. The premises identification number is associated with an address, geospatial coordinates, and/or location descriptors which provide a verifiably unique location. The premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. It may also be used as a component of a group/lot identification number. Premises identification numbers issued on or after [*Insert effective date of final rule*] shall consist of a seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

* * * * *

Done in Washington, DC, this 7th day of January 2009.

**Cindy J. Smith,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E9–353 Filed 1–13–09; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF ENERGY

## 10 CFR Part 430

**[Docket No. EERE–2006–BT–STD–0129]**

**RIN 1904–AA90**

## Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters: Public Meeting and Availability of the Preliminary Technical Support Document

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of public meeting and availability of preliminary technical support document.

**SUMMARY:** The Department of Energy (DOE) will hold an informal public meeting to discuss and receive comments on the product classes that DOE plans to analyze for purposes of amending energy conservation standards for certain residential heating products; the analytical framework, models, and tools that DOE is using to evaluate standards for these products; the results of preliminary analyses performed by DOE for these products; and potential energy conservation standard levels derived from these analyses that DOE could consider for these products. DOE also encourages written comments on these subjects. To inform stakeholders and facilitate this process, DOE has prepared an agenda, a preliminary Technical Support Document (preliminary-TSD), and briefing materials, all of which are available at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/heating products.html.*

**DATES:** DOE will hold a public meeting on Monday, February 9, 2009, from 9 a.m. to 5 p.m. in Washington, DC. Any person requesting to speak at the public meeting should submit such request, along with an electronic copy of the statement to be given at the public meeting, before 4 p.m., Monday, January 26, 2009. Written comments are welcome, especially following the public meeting, and should be submitted by March 16, 2009.

**ADDRESSES:** The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please

inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

Interested persons may submit comments, identified by docket number EERE–2006–BT–STD–0129, by any of the following methods:

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

• *E-mail: ResWaterDirectPoolHtrs@ee.doe.gov.* Include EERE–2006–BT–STD–0129 in the subject line of the message.

• *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Public Meeting for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters, EERE–2006–BT–STD–0129, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone (202) 586–2945. Please submit one signed paper original.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone (202) 586–2945. Please submit one signed paper original.

*Instructions:* All submissions received must include the agency name and docket number.

*Docket:* For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information regarding visiting the Resource Room. Please note that DOE's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials.

**FOR FURTHER INFORMATION CONTACT:** Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7892. E-mail: *Mohammed.Khan@ee.doe.gov.* Michael Kido, U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8145. E-mail: *Michael.Kido@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

## A. Statutory Authority

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291, *et seq.*) (EPCA) established the Energy Conservation Program for Consumer Products Other than Automobiles, covering major household appliances including water heaters and home heating equipment. Subsequent amendments expanded Title III of EPCA to include additional consumer products and certain commercial and industrial equipment, including residential pool heaters. (42 U.S.C. 6291, *et seq.*) Furthermore, the National Appliance Energy Conservation Act of 1987 (NAECA) amended EPCA by establishing energy conservation standards for residential water heaters, ''direct heating equipment'' (replacing the term ''home heating equipment'' previously used in EPCA), and pool heaters, as well as requirements for determining whether these standards should be amended. (42 U.S.C. 6295(e)(1) through (4))

Before DOE prescribes an amended standard for any of these products, however, it must first solicit comments on a proposed standard. Moreover, DOE must design each new or amended standard for these products to (1) achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified, and (2) result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A)) and (3) To determine whether a proposed standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, weighing the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of products subject to the standard;

2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products which are likely to result from the imposition of the standard;

3. The total projected amount of energy savings likely to result directly from the imposition of the standard;

4. Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

6. The need for national energy conservation; and

7. Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i).)

Prior to proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE will use to evaluate standards for the product at issue; the results of preliminary analyses performed by DOE for the product; and potential energy conservation standard levels derived from these analyses that DOE could consider. DOE is publishing this document to announce the availability of the preliminary TSD, which details the preliminary analyses, discusses the comments on the Framework document, and summarizes the preliminary results. In addition, DOE is announcing a public meeting to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

## B. History of Standards Rulemaking for Residential Heating Products

### *1. Background*

As indicated above, NAECA amended EPCA to establish energy conservation standards for each of the three heating products, applicable to units manufactured on or after January 1, 1990. For water heaters, EPCA prescribed minimum efficiency levels that vary depending on the storage volume of the product and the type of energy it uses (*i.e.*, gas, oil, or electricity). (42 U.S.C. 6295(e)(1)) For gas-fired direct heating equipment, EPCA prescribed a range of minimum annual fuel utilization efficiency (AFUE) levels, each of which applies to units of a particular type and heating capacity range. (42 U.S.C. 6295(e)(3)) In addition, for gas-fired pool heaters, EPCA prescribed a minimum thermal efficiency of 78 percent for all units. (42 U.S.C. 6295(e)(2)) For all three of the products, EPCA further requires that DOE conduct two cycles of rulemakings to determine whether the standards should be amended. (42 U.S.C. 6295(e)(4)).

On January 17, 2001, DOE published a final rule (the January 2001 final rule), effective on January 20, 2004, amending the energy conservation standards for residential water heaters. 66 FR 4474. DOE has not amended the energy conservation standards for direct heating equipment or pool heaters.

As to direct heating equipment, before the enactment of NAECA, EPCA included ''home heating equipment'' in

DOE's appliance standards program. DOE construed this term as covering unvented as well as vented products, and prescribed a separate test procedure for each. 43 FR 20128, 20132 (May 2, 1978). Each of these test procedures has since been amended and both are codified in 10 CFR part 430, Subpart B, Appendix G (''Uniform Test Method for Measuring the Energy Consumption of Unvented Home Heating Equipment'') and Appendix O (''Uniform Test Method for Measuring the Energy Consumption of Vented Home Heating Equipment''). However, when NAECA replaced the term ''home heating equipment'' with ''direct heating equipment'' in NAECA's amendments to EPCA in 1987 (42 U.S.C. 6295(e)(3)), the new energy conservation standards for this equipment only affected gas products and the statutorily-prescribed standards used the AFUE descriptor, which applies to vented, but not unvented, equipment. Because of the limitation imposed by the statute's use of the AFUE descriptor, subsequent DOE actions concerning direct heating equipment have focused solely on vented products.[1]

The current test procedure for unvented equipment also does not include a method for measuring energy efficiency. Despite this fact, because of the manner in which unvented heating products operate, which is to dissipate any heat losses directly into the conditioned space, the amount of energy efficiency losses from these products is minimal. In view of this belief, at this time, DOE is unaware of how the addition of a procedure to measure the energy efficiency of these particular products would yield significant energy efficiency benefits or would otherwise be practical.

DOE also notes that while the NAECA amendments authorized DOE to regulate unvented direct heating equipment, the rulemaking DOE is currently considering would address standards only for vented direct heating equipment since there is currently no energy efficiency descriptor or test procedure that DOE could apply as the basis for an amended standard for unvented heating products.

*2. Current Rulemaking Process*

To initiate the process to develop standards, on September 27, 2006, DOE published on its Web site the Rulemaking Framework for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (the framework document), which describes the procedural and analytic approaches it anticipated using to evaluate the establishment of energy conservation standards for these products. This document is available at *http://www.eere.energy.gov/buildings/appliance_standards/residential/pdfs/heating_equipment_framework_092706.pdf*. DOE also published a notice announcing the availability of the framework document and a public meeting to discuss the proposed analytical framework, and inviting written comments concerning the development of standards for the three heating products. 71 FR 67825 (November 24, 2006).

The focus of the public meeting, which was held on January 16, 2007, was to discuss the analyses and issues identified in various sections of the framework document. At the meeting, DOE described the different analyses it would conduct, the methods proposed for conducting them, and the relationships among the various analyses. Manufacturers, trade associations, environmental advocates, regulators, and other interested parties attended. Information related to the meeting is available at *http://www.eere.energy.gov/buildings/appliance_standards/residential/heating_equipment_mtg.html*.

In response to the requests of interested parties at the public meeting, DOE subsequently published in the **Federal Register** a notice that extended the comment period by two weeks. 72 FR 4219 (January 30, 2007). Written comments submitted during the comment period elaborated on the issues raised at the meeting and addressed other major issues, including

- Scope of coverage;
- Product classes;
- Efficiency levels analyzed for the engineering analysis;
- Installation, repair, and maintenance costs; and
- Product and fuel switching.

Comments received since publication of the framework document have helped identify issues DOE needs to address in developing a proposed standard and provided information contributing to DOE's proposed resolution of these issues.

## C. Summary of the Analyses Performed by DOE

For each of the three heating products currently under consideration, DOE conducted in-depth technical analyses in the following areas: (1) Engineering, (2) energy-use characterization, (3) markups to determine product price, (4) life-cycle cost (LCC) and payback period (PBP) analyses, and (5) national impact analysis (NIA). These analyses resulted in a preliminary TSD that presents the methodology and results of each of these analyses. The preliminary TSD is available at the Web address given in the **SUMMARY** section of this notice. The analyses are described in more detail below.

DOE also conducted several other analyses that either support the five major analyses or are preliminary analyses that will be expanded upon during the notice of proposed rulemaking (NOPR).[2] These analyses include the market and technology assessment, the screening analysis, which contributes to the engineering analysis, and the shipments analysis, which contributes to the NIA. In addition to these analyses, DOE has begun some preliminary work on the manufacturer impact analysis (MIA) and identified the methods to be used for the LCC subgroup analysis, the environmental assessment, the employment analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the NOPR.

*1. Engineering Analysis*

The engineering analysis establishes the relationship between the cost and efficiency of a product DOE is evaluating for amended energy conservation standards. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the Nation. The engineering analysis identifies representative baseline products, which is the starting point for analyzing technologies that provide energy efficiency improvements. Baseline product refers to a model or models having features and technologies typically found in products currently offered for sale. The baseline model in each product class represents the characteristics of products in that class and, for products already subject to energy conservation standards, usually is a model that just meets the current standard. After identifying the baseline models, DOE estimated manufacturer selling prices through an analysis of (1) manufacturer costs, and (2) markups,

[1] *See* 59 FR 10464, (March 4, 1994) (NOPR proposing standards for eight separate products) and 62 FR 26140 (May 12, 1997) (final rule prescribing test procedure amendments affecting direct heating equipment).

[2] For past rulemakings, DOE was required to issue an Advanced Notice of Proposed Rulemaking (ANOPR) following publication of the framework document. The Energy Independence and Security Act of 2007 (EISA) eliminated the requirement that DOE issue an ANOPR as part of the standards rulemaking process; see EISA, at sec. 307. Instead, DOE is using this alternative process to provide the same information and ability for public comment as the ANOPR, but without publication of analyses in the **Federal Register**.

which are the multipliers used to determine the manufacturer selling prices based on manufacturing cost. Chapter 5 of the preliminary TSD discusses the engineering analysis.

*2. Energy Use Characterization*

The energy use characterization provides estimates of annual energy consumption for the three heating products, which DOE uses in the LCC and PBP analyses and the NIA. DOE developed energy consumption estimates for all of the product classes analyzed in the engineering analysis as the basis for its energy use estimates. Chapter 7 of the preliminary TSD discusses the energy use characterization.

*3. Markups To Determine Product Prices*

DOE derives consumer prices for products based on manufacturer markups, retailer markups, distributor markups, contractor markups, builder markups, and sales taxes. In deriving these markups, DOE has determined (1) The distribution channels for product sales; (2) the markup associated with each party in the distribution channels; and (3) the existence and magnitude of differences between markups for baseline products (baseline markups) and for more-efficient products (incremental markups). DOE calculates both overall baseline and overall incremental markups based on the product markups at each step in the distribution channel. The overall incremental markup relates the change in the manufacturer sales price of higher-efficiency models (the incremental cost increase) to the change in the retailer or distributor sales price. Chapter 6 of the preliminary TSD discusses the estimation of markups.

*4. Life-Cycle Cost and Payback Period Analyses*

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total consumer expense for a product over the life of the product. The LCC analysis compares the LCCs of products designed to meet possible energy conservation standards with the LCCs of the products likely to be installed in the absence of standards. DOE determines LCCs by considering (1) Total installed cost to the purchaser (which consists of manufacturer selling price, sales taxes, distribution chain markups, and installation cost); (2) the operating expenses of the products (energy use and maintenance); (3) product lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of more efficient products through savings in the operating cost of the product. It is the change in total installed cost due to increased efficiency divided by the change in annual operating cost from increased efficiency. Chapter 8 of the preliminary TSD discusses the LCC and PBP analyses.

*5. National Impact Analysis*

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings expected to result from new standards at specific efficiency levels (referred to as candidate standard levels). Examining the three heating products, DOE calculated NES and NPV for each efficiency level as the difference between a base-case forecast (without new standards) and the standards case forecast (with standards). DOE determined national annual energy consumption by multiplying the number of units in use (by vintage, which is expressed in years) by the average unit energy consumption (also by vintage). Cumulative energy savings are the sum of the annual NES determined over a specified time period. The national NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, retirement rates (based on estimated product lifetimes), and estimates of changes in shipments and retirement rates in response to changes in product costs due to standards. Chapter 10 of the preliminary TSD discusses the NIA.

DOE consulted with stakeholders and other interested persons as part of its process for conducting all of the analyses and invites further input from the public on these topics. The preliminary analytical results are subject to revision following review and input from the public. A complete and revised TSD will be made available upon issuance of a NOPR. The final rule will contain the final analysis results and be accompanied by a final rule TSD.

DOE encourages those who wish to participate in the public meeting to obtain the preliminary TSD and to be prepared to discuss its contents. A copy of the preliminary TSD is available at the Web address given in the **SUMMARY** section of this notice. However, public meeting participants need not limit their comments to the topics identified in the preliminary TSD. DOE is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for these products or that DOE should address in the NOPR.

Furthermore, DOE welcomes all interested parties, whether or not they participate in the public meeting, to submit in writing by March 16, 2009, comments and information on matters addressed in the preliminary TSD and on other matters relevant to consideration of standards for residential water heaters, direct heating equipment, and pool heaters.

The public meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by United States antitrust laws.

After the public meeting and the expiration of the period for submitting written statements, DOE will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a NOPR. The NOPR will include proposed energy conservation standards for the products covered by this rulemaking, and members of the public will be given an opportunity to submit written and oral comments on the proposed standards.

Issued in Washington, DC, on January 5, 2009.

**John F. Mizroch,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. E9–476 Filed 1–12–09; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2009–0004; Directorate Identifier 2008–NM–160–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing

airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> One case of elevator servo-control disconnection has been experienced on an aircraft of the A320 family. Failure occurred at the servo-control rod eye-end. Further to this finding, additional inspections have revealed cracking at the same location on a number of other servo-control rod eye-ends. In one case, both actuators of the same elevator surface were affected. * * *
>
> A dual servo-control disconnection on the same elevator could result in an uncontrolled surface, the elevator surface being neither actuated nor damped, which could lead to reduced control of the aircraft.
>
> * * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by February 12, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

## Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0004; Directorate Identifier 2008–NM–160–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

## Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0149, dated August 5, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> One case of elevator servo-control disconnection has been experienced on an aircraft of the A320 family. Failure occurred at the servo-control rod eye-end. Further to this finding, additional inspections have revealed cracking at the same location on a number of other servo-control rod eye-ends. In one case, both actuators of the same elevator surface were affected. The root cause of the cracking has not yet been determined and tests are ongoing. It is anticipated that further actions will be required.
>
> A dual servo-control disconnection on the same elevator could result in an uncontrolled surface, the elevator surface being neither actuated nor damped, which could lead to reduced control of the aircraft.
>
> For the reason described above, this AD requires a one-time inspection [for cracking] of the elevator servo-control rod eye-ends and, in case of findings, the accomplishment of corrective actions.

The corrective actions include replacing any cracked rod eye end with a serviceable unit and re-adjusting the elevator servo-control. You may obtain further information by examining the MCAI in the AD docket.

## Relevant Service Information

Airbus has issued All Operators Telex A320–27A1186, dated June 23, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

## FAA's Determination and Requirements of This Proposed AD

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

## Differences Between This AD and the MCAI or Service Information

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

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

## Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 730 products of U.S. registry. We also estimate that it would take about 13 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $759,200, or $1,040 per product.

## Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

## Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Airbus:** Docket No. FAA–2009–0004; Directorate Identifier 2008–NM–160–AD.

**Comments Due Date**

(a) We must receive comments by February 12, 2009.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Airbus Model A318–111, –112, –121, and –122; A319–111, –112, –113, –114, –115, –131, –132, and –133; A320–111, –211, –212, –214, –231, –232, –233; and A321–111, –112, –131, –211, –212, –213, –231, and –232 series airplanes; certificated in any category; all manufacturer serial numbers.

**Subject**

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

**Reason**

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

One case of elevator servo-control disconnection has been experienced on an aircraft of the A320 family. Failure occurred at the servo-control rod eye-end. Further to this finding, additional inspections have revealed cracking at the same location on a number of other servo-control rod eye-ends. In one case, both actuators of the same elevator surface were affected. The root cause of the cracking has not yet been determined and tests are ongoing. It is anticipated that further actions will be required.

A dual servo-control disconnection on the same elevator could result in an uncontrolled surface, the elevator surface being neither actuated nor damped, which could lead to reduced control of the aircraft.

For the reason described above, this AD requires a one-time inspection [for cracking] of the elevator servo-control rod eye-ends and, in case of findings, the accomplishment of corrective actions.

The corrective actions include replacing any cracked rod eye-end with a serviceable unit and re-adjusting the elevator servo-control.

**Actions and Compliance**

(f) Unless already done after the accumulation of 10,000 total flight cycles since first flight of the airplane, do the following actions.

(1) Not before the accumulation of 10,000 total flight cycles since first flight of the airplane, and at the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD: Inspect both the left-hand and right-hand inboard elevator servo-control rod eye-ends for cracking in accordance with the instructions of Airbus All Operators Telex (AOT) A320–27A1186, dated June 23, 2008.

(i) Within 1,500 flight cycles or 200 days after the effective date of this AD, whichever occurs first.

(ii) Within 1,500 flight cycles or 200 days after accumulating 10,000 total flight cycles since first flight of the airplane, whichever occurs first.

(2) Not before the accumulation of 10,000 total flight cycles since first flight of the airplane, and at the later of the times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD: Inspect both the left-hand and right-hand outboard elevator servo-control rod eye-ends for cracking, in accordance with the instructions of Airbus AOT A320–27A1186, dated June 23, 2008.

(i) Within 3,000 flight cycles or 400 days after the effective date of this AD, whichever occurs first.

(ii) Within 3,000 flight cycles or 400 days after accumulating 10,000 total flight cycles since first flight of the airplane, whichever occurs first.

(3) If any cracking is found during any inspection required by this AD, before further flight, accomplish all applicable corrective actions in accordance with the instructions of Airbus AOT A320–27A1186, dated June 23, 2008.

(4) Submit a report of the findings of the inspection required by paragraphs (f)(1) and (f)(2) of this AD to Airbus in accordance with the instructions of Airbus AOT A320–27A1186, dated June 23, 2008, at the applicable time specified in paragraph (f)(4)(i) or (f)(4)(ii) of this AD. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(i) If the inspection was done after the effective date of this AD: Submit the report within 40 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 40 days after the effective date of this AD.

(5) As of the effective date of this AD, no person may install on any airplane an elevator servo-control rod eye-end unless it has been inspected in accordance with the instructions of Airbus AOT A320–27A1186, dated June 23, 2008.

**FAA AD Differences**

**Note 1:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority

(or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0149, dated August 5, 2008, and Airbus AOT A320–27A1186, dated June 23, 2008, for related information.

Issued in Renton, Washington, on December 29, 2008.

**Linda Navarro,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–456 Filed 1–12–09; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2009–0003; Directorate Identifier 2007–NM–251–AD]**

**RIN 2120–AA64**

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

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: Several cases of corrosion and damage on the Down Drive Shafts (DDS), between the Down Drive Gear Box (DDGB) and the Input Gear Box (IPGB), on all 10 Flap Tracks (5 per wing), have been reported by AIRBUS Long Range Operators. Investigations have revealed that corrosion and wear due to absence of grease in the spline interfaces could cause [DDS] disconnection which could result in a free movable flap surface, potentially leading to aircraft asymmetry or even flap detachment.The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by February 12, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0003; Directorate Identifier 2007–NM–251–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0026, dated February 12, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Several cases of corrosion and damage on the Down Drive Shafts (DDS), between the Down Drive Gear Box (DDGB) and the Input Gear Box (IPGB), on all 10 Flap Tracks (5 per wing), have been reported by AIRBUS Long Range Operators.
>
> Investigations have revealed that corrosion and wear due to absence of grease in the spline interfaces could cause [DDS] disconnection which could result in a free movable flap surface, potentially leading to aircraft asymmetry or even flap detachment.
>
> Emergency Airworthiness Directive (EAD) 2007–0222–E mandated on all aircraft older than 6 years since AIRBUS original delivery date of the aircraft, an initial inspection of all DDS and IPGB for corrosion and wear detection in order to replace any damaged part.
>
> Revision 1 of EAD 2007–0222–E aimed for clarifying the compliance instructions.
>
> [EASA AD 2008–0026] supersedes the EAD 2007–0222R1–E and mandates repetitive inspections every 6 years for all the fleet.

The corrective actions include replacing damaged parts before next flight. You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

Airbus has issued Service Bulletins A330–27–3151, A330–27–3152, A340–27–4151, A340–27–4152, and A340–27–5040; all dated August 9, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### FAA's Determination and Requirements of This Proposed AD

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

### Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in

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

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

### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 41 products of U.S. registry. We also estimate that it would take about 65 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $213,200, or $5,200 per product.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Airbus:** Docket No. FAA–2009–0003; Directorate Identifier 2007–NM–251–AD.

**Comments Due Date**

(a) We must receive comments by February 12, 2009.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Airbus Model A330–200 and –300 series airplanes, and A340–200, –300, –500 and –600 series airplanes, certificated in any category; all certified models, all manufacturer serial numbers.

**Subject**

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

**Reason**

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

Several cases of corrosion and damage on the Down Drive Shafts (DDS), between the Down Drive Gear Box (DDGB) and the Input Gear Box (IPGB), on all 10 Flap Tracks (5 per wing), have been reported by AIRBUS Long Range Operators.

Investigations have revealed that corrosion and wear due to absence of grease in the spline interfaces could cause [DDS] disconnection which could result in a free movable flap surface, potentially leading to aircraft asymmetry or even flap detachment.

Emergency Airworthiness Directive (EAD) 2007–0222–E mandated on all aircraft older than 6 years since AIRBUS original delivery date of the aircraft, an initial inspection of all DDS and IPGB for corrosion and wear detection in order to replace any damaged part.

Revision 1 of EAD 2007–0222–E aimed for clarifying the compliance instructions.

[EASA AD 2008–0026] supersedes the EAD 2007–0222R1–E and mandates repetitive inspections every 6 years for all the fleet.

The corrective actions include replacing damaged parts before next flight.

**Actions and Compliance**

(f) Unless already done, do the applicable inspections and corrective actions specified in paragraphs (f)(1) and (f)(2) of this AD in accordance with the instructions of the applicable service information specified in Table 1 of this AD.

TABLE 1—SERVICE INFORMATION

| For model— | Airbus Service Bulletin— | For actions specified in paragraph— |
|---|---|---|
| A330 airplanes | A330–27–3151, dated August 9, 2007 | (f)(1)(i) and (f)(1)(ii) of this AD. |
| A330 airplanes | A330–27–3152, dated August 9, 2007 | (f)(1)(iv) and (f)(2) of this AD. |
| A340–200 and –300 airplanes | A340–27–4151, dated August 9, 2007 | (f)(1)(i) and (f)(1)(ii) of this AD. |
| A340–200 and –300 airplanes | A340–27–4152, dated August 9, 2007 | (f)(1)(iv) and (f)(2) of this AD. |
| A340–500 and –600 airplanes | A340–27–5040, dated August 9, 2007 | (f)(2) of this AD. |

(1) For Model A330 airplanes, up to and including manufacturer serial number (MSN) 0420, and Model A340–200 and –300 series airplanes, up to and including MSN 0415, except MSNs 0385 and 0395: Do the actions specified in paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) of this AD at the applicable time specified.

(i) For airplanes on which less than 10 years have accumulated since the date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness as of the effective date of this AD: Within 24 months after the

effective date of this AD, perform simultaneous detailed visual inspections of the IPGB and of the DDS on all flap tracks on both wings for corrosion and wear detection and do all applicable corrective actions. Do all applicable corrective actions before further flight.

(ii) For airplanes on which 10 or more years have accumulated since the date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness as of the effective date of this AD: Within 4 months after the effective date of this AD, perform simultaneous detailed visual inspections of the IPGB and of the DDS on flap tracks 2 and 4 on both wings for corrosion and wear detection and do all applicable corrective actions. Do all applicable corrective actions before further flight.

(iii) Within 30 days after performing an initial inspection required by paragraph (f)(1)(i) or (f)(1)(ii) of this AD, or within 30 days after the effective date of this AD, whichever occurs later, report the initial inspection results only, whatever they are, to Airbus as specified in the reporting sheet of the applicable service information listed in Table 1 of this AD.

(iv) Within 6 years after performing the inspection required by paragraph (f)(1)(i) or (f)(1)(ii) of this AD; and thereafter at intervals not exceeding 6 years: Perform simultaneous detailed visual inspections of the IPGB and of the DDS on all flap tracks on both wings for corrosion and wear detection and do all applicable corrective actions. Do all applicable corrective actions before further flight.

(2) For airplanes other than those identified in paragraph (f)(1) of this AD: Within 6 years after issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness, or within 20 months after the effective date of this AD, whichever occurs later; and thereafter at intervals not exceeding 6 years: Perform simultaneous detailed visual inspections of the IPGB and of the DDS on all flap tracks on both wings for corrosion and wear detection and do all applicable corrective actions. Do all applicable corrective actions before further flight.

**Note 1:** Airbus should be contacted in order to get appropriate information for airplanes on which the original delivery date of the airplane is unknown to the operator.

**FAA AD Differences**

**Note 2:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

**Related Information**

(h) Refer to MCAI EASA Airworthiness Directive 2008–0026, dated February 12, 2008, and the service information specified in Table 1 of this AD, for related information.

Issued in Renton, Washington, on December 29, 2008.

**Linda Navarro,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–458 Filed 1–12–09; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2008–1228; Airspace Docket No. 08–ACE–3]**

## Proposed Amendment of Class E Airspace; Omaha, NE

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Omaha, NE. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Blair Municipal Airport, Blair, NE. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Blair Municipal Airport. This action also would make minor changes to the geographic coordinates of the existing airports in the Omaha, NE, airspace area.

**DATES:** Comments must be received on or before February 27, 2009.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–1228/Airspace Docket No. 08–ACE–3, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone: (817) 222–5582.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–1228/Airspace Docket No. 08–ACE–3.'' The postcard will be date/time stamped and returned to the commenter.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional controlled Class E airspace for SIAPs operations at Blair Municipal Airport, Blair, NE. A minor change also would be made in the geographic coordinates for Eppley Airfield, Offutt Air Force Base, and Council Bluffs Municipal Airport. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add controlled airspace at Blair Municipal Airport, Omaha, NE.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ACE NE E5 Omaha, NE [Amended]**

Omaha, Eppley Airfield, NE
(Lat. 41°18′11″ N., long. 95°53′39″ W.)
Omaha, Offutt AFB, NE
(Lat. 41°07′10″ N., long. 95°54′31″ W.)
Council Bluffs, Council Bluffs Municipal Airport, IA
(Lat. 41°15′36″ N., long. 95°45′31″ W.)
Blair, Blair Municipal Airport, NE
(Lat. 41°24′53″ N., long. 96°06′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Eppley Airfield and within 3 miles each side of the Eppley Airfield Runway 14R ILS Localizer course extending from the 6.9-mile radius to 12 miles northwest of the airport and within a 7-mile radius of Offutt AFB and within 4.3 miles each side of the Offutt AFB ILS Runway 30 localizer course extending from the 7-mile radius to 7.4 miles southeast of Offutt AFB and within a 6.4-mile radius of the Council Bluffs Municipal Airport, and within a 6.4-mile radius of Blair Municipal Airport, and within 2 miles each side of the 317° bearing from the Blair Municipal Airport extending from the 6.4-mile radius to 11.6 miles, and within 2 miles each side of the 137° bearing from the Blair Municipal Airport extending from the 6.4-mile radius to 12.2 miles.

* * * * *

Issued in Fort Worth, TX on January 7, 2009.

**Walter L. Tweedy,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. E9–478 Filed 1–12–09; 8:45 am]

BILLING CODE 4901–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2008–1290; Airspace Docket No. 08–AGL–19]**

## Proposed Amendment of Class E Airspace; Battle Creek, MI

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Battle Creek, MI. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at W.K. Kellogg Airport, Battle Creek, MI. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at W.K. Kellogg Airport.

**DATES:** Comments must be received on or before February 27, 2009.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–1290/Airspace Docket No. 08–AGL–19, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone: (817) 222–5582.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–1290/Airspace Docket No. 08–AGL–19.'' The postcard will be date/time stamped and returned to the commenter.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace for SIAPs operations at W.K. Kellogg Airport, Battle Creek, MI. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at W.K. Kellogg Airport, Battle Creek, MI.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MI E5 Battle Creek, MI [Amended]**

Battle Creek, W.K. Kellogg Airport, MI
(Lat. 42°18′26″ N., long. 85°15′05″ W.)
BATOL LOM/NDB
(Lat. 42°21′43″ N., long. 85°11′04″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of W.K. Kellogg Airport and within 4 miles each side of the 222° bearing from the airport extending from the 7-mile radius to 11.7 miles southwest of the airport, and within 4 miles each side of the 049° bearing from the airport extending from the 7-mile radius to 10.9 miles northeast of the airport, and within 7 miles northwest and 4.4 miles southeast of the Battle Creek ILS localizer northeast course extending from the 7-mile radius to 10.4 miles northeast of the BATOL LOM/NDB.

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Issued in Fort Worth, TX on January 7, 2009.

**Walter L. Tweedy,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. E9–477 Filed 1–12–09; 8:45 am]

**BILLING CODE 4901–13–P**

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 08–2775; MB Docket No. 08–252; RM–11509]**

## Television Broadcasting Services; Cadillac, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a channel substitution proposed by Cadillac Telecasting Co. (''CTC''), the licensee of WFQX–DT, post-transition DTV channel 47, Cadillac, Michigan. CTC requests the substitution of DTV channel 32 for post-transition DTV channel 47 at Cadillac.

**DATES:** Comments must be filed on or before January 28, 2009, and reply comments on or before February 9, 2009.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments

with the FCC, interested parties should serve counsel for petitioner as follows: Gregg P. Skall, Esq., Womble Carlyle Sandridge & Rice, 1401 Eye Street, NW., Seventh Floor, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Joyce L. Bernstein, *joyce.bernstein@fcc.gov,* Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–252, adopted December 22, 2008, and released December 23, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

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

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

**§ 73.622 [Amended]**

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Michigan, is amended by adding DTV channel 32 and removing DTV channel 47 at Cadillac.

Federal Communications Commission.

**Clay C. Pendarvis,**

*Associate Chief, Video Division, Media Bureau.*

[FR Doc. E9–509 Filed 1–12–09; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 79

**[CG Docket No. 05–231; FCC 08–255]**

## Closed Captioning of Video Programming

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on the application of the closed captioning rules to digital broadcasting, specifically to broadcasters that choose to use their digital allotment to multicast several streams of programming. The Commission's rules exempt video programming channels that produced annual gross revenues of less than $3 million during the previous calendar year from the Commission's closed captioning obligations. The Commission did not determine what constitutes a ''channel'' for purposes of satisfying this self-implementing exemption. The Commission therefore seeks comment on issues related to, for purposes of this exemption, whether each programming stream on a multicast signal constitutes a separate channel, or whether the broadcaster's entire operations attributable to its digital allotment should be considered one channel.

**DATES:** Comments are due on or before February 12, 2009. Reply comments are due on or before February 27, 2009.

**ADDRESSES:** Interested parties may submit comments identified by CG Docket No. 05–231, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*, or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and CG Docket No. 05–231. Parties also may submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in response.
- *Paper filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

For detailed instructions for submitting comments and additional

information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Amelia Brown, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 418–2799 or e-mail at *Amelia.Brown@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Closed Captioning of Video Programming*; *Closed Captioning Requirements for Digital Television Receivers*, Notice of Proposed Rulemaking (*2008 Digital Closed Captioning NPRM*), document FCC 08–255, adopted November 3, 2008, and released November 7, 2008, in CG Docket No. 05–231, seeking comment on matters concerning § 79.1(d)(12) of the Commission's rules and digital multicast channels. The full text of FCC 08–255 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. FCC 08–255 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site, *http://www.bcpiweb.com*, or by calling 1–800–378–3160. FCC 08–255 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/caption.html*. Parties who choose to file by paper should also submit their comments on compact disc. The compact disc should be submitted, along with three paper copies, to: Traci Randolph, Consumer and Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room 3–C425, Washington, DC 20554. Such submission should be on a compact disc formatted in an IBM compatible format using Word 2003 or a compatible software. The compact disc should be accompanied by a cover letter and should be submitted in ''read only'' mode. The compact disc should be clearly labeled with the commenter's name, proceeding (CG Docket No. 05–231), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the compact disc. The label also should include the following phrase: ''CD–Rom Copy—Not an Original.'' Each compact disc should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters filing by paper must send a compact disc copy to the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

## Initial Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

## Synopsis

1. As the nation transitions from analog to digital broadcasting, the video programming and broadcasting landscape will change substantially. With analog broadcasting, broadcasters use their spectrum allocation to provide programming on a single channel. With digital broadcasting, broadcasters may use their digital allotment to multicast several streams of programming, known as ''multicasting.'' Section 79.1(d)(12) of the Commission's rules exempts video programming channels that produced annual gross revenues of less than $3 million during the previous calendar year from the Commission's closed captioning obligations. The Commission seeks comment on the application of § 79.1(d)(12) of the Commission's rules to digital broadcasting.

2. In 1997, when the Commission adopted the exemption for channels producing less than $3 million in revenues, it specified that ''[a]nnual gross revenues shall be calculated for each channel individually based on revenues received in the preceding calendar year from all sources related to the programming on that channel.'' The Commission did not determine, however, what constitutes a ''channel'' for purposes of satisfying this self-implementing exemption. The Commission seeks comment on whether, for purposes of § 79.1(d)(12) of the Commission's rules, each programming stream on a multicast signal constitutes a separate channel, or whether the broadcaster's entire operations attributable to its digital allotment should be considered one channel.

3. Under the Commission's rules, programming that is already captioned and delivered to a broadcaster for airing must be aired with the captions intact, regardless of the multicast stream on which the programming airs, pursuant to the pass through rule. Given the pass through rule, it is likely that much of the programming delivered to broadcasters for airing on multicast streams will already be captioned, especially if it is programming provided by a network programmer, even if § 79.1(d)(12) of the Commission's rules applies to each multicast channel. The Commission seeks comment on what percentage of programming that airs on multicast streams, other than the main stream, is network programming, and how much of that programming is already captioned.

4. The Commission seeks comment on whether individual programming streams should not be considered separate channels for purposes of calculating revenues for purposes of § 79.1(d)(12) of the Commission's rules. In such circumstances, digital broadcasters would be exempt from the Commission's requirements under § 79.1(d)(12) of the Commission's rules only if their overall operations, taking into account all activities on all ''streams,'' received less than $3 million in revenues. The Commission seeks comment on the relative merits of this approach and its practical effects, including how this determination might affect program diversity, the airing of locally-originated programming, or the airing of other kinds of programming that may afford little or no economic return. The Commission also seeks comment on whether this approach may result in an increase in the number of petitions for exemption from the closed captioning requirements under the ''undue burden'' standard set forth in § 79.1(f) of the Commission's rules.

5. The Commission seeks comment on whether the $3 million revenue amount is a reasonable threshold for determining if secondary multicast streams should be exempt from the closed captioning requirements, or whether a smaller figure is appropriate and, if so, what that amount should be.

6. The Commission seeks comment on whether it is appropriate to adopt something other than a fixed revenue threshold for determining whether secondary multicast streams must be captioned. For example, comment is sought on whether the captioning requirements should be tied to a formula that considers the number of programming streams being offered (or some other variable), such as that used for determining a multicasting broadcaster's children's television programming requirements. Finally, the Commission seeks comment on similar alternatives for applying captioning

requirements to multicast program streams.

**Initial Regulatory Flexibility Certification**

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *2008 Digital Closed Captioning NPRM*. *See* 5 U.S.C. 603. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *2008 Digital Closed Captioning NPRM* provided in paragraph 43 of the Item. The Commission will send a copy of the *2008 Digital Closed Captioning NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a).

**Need for, and Objectives of, the Proposed Rules**

8. The Commission initiates this review relating to closed captioning in anticipation of the transition to digital television (DTV) by full power broadcasters, which will occur on February 18, 2009. This rulemaking proceeding proposes several options for the appropriate treatment of digital broadcasters that choose to use their digital allotment to multicast several streams of programming (known as ''multicasting''). In light of this new broadcasting environment, the *2008 Digital Closed Captioning NPRM* proposes several options for determining the closed captioning obligations for multicasting broadcasters. The *2008 Digital Closed Captioning NPRM* seeks comment on § 79.1(d)(12) of the Commission's rules, which exempts from the closed captioning obligations video programming channels that produced annual gross revenues of less than $3 million during the previous calendar year. 47 CFR 79.1(d)(12). In order to determine whether each stream of a digital broadcaster's multicast operation must be captioned, the Commission proposes several possible alternatives and the possible outcomes to each alternative.

9. The proposals set forth in the *2008 Digital Closed Captioning NPRM,* for which comment is sought, contemplate as possible outcomes the following: Treat each multicast stream as a separate channel and calculate their revenues separately; treat each multicast stream as a separate channel and calculate their revenues separately, but decrease the revenue threshold for determining whether the non-main programming streams must close caption; treat individual programming streams as one channel, in which case the revenues would be aggregated for purposes of determining if the exemption in § 79.1(d)(12) of the Commission's rules applies; or, impose a new non-revenue approach for deciding how much programming must be captioned on multicast streams.

**Legal Basis**

10. The authority for this proposed rulemaking is contained in sections 4(i), 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 613.

**Description and Estimate of the Number of Small Entities Impacted**

11. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. 5 U.S.C. 604(a)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. 5 U.S.C. 601(6). Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 5 U.S.C. 632.

12. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002). A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 2002, there were approximately 1.6 million small organizations. ''Independent Sector, The New Nonprofit Almanac & Desk Reference'' (2002). The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' 5 U.S.C. 601(5). Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. U.S. Census Bureau, ''Statistical Abstract of the United States: 2006,'' section 8, page 272, Table 415. The Commission estimates that, of this total, 84,377 entities were ''small governmental jurisdictions.'' The Commission assumes that the villages, school districts, and special districts are small, and total 48,558. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. Thus, the Commission estimates that most governmental jurisdictions are small.

13. *Wired Telecommunications Carriers.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' U.S. Census Bureau, 2002 NAICS Definitions, ''517110 Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for wireline firms within the broad economic census category, ''Wired Telecommunications Carriers.'' 13 CFR 121.201, NAICS code 517110. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 2,432 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size: 2002 (Including Legal Form of Organization),'' Table 5, NAICS code 517110 (issued Nov. 2005). Of this total, 2,395 firms had employment of 999 or fewer employees, and 37 firms had employment of 1,000 employees or more. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size: 2002 (Including Legal Form of Organization),'' Table 5, NAICS code 517110 (issued Nov. 2005). Thus, under this category and associated small business size standard, the majority of firms can be considered small.

14. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of

voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' (partial definition. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. The NAICS Code associated with this size standard is 517110. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

15. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. 47 CFR 76.901(e) of the Commission's rules. The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995), published at 60 FR 35854, July 12, 1995. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. 47 CFR 76.901(c) of the Commission's rules. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Warren Communications News, *Television & Cable Factbook 2006,* ''U.S. Cable Systems by Subscriber Size,'' page F–2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available. Thus, under this second size standard, most cable systems are small. Wired Telecommunications Carriers with fewer than 1,500 employees are considered to be small. *See* 13 CFR 121.201, NAICS code 517110.

16. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' 47 U.S.C. 543(m)(2); *see* 47 CFR 6.901(f) of the Commission's rules and notes 1–3. The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. 47 CFR 76.901(f) of the Commission's rules; *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* DA 01–158 (Cable Services Bureau, January 24, 2001). Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, T*elevision & Cable Factbook 2006,* ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857. The Commission notes that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard. The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b) of the Commission's rules.

17. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. As noted, Wired Telecommunications Carriers with fewer than 1,500 employees are considered to be small, under the currently applicable SBA classification. NAICS Code 517110. The data presented were acquired when the applicable SBA small business size standard was called Cable and Other Program Distribution, and which referred to all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Thus, under this size standard, the majority of firms can be considered small.

18. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS falls under the SBA definition of ''Wireless Telecommunications Carriers (except satellite)'', which establishes as a small DBS company any DBS company which has less than 1,500 employees. 13 CFR 121.201, NAICS Code 517210. The data presented were acquired when the applicable SBA small business size standard was called Cable and Other Program Distribution, and which referred to all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million,

and 43 firms had receipts of $10 million or more but less than $25 million. Currently, only four operators hold licenses to provide DBS service, which requires a great investment of capital for operation. All four currently offer subscription services. Two of these four DBS operators, DirecTV and EchoStar Communications Corporation (EchoStar), report annual revenues that are in excess of the threshold for a small business. DirecTV is the largest DBS operator and the second largest MVPD, serving an estimated 13.04 million subscribers nationwide. *See* Annual Assessment of Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report, FCC 05–13, paragraph 55 (released February 4, 2005) (2005 Cable Competition Report). EchoStar, which provides service under the brand name Dish Network, is the second largest DBS operator and the fourth largest MVPD, serving an estimated 10.12 million subscribers nationwide. *See* 2005 Cable Competition Report, paragraph 55. A third operator, Rainbow DBS, is a subsidiary of Cablevision's Rainbow Network, which also reports annual revenues in excess of $13.5 million, and thus does not qualify as a small business. Rainbow DBS, which provides service under the brand name VOOM, reported an estimated 25,000 subscribers. *See* 2005 Cable Competition Report, paragraph 55. The fourth DBS operator, Dominion Video Satellite, Inc. (Dominion), offers religious (Christian) programming and does not report its annual receipts. Dominion, which provides service under the brand name Sky Angel, does not publicly disclose its subscribership numbers on an annualized basis. *See* 2005 Cable Competition Report, paragraph 55. The Commission does not know of any source which provides this information and, thus, the Commission has no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, the Commission believes it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, the Commission acknowledges the possibility that there are entrants in this field that may not yet have generated $13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

19. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' U.S. Census Bureau, 2007 NAICS Definitions, ''515120 Television Broadcasting'' (partial definition). The SBA has created the following small business size standard for Television Broadcasting firms: those having $14 million or less in annual receipts. 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2008). The Commission has estimated the number of licensed commercial television stations to be 1,379. *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2007,'' dated March 18, 2008. In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) had revenues of $13 million or less. The Commission recognizes that BIA's estimate differs slightly from the FCC total. The Commission therefore estimates that the majority of commercial television broadcasters are small entities.

20. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. 13 CFR 21.103(a)(1). The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

21. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 380. *See FCC News Release*, ''Broadcast Station Totals as of December 31, 2007,'' dated March 18, 2008. These stations are non-profit, and therefore considered to be small entities. *See generally* 5 U.S.C. 601(4), (6). In addition, there are also 2,295 low power television stations (LPTV). *See FCC News Release*, ''Broadcast Station Totals as of December 31, 2007,'' dated March 18, 2008. Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

22. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, paragraph 348 (1997), published at 62 FR 16514, April 7, 1997. The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, 12 FCC Rcd 12545, 12689–90, paragraph 348. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, 12 FCC Rcd 12545, 12689–90, paragraph 348. The SBA has approved these small business size standards in the context of LMDS auctions. *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (January 6, 1998). There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and

387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses. Because some LMDS services may not have been auctioned, the SBA standard which applies to such services is Wireless Telecommunications Carriers (except satellite), pursuant to which a service is small if it has fewer than 1500 employees. The NAICS Code for this SBA classification is 51711.

23. *Wireless Telecommunications Carriers (except satellite)*. NAICS code 517210. Wireless Telecommunications Carriers, except satellite, is a NAICS standard which has a size standard of fewer than 1500 employees. NAICS Code 517210. Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (BRS), formerly Multipoint Distribution Service (MDS), and the Educational Broadband Service (EBS), formerly Instructional Television Fixed Service (ITFS), to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. As noted, within the category of Wireless Telecommunications Carriers, except satellite, such firms with fewer than 1500 employees are considered to be small. 13 CFR 121.201, NAICS Code 517210. The data presented were acquired when the applicable SBA small business size standard was called Cable and Other Program Distribution, and which referred to all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS Code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). The SBA small business size standard for the broad census category of Wireless Telecommunications Carriers, which consists of such entities with fewer than 1,500 employees, appears applicable to MDS and ITFS. Other standards also apply, as described.

24. The Commission has defined small MDS (now BRS) entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Wireless Telecommunications Carriers (except satellite). 13 CFR 121.201, NAICS Code 517210. As noted, within the category of Wireless Telecommunications Carriers, such firms with fewer than 1500 employees are considered to be small. 13 CFR 121.201, NAICS Code 517210. The data presented were acquired when the applicable SBA small business size standard was called Cable and Other Program Distribution, and which referred to all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS Code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Information available to the Commission indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

25. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS). The Commission estimates that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small entities.

26. *Open Video Services*. Open Video Service (OVS) systems provide subscription services. *See* 47 U.S.C. 573. The data presented were acquired when the applicable SBA small business size standard was called Cable and Other Program Distribution, and which referred to all such firms having $13.5 million or less in annual receipts. 13 CFR 121.201, NAICS Code 517110. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005). This standard has been replaced by the Wireless Telecommunications Carriers (except satellite) standard, which considers firms with fewer than 1,500 employees to be small. NAICS Code 517210. The Commission has certified approximately 100 OVS operators to serve 75 areas, and some of these are currently providing service. *See http://www.fcc.gov/csb/ovs/csovscer.html* (current as of June 2004). These data were collected when ''Cable and Other Program Distribution'' was the operative distribution technology. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have

not yet begun to generate revenues, the Commission concludes that those OVS operators remaining might qualify as small businesses that may be affected by the rules and policies adopted herein.

27. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

28. *Telephone Companies*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5–5 (February 2007). This source uses data that are current as of October 20, 2005. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action. The Commission estimates that ten LECs currently provide video programming, and several smaller telephone companies provide the service.

29. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under NCAIS rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5–5 (February 2007). This source uses data that are current as of October 20, 2005. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action. The Commission estimates that ten LECs currently provide video programming, and several smaller telephone companies provide the service.

30. *Closed Captioning Services*. These entities are indirectly affected by the Commission's action. The SBA has developed two small business size standards that may be used for closed captioning services. The two size standards track the economic census categories, ''Teleproduction and Other Postproduction Services'' and ''Court Reporting and Stenotype Services.''

31. The first category of *Teleproduction and Other Postproduction Services* ''comprises establishments primarily engaged in providing specialized motion picture or video postproduction services, such as editing, film/tape transfers, subtitling, credits, closed captioning, and animation and special effects.'' The relevant size standard for small businesses in these services is an annual revenue of less than $29.5 million. U.S. Census Bureau, 2002 NAICS Definitions, ''512191 Teleproduction and Other Postproduction Services.'' The size standard is $29.5 million. For this category, Census Bureau data for 2002 show that there were 1,316 firms that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 512191 (issued November 2005). Of this total, 1,301 firms had annual receipts of under $25 million, and 10 firms had receipts of $25 million to $49,999,999. U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 512191 (issued Nov. 2005). An additional 5 firms had annual receipts of $50 million or more. Consequently, the Commission estimates that the majority of *Teleproduction and Other Postproduction Services* firms are small entities that might be affected by our action.

32. The second category of *Court Reporting and Stenotype Services* ''comprises establishments primarily engaged in providing verbatim reporting and stenotype recording of live legal proceedings and transcribing subsequent recorded materials.'' The size standard for small businesses in these services is an annual revenue of less than $7 million. U.S. Census Bureau, 2002 NAICS Definitions, ''561492 Court Reporting and Stenotype Services.'' The size standard is $7 million. For this category, Census Bureau data for 2002 show that there were 2,487 firms that operated for the entire year. U.S. Census Bureau, 2002 Economic Census, Subject Series: Administrative and Support and Waste Management and Remediation Services, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 561492 (issued Nov. 2005). Of this total, 2,461 firms had annual receipts of under $5 million, and 16 firms had receipts of $5 million to $9,999,999. U.S. Census Bureau, 2002 Economic Census, Subject Series: Administrative and Support and Waste Management and Remediation Services, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 561492 (issued Nov. 2005). An additional 10 firms had annual receipts of $10 million or more. Consequently, the Commission estimates that the majority of *Court Reporting and Stenotype Services* firms are small entities that might be affected by our action.

**Description of Projected Reporting, Recordkeeping and Other Compliance Requirements**

33. The Commission does not anticipate that the proposals contained in the *2008 Digital Closed Captioning NPRM* will impose additional reporting, recordkeeping or compliance requirements.

**Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

34. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small

entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(b).

35. How the Commission resolves the question of how to treat digital multicast streams for purposes of the closed captioning rules is important, for purposes of § 79.1(d)(12) of the Commission's rules, which exempts from the closed captioning obligations video programming channels that produced annual gross revenues of less than $3 million during the previous calendar year. By its very nature, current § 79.1(d)(12) of the Commission's rules decreases the closed captioning burden on entities whose annual gross revenues for the previous year were less than $3 million. With regard to the proposal to treat each of the multicast streams individually, the *2008 Digital Closed Captioning NPRM* suggests that this likely will result in less captioned programming being available, and seeks comment on this assumption. Although this decision may decrease burdens on small businesses, it may mean that individuals who rely on closed captioning are burdened. At the same time, however, if the majority of programming aired on secondary multicast streams is already captioned, it is possible that the percentage of available captioning will not be greatly affected, given that programming that is already captioned and delivered to a broadcaster for airing must be aired with the captions intact, pursuant to the existing pass through rule, which is unaffected by the *2008 Digital Closed Captioning NPRM*. The Commission notes that, under the Commission's rules, programming that is already captioned and delivered to a broadcaster for airing must be aired with the captions intact, regardless of the multicast stream on which the programming airs. *See* 47 CFR 79.1(c) of the Commission's rules. Another alternative being considered by the Commission would retain the concept that each stream of multicast programming is separate, but the revenue threshold for determining whether one of the non-main programming streams is exempt would be less than $3 million. Given the general nature of the programming on such channels, the Commission seeks comment on whether a smaller figure may be appropriate.

36. In the alternative, if the Commission adopts the proposal to aggregate the revenues of all multicast streams, digital broadcasters would be exempt from the Commission's captioning requirements under § 79.1(d)(12) of the Commission's rules only if their overall operations, taking into account all activities on all ''streams,'' received less than $3 million in revenues. However, the *2008 Digital Closed Captioning NPRM* notes that this conclusion might affect program diversity, the airing of locally-originated programming, or the airing of other kinds of programming that may afford little or no economic return. The Commission further seeks comment on whether it also may result in an increase in the number of petitions for exemption from the closed captioning requirements based on the undue burden standard in the Commission's current rules. *See* 47 CFR 79.1(f) of the Commission's rules.

37. The last alternative the *2008 Digital Closed Captioning NPRM* considers is the establishment of a captioning requirement that is not dependant on revenues but relies on some other criteria, such as a formula that considers the number of programming streams being offered (or some other variable) in order to determine captioning obligations.

**Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals**

38. None.

**Ordering Clauses**

Pursuant to sections 4(i), 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 613, the *Notice of Proposed Rulemaking is adopted*.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. E8–31446 Filed 1–12–09; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register

Vol. 74, No. 8

Tuesday, January 13, 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

### Forest Service

### Ravalli County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meetings.

**SUMMARY:** The Ravalli County Resource Advisory Committee will be meeting every fourth Tuesday of the month from January 2009 through November 2009. The meetings are being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 110–343) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343). The meetings are open to the public.

**DATES:** The meeting will be held on every fourth Tuesday of each month starting from January 2009 through November 2009, at 6:30 p.m.

**ADDRESSES:** The meeting will be held at the Bitterroot National Forest, 1801 N, First, Hamilton, MT access by the back door. Send written comments to Daniel Ritter, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us*.

**FOR FURTHER INFORMATION CONTACT:** Daniel Ritter, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: January 6, 2009.

**Julie King,**

*Deputy Forest Supervisor.*

[FR Doc. E9–448 Filed 1–12–09; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on January 27, 2009, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

**Agenda**

*Public Session:*

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

*Closed Session:*

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than January 16, 2009.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 4, 2008 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List andU.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Dated: January 7, 2009.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. E9–366 Filed 1–12–09; 8:45 am]

BILLING CODE 3510–JT–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Application No. 97–9A003]**

### Export Trade Certificate of Review

**ACTION:** Notice of Application (#97–9A003) to Amend an Export Trade Certificate of Review Issued to the Association for the Administration of Rice Quotas, Inc.

**SUMMARY:** Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or by E-mail at *oetca@ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the

Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination of whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021X, Washington, DC 20230, or transmit by E-mail at *oetca@ita.doc.gov*. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 97–9A003.''

The original Certificate for the Association for the Administration of Rice Quotas, Inc. was issued on January 21, 1998 (63 FR 4220, January 28, 1998). The Certificate has been amended eight times. The last amendment was issued on February 14, 2005 (70 FR 8766, February 23, 2005). A summary of the current application for an amendment follows.

**Summary of the Application**

*Applicant:* Association for the Administration of Rice Quotas, Inc. (AARQ), c/o Chairman, Christian Bonnesen of ADM Rice, Inc., 660 White Plains Road, Tarreytown, New York 10591.

*Contact:* M. Jean Anderson, Esq., Counsel to Applicant, Telephone: (202) 682–7217.

*Application No.:* 97–9A003.

*Date Deemed Submitted:* December 31, 2008.

*Proposed Amendment:* AARQ seeks to amend its Certificate to reflect the following changes:

1. Delete the following companies as Members of the Certificate: California Rice Marketing LLC, Sacramento, CA; ConAgra Foods, Inc., Omaha, Nebraska, and its subsidiary ConAgra Trade Group, Inc., Omaha, Nebraska (formerly Alliance Grain, Inc., Marlton, New Jersey); Gold River Mills, LLC, Woodland, California (formerly Gold River Mills, LLC dba California Pacific Rice Milling, Woodland, California); International Grain Brokerage, LLC, Yuba City, California; MasterfoodsUSA, a Mars, Incorporated Company, Greenville, Mississippi; RiceTec, Inc., Alvin, Texas; and Supreme Rice Mill, Inc., Crowley, Louisiana.

2. Add the following company as a new Member of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.(1)): ''SunFoods LLC, Woodland, California.'' SunFoods LLC is a U.S. joint venture rice milling and marketing company. The SunFoods LLC joint venture includes a 65 percent majority share by Ricegrowers Limited of Sydney, Australia (trading as SunRice) and the amalgamated assets and brands previously held by Gold River Mills, LLC, Woodland, California (formerly Gold River Mills, LLC dba California Pacific Rice Milling, Woodland, California).

3. Amend the listing of the following Members: ''AFE (USA) Inc.'' should be amended to read ''Nobel Logistics USA Inc.'' due to a corporate name change. ''Busch Agricultural Resources, Inc. and its subsidiary Pacific International Rice Mills, Inc.'' should be amended to read ''Busch Agricultural Resources, LLC and its subsidiary Pacific International Rice Mills, LLC (both subsidiaries of Anheuser-Busch, Inc., which is a subsidiary of Anheuser-Busch InBev)'' due to changes in corporate structures. ''Cargill Americas, Inc.'' should be amended to read ''Cargill Americas, Inc., and its subsidiary CAI Trading Company LLC'' due to a change in corporate structure.

Dated: January 8, 2009.

**Jeffrey Anspacher,**

*Director, Export Trading Company Affairs.*

[FR Doc. E9–466 Filed 1–12–09; 8:45 am]

BILLING CODE 3510–DR–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XM60**

### Availability of Draft Guidelines for Use of Pesticide-Treated Wood Products

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** NMFS is providing this notice in order to allow other agencies and the public an opportunity to review and provide comments on a draft guideline document regarding the use of pesticide-treated wood products in aquatic environments. The intent of the guidelines is to aid NMFS personnel conducting Endangered Species Act (ESA) and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Essential Fish Habitat (EFH) consultations in making consistent determinations regarding projects proposing to use pesticide-treated wood products in habitats utilized by NOAA trust resources. The guidelines attempt to convey a summary of information that should be considered when examining the effects determinations made by the action agency, and to direct personnel to documents containing more detailed information when needed. NMFS is requesting comment on the draft guideline document before it is finalized. All comments received before the due date will be considered before finalizing the guideline document. All comments received will become part of the public record and will be available for review upon request.

**DATES:** Public comments must be received on or before 5 p.m., Pacific standard time March 16, 2009.

**ADDRESSES:** Comments on this draft guideline may be submitted by mail to the National Marine Fisheries Service, 777 Sonoma Avenue, Suite 325, Santa Rosa, CA 95409, Attn: Water Quality Coordinator/Treated Wood Comments. Comments concerning the draft guideline may be sent via facsimile to (707) 578–3435. Comments may also be submitted electronically to *SWR.treatedwood@noaa.gov*.

The reports are available at *http://swr.nmfs.noaa.gov/* or by calling the contact person listed below or by sending a request to *Joseph.J.Dillon@noaa.gov*. Please include appropriate contact information when requesting the documents.

**FOR FURTHER INFORMATION CONTACT:** Joseph Dillon, Southwest Region Water Quality Coordinator at 707–575–6093.

**SUPPLEMENTARY INFORMATION:** The purpose of the guidance document is to aid NMFS personnel conducting Endangered Species Act (ESA) and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Essential Fish Habitat (EFH) consultations to analyze the potential effects and mitigations for

projects proposing to use pesticide-treated wood products in habitats utilized by NOAA trust resources. The guidelines summarize information that should be considered when examining the effects determinations made by an action agency and to direct personnel to documents containing more detailed information when needed. The draft guidelines focus on copper treated wood, primarily ammoniacal copper zinc arsenate (ACZA), as this is the most prominent material used on the west coast of the United States and in Alaska, and creosote treated products.

These products are being examined by NMFS to determine the risks generated by their usage to the living marine resources which NOAA is responsible for managing, referred to as NOAA's Trust Resources. These include anadromous salmonids managed under the ESA and EFH as designated by the Magnuson-Stevens Act. The use of pesticide-treated wood in or near aquatic environments commonly requires a permit issued by the U.S. Army Corps of Engineers. Under the ESA, Federal agencies must consult with NMFS to ensure that any action authorized, funded or carried out by the Federal agency does not jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of designated critical habitat. The issuance of this permit by the U.S. Army Corps of Engineers requires consultation under Section 7 of the ESA to determine whether its approval action would jeopardize federally-listed species or adversely modify designated critical habitat, and requires an EFH assessment to determine whether its approval action would adversely affect EFH. Since the use of pesticide-treated wood materials in situations that may expose aquatic ecosystems is widespread along the west coast of the United States and in Alaska, development of guidelines from the information presented in these reports should help to streamline the review of permitting processes as well as the permitting processes themselves. In some instances, these reports may be used to update existing policies regarding pesticide-treated wood.

The purpose of the ESA is to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, to provide a program for the conservation of threatened and endangered species and to take steps that may be appropriate to achieve this conservation. Conservation is defined in the ESA to mean using, and the use, of all methods and procedures necessary to bring any endangered or threatened species to the point at which the protections provided by the ESA are no longer necessary. It is the policy of Congress, as declared in the ESA, that all Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of the ESA.

The Magnuson-Stevens Act established procedures designed to identify, conserve, and enhance EFH for those species regulated under a Federal fisheries management plan. EFH regulates an activity with an eye toward its impact on habitat characteristics. EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity. ''Waters'' include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; ''substrate'' includes sediment, hard bottom, structures underlying the waters, and associated biological communities; ''necessary'' means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and ''spawning, breeding, feeding, or growth to maturity'' covers a species' full life cycle. EFH for salmonids includes their saltwater and fresh water ranges.

Effects of pesticide-treated wood that need to be examined during the ESA and EFH consultations include direct, indirect, and cumulative effects. An example of direct effects includes the acute and sublethal impacts of copper and polycyclic aromatic hydrocarbons to salmonids and the EFH of managed species. An example of an indirect effect includes the adverse impacts to the prey base upon which ESA-listed and EFH-managed species depend. An example of a cumulative effect includes the impacts of multiple structures and contaminants in an area with or without additional loading from urban sources, historic mining, smelters, ships' hulls or any other source. The synthesis of these effects to habitat and to individuals, coupled with local environmental conditions and specific species of concern, defines the risk of a project proposing the use of pesticide-treated wood.

Dated: January 6, 2009.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9–369 Filed 1–12–09; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XM59**

### International Whaling Commission; Intersessional Meeting on the Future of the International Whaling Commission; Nominations

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

**ACTION:** Notice; request for nominations.

**SUMMARY:** This notice calls for nominees for one non-federal position to the U.S. Delegation to the Intersessional Meeting on the Future of the International Whaling Commission (IWC) that will be held in March 2009, in Rome, Italy. The non-federal representative selected as a result of this nomination process is responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations.

**DATES:** Written nominations must be received by February 8, 2009.

**ADDRESSES:** All nominations for the U.S. Delegation to the IWC annual meeting must be addressed to Bill Hogarth, U.S. Commissioner to the IWC, and sent via post to: Ryan Wulff, National Marine Fisheries Service, Office of International Affairs, 1315 East-West Highway, SSMC3 Room 12620, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Ryan Wulff, 301–713–2276, ext. 196.

**SUPPLEMENTARY INFORMATION:** The Secretary of Commerce is charged with the responsibility of discharging the domestic obligations of the United States under the International Convention for the Regulation of Whaling, 1946. The U.S. IWC Commissioner (Commissioner) has responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. The Commissioner is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other agencies. The non-federal representative selected as a result of this nomination process is responsible for providing input and recommendations to the Commissioner regarding the positions of non-governmental organizations.

The Intersessional Meeting on the Future of the IWC will be held March

9–11, 2009, at the offices of the Food and Agriculture Organization of the United Nations in Rome, Italy.

Dated: January 6, 2009.

**Rebecca Lent,**

*Director, Office of International Affairs, National Marine Fisheries Service.*

[FR Doc. E9–370 Filed 1–12–09; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XM52**

### Gulf of Mexico Fishery Management Council (Council); Public Meetings; Correction

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene public meetings. The original document published on Tuesday, January 6, 2009 and this document adds additional discussions that will take place at the Tuesday, January 27, 2009, 8:30 am–12:00 pm & 1:30 pm–3:00 pm meeting and is corrected in the **SUMMARY** section. All other information remains unchanged.

**DATES:** The meetings will be held January 26–29, 2009.

**ADDRESSES:** The meetings will be held at the Hollywood Casino, 711 Hollywood Blvd., Bay St. Louis, MS 39520.

*Council address*: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL, 33607.

**FOR FURTHER INFORMATION CONTACT:** Richard Leard, Interim Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–348–1630.

**SUPPLEMENTARY INFORMATION:**

**Correction**

In the **Federal Register** of January 6, 2009, in FR Doc. E8–31438, on page 432, in the third column, the Tuesday, January 27, 2009, 8:30 am–12:00 pm & 1:30 pm –3:00 pm meeting is corrected to read as follows:

*Tuesday, January 27, 2009*

*8:30 am–12:00 pm & 1:30 pm–3:00 pm*—The Reef Fish Management Committee will meet to discuss the Options Paper on Amendment/Regulatory Amendment and DEIS to Address Longline/Turtle Interactions; Results of Referendum and Final Action on Reef Fish Amendment 29; White Paper on Pros and Cons of Red Snapper For-Hire Sector Management; and Consideration of (re)allocation Issues for those Species in Reef Fish Amendments 30A and 30B using the Allocation Policy. The committee may also discuss and make recommendations for a Gulf of Mexico Angling Reporting System (GOMARS) to improve recreational data collection, particularly for red snapper. Finally, the committee will also receive a presentation on a device to reduce release mortality and may discuss goliath grouper activities.

Dated: January 9, 2009.

**William Chappell,**

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

[FR Doc. E9–608 Filed 1–12–09; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XM67**

### Western Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will hold a one day meeting of its Pelagics Plan Team (PPT), in Honolulu, HI, to discuss fishery issues and develop recommendations for future management.

**DATES:** The meeting of the PPT will be held on January 29, 2009, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Council Office Conference Room, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813; telephone: (808) 522–8220.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

**SUPPLEMENTARY INFORMATION:** The PPT will meet on Thursday, January 29, 2009, at 9 a.m., to discuss the following agenda items:

1. Introduction
2. Western & Central Pacific Fishery Commission (WCPFC) Conservation and Management Measure (CMM) 2008–01, requirements for USA and participating territories.
3. Potential IATTC management measures for bigeye tuna
4. Current monitoring of USA longline bigeye catch.
5. Options for improving catch monitoring of longline bigeye catches in WCPFC/IATTC areas.
6. Required research (e.g. conversion factors from processed to whole weight) for improving the accuracy of catch estimates.
7. Implementing WCPFC Conservation & Management Measure 2008–01 catch reductions for 2009.
8. Proposed Council amendments-Shortlines in Hawaii, and Purse seining in the Pacific Remote Island Areas (PRIAs)
9. Other business
10. Public comments
11. Pelagic Plan Team Recommendations

The order in which the agenda items are addressed may change. The PPT will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the PPT for discussion, those issues may not be the subject of formal action during these meetings. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council(s intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: January 7, 2009.

**Tracey L. Thompson,**

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

[FR Doc. E9–385 Filed 1–12–09; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XM56**

### U.S. Climate Change Science Program Draft Unified Synthesis Product Report: Global Climate Change Impacts in the United States

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of availability and request for public comments.

**SUMMARY:** The National Oceanic and Atmospheric Administration publishes this notice to announce a 45-day public comment period for the second draft of the report titled, U.S. Climate Change Science Program Unified Synthesis Product (USP). This draft report is being released solely for the purpose of pre-dissemination review under applicable information quality guidelines. This document has not been formally disseminated by NOAA. It does not represent and should not be construed to represent any Agency policy or determination. After consideration of comments received on the draft report, a revised version along with the comments received will be published on the CCSP web site.

**DATES:** Comments must be received by February 27, 2009.

**ADDRESSES:** The draft Unified Synthesis Product is posted on the CCSP Web site at: *http://www.climatescience.gov/Library/sap/usp/*

Detailed instructions for making comments on this draft report are also provided on the CCSP webpage. Comments must be prepared in accordance with these instructions and submitted to: *USP-comments@climatescience.gov*

**FOR FURTHER INFORMATION CONTACT:** Dr. Fabien Laurier, Climate Change Science Program Office, 1717 Pennsylvania Avenue NW, Suite 250, Washington, DC 20006, Telephone: (202) 419–3481.

**SUPPLEMENTARY INFORMATION:** The CCSP was established by the President in2002 to coordinate and integrate scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that promote climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues.

Dated: January 6, 2009.

**William J. Brennan,**

*Acting Under Secretary of Commerce for Oceans and Atmosphere and Acting NOAA Administrator, and Director of U.S. Climate Change Science Program.*

[FR Doc. E9–371 Filed 1–12–09; 8:45 am]

**BILLING CODE 3510–12–S**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before March 16, 2009.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 7, 2009.

**Angela C. Arrington,**

*Leader, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.*

**Institute of Education Sciences**

*Type of Review:* Revision.

*Title:* Feasibility and Conduct of an Impact Evaluation of Title I Supplemental Education Services.

*Frequency:* On Occasion.

*Affected Public:* Businesses or other for-profit; Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 10,862.

Burden Hours: 610.

*Abstract:* The No Child Left Behind Act (NCLB) requires districts with Title I schools that fall short of state standards for three years or more to offer supplemental educational services (SES) to their students from low-income families who attend these schools. SES are tutoring or other academic support services offered outside the regular school day by state-approved providers free of charge to eligible students. Parents can choose the specific SES provider from among a list approved to serve their area. The U.S. Department of Education has commissioned Mathematica Policy Research to evaluate the impact of SES on student achievement in up to nine school districts across the country. Findings of the study will not only inform national policy discussions about SES, but will also provide direct feedback to participating districts about the effectiveness of the SES offered to their students.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3927. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to

*ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–390 Filed 1–12–09; 8:45 am]

BILLING CODE 4000–01–P

## 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 12, 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: January 7, 2009.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Office of Postsecondary Education

*Type of Review:* Revision.

*Title:* Child Care Access Means Parents in School (CCAMPIS) Program Annual Performance Report Form.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 175.

Burden Hours: 1,050.

*Abstract:* CCAMPIS Program grantees must submit the report annually. The report provides the Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements in accordance with the program authorizing statute. The data collected is also aggregated to provide national information on project participants and program outcomes.

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 3902. 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. E9–393 Filed 1–12–09; 8:45 am]

BILLING CODE 4000–01–P

## 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 12, 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: January 7, 2009.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Office of Safe and Drug Free Schools

*Type of Review:* Revision.

*Title:* Gun-Free Schools Act Report.

*Frequency:* Annually.

*Affected Public:* Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 7,221

*Burden Hours:* 14,756

*Abstract:* The Gun-Free Schools Act (GFSA) requires States to provide annual reports to the Secretary of Education concerning implementation of the GFSA's requirements based on information collected from local

educational agencies (LEAs) in their applications requesting assistance. The GFSA requires each State receiving ESEA funds to have in effect a State law requiring LEAs to expel from school for a period of not less than one year a student found to have brought a firearm to school or to have possessed a firearm at school. The GFSA also requires LEAs that receive ESEA funds to adopt a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm to school or possesses a firearm at school.

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 3854. 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 directed to CAREY at 202–260–9404. 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. E9–395 Filed 1–12–09; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before March 16, 2009.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 8, 2009.

**Angela C. Arrington,**

*Leader, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Extension of a currently approved collection.

*Title:* Protection and Advocacy for Assistive Technology (PAAT) Program Performance Report, Form RSA 661.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions (primary).

*Reporting and Recordkeeping Hour Burden:*

Responses: 57

Burden Hours: 912

*Abstract:* The Annual PAAT Program Performance Report will be used to analyze and evaluate the PAAT Program administered by eligible systems in states. These systems provide services to eligible individuals with disabilities to assist in the acquisition, utilization, or maintenance of assistive technology devices or assistive technology services. The Rehabilitation Services Administration (RSA) uses the form to meet specific data collection requirements of Section 5 of the Assistive Technology Act of 1998, as amended (AT Act). PAAT programs must report annually using the form, which is due on or before December 30 of each year. The Annual PAAT Performance Report has enabled RSA to furnish the President and Congress with data on the provision of protection and advocacy services and has helped to establish a sound basis for future funding requests. Data from the form have been used to evaluate the effectiveness of eligible systems within individual states in meeting annual priorities and objectives. These data also have been used to indicate trends in the provision of services from year to year.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3920. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–488 Filed 1–12–09; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, January 21, 2009, 8 a.m.–5 p.m.

Opportunities for public participation will be held on Wednesday, January 21, 2009, from 1:30 p.m. to 1:45 p.m. and from 3:30 p.m. to 3:45 p.m.

These times are subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

**ADDRESSES:** Hilton Garden Inn, 700 Lindsay Boulevard, Idaho Falls, Idaho 83402.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, ID 83415. Phone (208) 526–6518; Fax (208) 526–8789 or e-mail: *pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://www.inlemcab.org*.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda* (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):

- Progress to Cleanup.
- Idaho National Laboratory CERCLA Caps.
- Evapotranspiration Surface Barrier Cap.
- Idaho CERCLA Disposal Facility (ICDF) Landfill, Design, Construction, and Operation.
- Remote-Handled Transuranic Waste Disposition Draft Environmental Assessment.
- Office of Nuclear Energy Liabilities Project.

*Public Participation:* The meeting is open to the public. The EM SSAB, Idaho National Laboratory, 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 Robert L. Pence at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

*Minutes:* Minutes will be available by writing or calling Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.inlemcab.org/meetings.html*.

Issued at Washington, DC on January 8, 2009.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. E9–468 Filed 1–12–09; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

January 2, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG09–21–000.

*Applicants:* Fox Energy Company LLC.

*Description:* Notice of Self-Recertification of Exempt Wholesale Generator Status of Fox Energy Company LLC in EG09–21.

*Filed Date:* 12/31/2008.

*Accession Number:* 20081231–5091.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER95–1528–020; ER01–1114–013; ER01–2659–014; ER02–2199–012; ER03–54–012; ER03–56–012; ER03–674–013; ER05–453–004; ER05–89–012; ER96–1088–047; ER97–2758–020; ER99–1936–012.

*Applicants:* Wisconsin Public Service Corporation, Upper Peninsula Power Company, Wisconsin River Power Company, WPS Energy Services, Inc.,WPS POWER DEVELOPMENT, LLC, Quest Energy, LLC, Combined Locks Energy Center, LLC, WPS Empire State, Inc., WPS Beaver Falls Generation, LLC, WPS Syracuse Generation, LLC, WPS Canada Generation, Inc., WPS New England Generation, Inc., WPS Westwood Generation, LLC, Advantage Energy, Inc.

*Description:* Integrys Energy Group, Inc submits revised MBR tariffs under ER95–1528 *et al.*

*Filed Date:* 12/22/2008

*Accession Number:* 20081230–0043.

*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER98–411–004.

*Applicants:* Wolverine Power Supply Cooperative, Inc.

*Description:* Wolverine Power Supply Cooperative, Inc submits revisions to its market based rate tariff to reflect the new requirements established in Order 697 and 697–A.

*Filed Date:* 12/23/2008.

*Accession Number:* 20081229–0160.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, January 13, 2009.

*Docket Numbers:* ER00–840–009; ER01–137–007; ER98–1767–014; ER99–3165–009; ER94–389–030.

*Applicants:* Tenaska Alabama II Partners, L.P., Tenaska Alabama Partners, L.P., Tenaska Frontier Partners, Ltd., Tenaska Power Services Co., TENASKA GEORGIA PARTNERS LP.

*Description:* Updated Market Power Analysis.

*Filed Date:* 12/24/2008.

*Accession Number:* 20081224–5025.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 23, 2009.

*Docket Numbers:* ER00–1115–008; ER00–3562–008; ER00–38–008; ER01–480–007; ER06–441–003; ER06–749–004; ER06–750–004; ER06–751–005; ER06–752–004; ER07–1335–004.

*Applicants:* BROAD RIVER ENERGY LLC, Calpine Construction Finance Company, LP, Calpine Energy Services LP, CARVILLE ENERGY LLC, Columbia Energy LLC, Decatur Energy Center, LLC, MOBILE ENERGY LLC, Morgan Energy Center, LLC, Pine Bluff Energy, LLC, Santa Rosa Energy Center, LLC.

*Description:* Errata to Updated Market Power Analysis of Calpine Southeast MBR Sellers under ER00–1115 *et al.*

*Filed Date:* 12/31/2008.

*Accession Number:* 20081231–5081.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER02–506–012; ER01–943–011; ER09–20–001; ER99–4160–017; ER08–451–004.

*Applicants:* Bluegrass Generation Company, L.L.C., Dynegy Power Marketing, Inc., Dynegy Marketing and Trade, Plum Point Energy Associates, LLC, Heard County Power, LLC.

*Description:* Bluegrass Generation Company, L.L.C., *et al.* submits the Updated Power Analysis under ER02–506, *et al.*

*Filed Date:* 12/24/2008.

*Accession Number:* 20081224–5079.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 23, 2009.

*Docket Numbers:* ER02–1052–010; ER96–1947–024.

*Applicants:* West Georgia Generating Company, L.L.C., LS Power Marketing, LLC.

*Description:* LS Power Marketing, LLC submits joint triennial market power update for the Southeast region under ER02–1052 *et al.*

*Filed Date:* 12/29/2008.

*Accession Number:* 20081230–0223.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 27, 2009.

*Docket Numbers:* ER03–879–006; ER03–880–006; ER03–882–006.

*Applicants:* D.E. Shaw & Co. Energy, L.L.C.

*Description:* Supplement to Application for Category 1 Seller Status and Filing of Pro Forma Tariff Changes under ER03–879 *et al.*

*Filed Date:* 12/24/2008.

*Accession Number:* 20081224–5047.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* ER04–944–004.

*Applicants:* Orion Power Midwest, L.P., Reliant Energy Mid-Atlantic Pwr Holdings, Reliant Energy New Jersey Holdings, LLC, Reliant Energy Seward, LLC, Reliant Energy Wholesale Generation, LLC.

*Description:* Reliant Energy Wholesale Generation, LLC submits a supplement to the June 30, 2008 Triennial Market Update under ER04–944.

*Filed Date:* 12/30/2008.

*Accession Number:* 20081230–5112.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 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:* ER07–1356–007; ER07–1115–006; ER07–1118–006; ER07–1120–006; ER07–1122–006; ER08–148–006; ER05–1232–015; ER09–335–001.

*Applicants:* BE Alabama LLC; BE Colquitt LLC; BE Rayle LLC; BE Satilla LLC; BE Walton LLC; Central Power & Lime, Inc.; J.P. Morgan Ventures Energy Corporation; J.P. Morgan Ventures Energy Corporation.

*Description:* J.P. Morgan Ventures Energy Corporation *et al.* submits Updated Market Power Analysis pursuant to Order Nos. 697 and 697–A Compliance Filing.

*Filed Date:* 12/31/2008.

*Accession Number:* 20081231–5094.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER07–1106–002.

*Applicants:* ArcLight Energy Marketing, LLC.

*Description:* Updated Market Power Analysis.

*Filed Date:* 12/31/2008

*Accession Number:* 20081231–5065

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER08–627–003.

*Applicants:* NSTAR Electric Company.

*Description:* NSTAR Electric Company submits proposed revisions to Schedule 20A–NSTAR of Section II of the ISO New England Inc Transmission, Markets and Services Tariff, FERC Electric Tariff 3 etc under ER08–627.

*Filed Date:* 12/29/2008.

*Accession Number:* 20081230–0218.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER08–1569–001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, LLC submits revised sheets to Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, LLC etc under ER08–1569.

*Filed Date:* 12/29/2008.

*Accession Number:* 20081230–0220.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER09–34–001.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Pacific Gas and Electric Company submit revised tariff sheets to the Transmission Owner Tariff under FERC Electric Tariff, Sixth Revised Volume 5 under ER09–34.

*Filed Date:* 12/24/2008.

*Accession Number:* 20081230–0041.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* ER09–74–001

*Applicants:* PacifiCorp

*Description:* PacifiCorp submits revised clean and blackline rate schedules that comply with Order 614 and Section 35.9 (a) under ER09–74.

*Filed Date:* 12/29/2008.

*Accession Number:* 20081230–0219.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER09–429–000.

*Applicants:* Sheldon Energy LLC.

*Description:* Sheldon Energy LLC submits an application for authorization of market based wholesale sales of energy, capacity, and ancillary services, under FERC Electric Tariff 1, and request for related Waivers under ER09–429.

*Filed Date:* 12/24/2008.

*Accession Number:* 20081230–0048.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* ER09–430–000.

*Applicants:* Willow Creek Energy LLC.

*Description:* Willow Creek LLC submits an application for authorization to make market based wholesale sales of energy, capacity, and ancillary services to its FERC Electric Tariff 1, *et al.* under ER09–430.

*Filed Date:* 12/24/2008.

*Accession Number:* 20081230–0050.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* ER09–440–000.

*Applicants:* Madison Paper Industries.

*Description:* Madison Paper Industries submits an Application for Market Based Rate Authorization and Request for Waivers and Blanket Authorizations, and submit a supplement on 12/30/08.

*Filed Date:* 12/24/2008; 12/30/2008.

*Accession Number:* 20081230–0049; 20081230–5060.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* ER09–446–000.

*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison Co submits Sub Eighth Revised Sheet No. 25 *et al.* to FERC Electric Tariff, Second Revised Volume No. 6, to be effective 3/1/09 under ER09–446 *et al.*

*Filed Date:* 12/24/2008.

*Accession Number:* 20081224–0111.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* ER09–455–000.

*Applicants:* Portland General Electric Company.

*Description:* Portland General Electric Co. submits their First Revised Rate Schedule 49, a Long Term Power Sale Agreement with San Diego Gas & Electric Co under ER09–455.

*Filed Date:* 12/22/2008.

*Accession Number:* 20081229–0119.

*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER09–456–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, LLC submits notice of the cancellation of an interim interconnection service agreement between PJM and American Electric Power Service Corporation as agent for the operating companies of the AEPSC etc under ER09–456.

*Filed Date:* 12/22/2008.
*Accession Number:* 20081229–0112.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER09–466–000.
*Applicants:* New York Independent System Operator, Inc.
*Description:* New York Independent System Operator, Inc. submits tariff revisions to its Market Administration and Control Area Services Tariff and its Open Access Transmission Tariff etc under ER09–466.
*Filed Date:* 12/23/2008.
*Accession Number:* 20081229–0102.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, January 13, 2009.

*Docket Numbers:* ER09–467–000.
*Applicants:* ISO New England Inc.
*Description:* ISO New England, Inc submits their Forward Capacity Auction Results Filing under ER09–467.
*Filed Date:* 12/23/2008.
*Accession Number:* 20081229–0101.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, January 13, 2009.

*Docket Numbers:* ER09–470–000.
*Applicants:* Macquarie Cook Power, Inc.
*Description:* Macquarie Cook Power Inc. submits a Certificate of Concurrence to the 1997 Agreement for Hourly Coordination of Projects on the Mid-Columbia River under ER09–470.
*Filed Date:* 12/24/2008.
*Accession Number:* 20081230–0037.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* ER09–471–000.
*Applicants:* Westar Energy, Inc.
*Description:* Westar Energy, Inc submits a Balancing Area Services Agreement between Westar and Smokey Hills Wind Project II, LLC under ER09–471.
*Filed Date:* 12/24/2008.
*Accession Number:* 20081230–0039.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* ER09–472–000.
*Applicants:* PacifiCorp.
*Description:* PacifiCorp submits an updated Exhibit B to a Network Integration Transmission Service Agreement between PacifiCorp Transmission and PacifiCorp Energy, etc under ER09–472.
*Filed Date:* 12/24/2008.
*Accession Number:* 20081230–0038.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* ER09–473–000.
*Applicants:* Wisconsin Public Service Corporation.
*Description:* Wisconsin Public Service Corporation Second Revised Sheet 2 *et al.* to its FERC Electric Rate Schedule 78 under ER09–473.
*Filed Date:* 12/24/2008.
*Accession Number:* 20081230–0042.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* ER09–476–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* Pacific Gas and Electric Company submits Notice of Termination of the Letter Agreement for Surplus Electric Services between PG&E and the Los Angeles Department of Water and Power under ER09–476.
*Filed Date:* 12/24/2008.
*Accession Number:* 20081230–0217.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* ER09–477–000.
*Applicants:* Acadia Power Partners, LLC.
*Description:* Acadia Power Partners, LLC and Cleco Power LLC submits a joint application for a short-term power purchase agreement under ER09–477.
*Filed Date:* 12/24/2008.
*Accession Number:* 20081230–0224.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* ER09–478–000.
*Applicants:* NorthWestern Corporation.
*Description:* NorthWestern Corporation *et al.* submits an amendment to the executed Large Generator Interconnection Agreement between NorthWesters and NaturEner Glacier Wind Energy 1, LLC originally filed by NorthWestern on 8/26/08 under ER09–478.
*Filed Date:* 12/29/2008.
*Accession Number:* 20081230–0221.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER09–479–000.
*Applicants:* PJM Interconnection, LLC.
*Description:* PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement entered into among PJM, AES, and PECO, executed on 11/24/08 under ER09–479.
*Filed Date:* 12/29/2008.
*Accession Number:* 20081230–0222.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER09–480–000.
*Applicants:* Mid-Continent Energy Marketers Association.
*Description:* Mid-Continent Energy Marketers Association *et al.* submits its proposed revisions to the MEMA Capacity and Energy Tariff under ER09–480.
*Filed Date:* 12/29/2008.
*Accession Number:* 20081230–0216.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA09–15–000.
*Applicants:* Golden Spread Electric Cooperative, Inc.
*Description:* Request for Waivers re Golden Spread Electric Cooperative, Inc under OA09–15.
*Filed Date:* 12/31/2008.
*Accession Number:* 20081231–5066.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Take notice that the Commission received the following public utility holding company filings:

*Docket Numbers:* PH09–5–000.
*Applicants:* Sempra Energy.
*Description:* Request for Waiver re Sempra Energy under PH06–108.
*Filed Date:* 12/31/2008.
*Accession Number:* 20081231–5071.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 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 dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E9–397 Filed 1–12–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

December 29, 2008.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC09–33–000.
*Applicants:* Willow Creek Hydro LLC; Sheldon Energy LLC.
*Description:* Willow Creek Energy LLC and Sheldon Energy LLC submits an application for authorization of transactions that will result in an upstream change in ownership.
*Filed Date:* 12/19/2008.
*Accession Number:* 20081223–0252.
*Comment Date:* 5 p.m. Eastern Time on Friday, January 09, 2009.

*Docket Numbers:* EC09–34–000.
*Applicants:* SOWEGA Power LLC.
*Description:* SOWEGA Power LLC submits an application for authorization under Section 203 of the Federal Power Act for disposition of jurisdictional facilities and request for expedited action.
*Filed Date:* 12/22/2008.
*Accession Number:* 20081224–0092.
*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:* ER96–2734–007.
*Applicants:* Southern Indiana Gas & Electric Company.
*Description:* Southern Indiana Gas and Electric Company *et al.* request renewal of its market-based rate authority.
*Filed Date:* 12/22/2008.
*Accession Number:* 20081224–0103.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER98–411–001.
*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 Tuesday, January 13, 2009.

*Docket Numbers:* ER00–3614–010; ER01–1300–009.
*Applicants:* BP Energy Company; Whiting Clean Energy, Inc.
*Description:* BP Energy Company submits FERC revised pages of their market-based rate wholesale power sales tariff to conform them with FERC's standard tariff language governing the sale of ancillary services in the markets administered by MISO.
*Filed Date:* 12/19/2008.
*Accession Number:* 20081223–0247.
*Comment Date:* 5 p.m. Eastern Time on Friday, January 09, 2009.

*Docket Numbers:* ER00–3751–007; ER08–1236–003;
*Applicants:* ANP FUNDING I, LLC; IPA Trading, LLC;
*Description:* IPA Entities submits an application for funding of Category 1 seller status in the Southeast, SPP, Southwest and Northwest Regions.
*Filed Date:* 12/22/2008.
*Accession Number:* 20081224–0102.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER01–205–032; ER98–2640–030; ER98–4590–027; ER99–1610–035.
*Applicants:* Xcel Energy Services Inc.; Northern States Power Company; Public Service Company of Colorado; Southwestern Public Service Company.
*Description:* Xcel Energy Operating Companies submits Attachment A an Updated Appendix.
*Filed Date:* 12/19/2008.
*Accession Number:* 20081223–0246.
*Comment Date:* 5 p.m. Eastern Time on Friday, January 09, 2009.

*Docket Numbers:* ER03–345–012.
*Applicants:* New England Power Pool Participants Comm.
*Description:* ISO New England submits semi-annual report on Load Response Programs.
*Filed Date:* 12/19/2008.
*Accession Number:* 20081223–0236.
*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.
*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:* ER07–476–003.
*Applicants:* ISO New England Inc.
*Description:* ISO New England Inc *et al.* submits transmittal letter and proposed amendments to the ISO Tariff in compliance with the Commission's 10/16/08 order in the proceeding.
*Filed Date:* 12/22/2008.
*Accession Number:* 20081224–0099.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER07–521–007.
*Applicants:* New York Independent System Operator, In.
*Description:* New York Independent System Operator, Inc submits compliance filing.
*Filed Date:* 12/22/2008.
*Accession Number:* 20081224–0100.
*Comment Date:* 5.p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER08–100–007; ER07–1215–007; ER07–265–008.
*Applicants:* Sempra Energy Trading, LLC, Sempra Energy Solutions LLC, The Royal Bank of Scotland plc.
*Description:* Sempra Energy Trading LLC *et al.* submits a notice of non-material change in status.
*Filed Date:* 12/19/2008.
*Accession Number:* 20081223–0231.
*Comment Date:* 5 p.m. Eastern Time on Friday, January 09, 2009.

*Docket Numbers:* ER08–209–001.
*Applicants:* Midwest Independent Transmission System.
*Description:* Midwest Independent System Operator, Inc submits a revised unexecuted Large Generator Interconnection Agreement among itself, Prairie State Generating Company, LLC *et al.* as acting agent for Illinois Power Company *et al.*
*Filed Date:* 12/22/2008.
*Accession Number:* 20081224–0091.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER08–394–018.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc reports that they make the compliance filing to comply with the Commission's 60-day compliance directives in the Rehearing Order.
*Filed Date:* 12/19/2008.
*Accession Number:* 20081223–0239.
*Comment Date:* 5 p.m. Eastern Time on Friday, January 09, 2009.

*Docket Numbers:* ER08–1328–001.
*Applicants:* New England Participating Transmission.
*Description:* New England Participating Transmission Owners

submits supporting materials to supplement its 7/31/08 informational filing.

*Filed Date:* 12/19/2008.

*Accession Number:* 20081223–0240.

*Comment Date:* 5 p.m. Eastern Time on Friday, January 09, 2009.

*Docket Numbers:* ER09–339–001.

*Applicants:* Crystal Lake Wind, LLC.

*Description:* Crystal Lake Wind, LLC submits amended and restated service agreement.

*Filed Date:* 12/19/2008.

*Accession Number:* 20081223–0237.

*Comment Date:* 5 p.m. Eastern Time on Friday, January 09, 2009.

*Docket Numbers:* ER09–393–001.

*Applicants:* West Oaks Energy, LLC.

*Description:* West Oaks Energy, LLC submits a revised application for Market-Based Rate Authority, filed on 12/10/08.

*Filed Date:* 12/23/2008.

*Accession Number:* 20081229–0115.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, January 13, 2009.

*Docket Numbers:* ER09–432–000.

*Applicants:* Chinook Power Transmission, LLC.

*Description:* Chinook Power Transmission, LLC submits an application for authority to sell transmission rights at negotiated rates.

*Filed Date:* 12/19/2008.

*Accession Number:* 20081223–0163.

*Comment Date:* 5 p.m. Eastern Time on Friday, January 09, 2009.

*Docket Numbers:* ER09–433–000.

*Applicants:* Zephyr Power Transmission, LLC.

*Description:* Zephyr Power Transmission, LLC submits an application for authority to sell transmission rights at negotiated rates.

*Filed Date:* 12/19/2008.

*Accession Number:* 20081223–0162.

*Comment Date:* 5 p.m. Eastern Time on Friday, January 09, 2009.

*Docket Numbers:* ER09–434–000.

*Applicants:* Pittsfield Generating Company, L.P.

*Description:* Pittsfield Generating Co, LP submits its proposed revisions to its cost of service Reliability Must-Run Agreement.

*Filed Date:* 12/19/2008.

*Accession Number:* 20081223–0161.

*Comment Date:* 5 p.m. Eastern Time on Friday, January 09, 2009.

*Docket Numbers:* ER09–435–000.

*Applicants:* Entergy Services, Inc.

*Description:* Entergy Operating Companies submits an executed Second Revised Network Integration Transmission Service Agreement *etc.*

*Filed Date:* 12/19/2008.

*Accession Number:* 20081223–0160.

*Comment Date:* 5 p.m. Eastern Time on Friday, January 09, 2009.

*Docket Numbers:* ER09–436–000.

*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison submits a Small Generator Interconnection Agreement.

*Filed Date:* 12/19/2008.

*Accession Number:* 20081223–0159.

*Comment Date:* 5 p.m. Eastern Time on Friday, January 09, 2009.

*Docket Numbers:* ER09–437–000.

*Applicants:* New York State Reliability Council, L.L.

*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.

*Docket Numbers:* ER09–439–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool submits a partially executed Service Agreement for Network Integration Transmission Service *etc.*

*Filed Date:* 12/22/2008.

*Accession Number:* 20081223–0233.

*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER09–441–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool submits an executed Service Agreement for Network Integration Transmission Service *etc.*

*Filed Date:* 12/22/2008.

*Accession Number:* 20081223–0234.

*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER09–442–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc submits an executed Large Generator Interconnection Agreement between SPP as Transmission Provider, *et al.* as Interconnection Customer.

*Filed Date:* 12/22/2008.

*Accession Number:* 20081229–0117.

*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009

*Docket Numbers:* ER09–443–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc request for Waiver of Tariff Provision and Expedited Treatment.

*Filed Date:* 12/22/2008.

*Accession Number:* 20081229–0118.

*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER09–444–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc submits revisions to its Open Access Transmission tariff in order to adopt changes to its Credit Policy.

*Filed Date:* 12/22/2008.

*Accession Number:* 20081229–0116.

*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER09–445–000.

*Applicants:* Southern Company Services, Inc.

*Description:* Alabama Power Company *et al.* submits the transmittal letter and the Interconnection Agreement between Live Oaks Company, LLC and Southern Companies.

*Filed Date:* 12/22/2008.

*Accession Number:* 20081224–0098.

*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER09–447–000.

*Applicants:* PJM Interconnection, LLC.

*Description:* PJM Interconnection, LLC submits notice of the cancellation of an interconnection service agreement between PJM and Susquehanna Electric Company designated as Original Service Agreement 798.

*Filed Date:* 12/22/2008.

*Accession Number:* 20081224–0097.

*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER09–448–000.

*Applicants:* Entergy Services, Inc.

*Description:* Entergy Services, Inc submits transmittal letter and a mutually-executed Dynamic Transfer Operating Agreement *etc.*

*Filed Date:* 12/22/2008.

*Accession Number:* 20081224–0096.

*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER09–449–000.

*Applicants:* Entergy Services, Inc.

*Description:* Entergy Services, LP submits transmittal letter with Attachments A & B.

*Filed Date:* 12/22/2008.

*Accession Number:* 20081224–0095.

*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER09–450–000.

*Applicants:* Kansas City Power & Light Company.

*Description:* Kansas City Power & Light submits amended Service Schedule A–EID and new Service Schedule C–EID, both of which are to be service schedules under KCP&L provides electric interconnection and delivery services to KEPCO *etc.*

*Filed Date:* 12/22/2008.

*Accession Number:* 20081224–0094.

*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER09–453–000.
*Applicants:* Deseret Generation & Trans Co-Oper., Inc.
*Description:* Deseret Generation & Transmission Co-operative, Inc submits an amendment to its service agreement for wholesale requirements service to one of its members, Dixie-Escalante Rural Electric Association, Inc.
*Filed Date:* 12/23/2008.
*Accession Number:* 20081229–0114.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, January 13, 2009.

*Docket Numbers:* ER09–454–000.
*Applicants:* ISO New England Inc. & New England Power.
*Description:* ISO New England Inc *et al.* submits amendments to the ISO Financial Assurance Policy for Market Participants that is Exhibit 1A to Section I of the ISO Tariff and to the ISO Billing Policy that is Exhibit 1D to Section I of the ISO Tariff *etc.*
*Filed Date:* 12/23/2008.
*Accession Number:* 20081229–0113.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, January 13, 2009.

*Docket Numbers:* ER09–456–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, LLC submits notice of the cancellation of an interim interconnection service agreement between PJM and American Electric Power Service Corporation as agent for the operating companies of the AEPSC *etc.*
*Filed Date:* 12/22/2008.
*Accession Number:* 20081229–0112.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER09–457–000.
*Applicants:* Midwest Independent System Transmission.
*Description:* Midwest Independent System Operator, Inc submit proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff.
*Filed Date:* 12/22/2008.
*Accession Number:* 20081229–0111.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER09–459–000.
*Applicants:* American Transmission Systems, Incorporated.
*Description:* American Transmission System, Incorporated submits Wholesale Distribution Service Agreement between ATSI as agent for Pennsylvania Power Company and the Borough if Wampum, PA.
*Filed Date:* 12/22/2008.
*Accession Number:* 20081229–0108.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER09–460–000.
*Applicants:* Arizona Public Service Company.
*Description:* Arizona Public Service Company submits proposed revisions to APS's FERC Electric Tariff, Volume 3 APS's Market Rate Tariff.
*Filed Date:* 12/22/2008.
*Accession Number:* 20081229–0109.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER09–466–000.
*Applicants:* New York Independent System Operator, Inc.
*Description:* New York Independent System Operator, Inc submits tariff revisions to its Market Administration and Control Area Services Tariff and its Open Access Transmission Tariff *etc.*
*Filed Date:* 12/23/2008.
*Accession Number:* 20081229–0102.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, January 13, 2009.

*Docket Numbers:* ER09–469–000.
*Applicants:* Midwest Independent Transmission System.
*Description:* Midwest Independent Transmission System Operator, Inc *et al.* submit revisions to their Joint Operating Agreement and Congestion Management Process as part of the RTOs' 2008 initiative to update their JOA.
*Filed Date:* 12/19/2008.
*Accession Number:* 20081229–0099.
*Comment Date:* 5 p.m. Eastern Time on Friday, January 09, 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.

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**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E9–398 Filed 1–12–09; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

December 19, 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 8, 2009.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER08–1581–000.
*Applicants:* Mint Farm Energy Center LLC.
*Description:* Puget Sound Energy, Inc submits Revised Cancelled Tariff Sheet reflecting 12/5/08 as the effective date under ER08–1581.

*Filed Date:* 12/15/2008.
*Accession Number:* 20081218–0190.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 5, 2009.

*Docket Numbers:* ER09–185–001.
*Applicants:* Weyerhaeuser NR Company.
*Description:* Weyerhaeuser NR Company submits their revised Rate Schedule 1 in connection with the petition for market based rate authority etc under ER09–185.
*Filed Date:* 12/18/2008.
*Accession Number:* 20081219–0112.
*Comment Date:* 5 p.m. Eastern Time on Monday, December 29, 2008.

*Docket Numbers:* ER09–201–001.
*Applicants:* Gilroy Energy Center, LLC.
*Description:* Gilroy Energy Center, LLC submits a revision to Tariff Sheet 145, which is contained in the Rate Schedules of its Reliability Must-Run Agreement with the California Independent System Operator Corporation.
*Filed Date:* 12/16/2008.
*Accession Number:* 20081218–0221.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, January 6, 2009.

*Docket Numbers:* ER09–417–000.
*Applicants:* Southern California Edison Company.
*Description:* Southern California Edison Company submits revised sheets to the Interconnection Facilities Agreement with the County Sanitation Districts of Los Angeles etc.
*Filed Date:* 12/16/2008.
*Accession Number:* 20081218–0213.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, January 6, 2009.

*Docket Numbers:* ER09–418–000.
*Applicants:* Startrans IO, L.L.C.
*Description:* Startrans IO, LLC submits First Revised Sheet No. 24 et al. to FERC Electric Tariff, Original Volume No. 1, to become effective 1/1/09.
*Filed Date:* 12/16/2008.
*Accession Number:* 20081218–0216.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, January 6, 2009.

*Docket Numbers:* ER09–419–000.
*Applicants:* California Independent System Operator C.
*Description:* California Independent System Operator Corp submits its Transmission Access Charge Informational Filing.
*Filed Date:* 12/16/2008.
*Accession Number:* 20081218–0215.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, January 6, 2009.

*Docket Numbers:* ER09–420–000.
*Applicants:* ISO New England Inc., Public Service Company of New Hampshire
*Description:* ISO New England Inc. et al. submits an executed non-confirming Standard Large Generator Interconnection Agreement.
*Filed Date:* 12/16/2008.
*Accession Number:* 20081218–0214.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, January 6, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA08–101–002.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, LLC submits errata filing in response to a request from Commission Staff for clarification revisions in Attachment C of the PJM Tariff regarding references to coordination agreements etc.
*Filed Date:* 12/16/2008.
*Accession Number:* 20081218–0219.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, January 6, 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 dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**
*Deputy Secretary.*
[FR Doc. E9–485 Filed 1–12–09; 8:45 am]
BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

January 6, 2009.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER97–324–013; ER97–3834–020.
*Applicants:* The Detroit Edison Company, DTE Energy Trading, Inc.
*Description:* DTE Entities submits revised tariff sheets in compliance with the order issued 12/18/08.
*Filed Date:* 12/22/2008.
*Accession Number:* 20081229–0155.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* ER98–4289–006.
*Applicants:* Montana-Dakota Utilities Company.
*Description:* Montana-Dakota Utilities Co. submits the Updated Market Power Analysis.
*Filed Date:* 12/30/2008.
*Accession Number:* 20090105–0008.
*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER99–845–014.
*Applicants:* Puget Sound Energy, Inc.
*Description:* Notice of Change in Status of Puget Sound Energy, Inc.
*Filed Date:* 01/05/2009.
*Accession Number:* 20090105–5107.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 26, 2009.

*Docket Numbers:* ER99–2948–016; ER00–2918–015; ER00–2917–015; ER05–261–008; ER01–556–014; ER01–1654–017; ER02–2567–015; ER05–728–008; ER04–485–012; ER07–247–007; ER07–245–007; ER07–244–007.
*Applicants:* Baltimore Gas and Electric Company, Constellation Power

Sources Generation, Inc., Calvert Cliffs Nuclear Power Plant, Inc., Constellation Energy Commodities Group, Inc., Handsome Lake Energy, LLC, Nine Mile Point Nuclear Station, LLC, Constellation NewEnergy, Inc., Constellation Energy Commodities Group Maine, LLC, R.E. Ginna Nuclear Power Plant, LLC, Raven One, LLC, Raven Two, LLC, Raven Three, LLC.

*Description:* Constellation MBR Entities forwards six public CD's containing their joint triennial market power update for the Southeast Region, and updated market power analysis in compliance with Order 697 etc.

*Filed Date:* 12/30/2008.

*Accession Number:* 20090102–0092.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER99–3665–010; ER02–1947–011, ER08–1354–004.

*Applicants:* Occidental Power Marketing L.P., Occidental Power Services, Inc., Occidental Chemical Corporation.

*Description:* Occidental Sellers submits an updated market power analysis for the Southeast region.

*Filed Date:* 12/31/2008.

*Accession Number:* 20090105–0004.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER00–38–008; ER00–1115–008; ER00–3562–008; ER06–749–004; ER06–751–005; ER06–441–003; ER01–480–007; ER06–750–004; ER06–752–004; ER07–1335–004.

*Applicants:* Broad River Energy LLC, Calpine Construction Finance Company, LP, Calpine Energy Services, L.P., Carville Energy, LLC, Columbia Energy, LLC, Decatur Energy Center, LLC, Mobile Energy, LLC, Morgan Energy Center, LLC, Pine Bluff Energy, LLC, Santa Rosa Energy Center, LLC.

*Description:* Broad River Energy LLC et al (Calpine Southeast MBR Sellers) submits their joint triennial market power update to comply with the Commission's directives in Order No 697–A etc.

*Filed Date:* 12/30/2008.

*Accession Number:* 20090102–0083.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER00–3080–004.

*Applicants:* Otter Tail Power Company.

*Description:* Otter Tail Power Company submits a Notice of Change in Status etc.

*Filed Date:* 12/30/2008.

*Accession Number:* 20090102–0085.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER00–3412–008; ER00–816–006; ER04–53–009; ER04–8–007; ER98–2440–007; ER98–3285–005; ER05–638–002; ER00–2687–010; ER05–1482–003.

*Applicants:* Ameren Energy Generating Company, Ameren Energy Marketing Company, AmerenEnergy Resources Generating Company, AmerenEnergy Medina Valley Cogen, L.L.C., Central Illinois Light Company, Central Illinois Public Service Company, Illinois Power Company, Union Electric Company, Electric Energy, Inc.

*Description:* Ameren Services Company submits an updated market power analysis.

*Filed Date:* 12/24/2008.

*Accession Number:* 20090102–0094.

*Comment Date:* 5 p.m. Eastern Time on Monday, February 23, 2009.

*Docket Numbers:* ER01–1403–010; ER06–1443–006; ER04–366–008; ER01–2968–011; ER01–845–009; ER05–1122–007; ER08–107–004

*Applicants:* FirstEnergy Operating Companies, Pennsylvania Power Company, Jersey Central Power & Light Company, FirstEnergy Solutions Corp., FirstEnergy Generation Corporation, FirstEnergy Nuclear Generation Corporation, FirstEnergy Mansfield Unit 1 Corp.

*Description:* The First Energy Operating Companies et al submits Triennial Market Power Update Analysis for Markets in the Midwest ISO.

*Filed Date:* 12/29/2008.

*Accession Number:* 20090102–0040.

*Comment Date:* 5 p.m. Eastern Time on Friday, February 27, 2009.

*Docket Numbers:* ER01–1418–010; ER02–1238–010, ER03–28–004; ER03–398–011.

*Applicants:* Effingham County Power, LLC, MPC Generating, LLC, Walton County Power, LLC, Washington County Power, LLC.

*Description:* Effingham County Power, LLC submits Updated Market Power Analysis; Application for Order Granting Revised Market-Based Rate Authority and Certain Waivers and Blanket Approvals; and Order 697 Compliance Filing.

*Filed Date:* 12/31/2008.

*Accession Number:* 20090105–0005.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER01–2636–005.

*Applicants:* ALLETE, Inc.

*Description:* Minnesota Power submits its Triennial Market Power Analysis requesting authority to sell energy, capacity and ancillary services at market-based rates pursuant to FERC's 6/21/07 Order.

*Filed Date:* 12/31/2008.

*Accession Number:* 20090105–0103.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER02–237–012.

*Applicants:* J. Aron & Company.

*Description:* J. Aron & Company submits the Updated Market Power Analysis.

*Filed Date:* 12/30/2008.

*Accession Number:* 20090102–0086.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER02–1572–006; ER02–1571–006; ER00–1259–008; ER00–3718–007; ER97–4281–019.

*Applicants:* Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC, NRG Sterlington Power LLC, NRG Power Marketing LLC.

*Description:* Bayou Cove Peaking Power LLC et al submits Updated Market Power Analysis.

*Filed Date:* 12/31/2008.

*Accession Number:* 20090105–0007.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER04–805–009.

*Applicants:* Wabash Valley Power Association, Inc.

*Description:* Wabash Valley Power submits Updated Market Power Analysis.

*Filed Date:* 12/30/2008.

*Accession Number:* 20090102–0084.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER05–1191–014.

*Applicants:* Union Power Partners, LP.

*Description:* Union Power Partners, LP submits an updated market power analysis that supports its continued market-based rate authorization pursuant to Orders 697 and 697A.

*Filed Date:* 12/30/2008.

*Accession Number:* 20090102–0088.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER06–549–002.

*Applicants:* Wheelabrator Ridge Energy Inc.

*Description:* Wheelabrator Ridge Energy, Inc submits the regional schedule set forth in Appendix D–2 of Order 697–A.

*Filed Date:* 12/31/2008.

*Accession Number:* 20090105–0018.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER06–744–004.

*Applicants:* Sabine Cogen, LP.

*Description:* Sabine Cogen, LP submits updated market power analysis and compliance filing.

*Filed Date:* 12/31/2008.

*Accession Number:* 20090105–0021.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER06–771–002; ER06–772–002; ER06–773–002.

*Applicants:* ExxonMobil Baton Rouge Complex, ExxonMobil Beaumont Complex, ExxonMobil LaBarge Shute Creek Treating Facility.

*Description:* Exxon Mobil Baton Rouge Complex et al submits their revised Order No 697 Compliance Filing.

*Filed Date:* 12/30/2008.

*Accession Number:* 20090102–0087.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER06–1265–002; ER02–1336–005.

*Applicants:* Orlando CoGen Limited, L.P., Vandolah Power Company, L.L.C.

*Description:* Pursuant to Order 697, Orlando CoGen Limited, LP et al request a Notice of Change in Status, and Limited Request for Privileged Treatment.

*Filed Date:* 12/30/2008.

*Accession Number:* 20090105–0101.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 2, 2009.

*Docket Numbers:* ER08–396–003; EL08–31–001.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc submits revised tariff sheets for the Rate Formula Template of its Open Access Transmission Tariff. FERC Electric Tariff, Second Revised 5 in conformance with the Commission's Designation etc.

*Filed Date:* 12/31/2008.

*Accession Number:* 20090105–0020.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER09–134–001; ER09–135–001; ER09–136–001; ER09–137–001.

*Applicants:* FirstEnergy Solutions Corp., FirstEnergy Generation Corp., FirstEnergy Nuclear Generation Corp., FirstEnergy Mansfield Unit 1 Corp.

*Description:* First Energy Solutions Corp et al submit amended market based rate tariffs in accordance with the Commission's 12/23/08 order.

*Filed Date:* 12/30/2008.

*Accession Number:* 20090102–0013.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER09–481–000.

*Applicants:* Westar Energy, Inc, Kansas Gas and Electric Company

*Description:* Westar Energy, Inc submits ministerial tariff revisions to its Rate Formula Template to Westar's FERC Open Access Transmission Tariff.

*Filed Date:* 12/30/2008.

*Accession Number:* 20090102–0012.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER09–482–000.

*Applicants:* Golden Spread Electric Cooperative, Inc.

*Description:* Golden Spread Electric Cooperative, Inc submits certain amendments to Golden Spread Eighth Revised Rate Schedule FERC 35 a long-term, bilateral Replacement Energy Agreement etc.

*Filed Date:* 12/31/2008.

*Accession Number:* 20090105–0024.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER09–483–000.

*Applicants:* Northern States Power Company.

*Description:* NSP Companies submits Notices of Cancellation of five Short-Term Market-Based Electric Service Agreement and one Long-Term Market-Based Electric Service Agreement among the NSP Companies and various counterparties.

*Filed Date:* 12/31/2008.

*Accession Number:* 20090105–0023.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER09–484–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, LLC submits amendments to Schedule 12—Appendix of the PJM Tariff etc.

*Filed Date:* 12/30/2008.

*Accession Number:* 20090105–0019.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER09–485–000.

*Applicants:* Electric Energy, Inc.

*Description:* Electric Energy, Inc submits Modification 21 to a Power Contract dated 9/2/87 between Electric Energy, Inc and the United States Department of Energy etc.

*Filed Date:* 12/30/2008.

*Accession Number:* 20090105–0010.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER09–486–000.

*Applicants:* Ashtabula Wind, LLC.

*Description:* Ashtabula Wind, LLC submits jurisdictional service agreement.

*Filed Date:* 12/30/2008.

*Accession Number:* 20090105–0022.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* ER09–487–000.

*Applicants:* NAEA Energy Massachusetts, LLC.

*Description:* NAEA Energy Massachusetts, LLC submits proposed revisions of its two cost-of-service Reliability Must-Run Agreements with ISO New England, Inc.

*Filed Date:* 12/31/2008.

*Accession Number:* 20090105–0009.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES07–36–002.

*Applicants:* Entergy Texas, Inc.

*Description:* Request of Entergy Texas, Inc., for Modification of Order Issued Under Section 204(a).

*Filed Date:* 01/02/2009.

*Accession Number:* 20090102–5062.

*Comment Date:* 5 p.m. Eastern Time on Friday, January 23, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA08–69–002.

*Applicants:* Tucson Electric Power Company.

*Description:* Tucson Electric Power Company submits Open Access Transmission Tariff sheets.

*Filed Date:* 12/30/2008.

*Accession Number:* 20090102–0014.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

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**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E9–486 Filed 1–12–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Wednesday, January 7, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP96–272–086.
*Applicants:* Northern Natural Gas Company.
*Description:* Northern Natural Gas Company submits Second Revised Sheet 66B.01a *et al.* to FERC Electric Gas Tariff, Fifth Revised Volume 1, effective 1/1/09.
*Filed Date:* 12/30/2008.
*Accession Number:* 20081231–0109.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* RP96–331–020.
*Applicants:* National Fuel Gas Supply Corporation.
*Description:* National Fuel Gas Supply Corporation submits Substitute Eighth Revised Sheet 12 and Fifth Revised Sheet 13 to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 12/1/08.
*Filed Date:* 12/30/2008.
*Accession Number:* 20081231–0108.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* RP96–383–090.
*Applicants:* Dominion Transmission, Inc.
*Description:* Dominion Transmission, Inc. submits Fourteenth Revised Sheet 1405 to FERC Gas Tariff, Third Revised Volume 1, to be effective 1/1/09.
*Filed Date:* 12/30/2008.
*Accession Number:* 20081231–0110.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* RP98–18–040.
*Applicants:* Iroquois Gas Transmission System, L.P.
*Description:* Iroquois Gas Transmission System, LP submits Second Revised Sheet 6F *et al.* to FERC Gas Tariff, First Revised Volume No 1, to be effective 1/1/09.
*Filed Date:* 12/31/2008.
*Accession Number:* 20090105–0003.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* RP99–176–178.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Natural Gas Pipeline Company of America LLC submits two amendments to the Transportation Rate Schedule FTS Agreement with a negotiated rate exhibit with Eagle Energy Partners I, LP.
*Filed Date:* 12/31/2008.
*Accession Number:* 20090105–0002.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* RP99–176–179.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Natural Gas Pipeline Company of America LLC submits their Transportation Rate Schedule FTS Agreement with a negotiated rate exhibit with ConocoPhillips Co as part of FERC Gas Tariff, Seventh Revised Volume 1, effective 12/1/08.
*Filed Date:* 12/31/2008.
*Accession Number:* 20090105–0001.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* RP02–534–011.
*Applicants:* Guardian Pipeline, LLC.
*Description:* Guardian Pipeline, LLC submits First Revised Sheet 9A to FERC Gas Tariff, Original Volume 1, to be effective 1/1/09.
*Filed Date:* 12/31/2008.
*Accession Number:* 20090105–0013.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* RP03–36–039.
*Applicants:* Dauphin Island Gathering Partners.
*Description:* Dauphin Island Gathering Partners submits Thirty Second Revised Sheet 10 to its FERC Gas Tariff, First Revised Volume 1, to be effective 1/2/09.
*Filed Date:* 01/02/2009.
*Accession Number:* 20090105–0233.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* RP09–61–002.
*Applicants:* Gulf Crossing Pipeline Company LLC.
*Description:* Gulf Crossing Pipeline Company LLC submits its Compliance Filing.
*Filed Date:* 01/05/2009.
*Accession Number:* 20090105–5109.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* RP09–193–000.
*Applicants:* Texas Eastern Transmission, L.P.
*Description:* Texas Eastern Transmission, LP submits Thirtieth Revised Sheet 25 *et al.* to Gas Tariff, Seventh Revised Volume 1, and First Revised Volume 2, to be effective 2/1/09.
*Filed Date:* 12/31/2008.
*Accession Number:* 20090105–0011.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* RP09–194–000.
*Applicants:* Tennessee Gas Pipeline Company.
*Description:* Tennessee Gas Pipeline Company submits Third Revised Sheet No 157 *et al.* to FERC Gas Tariff, Fifth Revised Volume No 1.
*Filed Date:* 12/31/2008.
*Accession Number:* 20090105–0014.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* RP09–195–000.
*Applicants:* National Fuel Gas Supply Corporation.
*Description:* National Fuel Gas Supply Corporation submits its 123rd Revised Sheet 9 to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 1/1/09.
*Filed Date:* 12/31/2008.
*Accession Number:* 20090105–0012.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 2009.

*Docket Numbers:* RP09–196–000.
*Applicants:* Central Kentucky Transmission Company.
*Description:* Central Kentucky Transmission Company submits their Penalty Revenue Crediting Report for the 2006–2007 contract year.
*Filed Date:* 01/02/2009.
*Accession Number:* 20090106–0074.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* RP09–196–000.
*Applicants:* Central Kentucky Transmission Company.
*Description:* Central Kentucky Transmission Company submits the corrected Penalty Revenue Crediting Report for the 2007–2008 contract year under RP09–196.
*Filed Date:* 01/05/2009.
*Accession Number:* 20090106–0245.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* RP09–197–000.
*Applicants:* Columbia Gas Transmission, LLC.
*Description:* Columbia Gas Transmission LLC submits their Penalty Revenue Crediting Report for the 2006–2007 contract year.

*Filed Date:* 01/02/2009.
*Accession Number:* 20090106–0073.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* RP09–197–000.
*Applicants:* Columbia Gas Transmission, LLC.
*Description:* Columbia Gas Transmission, LLC submits a corrected annual Penalty Revenue Crediting Report for the 2007–2008 contract year.
*Filed Date:* 01/05/2009.
*Accession Number:* 20090106–0145.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* RP09–198–000.
*Applicants:* Columbia Gulf Transmission Company.
*Description:* Columbia Gulf Transmission Company submits their Penalty Revenue Crediting Report for the 2007–2008 contract year.
*Filed Date:* 01/02/2009.
*Accession Number:* 20090106–0072.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* RP09–199–000.
*Applicants:* Crossroads Pipeline Company.
*Description:* Crossroads Pipeline Co. submits their Penalty Revenue Crediting Report for the 2006–2007.
*Filed Date:* 01/02/2009.
*Accession Number:* 20090106–0079.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* RP09–199–000.
*Applicants:* Crossroads Pipeline Company.
*Description:* Crossroads Pipeline Company submits the corrected Penalty Revenue Crediting Report for the 2007–2008 contract year under RP09–199.
*Filed Date:* 01/05/2009.
*Accession Number:* 20090106–0244.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 14, 2009.

*Docket Numbers:* RP09–201–000.
*Applicants:* Sabine Pipe Line LLC.
*Description:* Sabine Pipe Line LLC submits First Revised Sheet No. 310 *et al.* to FERC Gas Tariff, Original Volume No.1, to be effective 2/1/09.
*Comment Date:* 01/05/2009.
*Accession Number:* 20090106–0289.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* RP09–202–000.
*Applicants:* Midwestern Gas Transmission Company.
*Description:* Midwestern Gas Transmission Company submits Sixteenth Revised Sheet 273 to its FERC Gas Tariff, Third Revised Volume 1.
*Filed Date:* 01/05/2009.
*Accession Number:* 20090106–0288.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, January 21, 2009.

*Docket Numbers:* CP06–449–003
*Applicants:* Kinder Morgan Louisiana Pipeline LLC
*Description:* Kinder Morgan Louisiana Pipeline, LLC's abbreviated application for limited amendment of certificate authority.
*Filed Date:* 12/30/2008.
*Accession Number:* 20090106–0071.
*Comment Date:* 5 p.m. Eastern Time on Monday, January 12, 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 email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**
*Deputy Secretary.*
[FR Doc. E9–487 Filed 1–12–09; 8:45 am]
**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2003–0052; FRL–8761–9]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Risk Management Program Requirements and Petitions To Modify the List of Regulated Substances Under Section 112(r) of the Clean Air Act (CAA) (Renewal); EPA ICR No. 1656.13; OMB Control No. 2050–0144

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

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before February 12, 2009.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0052, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-Docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Air & Radiation Docket, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Sicy Jacob, Office of Emergency Management, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8019; fax number: (202) 564–2620; e-mail address: *jacob.sicy@epa,gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for

review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 14, 2008 (73 *FR* 47594), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0052, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air & Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

*Title:* Risk Management Program Requirements and Petitions to Modify the List of Regulated Substances under section 112(r) of the Clean Air Act (CAA) (Renewal);

*ICR Number:* EPA ICR No. 1656.13, OMB Control No. 2050–0144.

*ICR Status:* This ICR is scheduled to expire on January 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* The 1990 CAA Amendments added section 112(r) to provide for the prevention and mitigation of accidental releases. Section 112(r) mandates that EPA promulgate a list of ''regulated substances'' with threshold quantities and establish procedures for the addition and deletion of substances from the list of regulated substances. Processes at stationary sources that contain more than a threshold quantity of a regulated substance are subject to accidental release prevention regulations promulgated under CAA section 112(r)(7). These two rules are codified as 40 CFR part 68. Part 68 requires that sources with more than a threshold quantity of a regulated substance in a process develop and implement a risk management program and submit a risk management plan (RMP) to EPA. The compliance schedule for the part 68 requirements was established by rule on June 20, 1996. Burden to sources that are currently covered by part 68, for initial rule compliance, including rule familiarization and program implementation was accounted for in previous ICRs. Sources submitted their first RMPs on June 21, 1999. The next compliance deadline for most sources was June 21, 2004, five years after the first submission. Some sources revised and submitted their RMPs between the five-year deadlines. These sources were then assigned a new five-year compliance deadline based on the date of their revised plan submission. The next submission deadline of RMPs for most sources is June 21, 2009. However, as only some regulated entities have a compliance deadline of June 2009, the remaining sources have been assigned a deadline in 2010, 2011, 2012 or 2013 (the last two years are after the period covered by this ICR) based on the date of their most recent submission. The period covered by this ICR includes the regulatory reporting deadline, June 2009. In this ICR, EPA has accounted burden for new sources that may become subject to the regulations, currently covered sources with compliance deadlines in this ICR period (2009 to 2011), sources that are out of compliance since the last regulatory deadline but are expected to comply during this ICR period, and sources that have deadlines beyond this ICR period but are required to comply with certain prevention program documentation requirements.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 20.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Entities potentially affected by this action are chemical manufacturers, petroleum refineries, water treatment systems, non-chemical manufacturers, etc.

*Estimated Number of Respondents:* 13,718, including State implementing agencies.

*Frequency of Response:* Every five years, unless the facilities need to update their pervious submission earlier to comply with a rule requirement.

*Estimated Total Annual Burden Hours:* 93,982.

*Estimated Total Annual Cost:* $9,785,371.00. There are no capital or operating and maintenance costs associated with this ICR since the Agency expects all sources to submit their RMPs on-line using the new electronic reporting system, RMP* eSubmit.

*Changes in the Estimates:* There is a decrease of 4,617 hours for all sources and states from the previous ICR. There are two primary reasons for this decrease in burden. First, as explained in section 1 of the supporting statement for this ICR renewal, the burden varies from ICR to ICR due to different compliance deadlines based on the sources' RMP re-submission deadline and other regulatory deadlines. Therefore, the burden fluctuates each year depending on how many sources have to submit their RMP and comply with certain prevention program requirements. Second, the number of sources subject to the regulations is lower than in the previous ICR (16,634 in the previous ICR and 13,718 sources in this ICR period).

Dated: January 6, 2009.

**John Moses,**

*Acting Director, Collection Strategies Division.*

[FR Doc. E9–471 Filed 1–12–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8761–8]**

## Agency Information Collection Activities OMB Responses

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

**ACTION:** Notice.

**SUMMARY:** This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

**FOR FURTHER INFORMATION CONTACT:** Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

**SUPPLEMENTARY INFORMATION:**

### OMB Responses to Agency Clearance Requests

*OMB Approvals*

EPA ICR Number 1723.05; Reporting and Recordkeeping Requirements for Importation of Nonroad Engines and Recreational Vehicles; in 40 CFR 85.1501, 40 CFR 90.601 and 19 CFR 12.73 and 12.74; was approved 12/09/2008; OMB Number 2060–0320; expires 12/31/2011.

EPA ICR Number 1718.08; Fuel Quality Regulations for Diesel Fuel Sold in 2001 & Later Years; for Tax-Exempt (Dyed) Highway Diesel Fuel; & Nonroad Locomotive & Marine Diesel Fuel (Renewal); in 40 CFR 80.561, 80.590, 80.591, 80.592, 80.593, 80.594, 80.597, 80.600, 80.607, and 80.620; was approved 12/09/2008; OMB Number 2060–0308; expires 12/31/2011.

EPA ICR Number 0746.07; NSPS for Calciners and Dryers in Mineral Industries (Renewal); in 40 CFR Part 60, Subpart UUU; was approved 12/09/2008; OMB Number 2060–0251; expires 12/31/2011.

EPA ICR Number 1557.07; NSPS for Municipal Solid Waste Landfills (Renewal); in 40 CFR part 60, subpart WWW; was approved 12/09/2008; OMB Number 2060–0220; expires 12/31/2011.

EPA ICR Number 0660.10; NSPS for Metal Coil Surface Coating (Renewal); in 40 CFR part 60, subpart TT; was approved 12/09/2008; OMB Number 2060–0107; expires 12/31/2011.

EPA ICR Number 1054.10; NSPS for Petroleum Refineries (Renewal); in 40 CFR part 60, subpart J; was approved 12/09/2008; OMB Number 2060–0022; expires 12/31/2011.

EPA ICR Number 0982.09; NSPS for Metallic Mineral Processing Plants (Renewal); in 40 CFR part 60, subpart LL; was approved 12/09/2008; OMB Number 2060–0016; expires 12/31/2011.

EPA ICR Number 1131.09; NSPS for Glass Manufacturing Plants (Renewal); in 40 CFR part 60, subpart CC; was approved 12/09/2008; OMB Number 2060–0054; expires 12/31/2011.

EPA ICR Number 1069.09; NSPS for Primary and Secondary Emissions from Basic Oxygen Furnaces (Renewal); in 40 CFR part 60, subparts N and Na; was approved 12/09/2008; OMB Number 2060–0029; expires 12/31/2011.

Part EPA ICR Number 1057.11; NSPS for Sulfuric Acid Plants (Renewal); in 40 CFR part 60, subpart H; was approved 12/09/2008; OMB Number 2060–0041; expires 12/31/2011.

EPA ICR Number 0664.09; NSPS for Bulk Gasoline Terminals (Renewal); in 40 CFR part 60, subpart XX; was approved 12/09/2008; OMB Number 2060–0006; expires 12/31/2011.

EPA ICR Number 1657.06; NESHAP for Pulp and Paper Production (Renewal); in 40 CFR part 63, subpart S; was approved 12/10/2008; OMB Number 2060–0387; expires 12/31/2011.

EPA ICR Number 1805.05; NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills; in 40 CFR part 63, subpart MM; was approved 12/10/2008; OMB Number 2060–0377; expires 12/31/2011.

EPA ICR Number 1807.04; NESHAP for Pesticide Active Ingredient Production (Renewal); in 40 CFR part 63, subpart MMM; was approved 12/10/2008; OMB Number 2060–0370; expires 12/31/2011.

EPA ICR Number 1597.08; Requirements and Exemptions for Specific RCRA Wastes (Renewal); in 40 CFR part 266, subpart N, 40 CFR 260.23, 273, 279.10, 279.11, 279.42–279.44, 279.52–279.55, 279.57, 279.63 and 279.83; was approved 12/10/2008; OMB Number 2050–0145; expires 12/31/2011.

EPA ICR Number 2267.02; NESHAP for Iron and Steel Foundries (Final Rule); in 40 CFR part 63, subpart ZZZZZ; was approved 12/19/2008; OMB Number 2060–0605; expires 12/31/2011.

EPA ICR Number 0574.13; Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances (Renewal); in 40 CFR parts 700, 720, 721, 723, and 725; was approved 12/22/2008; OMB Number 2070–0012; expires 12/31/2011.

EPA ICR Number 1816.04; EPA Strategic Plan Information on Source Water Protection (Renewal); was approved 12/23/2008; OMB Number 2040–0197; expires 12/31/2011.

EPA ICR Number 1973.04; Cooling Water Intake Structures—New Facility (Renewal); in 40 CFR 122.21 and 125.86–125.89; was approved 12/24/2008; OMB Number 2040–0241; expires 12/31/2011.

EPA ICR Number 1560.08; National Water Quality Inventory Reports (Renewal); in 40 CFR 130.6–130.10 and 130.15; was approved 12/23/2008; OMB Number 2040–0071; expires 12/31/2011.

EPA ICR Number 1791.05; Establishing No-Discharge Zones (NDZs) Under Clean Water Act Section 312 (Renewal); in 40 CFR part 140; was approved 12/23/2008; OMB Number 2040–0187; expires 12/31/2011.

EPA ICR Number 1391.08; Clean Water Act State Revolving Fund Program (Renewal); in 40 CFR part 35, subpart K; was approved 12/23/2008; OMB Number 2040–0118; expires 12/31/2011.

EPA ICR Number 0370.21; Underground Injection Control Program (Renewal); in 40 CFR parts 144–148; was approved 12/23/2008; OMB Number 2040–0042; expires 12/31/2011.

EPA ICR Number 0002.14; National Pretreatment Program (Renewal); in 40 CFR 105, 122.42, 122.41, 123.24, 123.62, 403.1–403.20, 430.02, 437, 442.15, 442.16, 442.25 and 442.26; was approved 12/23/2008; OMB Number 2040–0009; expires 12/31/2011.

EPA ICR Number 0988.10; Water Quality Standards Regulation (Renewal); in 40 CFR 131.6–131.8, 131.20–131.22 and 131.31–131.36; was approved 12/23/2008; OMB Number 2040–0049; expires 12/31/2011.

EPA ICR Number 2154.03; Technology Performance and Product Information to Support Vendor Information Summaries (Renewal); was approved 12/31/2008; OMB Number 2050–0194; expires 12/31/2011.

EPA ICR Number 2237.02; NESHAP for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities (Final Rule); in 40 CFR part 63, subparts

BBBBBB and CCCCCC; was approved 12/31/2008; OMB Number 2060–0620; expires 12/31/2011.

EPA ICR Number 1974.05; NESHAP for Cellulose Products Manufacturing (Renewal); in 40 CFR part 63, subpart UUUU; was approved 12/31/2008; OMB Number 2060–0488; expires 12/31/2011.

EPA ICR Number 1506.11; NSPS for Municipal Waste Combustors (Renewal); in 40 CFR part 60, subparts Ea and Eb; was approved 12/31/2008; OMB Number 2060–0210; expires 12/31/2011.

EPA ICR Number 1445.07; Continuous Release Reporting Regulations (CRRR) under CERCLA 1980 (Renewal); in 40 CFR 302.8; was approved 12/31/2008; OMB Number 2050–0086; expires 12/31/2011.

EPA ICR Number 1139.08; TSCA Section 4 Test Rules, Consent Orders, Test Rule Exemptions, and Voluntary Data Submission; in 40 CFR part 790; was approved 01/02/2009; OMB Number 2070–0033; expires 01/31/2012.

EPA ICR Number 0586.11; TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR); in 40 CFR parts 712, 766, and 792; was approved 01/02/2009; OMB Number 2070–0054; expires 01/31/2012.

*Improper Submission*

EPA ICR Number 1748.07; State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (SBTCP) Annual Reporting Form (Reinstatement); was deemed improperly submitted by OMB on 12/10/2008; OMB Number 2060–0337.

*Short-Term Extension of Expiration Date*

EPA ICR Number 2159.02; Background Checks for Contractor Employees (Renewal); a short-term extension of the expiration date was granted by OMB on 12/15/2008; OMB Number 2030–0043; expires 03/31/2009.

EPA ICR Number 2183.02; Drug Testing for Contractor Employees (Renewal); a short-term extension of the expiration date was granted by OMB on 12/15/2008; OMB Number 2030–0044; expires 03/31/2009.

EPA ICR Number 1911.02; Data Acquisition for Anticipated Residue and Percent of Crop Treated; a short-term extension of the expiration date was granted by OMB on 12/18/2008; OMB Number 2070–0164; expires 03/31/2009.

EPA ICR Number 1504.05; Data Generation for Pesticide Reregistration; a short-term extension of the expiration date was granted by OMB on 12/18/2008; OMB Number 2070–0107; expires 03/31/2009.

EPA ICR Number 0922.07; Data Call-ins for the Special Review and Registration Review Programs; a short-term extension of the expiration date was granted by OMB on 12/18/2008; OMB Number 2070–0057; expires 03/31/2009.

EPA ICR Number 1680.04; Combined Sewer Overflow Control Policy; a short-term extension of the expiration date was granted by OMB on 12/23/2008; OMB Number 2040–0170; expires 03/31/2009.

EPA ICR Number 2097.02; The National Primary Drinking Water Regulations; Long-Term 2 Enhanced Surface Water Treatment Rule; a short-term extension of the expiration date was granted by OMB on 12/23/2008; OMB Number 2040–0266; expires 03/31/2009.

EPA ICR Number 2264.01; Proficiency Testing Studies for Drinking Water Laboratories; a short-term extension of the expiration date was granted by OMB on 12/23/2008; OMB Number 2040–0276; expires 03/31/2009.

*OMB Comments Filed*

EPA ICR Number 1084.09; NSPS for Nonmetallic Mineral Processing (40 CFR Part 60, Subpart OOO) (Proposed Rule); OMB Number 2060–0050; on 12/15/2008, OMB filed comment.

EPA ICR Number 2269.01; Performance Specifications and Quality Assurance Procedures for Continuous Parameter Monitoring Systems (Proposed Rule); on 12/15/2008, OMB filed comment.

EPA ICR Number 1069.10; NSPS for Coal Preparation Plants (40 CFR part 60, Subpart Y) (Proposed Rule); OMB Number 2060–0122; on 12/15/2008, OMB filed comment.

EPA ICR Number 2334.01; NESHAP for Petroleum Refineries (Proposed Rule); on 12/19/2008, OMB filed comment.

EPA ICR Number 2309.01; Federal Requirements Under the Underground Injection Control (UIC) Program for Carbon Dioxide (CO2) Geologic Sequestration (GS) Wells (Proposed Rule); on 12/23/2008, OMB filed comment.

EPA ICR Number 2046.04; NESHAP for Mercury Cell Chlor-Alkali Plants (40 CFR part 63, subpart IIIII) (Proposed Rule); OMB Number 2060–0542; on 12/31/2008, OMB filed comment.

Dated: January 7, 2009.

**John Moses,**

*Acting Director, Collection Strategies Division.*

[FR Doc. E9–475 Filed 1–12–09; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2007–0484; FRL–8761–7]**

## Board of Scientific Counselors, National Center for Environmental Research Standing Subcommittee Meeting—2009

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

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency (EPA), Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) National Center for Environmental Research Subcommittee (NCER).

**DATES:** The meeting will be held on Monday, February 2, 2009 from 9 p.m. to 5 p.m. and continue on Tuesday, February 3, 2009 from 9 to 12 noon Eastern Standard Time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making an oral presentation at the meeting will be accepted up to one business day before the meeting.

**ADDRESSES:** The meeting will be held at the Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0484, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2007–0484.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2007–0484.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, NCER Standing Subcommittee—2009 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2007–0484.
- *Hand Delivery or Courier:* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2007–0484.

**Note:** This is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2007–

0484. 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 email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* All documents in the 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 copyrighted 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 Board of Scientific Counselors, NCER Standing Subcommittee—2009 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

**FOR FURTHER INFORMATION CONTACT:** The Designated Federal Officer via mail at: Susan Peterson, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–1077; via fax at: (202) 565–2911; or via e-mail at: *peterson.susan@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## General Information

Proposed agenda items for the meeting include, but are not limited to, an overview of NCER grants research with emphasis on investments in emerging areas of research, the Fellowships Program restructuring and goals, and status of action items from the 2006 BOSC review.

*Information on Services for Individuals with Disabilities:* For information on access or services for individuals with disabilities, please contact Susan Peterson at (202) 564–1077 or *peterson.susan@epa.gov*. To request accommodation of a disability, please contact Susan Peterson, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 6, 2009.

**Mary Ellen Radzikowski,**

*Acting Director, Office of Science Policy.*

[FR Doc. E9–470 Filed 1–12–09; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8761–6]**

## Total Coliform Rule / Distribution Systems Advisory Committee Agreement In Principle

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

**ACTION:** Notice of agreement in principle.

**SUMMARY:** In September 2008, the Total Coliform Rule/Distribution Systems Advisory Committee (Committee) signed an Agreement in Principle, making recommendations to the Administrator of the Environmental Protection Agency on revisions to the Total Coliform Rule and research/information needs to better inform distribution system issues. The purpose of this notice is to make available to the public the Agreement in Principle, which includes the full recommendations of the Committee. The Agreement in Principle can be found on EPA's Office of Water, Office of Ground Water and Drinking Water's Web site.

**FOR FURTHER INFORMATION CONTACT:** The Agreement in Principle (AIP) can be accessed on the Agency's Web site at *http://www.epa.gov/safewater/disinfection/tcr/regulation_revisions.html*. If accessing the AIP through EPA's Web site is not possible or for general information, contact the Drinking Water Hotline at 1–800–426–4791 or go to the Internet Web site *http://www.epa.gov/safewater/disinfection/tcr/regulation_revisions_tcrdsac.htm*l. For technical inquiries, contact Karl Anderson, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2833; fax number: (202) 564–3767; e-mail address: *anderson.karld@epa.gov*.

**SUPPLEMENTARY INFORMATION:** The Total Coliform Rule (TCR) is a National Primary Drinking Water Regulation, originally promulgated in 1989 by EPA under the Safe Drinking Water Act (SDWA), 42 U.S.C. 300f *et seq.*, which sets both health goals (MCLGs) and legal limits (MCLs) for the presence of microbial indicators, such as total coliform, in drinking water. The rule also details the type and frequency of testing public water systems must undertake. EPA announced its intent to revise the rule in 2003.

In June 2007, EPA established the Total Coliform Rule/Distribution System Advisory Committee (Committee, TCRDSAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2, 9 (c). The purpose of the TCRDSAC was to advise and make recommendations to the Agency on revisions to the TCR, and on what information about distribution systems is needed to better understand the public health impact from the degradation of drinking water quality in distribution systems. The Committee's activities included efforts to utilize available information, analyze options for revisions to the TCR and to consider research and information needed to better understand and address public health risks from contamination of distribution systems.

The Committee consisted of organizational members representing EPA, public interest groups, State and local public health and regulatory agencies, local elected officials, Indian tribes, and drinking water suppliers. The Committee met on 13 occasions between July 2007 and September 2008.

All Committee members signed a final AIP in September 2008. The AIP contains recommendations on which all

members of the Committee agreed. The recommendations can be divided into two main topics. The first topic is recommendations on how EPA should revise the TCR while maintaining or improving public health protection. The second topic concerns what data should be collected, research conducted, and/or risk management strategies evaluated to better inform distribution system contaminant occurrence and associated public health risks.

Today's notice, in addition to its posting on the EPA's TCR Web page, provides additional notification to the public regarding the availability of the AIP. In accordance with its usual rule development process, the Agency will provide a public comment period for the proposed Revised Total Coliform Rule when it is published and will address those comments in completing the final rule.

The Agreement in Principle (AIP) is the result of a tremendous collaborative effort and EPA would like to express its appreciation to all members of the Committee, as well as to members of the Technical Workgroup that supported the Committee.

Dated: January 7, 2009.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. E9–469 Filed 1–12–09; 8:45 am]

**BILLING CODE 6560–50–P**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Submission for OMB Review

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final notice of submission for OMB review—no change: Employer Information Report (EEO–1).

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a request for an extension through 2010 of the existing collection requirements under 29 CFR 1602, Recordkeeping and Reporting Requirements under Title VII. The Commission has requested an extension of an existing collection as listed below.

**DATES:** Written comments on this final notice must be submitted on or before February 12, 2009.

**ADDRESSES:** The Request for Clearance (SF 83–I), supporting statement, and other documents submitted to OMB for review may be obtained from: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street NE., Washington, DC 20507. Comments on this final notice must be submitted to Chandana Achanta, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to *Chandana_L._Achanta@omb.eop.gov*. Comments should also be sent to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 131 M Street, NE., Washington, DC 20507 by the Federal eRulemaking Portal: *http://www.regulations.gov*. After accessing this web site, follow its instructions for submitting comments. As a convenience to commentators, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (''FAX'') machine. This limitation is necessary to assure access to the equipment. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number). Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers).

**FOR FURTHER INFORMATION CONTACT:** Ronald Edwards, Director,Program Research and Surveys Division, 131 M Street, NE., Washington, DC 20507, at (202) 663–4958 or TDD (202) 663–7063. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

**SUPPLEMENTARY INFORMATION:** A notice that EEOC would be submitting this request was published in the **Federal Register** on October 3, 2008, allowing for a 60-day public comment period. One comment was received stating that the period of time for the extension should be longer.

### Overview of This Information Collection

*Type of Review:* Extension—No change.

*Collection Title:* Employer Information Report (EEO–1).

*Frequency of Report:* Annual.

*Type of Respondent:* Private industry employers with 100 or more employees and certain Federal Government contractors and first-tier subcontractors with 50 or more employees.

*Description of Affected Public:* Private industry employers with 100 or more employees and certain Federal Government contractors and first-tier subcontractors with 50 or more employees.

*Reporting Hours:* 599,000.

*Federal Cost:* $2.1 million.

*Number of Forms:* 1.

*Abstract:* Section 709 (c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations, Title 29, Chapter XIV, Subpart B, §§ 1602.7, which set forth the reporting requirements for various kinds of employers. Employers in the private sector with 100 or more employees and some Federal contractors with 50 or more employees have been required to submit EEO–1 reports annually since 1966. The individual reports are confidential. EEO–1 data are used by EEOC to investigate charges of employment discrimination against employers in private industry and to provide information about the employment status of minorities and women. The data are shared with the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, and several other Federal agencies. Pursuant to § 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data are also shared with eighty-six State and local Fair Employment Practices Agencies (FEPAs).

*Burden Statement:* The estimated number of respondents included in the annual EEO–1 survey is 45,000 private employers. The estimated number of establishment-based responses per reporting company is between 3 and 4 EEO–1 reports annually. The annual number of responses is approximately 170,000. The form is estimated to impose 599,000 burden hours annually. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Dated: January 8, 2009.

For the Commission.

**Reed L. Russell,**

*Legal Counsel.*

[FR Doc. E9–490 Filed 1–12–09; 8:45 am]

**BILLING CODE 6570–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

December 29, 2008.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Pursuant to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written PRA comments should be submitted on or before March 16, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Interested parties may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov* and/or *Cathy.Williams@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov* and/or *Cathy.Williams@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0761.

*Title:* Section 79.1 Closed Captioning of Video Programming, CG Docket No. 05–231.

*Form Number:* Not Applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; Individuals or households; and Not-for-profit entities.

*Number of Respondents and Responses:* 14,383 respondents; 110,224 responses.

*Estimated Time per Response:* 15 minutes (0.25 hours) to 10 hours.

*Frequency of Response:* Annual and on occasion reporting requirements; Third party disclosure requirement; Recordkeeping requirement.

*Total Annual Burden:* 226,374.75 hours.

*Total Annual Cost:* $37,340,142.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this obligation is found at section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613, and implemented at 47 CFR 79.1.

*Nature and Extent of Confidentiality:* Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice, FCC/CGB–1, ''Informal Complaints and Inquiries.''

*Privacy Impact Assessment:* The Privacy Impact Assessment for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.*

*Needs and Uses:* On July 21, 2005, the Commission released *Closed Captioning of Video Programming; Telecommunications for the Deaf, Inc. Petition for Rulemaking,* CG Docket No. 05–231, Notice of Proposed Rulemaking, FCC 05–142, 70 FR 56150, September 26, 2005 (*Closed Captioning Notice of Proposed Rulemaking*), which sought comment on several issues pertaining to the Commission's closed captioning rules (47 CFR 79.1), which require that, with some exceptions, all new video programming, and 75 percent of ''pre-rule'' programming, eventually be closed captioned. The *Closed Captioning Notice of Proposed Rulemaking* sought comment, *inter alia,* on whether petitions for exemption from the closed captioning rules should be permitted (or required) to be filed electronically through the Commission's Electronic Comment Filing System, and whether video programming distributors should be required to submit compliance reports to the Commission in cases where the types of video programming that they air are still subject to a phase-in period, or where the final required amount of captioning post phase-in (*e.g.*, pre-rule programming) is not 100 percent.

On November 7, 2008, the Commission released *Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers,* CG Docket No. 05–231 and ET Docket No. 99–24, Declaratory Ruling, Order and Notice of Proposed Rulemaking, FCC 08–255 (*2008 Order*), addressing some of the issues raised in the *Closed Captioning Notice of Proposed Rulemaking*. The *2008 Order* streamlined and simplified the closed captioning complaint process by shortening the time frames associated with filing and responding to complaints, and by permitting complaints to be filed directly with the Commission, rather than requiring that they be filed with the video programming distributor first. The *2008 Order* also adopted new rules requiring video programming distributors to make contact information available in phone directories, on the Commission's Web site and their own Web sites (if they have them), and in billing statements (to the extent they issue them). With this contact information, consumers can more easily and promptly contact the appropriate person or office at a video programming distributor to report closed captioning problems or to file complaints.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8–31443 Filed 1–12–09; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting; Open Commission Meeting; Thursday, January 15, 2009

January 8, 2009.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 15, 2009, which is scheduled to commence at 10 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC. With regard to item 1, the Commission is waiving the sunshine period prohibition contained in section 1.1203 of the Commission's rules, 47 CFR 1.1203, until 5:30 pm, Friday, January 9, 2009. Thus presentations with respect to item 1 will be permitted until that time.

The Meeting also will include presentations by senior agency officials

regarding implementations of the agency's strategic plan and a comprehensive review of FCC policies and procedures.

| Item No. | Bureau | Subject |
|---|---|---|
| 1 | Media | *Title:* Implementation of Short-term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition ''Analog Nightlight'' Program (MB Docket No. 08–255)<br>*Summary:* The Commission will consider a Report and Order to implement the Short-term Analog Flash and Emergency Readiness Act. |
| 2 | OMD | *Title:* FY 2008 Senior Executive Service Performance Rating, Bonus, and Pay Increase Recommendations.<br>*Summary:* The Commission will consider annual performance awards for career Senior Executive Service personnel. |

*Presentations will be made in four panels:*

- Panel One will feature the Managing Director and the Chief of the Wireline Competition Bureau.
- Panel Two will feature the Chiefs of the Media Bureau and the Consumer & Governmental Affairs Bureau.
- Panel Three will feature the Chiefs of the Public Safety and Homeland Security Bureau, Wireless Telecommunications Bureau, and the Office of Engineering and Technology.
- Panel Four will feature the Chiefs of the International Bureau and theEnforcement Bureau.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need. Also include a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E9–619 Filed 1–9–09; 4:15 pm]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2881]**

### Petition for Reconsideration of Action in Rulemaking Proceeding

January 6, 2009.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by January 28, 2009. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Evergreen, Alabama and Shalimar, Florida) (MB Docket No. 04–219).

*Number of Petitions Filed:* 1.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E9–510 Filed 1–12–09; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL MARITIME COMMISSION

### Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 011961–005.

*Title:* The Maritime Credit Agreement.

*Parties:* Alianca Navegacao e Logistica Ltda. & Cia; A.P. Moller-Maersk A/S; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; Compania Sudamericana de Vapores, S.A.; COSCO Container Lines Company Limited; Dole Ocean Cargo Express; Hamburg-Süd; Hoegh Autoliners A/S; Independent Container Line Ltd.; Kawasaki Kisen Kaisha, Ltd.; Norasia Container Lines Limited; Safmarine Container Lines N.V.; Tropical Shipping & Construction Co., Ltd.; United Arab Shipping Company (S.A.G.); Wallenius Wilhelmsen Logistics AS; and Zim Integrated Shipping Services, Ltd.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment would add Nippon Yusen Kaisha as a party to the agreement. The parties have requested expedited review of this amendment.

By order of the Federal Maritime Commission.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. E9–425 Filed 1–12–09; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act; Notice of Meeting

January 15, 2009.

**TIME AND DATE:** 9 a.m. (Eastern Time).

**PLACE:** 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

**STATUS:** Parts will be open to the public and parts closed to the public.

**Matters To Be Considered**

**Parts Open to the Public**

1. Approval of the minutes of the December 15, 2008 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
   a. Monthly Participant Activity Report.
   b. Legislative Report.
   c. Office of Participant Services Report.
3. Quarterly Reports.
   a. Investment Policy Review.
   b. Vendor Financial Reports.
   c. MetLife Annuity Report.
4. Audit of Computer Access and Technical Security Controls.

**Parts Closed to the Public**

5. Confidential Financial Information.
6. Security.

**CONTACT FOR MORE INFORMATION:** Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: January 8, 2009.

**Thomas K. Emswiler,**

*Secretary, Federal Retirement Thrift Investment Board.*

[FR Doc. E9–558 Filed 1–9–09; 11:15 am]

BILLING CODE 6760–01–P

## FEDERAL TRADE COMMISSION

### Revised Jurisdictional Thresholds for Section 7A of the Clayton Act

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Trade Commission announces the revised thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 required by the 2000 amendment of Section 7A of the Clayton Act. Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390 (''the Act''), requires all persons contemplating certain mergers or acquisitions, which meet or exceed the jurisdictional thresholds in the Act, to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Section 7A(a)(2) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product, in accordance with Section 8(a)(5). The new thresholds, which take effect 30 days after publication in the Federal Register, are as follows:

| SUBSECTION OF 7A | ORIGINAL THRESHOLD | ADJUSTED THRESHOLD |
|---|---|---|
| 7A(a)(2)(A) | $200 million | $260.7 million |
| 7A(a)(2)(B)(i) | $50 million | $65.2 million |
| 7A(a)(2)(B)(i) | $200 million | $260.7 million |
| 7A(a)(2)(B)(ii)(I) | $10 million | $13.0 million |
| 7A(a)(2)(B)(ii)(I) | $100 million | $130.3 million |
| 7A(a)(2)(B)(ii)(II) | $10 million | $13.0 million |
| 7A(a)(2)(B)(ii)(II) | $100 million | $130.3 million |
| 7A(a)(2)(B)(ii)(III) | $100 million | $130.3 million |
| 7A(a)(2)(B)(ii)(III) | $10 million | $13.0 million |
| Section 7A note: Assessment and Collection of Filing Fees [1] (3)(b)(1) | $100 million | $130.3 million |
| Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2) | $100 million | $130.3 million |
| Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2) | $500 million | $651.7 million |
| Section 7A note: Assessment and Collection of Filing Fees (3)(b)(3) | $500 million | $651.7 million |

[1] Pub. L 106-553, Sec. 630(b) amended Sec. 18a note.

Any reference to these thresholds and related thresholds and limitation values in the HSR rules (16 C.F.R. Parts 801-803) and the Antitrust Improvements Act Notification and Report Form and its Instructions will also be adjusted, where indicated by the term ''(as adjusted)'', as follows:

| ORIGINAL THRESHOLD | ADJUSTED THRESHOLD |
|---|---|
| $10 million | $13.0 million |
| $50 million | $65.2 million |
| $100 million | $130.3 million |
| $110 million | $143.4 million |

| ORIGINAL THRESHOLD | ADJUSTED THRESHOLD |
|---|---|
| $200 million | $260.7 million |
| $500 million | $651.7 million |
| $1 billion | $1,303.4 million |

**EFFECTIVE DATE:** February 12, 2009.

**FOR FURTHER INFORMATION CONTACT:** B. Michael Verne, Bureau of Competition, Premerger Notification Office (202) 326-3100.

**Authority:** 16 U.S.C. § 7A.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. E9–411 Filed 1–12–09; 8:45 am]

**BILLING CODE 6750–11–S**

## FEDERAL TRADE COMMISSION

### Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of Section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by Section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $26,161,000 for Section 8(a)(1), and $2,616,100 for Section 8(a)(2)(A).

**EFFECTIVE DATE:** January 13, 2009.

**FOR FURTHER INFORMATION CONTACT:** James F. Mongoven, Bureau of Competition, Office of Policy and Coordination, (202) 326-2879.

**Authority:** 15 U.S.C. § 19(a)(5).

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. E9–418 Filed 1–12–09; 8:45 am]

**BILLING CODE 6750–01–S**

## GENERAL SERVICES ADMINISTRATION

### Federal Travel Regulation (FTR); Notice of GSA Bulletin FTR 09–02

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Notice of a bulletin.

**SUMMARY:** This Bulletin informs agencies what baggage and seat choice fees they may reimburse their employees while on official travel. GSA Bulletin FTR 09–02 may be found at *http://www.gsa.gov/bulletin*.

**DATES:** The bulletin announced in this notice became effective on December 31, 2008, and will remain effective until the FTR is amended to reflect the changes.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, please contact Mr. Cy Greenidge, Office of Governmentwide Policy, Office of Travel, Transportation and Asset Management, at (202) 219–2349.

Please cite FTR Bulletin 09–02.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Section 301–10.122 of the Federal Travel Regulation (FTR) (41 CFR 301–10.122) stipulates that Federal employees, with few exceptions, must use coach-class accommodations. As a result of many airlines now charging additional fees for checked baggage, as well as for seat choice in the coach-class cabin, this bulletin was developed to clarify which of these fees may be reimbursed by Federal agencies.

*B. Procedures*

Bulletins regarding the Federal Travel Regulation are located on the Internet at *http://www.gsa.gov/bulletin* as Federal Travel Regulation bulletins.

Dated: January 5, 2009.

**Russell H. Pentz,**

*Assistant Deputy Associate Administrator, Office of Travel, Transportation, and Asset Management.*

[FR Doc. E9–434 Filed 1–12–09; 8:45 am]

**BILLING CODE 6820–14–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60 Day–09–0556]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden 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. Written comments should be received within 60 days of this notice.

**Proposed Project**

Assisted Reproductive Technology (ART) Program Reporting System—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Section 2(a) of Pub. L. 102–493 (known as the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA), 42 U.S.C. 263a–1(a)) requires

that each assisted reproductive technology (ART) program shall annually report to the Secretary through the Centers for Disease Control and Prevention: (1) Pregnancy success rates achieved by such ART program, and (2) the identity of each embryo laboratory used by such ART program and whether the laboratory is certified or has applied for such certification under the Act. The required information is currently reported by ART programs to CDC as specified in the Assisted Reproductive Technology (ART) Program Reporting System (OMB No. 0920–0556, exp. 9/30/2009). CDC seeks to extend OMB approval for a period of three years and incorporate a minor change in wording to one question. In addition, the revised total burden estimate includes an anticipated increase in the number of respondents and a slight decrease in the average number of responses per respondent. The burden estimate per response has also been revised to include an adjustment for data validation procedures.

The currently approved program reporting system, also known as the National ART Surveillance System (NASS), includes information about all ART cycles initiated by any of the ART programs in the United States. An ART cycle is considered to begin when a woman begins taking ovarian stimulatory drugs or starts ovarian monitoring with the intent of having embryos transferred. The system also collects information about the pregnancy outcome of each cycle, as well as a number of data items deemed important to explain variability in success rates across ART programs and across individuals. Data elements and definitions currently in use reflect CDC's consultations with representatives of the Society for Assisted Reproductive Technology (SART), the American Society for Reproductive Medicine, and RESOLVE, the National Infertility Association (a national, nonprofit consumer organization), as well as a variety of individuals with expertise and interest in this field.

Respondents are the 480 ART programs in the United States. Approximately 420 clinics are expected to report an average of 286 ART cycles each. Ten percent of responding clinics will be randomly selected to participate in full validation of selected ART cycle records and an abbreviated validation of selected cycles resulting in live birth. All information is collected electronically. Respondents have the option of entering data directly into a Web-based NASS interface or of transmitting system-compatible files extracted from other record systems. The ART program reporting system allows CDC to publish an annual report to Congress as specified by the FCSRCA and to provide information needed by consumers.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| ART Programs | NASS | 420 | 286 | 38/60 | 76,076 |

Dated: January 2, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–405 Filed 1–12–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Subcommittee on Procedures Reviews, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention, announces the following meeting for the aforementioned subcommittee:

*Time and Date:* 9:30 a.m.–5 p.m., January 28, 2009.

*Place:* Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018. Telephone (859) 334–4611, Fax (859) 334–4619.

*Status:* Open to the public, but without a public comment period. To access by conference call dial the following information 1(866) 659–0537, Participant Pass Code 9933701.

*Background:* The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2009.

*Purpose:* The Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction. It will be responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Office of Compensation Analysis and Support (OCAS) and its dose reconstruction contractor.

*Matters To Be Discussed:* The agenda for the Subcommittee meeting includes: a discussion of proposed new versions of the computer-assisted telephone interview scripts and procedures NIOSH uses to interview claimants at the outset of the dose reconstruction process; a discussion of ORAUT–OTIB–0054 (''Fission and Activation Product Assignment for Internal Dose-Related Gross Beta and Gross Gamma Analyses'') and ORAUT–OTIB–0066 (''Calculation of Dose from Intakes of Special Tritium Compounds''); and, a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

*Contact Person for More Information:* Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, e-mail *ocas@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 7, 2009.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E9–524 Filed 1–12–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Child Care Quarterly Case Record Report—ACF–801.

*OMB No.:* 0970–0167.

*Description:* Section 658K of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508, 42 U.S.C. 9858) requires that States and Territories submit monthly case-level data on the children and families receiving direct services under the Child Care and Development Fund. The implementing regulations for the statutorily required reporting are at 45 CFR 98.70. Case-level reports, submitted quarterly or monthly (at grantee option), include monthly sample or full population case-level data. The data elements to be included in these reports are represented in the ACF–801. ACF uses disaggregate data to determine program and participant characteristics as well as costs and levels of child care services provided. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. Consistent with the statute and regulations, ACF requests extension of the ACF–801. With this extension, ACF is proposing several changes and clarifications to the reporting requirements and instructions.

*Respondents:* States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ACF–801 | 56 | 4 | 20 | 4,480 |

Estimated Total Annual Burden Hours: 4,480

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov*.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: January 8, 2009.

**Janean Chambers,**

*Reports Clearance Officer.*

[FR Doc. E9–447 Filed 1–12–09; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0038]**

### Advisory Committees; Tentative Schedule of Meetings for 2009

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 2009. During 1991, at the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. In its final report, one of the IOM's recommendations was for the agency to publish an annual tentative schedule of its meetings in the **Federal Register**. This publication implements the IOM's recommendation.

**FOR FURTHER INFORMATION CONTACT:** Theresa L. Green, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

**SUPPLEMENTARY INFORMATION:** The IOM, at the request of the Commissioner, undertook a study of the use of the FDA's advisory committees. In its final report in 1992, one of the IOM's recommendations was for FDA to adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**; FDA has implemented this recommendation. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. Because the schedule is tentative, amendments to this notice will not be published in the **Federal Register**. However, changes to the schedule will be posted on the FDA

advisory committees' Internet site located at *http://www.fda.gov/oc/advisory/default.htm*. FDA will continue to publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting, to announce the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 2009. You may also obtain up-to-date information by calling the Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area).

| Committee Name | Tentative Date of Meeting(s) | Advisory Committee 10-Digit Information Line Code |
|---|---|---|
| OFFICE OF THE COMMISSIONER | | |
| Pediatric Advisory Committee | March 23–24, June 22–23, September 21–22, December 7–8 | 8732310001 |
| Risk Communication Advisory Committee | February 26–27, April 30–May 1, August 13–14, November 12–13 | 8732112560 |
| Science Board to the Food and Drug Administration | February 24, May 18, August 17, November 16 | 3014512603 |
| CENTER FOR BIOLOGICS EVALUATION AND RESEARCH | | |
| Allergenic Products Advisory Committee | March 5, October 22 | 3014512388 |
| Blood Products Advisory Committee | January 9, April 1, July 20–21, November 16–17 | 3014519516 |
| Cellular, Tissue and Gene Therapies Advisory Committee | May 14–15, November 5–6 | 3014512389 |
| Transmissible Spongiform Encephalopathies Advisory Committee | To be announced | 3014512392 |
| Vaccines and Related Biological Products Advisory Committee | February 18–19, May 20–21, September 23–24, November 18–19 | 3014512391 |
| CENTER FOR DRUG EVALUATION AND RESEARCH | | |
| Anesthetic and Life Support Drugs Advisory Committee | January 29–30, April dates to be announced | 3014512529 |
| Anti-Infective Drugs Advisory Committee | To be announced | 3014512530 |
| Antiviral Drugs Advisory Committee | To be announced | 3014512531 |
| Arthritis Advisory Committee | March 5, June 16–17, October 27–28 | 3014512532 |
| Cardiovascular and Renal Drugs Advisory Committee | February 3, March 18–19, July 28–29, December 7–8 | 3014512533 |
| Dermatologic and Ophthalmic Drugs Advisory Committee | To be announced | 3014512534 |
| Drug Safety and Risk Management Advisory Committee | January 30, April dates to be announced | 3014512535 |
| Endocrinologic and Metabolic Drugs Advisory Committee | April 2–3 | 3014512536 |
| Gastrointestinal Drugs Advisory Committee | February 17 | 3014512538 |
| Nonprescription Drugs Advisory Committee | April dates to be announced | 3014512541 |
| Oncologic Drugs Advisory Committee | February 25, March 24–25, May dates to be announced, July 14–15, September 15–16, December 16–17 | 3014512542 |
| Peripheral and Central Nervous System Drugs Advisory Committee | January 7–8 | 3014512543 |
| Pharmaceutical Science and Clinical Pharmacology, Advisory Committee for | March dates to be announced | 3014512539 |
| Psychopharmacologic Drugs Advisory Committee | March 26 | 3014512544 |
| Pulmonary-Allergy Drugs Advisory Committee | February 4 | 3014512545 |
| Reproductive Health Drugs, Advisory Committee for | May and August dates to be announced | 3014512537 |
| CENTER FOR DEVICES AND RADIOLOGICAL HEALTH | | |
| Device Good Manufacturing Practice Advisory Committee | April 15, October 5–6 | 3014512398 |
| Medical Devices Advisory Committee (Comprised of 18 Panels) | | |

| Committee Name | Tentative Date of Meeting(s) | Advisory Committee 10-Digit Information Line Code |
|---|---|---|
| Anesthesiology and Respiratory Therapy Devices Panel | February 5, April 30, July 23, September 17, November 12 | 3014512624 |
| Circulatory System Devices Panel | February 25, May 27, September 24 | 3014512625 |
| Clinical Chemistry and Clinical Toxicology Devices Panel | March 18–19, June 17–18, October 21–22 | 3014512514 |
| Dental Products Panel | February 11, May 6, June 17, September 16, December 9 | 3014512518 |
| Ear, Nose, and Throat Devices Panel | February 24, May 19, August 18, November 17 | 3014512522 |
| Gastroenterology-Urology Devices Panel | March 20, October 15 | 3014512523 |
| General and Plastic Surgery Devices Panel | February 26–27, June 9–10, October 15–16 | 3014512519 |
| General Hospital and Personal Use Devices Panel | March 25–26, July 29–30, October 21–22 | 3014512520 |
| Hematology and Pathology Devices Panel | April 24, July 17, October 23 | 3014512515 |
| Immunology Devices Panel | October 15–16 | 3014512516 |
| Medical Devices Dispute Resolution Panel | Meetings occur as needed | 3014510232 |
| Microbiology Devices Panel | February 24–25, September 22–23, October 27–28 | 3014512517 |
| Molecular and Clinical Genetics Panel | April 15, October 5–6 | 3014510231 |
| Neurological Devices Panel | February 26–27, May 14–15, September 17–18, December 2–3 | 3014512513 |
| Obstetrics and Gynecology Devices Panel | February 5–6, May 14–15, August 13–14, November 12–13 | 3014512524 |
| Ophthalmic Devices Panel | February 12–13, May 14–15, September 24–25,November 19–20 | 3014512396 |
| Orthopaedic and Rehabilitation Devices Panel | February 3–4, April 14–15, June 9–10, August 11–12, October 15–16, December 1–2 | 3014512521 |
| Radiological Devices Panel | February 18, May 12, August 4, November 17 | 3014512526 |
| National Mammography Quality Assurance Advisory Committee | November 4–5 | 3014512397 |
| Technical Electronic Product Radiation Safety Standards Committee | No meeting tentatively scheduled for 2009 | 3014512399 |
| CENTER FOR FOOD SAFETY AND APPLIED NUTRITION | | |
| Food Advisory Committee | May 20–21 | 3014510564 |
| CENTER FOR VETERINARY MEDICINE | | |
| Veterinary Medicine Advisory Committee | April 14 | 3014512548 |
| NATIONAL CENTER FOR TOXILOGICAL RESEARCH (NCTR) | | |
| Science Advisory Board to NCTR | November 17–18 | 3014512559 |

Dated: December 24, 2008.

**Randall W. Lutter,**

*Deputy Commissioner for Policy.*

[FR Doc. E9–451 Filed 1–12–09; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–D–0675]**

### Draft Guidance for Industry on Good Importer Practices; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing on behalf of several members of the Interagency Working Group on Import Safety (agencies) the availability of a draft guidance for industry entitled ''Good Importer Practices.'' This draft guidance document provides general recommendations to importers on possible practices and procedures they may follow to increase the likelihood the products they import are in

compliance with applicable U.S. safety and security requirements. The recommendations provided here are intended to promote and facilitate an assessment by importers of a product's life cycle so the importer may make sound decisions about how best to address the product's potential to cause harm and to facilitate compliance with U.S. requirements.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agencies consider your comments on this draft guidance before they begin work on the final version of the guidance, submit written or electronic comments on the draft guidance by April 13, 2009.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Food and Drug Administration, Office of Policy and Planning, 10903 New Hampshire Ave., White Oak Building 1, 4th Floor,Silver Spring, MD 20993. Send one self-addressed adhesive label to assist the office in processing your request.Submit written comments on the 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 *http://www.regulations.gov*. All comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Shuren, Food and Drug Administration, 10903 New Hampshire Avenue, White Oak Building 1, Silver Spring, MD 20993, 301–796–4840.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing on behalf of the agencies[1] the availability of a draft guidance for industry entitled ''Good Importer Practices.'' This draft guidance is issued in response to recommendations contained in the *Action Plan for Import Safety: A Roadmap for Continual Improvement* (Action Plan) issued on November 6, 2007, by the Interagency Working Group on Import Safety (Working Group) established by Executive Order 13439 (see *http://www.importsafety.gov/report/actionplan.pdf*). The Action Plan recommends that the Federal Government work with the importing community and other members of the public to develop Good Importer Practices and issue guidance. The Action Plan specifies that the focus of these practices should be to ensure that imported products meet U.S. standards, as well as to promote effective supply-chain management. The Action Plan recommended that these practices be risk-based and provide concrete guidance to the importing community for evaluating imported products. This evaluation would be based on due diligence and preventive control principles.

This guidance is intended for use by the importer that initiates or causes the entry or attempted entry of foreign-sourced products into the United States or the reimportation of U.S.-made products (American goods returned) for commercial purposes to help ensure that such products are safe and comply with applicable U.S. requirements.[2] At any point during the product's life cycle, hazards can be introduced that may place consumers at risk unless appropriate preventive controls are implemented. In general, the recommendations advise the importer to know the foreign firms with whom they do business and through which the products they purchase pass, understand the products they import and their vulnerabilities, understand the hazards that may be introduced during the product life cycle, and ensure that these hazards have been properly controlled and monitored. Importers should consider instituting practices to identify and minimize risk. Importers should put into place controls for known vulnerabilities, such as to microbiological contamination or product defects, and monitor for other risks, such as counterfeiting or intentional contamination.

These Good Importer Practices are broadly organized by four guiding principles. These four guiding principles are as follows:

- Establishing a product safety management program
- Knowing the product and applicable U.S. requirements
- Verifying product and firm compliance with U.S. requirements throughout the supply chain and product life cycle
- Taking corrective and preventive action when the imported product or firm is not compliant with U.S. Requirements

The guidance suggests actions the importer can take to accomplish each of these objectives.

This draft guidance is being issued consistent with the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices (No. 07–02 (M–07–07)). The draft guidance, when finalized, will represent the agencies' current thinking on Good Importer Practices. It does not create or confer any rights for or on any person and does not operate to bind the agencies or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable U.S. statutes and regulations.

## II. Comments

FDA is coordinating the receipt of submitted comments on behalf of the agencies. Interested persons may submit to FDA's 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/oc/guidance/goodimportpractice.html* or *http://www.regulations.gov*.

Dated: January 8, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–453 Filed 1–12–09; 8:45 am]

**BILLING CODE 4160–01–S**

[1] The agencies who developed this draft guidance are the U.S. Consumer Product Safety Commission, the Department of Agriculture, the Department of Commerce, the Department of Health and Human Services (FDA), the Department of Homeland Security, the Department of Transportation, and the Environmental Protection Agency, as well as with input from the Office of the U.S. Trade Representative.

[2] While this guidance document sets out principles and recommendations for helping to ensure the safety and security of imported products, the principles and the non-customs related recommendations are also applicable to helping ensure the safety and security of products that are domestically produced.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–D–0053]**

### Guidance for Industry on Good Reprint Practices for the Distribution of Medical Journal Articles and Medical or Scientific Reference Publications on Unapproved New Uses of Approved Drugs and Approved or Cleared Medical Devices; 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 ''Good Reprint Practices for the Distribution of Medical Journal Articles and Medical or Scientific Reference Publications on Unapproved New Uses of Approved Drugs and Approved or Cleared Medical Devices.'' The guidance provides drug, biologics, and device manufacturers with the agency's views on the distribution of medical journal articles and scientific or medical reference publications that discuss unapproved new uses for FDA-approved drugs or biologics or FDA-approved or cleared medical devices to healthcare professionals and healthcare entities.

**DATES:** Submit written or electronic comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Office of Policy, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, rm. 4305, Silver Spring, MD, 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments 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*.

**FOR FURTHER INFORMATION CONTACT:** Jarilyn Dupont, Office of Policy, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, rm. 4305, Silver Spring, MD, 20993–0002, 301–796–4830.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The guidance provides drug, biologics, and device manufacturers with the agency's views on the distribution of medical journal articles and scientific or medical reference publications that discuss unapproved new uses for FDA-approved drugs (including biologics) or FDA-approved or cleared medical devices to healthcare professionals and healthcare entities. In the **Federal Register** of February 20, 2008 (73 FR 9342), FDA announced the availability of a draft guidance for industry entitled ''Good Reprint Practices for the Distribution of Medical Journal Articles and Medical or Scientific Reference Publications on Unapproved New Uses of Approved Drugs and Approved or Cleared Medical Devices.'' FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized.

On September 30, 2006, section 401 of the Food and Drug Administration Modernization Act (FDAMA) (section 551 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360aaa)) ceased to be in effect. The provision described certain conditions under which a drug or medical device manufacturer could disseminate medical and scientific information discussing unapproved uses of approved drugs and cleared or approved medical devices to healthcare professionals and certain entities (including pharmacy benefits managers, health insurance issuers, group health plans, and Federal or State governmental agencies). Section 401 of FDAMA provided that, if the described conditions were met, dissemination of such journal articles or reference publications would not be considered as evidence of the manufacturer's intent that the product be used for an unapproved new use. FDA-implementing regulations were codified at 21 CFR part 99. In light of the sunset of section 401 of FDAMA and in recognition of the public health value to healthcare professionals of receiving scientific and medical information, FDA determined that its current views and recommendations concerning ''Good Reprint Practices'' for the dissemination of medical journal articles and medical or scientific reference publications on unapproved uses of drugs and medical devices were important. The sunset of the statutory provision eliminated the authority of FDA to require submission of articles for the agency's review before dissemination by the manufacturers in instances where the manufacturer chose to disseminate information under these provisions. In the absence of that ability to require such submissions and the fact that the implementing regulations are no longer applicable, the agency determined that guidance to manufacturers was appropriate because the agency no longer reviews individual articles.

With this guidance, FDA is providing its current views on the dissemination of medical journal articles and medical or scientific reference publications on unapproved uses of approved drugs and approved or cleared medical devices to healthcare professionals and healthcare entities. FDA's legal authority to determine whether certain distributions of medical or scientific information constitutes promotion of an unapproved ''new use,'' or whether such activities cause a product to be misbranded or adulterated has not changed.

Some of the changes made to the guidance based on comments received, and on FDA's own initiative, include a specific reference encouraging manufacturers to seek approvals and clearance for new indications and intended uses for medical products. FDA recognizes the value of new indications and uses for approved products and wants these to be studied so that patients and healthcare professionals receive safe and effective treatments. Many comments suggested that FDA continue to require pre-submission of the articles and suggested other mandatory review practices. However, given the sunset of section 401 of FDAMA these were not within FDA's authority and thus outside the scope of this guidance. Section IV of the guidance clarifies a number of bullet points to address comments expressing confusion as to some of the terms and practices expressed. Additional information was provided to distinguish the dissemination of these types of articles from other industry practices.

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 the dissemination of medical journal articles and medical or scientific reference publications on unapproved uses of approved drugs and approved or cleared medical devices to healthcare professionals and healthcare entities. 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 applicable statutes and regulations.

## II. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance. 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. A copy of the guidance and received comments are available for public examination 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/oc/op/goodreprint.html* or *http://www.regulations.gov.*

Dated: January 6, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–452 Filed 1–12–09; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–N–0674]**

### Participation of Certain Population Subsets in Clinical Drug Trials; Request for Comment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is seeking information and comments on issues related to the enrollment of certain populations in clinical drug trials. Particularly, we are requesting information and comments from medical product manufacturers, institutional review boards (IRBs), patient groups, universities, researchers, community groups, and other interested parties. This request is related to FDA's implementation of the Food and Drug Administration Amendments Act of 2007 (FDAAA) section 901, which requires recommendations be included in a report to Congress addressing best practice approaches on increasing the participation of elderly populations, children, racially and ethnically diverse communities, and medically underserved populations in clinical drug trials. FDA requests that those with information on possible approaches to increase participation of these groups in clinical drug trials submit comments.

**DATES:** Submit written or electronic comments by February 27, 2009.

**ADDRESSES:** Submit electronic comments to *http://www.regulations.gov*.

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Brenda Evelyn, Office of Special Health Issues, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4460.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 901 of FDAAA requires that FDA submit a report to Congress that includes ''recommendations regarding impediments to the participation of elderly populations, children, racially and ethnically diverse communities and medically underserved populations in clinical drug trials'' and recommendations that address ''best practice approaches for increasing the inclusion of such subsets of the general population'' in clinical drug trials (FDAAA, section 901(d)(5)). In developing this report, FDA seeks comments that may help to develop these recommendations.

Participation of all segments of the population in medical research is critical to public health. The ability to develop drugs that are safe and effective for diverse groups hinges on the availability of clinical drug trial participants from these same groups. Some researchers and public health experts argue that inconsistent representation of certain communities can potentially lead to health disparities and insufficient data for risk assessment. FDA has previously identified the need for inclusion of children, both sexes, the elderly, racially and ethnically diverse communities, and other populations in clinical trials so that data are available to evaluate the potential differences among these subgroups (63 FR 6854, February 11, 1998). According to the Department of Health and Human Services (HHS) Office of Minority Health, in a recent prostate cancer study, only 8 percent of the 18,000 participants were minorities (*www.omhrc.gov/templates/content.aspx?ID=5147*). Increased participation from all of these subgroups may help assure that data relevant to the entire treatment population are obtained.

In addition, statutory mandates and incentives such as the Pediatric Research Equity Act (PREA) (Public Law No. 108–155 as amended by FDAAA) and the Best Pharmaceuticals for Children Act (BPCA) (Public Law No. 107–109 as amended by FDAAA) require and encourage medical research to consider implications for pediatric populations.

For over 20 years, FDA has worked to encourage broad participation of all groups in clinical drug trials. Under FDA regulations (21 CFR 312.33), all investigational new drug (IND) applications must include in annual reports the number of patients tabulated by age, gender, and race, and under 21 CFR 314.50(d)(5)(v) and (d)(5)(vi), new drug applications (NDA) are required to include analyses of efficacy and safety by demographic subgroups. Biologics license applications typically include analyses of efficacy and safety by demographic subgroups. The International Conference on Harmonization (ICH) guidance on the common technical document also calls for such analyses (see M4E: The CTD—Efficacy (August 2001) available at *http://www.fda.gov/cber/gdlns/m4ectd.pdf.*).

FDA has issued labeling recommendations for specific subpopulations (Guidance for Industry: Content and Format of the Adverse Reactions Section of Labeling for Human Prescription Drugs and Biological Products, January 2006, available at *http://www.fda.gov/cber/gdlns/cfadvers.htm*) and guidelines for studying gender differences in clinical drug studies (Guideline for the Study and Evaluation of Gender, July 1993, available at *http://www.fda.gov/cder/Guidance/old036fn.pdf*). FDA has made recommendations for minimum standards for the collection and use of race and ethnicity information to assist in the reporting of the summary of safety and effectiveness data by demographic subgroups (age, gender, race), as well as an analysis of whether modifications of dose or dosage intervals are needed for specific subgroups. (Guidance for Industry: Collection of Race and Ethnicity Data in Clinical Trials, September 2005, available at *http://www.fda.gov/CBER/gdlns/racethclin.htm*; see, also ICH E–7 Guideline for Industry, Studies in Support of Special Populations: Geriatrics (August 1994) available at

*http://www.fda.gov/cder/guidance/iche7.pdf* and Reviewer Guidance: Conducting a Clinical Safety Review of a New Product Application and Preparing a Report on the Review (February 2005) available at *http://www.fda.gov/cder/guidance/3580fnl.pdf*.)

Other agencies have also issued guidelines for the participation of diverse groups in clinical trials. For example, the National Institutes of Health (NIH) requires the inclusion of women and minority groups in NIH-funded trials unless an exception is warranted (NIH Policy on the Inclusion of Women and Minorities as Subjects in Clinical Research as amended October 2001, information is available at *http://grants.nih.gov/grants/funding/women_min/guidelines_amended_10_2001.htm*). NIH also has issued guidelines for inclusion of children as research subjects (March 1998 NIH Policy and Guidelines on the Inclusion of Children as Participants in Research Involving Human Subjects, available at *http://grants.nih.gov/grants/guide/notice-files/not98-024.html*).

Currently, healthcare professional organizations, various universities, foundations, and industries are taking steps to encourage broad participation of all populations in clinical drug trials.

Since 1998, the National Medical Association has administered Project IMPACT, a program initially funded by HHS designed to train African American physicians on being clinical investigators and to increase knowledge and raise awareness about clinical trials among African American physicians and consumers. (Information is available at *http://www.omhrc.gov/assets/pdf/checked/Project%20IMPACT--Increasing%20Minority%20Participation%20and%20Awareness%20of%20Clinical%20Trials.pdf*.) The program is currently being funded by AstraZeneca and has expanded to include the Interamerican College of Physicians and Surgeons, an Hispanic health professional organization. (Information is available at *http://www.astrazeneca-us.com/community-support/?itemId=1338629*.) Further, some foundations have supported studies and programs designed to increase participation (e.g., the Lance Armstrong Foundation's support of the Education Network to Advance Clinical Cancer Trials, intended ''to foster awareness about cancer clinical trials, enhance their acceptability and improve access to them.'' Information is available at *http://www.livestrong.org/site/c.khLXK1PxHmF/b.2662065/k.C0D9/ENACCT.htm*). Industry has partnered with academia to fund similar programs (e.g., Genentech's and Baylor College of Medicine's research initiative with the Intercultural Cancer Council, ''Project addresses underrepresentation of minorities, underserved patients in clinical studies.'' Information is available at *http://www.bcm.edu/news/item.cfm?newsID=420*).

We are seeking information to determine if additional approaches are necessary to increase participation of certain subsets of the general population (elderly populations, children, racially and ethnically diverse communities, and medically underserved populations) in drug clinical trials.

## II. Request for Comments and Information

In providing comments, we are particularly interested in responses to the following questions regarding the participation of certain population subsets in clinical drug trials.

### *A. Communication and Knowledge Barriers*

1. To what extent do differences in native language, educational level, and literacy interfere with members of some populations' participation in clinical trials:

- Finding out about the existence of trials and how to enroll
- Understanding informed consent documents and procedures
- Adhering to clinical trial instructions and drug regimens
- Completing clinical trials

2. To what extent do limitations in access to technology and to medical care in general decrease the chance that members of some populations will know about the existence of clinical trials and how to participate in them?

- Are these subsets of populations aware of *www.ClinicalTrials.gov*?

3. What proven methods, i.e., best practices, are available to address the impact of these potential barriers to communication about the existence of, and how to participate in, clinical drug trials?

4. To what extent are health care providers aware of *www.ClinicalTrials.gov*?

### *B. Trust and Cultural Sensitivity*

1. To what extent do culturally-bound beliefs or traditions, or trust or stereotypes about the medical research community, interfere with group members' willingness to participate in clinical drug trials?

- Are particular populations significantly more or less trusting of those who conduct medical research?

2. What approaches to address cultural sensitivity and trust issues, including increased collaboration with community-based organizations, have been shown to increase successful clinical trial participation?

3. To what extent do the beliefs of clinical trial personnel about the commitment or ability of members of some populations to follow through with a protocol influence willingness to recruit and enroll such individuals in clinical drug trials?

4. What approaches, i.e. best practices, have been shown to improve trust between potential participants and clinical drug trial researchers and healthcare providers who can provide referrals?

### *C. Costs of Clinical Trial Participation*

*Note*: The term ''cost'' may vary from participant to participant and is intended to include time lost (i.e. wages, childcare, etc), effort expended, and other sacrifices that may be necessary to participate in clinical drug trials.

1. To what extent do data show that the ''costs'' of participation, to either potential participants or to those who conduct clinical drug trials, prohibit participation or enrollment of particular populations?

2. To what extent do data address the following?

- Do particular populations understand the potential public benefit from participating in clinical drug trials as compared to the ''cost'' to the participant?
- Is the belief that there is a public benefit from participating in clinical drug trials a sufficient incentive for participation for some populations?

3. To what extent do data show that limited health insurance coverage is an impediment to clinical drug trial participation?

4. To what degree is the geographical accessibility to clinical trials a significant cost that affects the participation of some populations?

5. What are the ''costs'' of participating in clinical drug trials that are most relevant to some populations? How might these be reduced?

6. What approaches, i.e. best practices, have been shown to decrease ''costs'' with resulting increased participation in clinical drug trials?

### *D. Other*

1. Please describe any other barriers, or best practice approaches, that HHS should consider in striving to increase participation of certain population subsets in clinical drug trials.

**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*.

Dated: January 6, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–450 Filed 1–12–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request; Follow-up of Kidney Cancer Patients From the Central European Multicenter Case-Control Study (CEERCC) (NCI)

**SUMMARY:** Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 3, 2008 (Volume 73, No. 213, p. 65387) and allowed 60 days for public comment. There was one public comment received which questioned why U.S. tax dollars are being spent on a study located in Europe. The investigator responded directly to the comment on 12/19/08 stating that this study costs less money to conduct in central Europe than in the U.S. since previous data has already been collected. Additionally, since this region has the highest rates of kidney cancer in the world a study in this area would provide a wealth of data in terms of the causes of kidney cancer. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection: Title:* Follow-up of Kidney Cancer Patients from the Central European Multicenter Case-Control Study (NCI). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The purpose of this questionnaire is to obtain information on the 5-year survival status of kidney cancer patients that were previously enrolled in a Central European Case-Control Study of Kidney Cancer that was conducted from 2001 to 2004. The aim is to assess survival, the prevalence of recurrent disease and progression, and to investigate patient, tumor and genetic determinants of survival among cases. The questionnaire will collect information on patient related factors, tumor related factors that were not collected during the initial study, and the type of treatment(s) received since the patients were last contacted for the case-control study. This questionnaire adheres to The Public Health Service Act, section 412 (42 U.S.C. 285a–1) and section 413 (42 U.S.C. 285a–2), which authorizes the Division of Cancer Epidemiology and Genetics of the National Cancer Institute (NCI) to establish and support programs for the detection, diagnosis, prevention and treatment of cancer; and to collect, identify, analyze and disseminate information on cancer research, diagnosis, prevention and treatment. *Frequency of Response:* Once. *Affected Public:* Individuals. *Type of Respondents:* Individuals that participated in the Central European Renal Cancer Case-Control Study between 2001–2004 and physician abstractors. The estimated total annual burden hours requested is 296. The annualized cost to respondents is estimated at $5174. The data will be collected within a two-year period. There are no additional capital costs, operating costs, and/or maintenance costs to report.

ESTIMATES OF ANNUAL BURDEN HOURS

| Type of respondents | Number of respondents | Frequency of response | Average time per response (Minutes/Hour) | Annual burden hours |
|---|---|---|---|---|
| Patients | 200 | 1 | 40/60 | 133.33 |
| Families (NOK) | 240 | 1 | 40/60 | 160.00 |
| Physicians | 10 | 1 | 15/60 | 2.50 |
| Totals | 450 | | | 295.83 |

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Lee E. Moore, PhD, MPH, Investigator, Occupational and Environmental Epidemiology Branch, Division of Cancer Epidemiology and Genetics, National Cancer Institute, NIH, DHHS, Executive Plaza South, Room 8102, 6120 Executive Blvd., EPS–MSC 7242, Bethesda, MD 20892–7270 or call non-toll-free number 301–496–6427 or e-mail your request, including your address to: *moorele@mail.nih.gov*.

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: January 2, 2009.

**Vivian Horovitch-Kelley,**

*NCI Project Clearance Liaison Office, National Institutes of Health.*

[FR Doc. E9–484 Filed 1–12–09; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Institute of Child Health and Human Development Special Emphasis Panel; Biological Testing Facility (RFP–NIH–NICHD–CPR–09–05).

*Date:* February 9, 2009.

*Time:* 10 a.m. to 1 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5b01, Bethesda, Md 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 7, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–482 Filed 1–12–09; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, Childhood Obesity RFA HD–08–023.

*Date:* February 6, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, Eunice Kennedy Shriver, National Institute For Child Health & Development, 6100 Executive Boulevard, Room 5b01, Bethesda, MD 20812–7510, (301) 435–8382, *hindialm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 7, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–483 Filed 1–12–09; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Closed 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 Center for Research Resources Special Emphasis Panel; SEPA SEP.

*Date:* February 10, 2009.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Lee Warren Slice, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, Bethesda, MD 20892, 301–435–0965.

(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: January 6, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–417 Filed 1–12–09; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Research Resources Council.

*Date:* February 12, 2009.

*Open:* 8 a.m. to 11:55 a.m.

*Agenda:* Report of the Director, NCRR and other Council business.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Closed:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023, *louiser@ncrr.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs and hotel and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ncrr.nih.gov/newspub/minutes.htm*, where an agenda and any additional information for the meeting will be posted when available.

(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: January 6, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–426 Filed 1–12–09; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse; Special Emphasis Panel CEBRA Review.

*Date:* January 16, 2009.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse. NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389, *ms80x@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Drug Abuse; Special Emphasis Panel; Medications Development for Cannabis-Related Disorders.

*Date:* January 29, 2009.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Blvd., Suite 220, MSC 8401, Bethesda, MD 20892, 301–402–7964, *mh392g@nih.gov*.

*Name of Committee:* National Institute on Drug Abuse; Special Emphasis Panel; Pilot Clinical Trials of Pharmacotherapies for Substance Related.

*Date:* February 9, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sofitel Hotel, 806 15th Street, NW., Washington, DC 20005.

*Contact Person:* Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda. MD 20892–8401, 301–451–4530, *elazarwe@nida.nih.gov*.

*Name of Committee:* National Institute on Drug Abuse, Initial Review Group, Health Services Research Subcommittee, NIDA–F.

*Date:* February 10–11, 2009.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

*Contact Person:* Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Blvd., Suite 220, MSC 8401, Bethesda, MD 20892, 301–402–7964, *mh392g@nih.gov*.

*Name of Committee:* National Institute on Drug Abuse, Special Emphasis Panel,NIDA–F Conflicts.

*Date:* February 10, 2009.

*Time:* 3 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

*Contact Person:* Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6626, *gm145a@nih.gov*.

*Name of Committee:* National Institute on Drug Abuse, Special Emphasis Panel, NIDA–E Conflicts.

*Date:* February 11, 2009.

*Time:* 9 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

*Contact Person:* Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–451–4530, *elazarwe@nida.nih.gov*.

*Name of Committee:* National Institute on Drug Abuse; Initial Review Group; Medication Development Research Subcommittee.

*Date:* February 12, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications

*Place:* Double Tree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

*Contact Person:* Jose F Ruiz, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Blvd., Rm. 213, MSC 8401, Bethesda, MD 20892, 301–451–3086, *ruizjf@nida.nih.gov*.

*Name of Committee:* National Institute on Drug Abuse; Initial Review Group Training and; Career Development Subcommittee.

*Date:* March 17–18, 2009.

*Time:* 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

*Contact Person:* Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Room 220, MSC 8401, Bethesda, MD 20892–8401, 301–451–4530, *el6r@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 5, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–280 Filed 1–12–09; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of 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 meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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 Diabetes and Digestive and Kidney Diseases Advisory Council.

*Date:* February 18, 2009.

*Open:* 8:30 a.m. to 11:45 a.m.

*Agenda:* To present the Director's Report and other scientific Presentations.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Closed:* 4:10 p.m. to 4:40 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases, Advisory Council, Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

*Date:* February 18, 2009.

*Open:* 1 p.m. to 2:30 p.m.

*Agenda:* To review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Closed:* 2:30 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases, Advisory Council, Digestive Diseases and Nutrition Subcommittee.

*Date:* February 18, 2009.

*Open:* 1 p.m. to 2:30 p.m.

*Agenda:* To review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

*Closed:* 2:30 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, PhD, Director, Division Of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases, Advisory Council, Kidney, Urologic, and Hematologic Diseases Subcommittee.

*Date:* February 18, 2009.

*Open:* 1 p.m. to 2:30 p.m.

*Agenda:* To review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

*Closed:* 2:30 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

*Contact Person:* Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institutes/Center's home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 6, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–400 Filed 1–12–09; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Initial Review Group Biological Aging Review Committee.

*Date:* February 6, 2009.

*Time:* 11 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes on Aging, Gateway Building, 7201 Wisconsin Avenue, Rm. 2C212, Bethesda, MD 20814. (Telephone Conference Call)

*Contact Person:* Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C–212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov*.

*Name of Committee:* National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

*Date:* March 5–6, 2009.

*Time:* 4 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites Chevy Chase, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* William Cruce, PhD, Scientific Review Administrator, National Institute on Aging, Scientific Review Office, Gateway Building 2C–212, 7201 Wisconsin Ave., Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 6, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–401 Filed 1–12–09; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of R03 and R21 applications.

*Date:* February 11, 2009.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Jonathan Horsford, PhD, Scientific Review Officer, Natl. Inst. of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd, Room 664, Bethesda, MD 20892, 301–594–4859. *horsforj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 6, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–420 Filed 1–12–09; 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; NIAID Clinical Trials.

*Date:* February 10, 2009.

*Time:* 3 p.m. to 6 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:* Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 6, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–424 Filed 1–12–09; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2009–0001]**

### Homeland Security Information Network Advisory Committee

**ACTION:** Committee Management; Notice of Rescheduling of Federal Advisory Committee Teleconference Meeting.

**SUMMARY:** The Homeland Security Information Network Advisory

Committee will hold a teleconference call on January, 26, 2009, to discuss implementation efforts associated with the Next Generation of the Homeland Security Information Network. This notice supersedes the notice announcing a teleconference meeting scheduled to take place on January 13, 2009. No teleconference call will take place on January 13, 2009.

Teleconference call dates may be subject to change. Please contact Niklaus Welter in advance of the call to confirm that the call will take place.

**DATES:** The teleconference call will take place on Monday, 26 January, 2009, at2–3 p.m. EST.

**ADDRESSES:** Members of the public may monitor the call by calling 1–800–882–3610 (Domestic Callers) or 1–412–380–2000 (International Callers), to be followed by this PIN 1782344#. Members of the public are welcome to monitor the call; however, the number of teleconference lines is limited and available on a first-come, first-served basis. Questions or Comments must be identified by DHS–2009–0001 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal:*
- *http://www.regulations.gov*. Follow the instructions for submitting questions or comments.
- *E-mail: Niklaus.Welter@dhs.gov*. Include the docket number, DHS–2009–0001 in the subject line of the message.
- *Fax:* 202–282–8806.
- *Mail:* Niklaus Welter, Department of Homeland Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528.

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received by the Homeland Security Information Network Advisory Committee, go to *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Niklaus Welter, 245 Murray Lane, SW., Bldg 410, Washington, DC 20528, *Niklaus.Welter@dhs.gov*, 202–282–8336, fax 202–282–8806.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). This notice supersedes the notice published on January 07, 2009 (Docket No. DHS–2008–0204), announcing a teleconference meeting scheduled to take place on January 13, 2009. No teleconference call will take place on January 13, 2009. The Homeland Security Information Network Advisory Committee will have a conference call on January 26, 2009, to discuss implementation efforts associated with the Next Generation of the Homeland Security Information Network. The Homeland Security Information Network Advisory Committee provides advice and recommendations to the Secretary through the Director, Operations Coordination and Planning on matters relating to gathering and incorporating user requirements into the Homeland Security Information Network.

The Committee will discuss the above issues from approximately 2–3 p.m. EST. Teleconference Call dates may be subject to change. Please contact Niklaus Welter in advance of the call to confirm that the call will take place.

The chairperson of the Homeland Security Information Network Advisory Committee shall conduct the teleconference in a way that will, in his judgment, facilitate the orderly conduct of business. Please note that the teleconference may end early if all business is completed.

**Information on Services for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Niklaus Welter as soon as possible.

**Roger T. Rufe, Jr.,**

*Director, Operations Coordination and Planning.*

[FR Doc. E9–445 Filed 1–12–09; 8:45 am]

**BILLING CODE 4410–10–P**

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## DEPARTMENT OF HOMELAND SECURITY

### No FEAR Act

**AGENCY:** Office of the Secretary; DHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Homeland Security (DHS) is providing notice to all of its employees, former employees, and applicants for employment about the rights and remedies that are available to them under Federal antidiscrimination laws and whistleblower protection laws. This notice satisfies the Department's notification requirements under section 202 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 and Office of Personnel Management regulations.

**FOR FURTHER INFORMATION CONTACT:** Stephen Shih, Deputy Officer for Equal Employment Opportunity (EEO) Programs, U.S. Department of Homeland Security, 245 Murray Lane, SW., Building 410, Washington DC, 20528, by telephone at 1–888–644–8360 or by e-mail at *civil.liberties@dhs.gov*.

**SUPPLEMENTARY INFORMATION:** The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, ''No FEAR Act''), Public Law 107–174 (May 15, 2002) was enacted, in part, to ensure that federal agencies are accountable for violations of antidiscrimination and whistleblower protection laws. Congress expressly found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' *Id.,* Title I, General Provisions, section 101(1).

In furtherance of this purpose, section 202 of the No FEAR Act requires all Federal agencies to provide written notification to Federal employees, former Federal employees and applicants for Federal employment to inform them of the rights and protections available under applicable Federal antidiscrimination and whistleblower protection laws. The Act also requires federal agencies to post the notice on each agency's Web site.

Pursuant to section 202 of the No FEAR Act, DHS is notifying all of its employees, former employees, and applicants for employment about the rights and remedies that are available to them under applicable Federal antidiscrimination laws and whistleblower protection laws. This notice will also be posted on DHS's Web site *https://www.dhs.gov*.

**Antidiscrimination Laws**

A Federal agency, including DHS, may not discriminate against an employee or applicant for Federal employment with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C.2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16. If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact a DHS Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal

complaint of discrimination with your agency. See, *e.g.*, 29 CFR part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor, as noted above, or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on sexual orientation, marital status, protected genetic information or political affiliation, you may (a) File a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below) or (b) pursue a discrimination complaint by contacting a DHS Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action or (c) file a grievance through the DHS administrative or negotiated grievance procedures, if such procedures apply and are available.

**Whistleblower Protection Laws**

A Federal employee—including a DHS employee—with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of: law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov*.

**Retaliation for Engaging in Protected Activity**

A Federal employee, including a DHS employee, may not retaliate against an employee or applicant for employment because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

**Disciplinary Actions**

Under the existing laws, DHS retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws, up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), DHS must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits DHS to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

**Additional Information**

For further information regarding the No FEAR Act regulations, refer to 5 CFR Part 724, as well as the DHS Office for Civil Rights and Civil Liberties. Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov*.

**Existing Rights Unchanged**

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

**Daniel W. Sutherland,**

*Officer for Civil Rights and Civil Liberties.*

[FR Doc. E9–376 Filed 1–12–09; 8:45 am]

BILLING CODE 4410–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Privacy Act of 1974; System of Records

**AGENCY:** Privacy Office, DHS.

**ACTION:** Notice of removal of a Privacy Act system of records notice.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to consolidate the following Privacy Act system of records notice, Justice/INS–025 Worksite Enforcement Activity Record and Index, October 17, 2002, into an existing Department of Homeland Security Immigration and Customs Enforcement system of records notice, External Investigations Records, December 11, 2008.

**DATES:** *Effective Date:* February 12, 2009.

**FOR FURTHER INFORMATION CONTACT:** Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile 703–483–2999.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is giving notice that it proposes to consolidate the following Privacy Act system of records notice, Justice/INS–025 Worksite Enforcement Activity Record and Index (67 FR 64136 October 17, 2002) into an existing DHS Immigration and Customs Enforcement (ICE) system of records, External Investigations Records, (73 FR 75452 December 11, 2008).

DHS inherited this records system upon its creation in January of 2003. Upon review of its inventory of record systems, DHS has determined that it should be consolidated into the existing DHS ICE External Investigation system of records.

Justice/INS–025 Worksite Enforcement Activity Record and Index was originally established to administer and enforce the employment control provisions of the Immigration and Nationality Act and related criminal statues. Additionally, the system was used to monitor and evaluate information contained on I–9 forms under inspection. The data collected by ICE pursuant to these activities are now covered by the External Investigations system of records.

Consolidating this system of records notice will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: January 5, 2009.

**Hugo Teufel III,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. E9–377 Filed 1–12–09; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Privacy Act of 1974; System of Records

**AGENCY:** Privacy Office, DHS.

**ACTION:** Notice of removal of a Privacy Act system of records notice.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to consolidate the following Privacy Act system of records notice, FEMA/CGC–1, August 28, 2000, into an existing Department of Homeland Security system of records notice, DHS/ALL–013 Department of Homeland Security Claims Records, October 28, 2008.

**DATES:** *Effective Date:* February 12, 2009.

**FOR FURTHER INFORMATION CONTACT:** Hugo Teufel III, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or facsimile 703–483–2999.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security (DHS) is giving notice that it proposes to consolidate the following Privacy Act system of records notice, FEMA/CGC–1 (65 FR 52116 August 28, 2000) into an existing Department of Homeland Security system of records notice, DHS/ALL–013 Department of Homeland Security Claims Records (73 FR 63987 October 28, 2008).

DHS inherited this records system upon its creation in January of 2003. Upon review of its inventory of record systems, DHS has determined that it should be consolidated into DHS/ALL–013 Department of Homeland Security Claims Records (73 FR 63987 October 28, 2008).

DHS is consolidating FEMA/CGC–1 (65 FR 52116 August 28, 2000), Cerro Grande Fire Assistance Claim Files. This system was originally established to expeditiously consider and settle claims for injuries suffered as a result of the Cerro Grande Fire.

Consolidating this system of records notice will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: January 5, 2009.

**Hugo Teufel III,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. E9–379 Filed 1–12–09; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5264–D–01]**

### Redelegation of Authority for Office of Public and Indian Housing

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice to redelegate authority.

**SUMMARY:** Through this notice, the Assistant Secretary for Public and Indian Housing retains and redelegates certain authority to the Deputy Assistant Secretaries of the Office of Public and Indian Housing (PIH).

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

**FOR FURTHER INFORMATION CONTACT:** Linda Bronsdon, AICP, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000, telephone number 202–708–0713. (This is not a toll-free number.) Hearing-or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** Section 7(d) of the Department of Housing and Urban Development (HUD) Act, as amended (42 U.S.C. 3535(d)), provides authority to the Secretary to delegate functions, powers and duties as the Secretary deems necessary. In the Consolidated Delegation of Authority for PIH, published on August 4, 2004, at 69 FR 47171, the Secretary of HUD delegated authority to the Assistant Secretary for PIH and authorized the Assistant Secretary to redelegate authority for the administration of certain PIH programs.

**Section A. Authority Redelegated**

The Assistant Secretary for PIH redelegates to Deputy Assistant Secretaries for PIH the power and authority of the Assistant Secretary for PIH to administer the following:

1. Programs under the jurisdiction of the Secretary that are carried out pursuant to the authority transferred from the Public Housing Administration under Section 5(a) of the Department of Housing and Urban Development Act (42 U.S.C. 3534) as amended;

2. Each program of the Department that is authorized pursuant to the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437 *et seq.*) as amended, including but not limited to the Public Housing program, Section 8 programs (except the following Section 8 Project-Based programs: New Construction, Substantial Rehabilitation, Loan Management Set-Aside and Property Disposition) and predecessor programs that are no longer funded but have ongoing commitments;

3. PIH programs for which assistance is provided for or on behalf of public housing agencies (PHAs), public housing residents or other low-income households; and

4. PIH programs for which assistance is provided for or on behalf of Native Americans, Indian tribes, Alaska Native Villages, Native Hawaiians, tribal entities, tribally designated housing entities, or tribal housing resident organizations, as defined in Section G.

**Section B. Authority Excepted**

The redelegation of authority to the Deputy Assistant Secretaries does not include any power or authority under law specifically required of either the Secretary of HUD or the Assistant Secretary of PIH. Authority excepted includes:

1. Issue or waive regulations, including waivers pursuant to Section 982.161(c) of title 24 of the Code of Federal Regulations which permits HUD field offices to act on waivers of conflict of interests. Public Housing Field Office Directors are to not exercise this authority;

2. Issue notices to clarify regulations;

3. Issue Notices of Funding Availability (NOFAs), handbooks, notices and other HUD policy directives;

4. Waive any provision of an Annual Contributions Contract (ACC) including a determination of substantial breach or default; taking possession or title of property from a PHA; and declaring breach or default in response to any violation of statute or regulations;

5. Impose remedies for substantial noncompliance with the requirements of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*) and/or its implementing regulations; and

6. Declare a failure to comply with the regulations of the Community Development Block Grants for Indian Tribes and Alaska Native Villages.

**Section C. Authority To Further Redelegate**

In accordance with a written redelegation of authority, a Deputy Assistant Secretary may further redelegate specific authority to PIH Office Directors or to other ranking PIH program officials. Redelegated authority to PIH directors or other ranking PIH program officials does not supersede the authority of a Deputy Assistant Secretary as designee of the Assistant Secretary for PIH. Such further redelegations include, but are not limited to, the issuance of a Limited Denial of Participation.

**Section D. Exceptions to Authority To Further Redelegate**

Authority redelegated from a Deputy Assistant Secretary to a PIH Office Director or other ranking PIH program official is limited. Excepted power and authority, meaning the authority may not be further redelegated by, and remains with, a Deputy Assistant Secretary, includes the authority to:

1. Offer new legislative proposals to Congress;
2. Allocate or reallocate funding among field offices;
3. Approve remedies for noncompliance requiring notice and opportunity for administrative hearing;
4. Issue a Notice of Intent to Impose Remedies under the Indian Housing Block Grant Program, Native Hawaiian Housing Block Grant Program, or Community Development Block Grant Program for Indian Tribes and Alaska Native Villages;
5. Waive provisions or instructions of PIH directives relating to the obligation or payment of operating subsidies;
6. Solicit competitive proposals for the management of all or part of public housing administered by a PHA;
7. Approve special rent adjustments;
8. Conduct tax credit and/or subsidy layering reviews, unless specifically or otherwise noted;
9. Approve PHA requests for exception payment standards that exceed 120 percent of the Fair Market Rent (FMR); and
10. Approve grant extensions, unless specifically or otherwise noted.

**Section E. Redelegation of Authority to the Office of Native American Programs**

The Assistant Secretary for PIH hereby redelegates authority to the Deputy Assistant Secretary of the Office of Native American Programs to perform program administration and oversight responsibilities associated with the following:

1. Programs authorized pursuant to NAHASDA (25 U.S.C. 4101 *et seq.*);
2. The Community Development Block Grant Program for Indian Tribes and Alaska Native Villages authorized by Section 106 of the Housing and Community Development Act of 1974 (42 U.S.C. 5306);
3. The Indian Home Loan Guarantee Program authorized by Section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a);
4. The Native Hawaiian Loan Guarantee Program authorized by Section 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13b); and
5. Rural Housing and Economic Development grants awarded to Indian tribes and tribal entities by the Assistant Secretary for Community Planning and Development.

**Section F. Authority Superseded**

All previous redelegations of authority between the Assistant Secretary for PIH and PIH Deputy Assistant Secretaries are superseded by and replaced with this redelegation of authority.

**Section G. Actions Ratified**

The Assistant Secretary for PIH hereby ratifies all actions previously taken by Deputy Assistant Secretaries in PIH from August 4, 2004 through the effective date of this redelegation with respect to programs and matters listed in this redelegation of authority. All actions previously taken by the Deputy Assistant Secretary (DAS) for the Office of Public Housing Investments (OPHI), or by the Director of the Special Applications Center (SAC), with respect to the above redelegated authority are hereby ratified. The redelegation of authority from the DAS for OPHI to the Director of SAC, dated March 17, 2008, concerning actions taken from August 4, 2004 through the effective date of this redelegation, remains in effect.

**Authority:** Section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: December 24, 2008.

**Paula O. Blunt,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. E9–386 Filed 1–12–09; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–957400–09–14200000–BJ0000]**

### Notice of Filing of Plats of Survey, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Filing of Plats of Survey, Wyoming.

**SUMMARY:** The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on the dates indicated.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

**SUPPLEMENTARY INFORMATION:** These surveys were executed at the request of the Bureau of Land Management, and are necessary for the management of resources. The lands surveyed are:

The plat and field notes representing the dependent resurvey of a portion of the east boundary, the north boundary and the subdivisional lines, and the subdivision of sections 5 and 23, Township 30 North, Range 107 West, of the Sixth Principal Meridian, Wyoming, Group No. 688, was accepted November 17, 2008.

The plat and field notes representing the dependent resurvey of the Thirteenth Auxiliary Guide Meridian West through Township 30 North, between Ranges 108 and 109 West, the east and north boundaries, and the subdivisional lines, Township 30 North, Range 108 West, of the Sixth Principal Meridian, Wyoming, Group No. 688, was accepted November 17, 2008.

The plat representing the entire record of the dependent resurvey of a portion of the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, Township 27 North, Range 102 West, Sixth Principal Meridian, Wyoming, Group No. 771, was accepted November 17, 2008.

The plat and field notes representing the dependent resurvey of the subdivisional lines, Township 21 North, Range 93 West, Sixth Principal Meridian, Wyoming, Group No. 772, was accepted November 17, 2008.

The plat representing the entire record of the corrective dependent resurvey of a portion of the subdivisional lines, designed to restore the corners to their original locations according to the best available evidence,

Township 47 North, Range 78 West, Sixth Principal Meridian, Wyoming, Group No. 773, was accepted November 17, 2008.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: January 7, 2009.

**John P. Lee,**

*Chief Cadastral Surveyor, Division of Support Services.*

[FR Doc. E9–454 Filed 1–12–09; 8:45 am]

**BILLING CODE 4310–22–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 701–TA–455 (Final)]**

## Circular Welded Carbon Quality Steel Line Pipe From China

### Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act), that an industry in the United States is materially injured or threatened with material injury by reason of imports from China of circular welded carbon quality steel line pipe from China, provided for in subheadings 7306.19.10 and 7306.19.51 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of China.[2]

### Background

The Commission instituted this investigation effective April 3, 2008, following receipt of a petition filed with the Commission and Commerce by Maverick Tube Corp. (Houston, TX), Tex-Tube Co. (Houston, TX), U.S. Steel Corp. (Pittsburgh, PA), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (Pittsburgh, PA).[3] The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of circular welded carbon quality line pipe from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 22, 2008 (73 FR 54618). The hearing was held in Washington, DC, on November 24, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 7, 2009. The views of the Commission are contained in USITC Publication 4055 (January 2009), entitled *Circular Welded Carbon Quality Line Pipe from China: Investigation No. 701–TA–455 (Final).*

By order of the Commission.

Issued: January 7, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9–446 Filed 1–12–09; 8:45 am]

**BILLING CODE 7020–02–P**

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Charlotte R. Lane, Irving A. Williamson, and Dean A. Pinkert based their affirmative determinations on findings of present material injury. Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, and Commissioner Deanna Tanner Okun based their affirmative determinations on findings of threat of material injury, and further determined that they would not have found material injury but for the suspension of liquidation.

[3] On April 4, 2008, Wheatland Tube Co. (Sharon, PA) separately filed an entry of appearance in support of the petition. Council for petitioning firm Tex-Tube Co. amended its entry of appearance on October 31, 2008, to also include domestic producers Northwest Pipe Co. (Vancouver, WA); Stupp Corp. (Baton Rouge, LA); and TMK IPSCO Tubulars (Lisle, IL); the same council once again amended its entry of appearance on November 3, 2008, to add domestic producer American Steel Pipe Division of ACIPCO (Birmingham, AL).

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1022 (Review)]**

## Refined Brown Aluminum Oxide From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of an expedited five-year review concerning the antidumping duty order on refined brown aluminum oxide from China.

**SUMMARY:** The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on refined brown aluminum oxide from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

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

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On January 5, 2009, the Commission determined that the domestic interested party group response to its notice of institution (73 FR 57149, October 1, 2008) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

*Staff report.*—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on February 2, 2009, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

*Written submissions.*—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before February 5, 2009 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by February 5, 2009. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 8, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9–480 Filed 1–12–09; 8:45 am]

**BILLING CODE 7020–02–P**

[2] The Commission has found the responses submitted on behalf of C–E Minerals, Inc.; Great Lakes Minerals, LLC; Treibacher Schleifmittel North America, Inc.; and Washington Mills Company, Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0049]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Application for National Firearms Examiner Academy.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 207, page 63512–63513 on October 24, 2008, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 12, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for National Firearms Examiner.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 6330.1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Federal. Abstract: The information requested on this form is necessary to process requests from prospective students to attend the ATF National Firearms Examiner Academy and to acquire firearms and tool mark examiner training. The information collection is used to determine the eligibility of the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 75 respondents, who will complete the form within approximately 12 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 15 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: January 8, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9–464 Filed 1–12–09; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0026]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30–Day Notice of Information Collection Under Review: Report of Theft or Loss of Explosives.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 207, page 63512, on October 24, 2008, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 12, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Theft or Loss of Explosives.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.5. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: Losses or theft of explosives must, by statute be reported within 24 hours of the discovery of the loss or theft. This form contains the minimum information necessary for ATF to initiate criminal investigations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 300 respondents, who will complete the form within approximately 1 hour and 48 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 540 total burden hours associated with this collection.

*If additional information is required contact:* Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: January 8, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9–465 Filed 1–12–09; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0062]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Identification of Imported Explosives Materials.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 207, page 63513 on October 24, 2008, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 12, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Identification of Imported Explosives Materials.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: The information is necessary to ensure that explosive materials can be effectively traced. All licensed importers are required to identify by marking all explosive materials they import for sale or distribution. The process provides valuable information in explosion and bombing investigations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 15 respondents, who will spend 1 hour placing marks of identification on imported explosives.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 45 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Clearance Officer, United States Department of Justice, Planning and Policy Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: January 8, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9–472 Filed 1–12–09; 8:45 am]

BILLING CODE 4410–FY–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[OMB Number 1117–0037]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested: Prescription Drug Monitoring Program Questionnaire

**ACTION:** 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until March 16, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of Information Collection 1117–0037**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Prescription Drug Monitoring Program Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* States.

*Other:* None.

*Abstract:* This questionnaire permits the Drug Enforcement Administration to compile and evaluate information regarding the design, implementation and operation of State prescription monitoring programs. Such information allows DEA to assist states in the development of new programs designed to enhance the ability of both DEA and State authorities to prevent, detect, and investigate the diversion and abuse of controlled substances.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 51 persons complete the Prescription Monitoring Program Questionnaire electronically, at 5 hours per form, for an annual burden of 255 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 255 burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 8, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9–467 Filed 1–12–09; 8:45 am]

BILLING CODE 4410–09–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2009–0024; DOCKET NO. 030–29462]**

## Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Materials License No. 45–23645–01na, To Incorporate the Decommissioning Plan for the Hypervelocity Gun Facility at the Naval Research Laboratory in Chesapeake Beach, MD

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

**FOR FURTHER INFORMATION CONTACT:** Orysia Masnyk Bailey, Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (864) 427–1032; fax number (610) 680–3497; or by e-mail: *Orysia.MasnykBailey@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Materials License No. 45–23645–01NA. The license is held by the Department of the Navy (Navy). This is a Master Materials License and covers many sites around the country. The proposed action pertains to the Hypervelocity Gun Facility at the Naval Research Laboratory, located about 2 miles south of Chesapeake Beach, Maryland. By letter dated May 22, 2008, the Navy submitted for NRC approval a decommissioning plan regarding the Hypervelocity Gun Facility. Granting the amendment request would incorporate the decommissioning plan into the license authorizing decommissioning activities at the site and eventual unrestricted release of the Facility. The NRC has evaluated and approved the Navy's decommissioning plan. The findings of this evaluation are documented in a Safety Evaluation Report which will be issued along with the amendment. The NRC has prepared an Environmental Assessment in support of this proposed action in accordance with the requirements of Title 10, *Code of Federal Regulations* (CFR), Part 51 (10 CFR part 51). Based on the Environmental Assessment, the NRC has concluded that a Finding of No Significant Impact is appropriate with respect to the proposed action. The amendment will be issued to the Navy following the publication of this Finding of No Significant Impact and Environmental Assessment in the **Federal Register**.

### II. Environmental Assessment

*Identification of Proposed Action*

The proposed action would approve the Navy's May 22, 2008, license amendment request to incorporate the decommissioning plan into the license, resulting in final decommissioning of the Facility and subsequent release of the Facility for unrestricted use. The Hypervelocity Gun Facility was used to test the impact of high velocity projectiles on depleted uranium targets. The testing was conducted from the early 1970s until the early 1990s. Testing was authorized under NRC License No. SMB–448, and subsequently, by Naval Radioactive Materials Permit No. 08–00173–E1NP. The Naval Radioactive Materials Permit No. 08–00173–E1NP remains active under the Navy's Master Materials License. Depleted uranium was stored and used in the Building 218C target chamber and Building 227 vault, and these areas are included within the decommissioning plan's scope.

The Hypervelocity Gun Facility is located at the Naval Research Laboratory on a 168 acre site. The Facility is located against a hillside, approximately 1,000 feet from the Chesapeake Bay. The city of Chesapeake Beach is approximately two miles to the north of the Facility, and North Beach is approximately six miles to the north of the Facility. The region surrounding the Naval Research Laboratory is sparsely populated.

The Hypervelocity Gun Facility consists of a light gas gun, a blast tank at the gun muzzle, a shadowgraph tube with optics to measure the projectile velocity, an orthogonal room and the target chamber, and a spherical target chamber that is 12 feet in diameter. All components are steel except for aluminum in a quick closing valve and the shadowgraph tube. Part of the gas gun is enclosed by concrete walls and ceilings and buried in the hill. The entire blast tube is buried in the hillside with a small access to crawl into the tube. The optics room containing the shadowgraph tube and orthogonal room are surrounded by concrete walls and ceilings and partly buried in a hill. The target chamber is contained in a structure called the environmental room, and it is this part of the Facility that contains the areas of residual contamination from past operations.

In the Hypervelocity Gun Facility, various metallic projectiles were fired against depleted uranium shapes and depleted uranium with explosives (targets) in a completely enclosed containment system. Depleted uranium targets were located in the spherical target chamber with target debris contained in the target chamber and flight tube. In a few tests, the quick closing valve did not function and allowed target debris from explosive tests to blow back through the flight tube into the orthogonal room, shadowgraph tube, and blast tank as far as the muzzle of the projectile launch tube. Depleted uranium remains embedded in some walls of the blast tank. It is possible that depleted uranium is lodged in inaccessible areas that were not affected by the routine cleaning and decontamination performed during testing. The decommissioning plan submitted by the Navy addresses the residual contamination in Buildings 218C and 227.

*Need for the Proposed Action*

The proposed action is to approve the decommissioning plan so that the Navy may complete Facility decommissioning activities. Completion of the decommissioning activities will reduce residual radioactivity at the facility. NRC regulations require licensees to begin timely decommissioning of their sites, or any separate buildings that contain residual radioactivity, upon cessation of licensed activities, in accordance with 10 CFR Part 30.36(d). The proposed licensing action will support such a goal. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for decommissioning that ensures protection of the public health and safety.

*Environmental Impacts of the Proposed Action*

The historical review of licensed activities conducted at the facility shows that such activities involved the test firing of various metallic projectiles against depleted uranium shapes and depleted uranium targets and the storage of contaminated targets and debris.

The NRC staff has reviewed the Navy's amendment request for the facility and examined the impacts of granting this license amendment request. Potential impacts include water resource impact (e.g. water may be used for dust control), air quality impacts from dust emissions, temporary local traffic impacts resulting from

transporting debris, human health impacts, noise impacts from equipment operations, scenic quality impacts, and waste management impacts.

Based on its review, the staff has determined that no surface or ground water impacts are expected from the decommissioning activities. Additionally, the staff has determined that significant air quality, noise, land use, and off-site radiation exposure impacts are also not expected. No significant air quality impacts are anticipated because of the contamination controls that will be implemented by the Navy during decommissioning activities. In addition, the environmental impacts associated with the decommissioning activities are bounded by impacts evaluated by NUREG–1496, ''Generic Environmental Impact Statement in Support Rulemaking on Radiological Criteria for License Termination of NRC Licensed Nuclear Facilities.'' Generic impacts for this type of decommissioning process were previously evaluated and described in NUREG–1496, which concludes that the environmental consequences are small.

The Navy estimates that approximately 78 cubic yards of solid radioactive waste will be generated during decommissioning activities. The risk to human health from the transportation of all radioactive material in the United States was evaluated in NUREG–0170, ''Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes.'' The principal radiological environmental impact during normal transportation is direct radiation exposure to nearby persons from radioactive material in the package. The average annual individual dose from all radioactive material transportation in the United States was calculated to be approximately 0.5 mrem, well below the 10 CFR part 20.1301 limit of 100 mrem for a member of the public.

This proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or pubic radiation exposure. Thus, waste management and transportation impacts from the decommissioning will not be significant.

Occupational health was also considered in the ''Final Environmental Impact Statement of the Transportation of Radioactive Material by Air and Other Modes.'' Shipment of the 78 cubic yards of materials from the facility would not affect the assessment of environmental impacts or the conclusions in the ''Final Environmental Impact Statement of the Transportation of Radioactive Material by Air and Other Modes.''

The staff also finds that the proposed license amendment will meet the radiological criteria for unrestricted release as specified in 10 CFR part 20.1402. The Navy demonstrated this through the development of building surface derived concentration guideline limits for its Facility. The Navy conducted site specific dose modeling using parameters specific to the Facility that adequately bounded the potential dose. The release limits for soil at the Facility will be that published in the **Federal Register** on December 7, 1999 (Volume 64, Number 234, Pages 68395—68396).

The Navy will maintain an appropriate level of radiation protection staff, procedures, and capabilities, and will implement an acceptable program to keep exposure to radioactive materials as low as reasonably achievable. Work activities are not anticipated to result in radiation exposures to the public in excess of 10 percent of the 10 CFR Part 20.1301 limits.

The NRC also evaluated whether cumulative environmental impacts could result from an incremental impact of the proposed action when added to other past, present, or reasonably foreseeable future actions in the area. The proposed NRC approval of the license amendment request, when combined with known effects on resource areas at the Naval Research Laboratory site, including further site remediation, are not anticipated to result in any cumulative impacts at the site.

*Environmental Impacts of the Alternatives to the Proposed Action*

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR part 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The no action alternative would keep radioactive material on-site without disposal. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

*Conclusion*

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR part 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

*Agencies and Persons Consulted*

NRC provided a draft of this Environmental Assessment to the Radiological Health Program in the Air and Radiation Management Administration of the Maryland Department of the Environment on November 17, 2008. On December 16, 2008, the State of Maryland responded by e-mail. The State agreed with the conclusions of the Environmental Assessment, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

## III. Finding of No Significant Impact

The NRC staff has prepared this Environmental Assessment in support of the proposed action. On the basis of this Environmental Assessment, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

## IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to

this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''

2. Title 10, *Code of Federal Regulations*, Part 20, Subpart E, ''Radiological Criteria for License Termination;''

3. Title 10, *Code of Federal Regulations*, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''

4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;''

5. NUREG–1720, ''Re-evaluation of the Indoor Resuspension Factor for the Screening Analysis of the Building Occupancy Scenario for NRC's License Termination Rule—Draft Report;''

6. NRC License No. 45–23645–01NA inspection and licensing records;

7. Department of the Navy, Decommissioning of the Hypervelocity Gun Facility at NavalResearch Laboratory, Chesapeake Beach Detachment, dated January 19, 2007 (ML070330468); and

8. Department of the Navy, Decommissioning Plan for Hypervelocity Gun Facility at NavalResearch Laboratory, Chesapeake Beach Detachment, dated May 22, 2008 (ML081640631).

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The Public Document Room reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia, PA this 6th day of January 2009.

For the Nuclear Regulatory Commission.

**Eugene Cobey,**

*Chief, Decommissioning Branch, Division of Nuclear Materials Safety Region I.*

[FR Doc. E9–457 Filed 1–12–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

## Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 18, 2008 to December 30, 2008. The last biweekly notice was published on December 30, 2008 (73 FR 79928).

### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice.

Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief

Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained

absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

**Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of amendment request:* September 30, 2008.

*Description of amendment request:* This is an administrative change which would reflect the creation of new companies as approved by the NRC Order dated July 28, 2008. The amendments would not be implemented until the restructuring transactions have been completed. The amendments would revise the names on the plant licenses to match the names of the new companies. Entergy Nuclear FitzPatrick, LLC would be changed to Enexus Nuclear FitzPatrick, LLC. Entergy Nuclear Operations, Inc. would be changed to EquaGen Nuclear LLC.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment would only change the names of the licensees and reflect the referenced NRC Order requirements; principal management and operational staffing for the restructured organization remain largely unchanged. The proposed name changes do not: (a) Involve a significant increase in the probability or consequences of an accident previously evaluated; (b) create the possibility of a new or different kind of accident from any accident previously evaluated; or (c) involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

*NRC Branch Chief:* Mark G. Kowal.

**FPL Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin**

*Date of amendment request:* November 25, 2008.

*Description of amendment request:* Amend Renewed Operating Licenses DPR–24 and DPR–27 for Point Beach Nuclear Plant (PBNP) Units 1 and 2 to incorporate new Large-Break LOCA (LBLOCA) analyses using the realistic LBLOCA methodology contained in NRC-approved WCAP–16009–P–A, ''Realistic Large Break LOCA Evaluation Methodology Using Automated Statistical Treatment of Uncertainty Method (ASTRUM),'' and to revise Technical Specification (TS) 5.6.4.b to include reference to WCAP–16009–P–A. This request also proposes to implement Technical Specification Task Force (TSTF) Traveler–363A. TSTF–363A eliminates the revision numbers and dates from the list of topical reports in TS 5.6.4.b. TS 5.6.4.b provides the analytical methods used to determine the core operating limits. Relocation of the complete citations to the core operating limits report (COLR) will enable the current revisions of these topical reports to be used.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This application proposes to incorporate LBLOCA analyses using the ASTRUM methodology, documented in WCAP–16009–P–A, ''Realistic Large Break LOCA Evaluation Methodology Using the Automated Statistical Treatment of Uncertainty Method (ASTRUM)'', in the PBNP licensing basis, add reference to WCAP–16009–P–A in the Technical Specification 5.6.4.b list of approved methodologies for establishing core operating limits, and relocate topical report detailed reference citations from TS 5.6.4.b to the COLR.

Accident analyses are not accident initiators, therefore, this proposed licensing basis change does not involve a significant increase in the probability of an accident. The analyses using ASTRUM demonstrated that the acceptance criteria in 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' were met. The NRC has approved WCAP–16009–P–A for application to two-loop Westinghouse plants with upper plenum injection (UPI). Since the PBNP Units 1 and 2 are two-loop Westinghouse plants with UPI and the analysis results meet the 10 CFR 50.46 acceptance criteria, this change does not involve a significant increase in the consequences of an accident.

Addition of the reference to WCAP–16009–P–A in TS 5.6.4.b and relocation of topical report detailed citations to the COLR are administrative changes that do not affect the probability or consequences of an accident previously evaluated.

The changes proposed in this license amendment do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This license amendment request proposes to incorporate LBLOCA analyses using the ASTRUM methodology, documented in WCAP–16009–P–A, ''Realistic Large Break LOCA Evaluation Methodology Using the Automated Statistical Treatment of Uncertainty Method (ASTRUM),'' in the PBNP licensing basis, add a reference to WCAP–16009–P–A in the Technical Specification list of approved methodologies for establishing core operating limits, and relocate topical report detailed reference citations from TS 5.6.4.b to the COLR in accordance with approved TSTF–363A.

There are no physical changes being made to the plant as a result of using the Westinghouse ASTRUM analysis methodology in WCAP–16009–P–A for performance of the LBLOCA analyses. No

new modes of plant operation are being introduced. The configuration, operation and accident response of the structures or components are unchanged by utilization of the new analysis methodology. Analyses of transient events have confirmed that no transient event results in a new sequence of events that could lead to a new accident scenario. The parameters assumed in the analysis are within the design limits of existing plant equipment.

In addition, employing the Westinghouse ASTRUM LBLOCA analysis methodology does not create any new failure modes that could lead to a different kind of accident. The design of all systems remains unchanged and no new equipment or systems have been installed which could potentially introduce new failure modes or accident sequences. No changes have been made to any reactor protection system or emergency safeguards features instrumentation actuation setpoints.

Based on this review, it is concluded that no new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed methodology changes.

Addition of the reference to WCAP–16009–P–A in the Technical Specifications is an administrative change that does not create the possibility of a new or different kind of accident. Relocation of topical report detailed citations from the Technical Specifications to the core operating limits report in accordance with approved TSTF–363A is an administrative change that does not create the possibility of a new or different kind of accident.

The licensing basis and Technical Specification changes proposed in this license amendment do not create the possibility of a new or different kind of accident from any previously evaluated.

Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

This application proposes to incorporate LBLOCA analyses using the ASTRUM methodology, documented in WCAP–16009–P–A, ''Realistic Large Break LOCA Evaluation Methodology Using the Automated Statistical Treatment of Uncertainty Method (ASTRUM)'', in the PBNP licensing basis, add a reference to WCAP–16009–P–A in the Technical Specifications list of approved methodologies for establishing core operating limits, and relocate topical report detailed reference citations from Technical Specification 5.6.4.b to the COLR.

The analyses using ASTRUM demonstrated that the applicable acceptance criteria in 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors'' are met. Margins of safety for LBLOCAs include quantitative limits for fuel performance established in 10 CFR 50.46. These acceptance criteria and the associated margins of safety are not being changed by this proposed new methodology. The NRC has approved WCAP–16009–P–A for application to two-loop Westinghouse plants with UPI. Since the PBNP is a two-loop Westinghouse plant with UPI and the analysis results meet the 10 CFR 50.46 acceptance criteria, this change does not involve a significant reduction in a margin of safety. The analysis results using this methodology improve the margin of safety of PBNP.

Addition of the reference to WCAP–16009–P–A in the Technical Specifications and implementation of TSTF–363A are administrative changes that do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Antonio Fernandez, Esquire, Senior Attorney, FPL Energy Point Beach, LLC, P.O. Box 14000, Juno Beach, FL 33408–0420.

*NRC Branch Chief:* Lois M. James.

**Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* October 21, 2008.

*Description of amendment request:* The proposed change would revise Sequoyah Nuclear Plant's Updated Final Safety Analysis Report (UFSAR) to require an inspection of each ice condenser within 24 hours of experiencing a seismic event greater than or equal to an operating basis earthquake (i.e., ½ of a safe shutdown earthquake) within the 5-week period after ice basket replenishment is completed. This will confirm that ice condenser lower inlet doors have not been blocked by ice fallout.

The proposed amendment provides a procedural requirement to confirm the ice condenser maintains the ice condenser generic qualification as set forth in the UFSAR. Justification for the use of the proposed procedural requirement is based on reasonable assurance that the ice condenser lower inlet doors will open following a seismic event during the 5-week period and the low probability of a seismic event occurring coincident with or subsequently followed by a design basis accident.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The analyzed accidents of consideration in regard to changes potentially affecting the ice condenser are a loss-of-coolant accident (LOCA) and a steam or feedwater line break inside containment. The ice condenser is an accident mitigator and is not postulated as being the initiator of a LOCA or high energy line break (HELB). The ice condenser is structurally designed to withstand a Safe Shutdown Earthquake (SSE) plus a Design Basis Accident (DBA) and does not interconnect or interact with any systems that interconnect or interact with the reactor coolant, main steam or feedwater systems. Because the proposed changes do not result in, or require any physical change to the ice condenser that could introduce an interaction with the reactor coolant, main steam or feedwater systems, there can be no change in the probability of an accident previously evaluated.

Under the current licensing basis, the ice condenser ice baskets would be considered fully fused prior to power ascension and the ice condenser would perform its accident mitigation function even if a safe shutdown seismic event occurred coincident with or just preceding the accident. Under the proposed change, there is some finite probability that, within 24 hours following a seismic disturbance, a LOCA or HELB in containment could occur within 5 weeks of the completion of ice basket replenishment. However, several factors provide defense-in-depth and tend to mitigate the potential consequences of the proposed change.

DBAs are not assumed to occur simultaneously with a seismic event. Therefore, the coincident occurrence of a LOCA or HELB with a seismic event is strictly a function of the combined probability of the occurrence of independent events, which in this case is very low. Based on the Probabilistic Risk Assessment model and seismic hazard analysis, the combined probability of occurrence of a seismic disturbance greater than or equal to an OBE [operating basis earthquake] during the 5-week period following ice replenishment coincident with or subsequently followed by a LOCA or HELB during the time required to perform the proposed inspection (24 hours) and if required by technical specifications, complete unit shutdown (37 hours), is less than 3.89E–09 for Sequoyah [Nuclear Plant]. This probability is well below the threshold that is typically considered credible.

Even if ice were to fall from ice baskets during a seismic event occurring coincident with or subsequently followed by an accident, the ice condenser would be expected to perform its intended safety function. There is reasonable assurance that the ice condenser would function properly following a seismic event within the 5-week period due to inherent conservatisms in the 1974 test data, the low likelihood of flow channel and floor drain blockage, and improbable blocking of the lower inlet doors by any potential fallout.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The ice condenser is expected to perform its intended safety function under all circumstances following a LOCA or HELB in containment.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change affects the assumed timing of a postulated seismic and DBA applied to the ice condenser and provides an alternate methodology to confirm the ice condenser lower inlet doors are capable of opening. As previously discussed, the ice condenser is not postulated as an initiator of any DBA. The proposed change does not impact any plant system, structure or component that is an accident initiator. The proposed change does not involve any hardware changes to the ice condenser or other changes that could create new accident mechanisms. Therefore, there can be no new or different accidents created from those previously identified and evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of the fuel cladding and the reactor coolant system will not be impacted by the proposed change.

The requirement to inspect the ice condensers within 24 hours of experiencing seismic activity greater than or equal to an OBE during the 5-week period following the completion of ice basket replenishment will confirm that the ice condenser lower inlet doors are capable of opening. This inspection will confirm that the ice condenser doors remain fully capable of performing their intended safety function under credible circumstances.

The proposed change affects the assumed timing of a postulated seismic and DBA applied to the ice condenser and provides an alternate methodology in confirming the ice condenser lower inlet doors are capable of opening. As previously discussed, the combined probability of occurrence of a LOCA or HELB and a seismic disturbance greater than or equal to an OBE during the ''period of potential exposure'' is less than 3.89E–09 for Sequoyah. This probability is well below the threshold that is typically considered credible.

Therefore, the proposed change does not involve a significant reduction in the margin of safety. The SQN [Sequoyah Nuclear Plant] ice condenser will perform its intended safety function under credible circumstances.

The changes proposed in this license amendment request (LAR) do not make any physical alteration to the ice condensers, nor does it affect the required functional capability of the ice condenser in any way. The intent of the proposed change to the UFSAR is to eliminate an overly restrictive waiting period prior to unit ascent to power operations following the completion of ice basket replenishment. The required inspection of the ice condenser following a seismic event greater than or equal to an OBE will confirm that the ice condenser lower inlet doors will continue to fully perform their safety function as assumed in the SQN safety analyses.

Thus, it can be concluded that the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

*NRC Branch Chief:* Thomas H. Boyce.

**Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* October 23, 2008.

*Description of amendment request:* The requested change is a partial adoption of Technical Specification Task Force Change Traveler No. 491 (TSTF–491), Revision 2, ''Removal of Main Steam and Feedwater Valve Isolation Times.'' The proposed change only revises TS 3.7.1.5, ''Main Steam Line Isolation Valves,'' by relocating the main steam isolation valve closure time from Surveillance Requirement (SR) 4.7.1.5.1 to the Bases. The proposed amendment deviates from TSTF–491 in that the current Sequoyah Nuclear Plant (SQN) TS 3.7.1.6, ''Main Feedwater Isolation, Regulating, and Bypass Valves,'' and associated surveillance requirements do not include the main feedwater valve closure times, and thus, TSTF–491 changes to TS 3.7.1.6 would not apply to the SQN TSs without modification. Because of this deviation from TSTF–491, the proposed amendment will be processed as a typical amendment.

*Basis for proposed no significant hazards consideration determination:* To satisfy the requirements of 10 CFR 50.91(a), the licensee's amendment request incorporates by reference the proposed no significant hazards consideration (NSHC) published in the **Federal Register** on October 5, 2006 (71 FR 58884), as part of the Consolidated Line Item Improvement Process associated with TSTF–491. That NSHC is reproduced below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows relocating main steam and main feedwater valve isolation times to the Licensee Controlled Document that is referenced in the Bases. The proposed change is described in Technical Specification Task Force (TSTF) Standard TS Change Traveler TSTF–491 related to relocating the main steam and main feedwater valves isolation times to the Licensee Controlled Document that is referenced in the Bases and replacing the isolation time with the phrase, ''within limits.''

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed changes relocate the main steam and main feedwater isolation valve times to the Licensee Controlled Document that is referenced in the Bases. The requirements to perform the testing of these isolation valves are retained in the TS. Future changes to the Bases or licensee-controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, '' Changes, test and experiments,'' to ensure that such changes do not result in more than minimal increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and the amounts of radioactive effluent that may be released, nor significantly increase individual or cumulative occupation/public radiation exposures.

Therefore, the changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes relocate the main steam and main feedwater valve isolation times to the Licensee Controlled Document that is referenced in the Bases. In addition, the valve isolation times are replaced in the TS with the phrase, ''within limits.'' The changes do not involve a physical altering of the plant (i.e., no new or different type of equipment will be installed) or a change in methods governing normal plant operation. The requirements in the TS continue to require testing of the main steam and main feedwater isolation valves to ensure the proper functioning of these isolation valves.

Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes relocate the main steam and main feedwater valve isolation times to the Licensee Controlled Document that is referenced in the Bases. In addition, the valve isolation times are replaced in the TS with the phrase, ''within limits.'' Instituting the proposed changes will continue to ensure the testing of main steam and main feedwater isolation valves. Changes to the Bases or License Controlled Document are performed in accordance with 10 CFR 50.59. This approach provides an effective level of regulatory control and ensures that main steam and feedwater isolation valve testing is conducted such that there is no significant reduction in the margin of safety.

The margin of safety provided by the isolation valves is unaffected by the proposed changes since there continue to be TS requirements to ensure the testing of main steam and main feedwater isolation valves. The proposed changes maintain sufficient controls to preserve the current margins of safety.

The NRC staff has reviewed this analysis. Based on this review, it appears the licensee's proposed amendment is bounded by the original NSHC and that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

*NRC Branch Chief:* Thomas H. Boyce.

**Notice of Issuance of Amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

**Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina**

*Date of application for amendments:* June 19, 2008, as supplemented by letter dated October 1, 2008.

*Brief description of amendments:* The amendments (1) revise the technical specifications (TS) control rod notch surveillance requirement (SR) frequency in TS 3.1.3, ''Control Rod Operability,'' and (2) revise Example 1.4–3 in Section 1.4, ''Frequency,'' to clarify the applicability of the 1.25 surveillance test extension. The licensee is proposing to adopt the approved Technical Specification Task Force (TSTF) change traveler TSTF–475, Revision 1, ''Control Rod Notch Testing Frequency.'' A notice of availability of TSTF–475, Revision 1, was published in the **Federal Register** on November 13, 2007 (72 FR 63935).

In addition, the proposed amendment would remove Note 2 associated with SR 3.1.3.3 for Unit 1, which is a cycle-specific note and has expired. This change is administrative in nature and does not affect the no significant hazards consideration determination.

*Date of issuance:* December 15, 2008.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment Nos.:* 250 and 278.

*Facility Operating License Nos. DPR–71 and DPR–62:* Amendments change the technical specifications.

*Date of initial notice in **Federal Register:*** October 7, 2008 (73 FR 58671). The supplemental letter dated October 1, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments are contained in a safety evaluation dated December 15, 2008.

No significant hazards consideration comments received: No.

**Dominion Nuclear Connecticut, Inc., et al., Docket Nos. 50–245, 50–336, and 50–423, Millstone Power Station, Units 1, 2, and 3, New London County, Connecticut**

*Date of application for amendment:* August 21, 2008.

*Brief description of amendment:* The amendments remove references to and limits imposed by Nuclear Regulatory Commission Generic Letter (GL) 82–12, ''Nuclear Power Plant Staff Working Hours,'' from the subject plants' technical specifications. The guidelines have been superseded by the requirements of Title 10 of the *Code of Federal Regulations,* Part 26 (10 CFR 26), Subpart I, ''Managing Fatigue.''

*Date of issuance:* December 17, 2008.

*Effective date:* As of the date of issuance and shall be implemented no later thanOctober 1, 2009.

*Amendment Nos.:* 116; 308; and 247.

*Facility Operating License No. DPR–21, Renewed Facility Operating License No. DPR–65, and Renewed Facility Operating License No. NPF–49:* Amendments revised the License and Technical Specifications.

*Date of initial notice in **Federal Register:*** September 23, 2008 (73 FR 54864).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 2008.

No significant hazards consideration comments received: No.

**Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Unit Nos. 2 and 3, Westchester County, New York**

*Date of application for amendment:* December 18, 2007, as supplemented by

letters dated September 18 and October 28, 2008.

*Brief description of amendment:* The amendments revise the Technical Specifications (TSs) by adding a Control Room Habitability Program and revising the TS on the Control Room Ventilation System in accordance with Technical Specifications Task Force (TSTF) change traveler TSTF–448, ''Control Room Habitability.'' License conditions are added regarding the initial performance of the new surveillance.

*Date of issuance:* December 22, 2008.

*Effective date:* As of the date of issuance, and shall be implemented within 30 days.

*Amendment No.:* 258 and 239.

*Facility Operating License Nos. DPR–26 and DPR–64:* The amendment revised the License and the Technical Specifications.

*Date of initial notice in **Federal Register:*** March 25, 2008 (73 FR 15785). The September 18 and October 28, 2008, supplements provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 2008.

No significant hazards consideration comments received: No.

**Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Unit Nos. 2 and 3 (IP2 and IP3), Westchester County, New York**

*Date of application for amendment:* March 13, 2008.

*Brief description of amendment:* The amendment revises the licensing basis for passive failures in fluid systems for IP2 and IP3 such that the loss-of-coolant accident (LOCA) recirculation phase single passive failure is assumed to occur 24 hours or greater following initiation of a LOCA. Also, the IP2 single passive failure licensing basis for the component cooling water system is revised such that a passive failure is assumed to occur 24 hours or greater following initiation of a LOCA.

*Date of issuance:* December 4, 2008.

*Effective date:* As of the date of issuance, and shall be implemented within 30 days.

*Amendment No.:* 257 and 238.

*Facility Operating License Nos. DPR–26 and DPR–64:* The amendment revised the License and the Updated Final Safety Analysis Report.

*Date of initial notice in **Federal Register:*** July 1, 2008 (73 FR 37503).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 2008.

No significant hazards consideration comments received: No.

**Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Plant, Van Buren County, Michigan**

*Date of application for amendment:* January 31, 2008, as supplemented by letter dated July 30, 2008.

*Brief description of amendment:* The amendment revises the description of fuel assemblies specified in Technical Specification (TS) 4.2.1 and adds the approved AREVA licensed topical report BAW–10240(P)–A, ''Incorporation of M5 Properties in Framatome ANP Approved Methods,'' to the analytical methods referenced in TS 5.6.5.b to permit the use of M5 alloy and supporting analytical methods in future reload designs.

*Date of issuance:* December 12, 2008.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment No.:* 234.

*Facility Operating License No. DPR–20:* Amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register:*** March 25, 2008 (73 FR 15786). The supplement dated July 30, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the initial **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 2008.

No significant hazards consideration comments received: No.

**Entergy Nuclear Operations, Inc. Docket No. 50–255, Palisades Plant, Van Buren County, Michigan**

*Date of application for amendment:* May 5, 2008.

*Brief description of amendment:* The amendment would revise renewed facility operating license DPR–20 to correct an error, generated during Palisades license transfer approval on April 11, 2007, and also remove several outdated license conditions pertaining to surveillance requirements.

*Date of issuance:* December 15, 2008.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment No.:* 235.

*Facility Operating License No. DPR–20:* Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** September 9, 2008 (73 FR 52416).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 2008.

No significant hazards consideration comments received: No.

**FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania**

*Date of application for amendment:* December 21, 2007, as supplemented on August 1, 2008.

*Brief description of amendment:* The amendment revises several Technical Specification (TS) sections to allow relaxations of various Reactor Trip System/Engineered Safety Feature (RTS/ESF) logic completion times, bypass test times, allowable outage times, and surveillance testing intervals that were previously reviewed and approved by NRC under Westinghouse Reports WCAP–14333–P–A, ''Probabilistic Risk Analysis of RPS [reactor protection system] and ESFAS [ESF Actuation System] Test Times and Completion Times,'' and WCAP–15376–P–A, ''Risk-Informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times.''

*Date of issuance:* December 29, 2008.

*Effective date:* As of the date of issuance and shall be implemented within 90 days of issuance.

*Amendment Nos.:* 282 and 166.

*Facility Operating License Nos. DPR–66 and NPF–73:* Amendments revises the License and Technical Specifications.

*Date of initial notice in **Federal Register:*** June 10, 2008 (73 FR 32745). The August 1, 2008, supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 2008.

No significant hazards consideration comments received: No.

**Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2 (CNP–1 and CNP–2), Berrien County, Michigan**

*Date of application for amendment:* December 27, 2007, as supplemented on July 28, 2008.

*Brief description of amendment:* The amendment establishes more effective and appropriate action, surveillance, and administrative requirements related to ensuring habitability within the control room envelope in accordance with the NRC-approved Technical Specification Task Force Traveler (TSTF)–448, Revision 3, and changes the technical specifications (TS) related to the control room emergency ventilation system in TS Section 3.7.10, ''Control Room Emergency Ventilation (CREV) System,'' and TS Section 5.5.16, ''Control Room Envelope Habitability Program.'' The amendment also adds a license condition to support implementation of the TS change.

*Date of issuance:* December 30, 2008.

*Effective date:* As of the date of issuance to be implemented within 180 days.

*Amendment Nos.:* 307 (CNP–1), 289 (CNP–2).

*Facility Operating License Nos. DPR–58 and DPR–74:* Amendments revised the Renewed Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register:*** January 29, 2008 (73 FR 5224). The supplemental letter dated July 28, 2008, provided information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 2008.

No significant hazards consideration comments received: No.

**Nine Mile Point Nuclear Station, LLC, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2 (NMP 1 and 2), Oswego County, New York**

*Date of application for amendment:* June 24, 2008.

*Brief description of amendments:* The amendments revise the Technical Specifications (TSs) by (1) replacing the references to Section XI of the American Society of Mechanical Engineers (ASME) *Boiler and Pressure Vessel Code* (Code) with references to the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) in the applicable TS section for the Inservice Testing (IST) Program for NMP 1 TS 6.5.4 and NMP 2 TS 5.5.6; and (2) revising the allowance to extend IST frequencies by 25 percent to clearly state that the allowance is applicable to IST frequencies of 2 years or less. The proposed changes are based on TS Task Force (TSTF) Standard Technical Specification Change Traveler 479–A, Revision 0, ''Changes to Reflect Revision of 10 CFR 50.55a,'' as modified by TSTF–497–A, Revision 0, ''Limit Inservice Testing Program SR 3.0.2 Application to Frequencies of 2 Years or Less.''

*Date of issuance:* December 22, 2008.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment Nos.:* 199 and 129.

*Renewed Facility Operating License Nos. DPR–063 and NPF–069:* The amendments revise the License and TSs.

*Date of initial notice in **Federal Register***: October 7, 2008 (73 FR 58674).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 2008.

No significant hazards consideration comments received: No.

**Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California**

*Date of application for amendments:* December 26, 2007, as supplemented onNovember 25, 2008.

*Brief description of amendments:* The amendments revised the action and surveillance requirements in Technical Specification (TS) 3.7.10, ''Control Room Ventilation System (CRVS),'' and add a new administrative controls program, TS 5.5.18, ''Control Room Envelope Habitability Program.'' The amendments are consistent with the TS traveler TSTF–448, ''Control Room Habitability,'' Revision 3.

*Date of issuance:* December 23, 2008.

*Effective date:* As of its date of issuance and shall be implemented within 180 days from the date of issuance.

*Amendment Nos.:* Unit 1–201; Unit 2–202.

*Facility Operating License Nos. DPR–80 and DPR–82:* The amendments revised the Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register***: January 29, 2008 (73 FR 5227). The supplement dated November 25, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 23, 2008.

No significant hazards consideration comments received: No.

**PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey**

*Date of application for amendment:* July 30, 2008, as supplemented by letters dated September 29, and October 20, 2008.

*Brief description of amendment:* The amendment revises Technical Specification (TS) 3.8.3, ''Onsite Power Distribution Systems,'' to establish a separate TS Action statement for inoperable inverters associated with the 120 volt alternating current distribution panels. The amendment extends the allowed outage time for inoperable inverters from 8 hours to 24 hours.

*Date of issuance:* December 18, 2008.

*Effective date:* As of the date of issuance, to be implemented within 30 days.

*Amendment No.:* 175.

*Facility Operating License No. NPF–57:* The amendment revised the TSs and the License.

*Date of initial notice in **Federal Register***: September 9, 2008 (73 FR 52421). The letters dated September 29, and October 20, 2008, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 2008.

No significant hazards consideration comments received: No

**Tennessee Valley Authority, Docket No. 50 390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee**

*Date of application for amendment:* September 4, 2008.

*Brief description of amendment:* The amendment revises the Technical Specifications (TS) to adopt TS Task Force (TSTF) Change Traveler TSTF–447, Revision 1, ''Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors.''

*Date of issuance:* December 23, 2008.

*Effective date:* As of the date of issuance and shall be implemented within 60 days of issuance.

*Amendment No.:* 72.

*Facility Operating License No. NPF–90:* Amendment revises the TSs and Facility Operating License.

*Date of initial notice in* ***Federal Register***: October 21, 2008 (73 FR 62569).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 2008.

*No significant hazards consideration comments received:* No.

**Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri**

*Date of application for amendment:* December 28, 2007.

*Brief description of amendment:* The amendment revised Technical Specification (TS) 3.7.2, ''Main Steam Isolation Valves (MSIVs),'' and TS Table 3.3.2–1, ''Engineered Safety Feature Actuation System Instrumentation.''

*Date of issuance:* December 18, 2008.

*Effective date:* As of its date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment No.:* 189.

*Facility Operating License No. NPF–30:* The amendment revised the Operating License and Technical Specifications.

*Date of initial notice in* ***Federal Register*** : March 25, 2008 (73 FR 15790).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 2008.

No significant hazards consideration comments received: No.

**Virginia Electric and Power Company, et al., Docket No. 50–281, Surry Power Station, Unit 2, Surry County, Virginia**

*Date of application for amendment:* December 17, 2007, as supplemented on April 24, 2008, and June 27, 2008.

*Brief Description of amendment:* The amendment revised Technical Specification (TS) 4.4, pertaining to the containment leak rate testing program. The TS change permitted a one-time 5-year extension to the once per 10-year frequency of the performance-based leakage rate testing program for Type A tests, which are done in accordance with Regulatory Guide (RG) 1.163, ''Performance-Based Containment Leak-Test Program.'' This one time exception to the RG 1.163 requirement allows the next Type A test to be performed no later than October 26, 2015.

*Date of issuance:* December 18, 2008.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 263.

*Renewed Facility Operating License No. DPR–37:* Amendment changed the license and the technical specifications.

*Date of initial notice in* ***Federal Register***: January 15, 2008 (73 FR 2551).

The supplemental letters dated April 24, 2008, and June 27, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 2008.

No significant hazards consideration comments received: No.

**Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* January 15, 2008, as supplemented by letter dated October 27, 2008.

*Brief description of amendment:* The amendment modified the Technical Specification (TS) to establish more effective and appropriate action, surveillance, and administrative requirements related to ensuring the habitability of the control room envelope (CRE) in accordance with U.S. Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) Standard Technical Specification change traveler TSTF–448, Revision 3, ''Control Room Habitability.'' Specifically, the amendment modified TS 3.7.10, ''Control Room Emergency Ventilation System (CREVS),'' and established a CRE habitability program in TS Section 5.5, ''Administrative Controls—Programs and Manuals.''

*Date of issuance:* December 24, 2008.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment No.:* 179.

*Facility Operating License No. NPF–42.* The amendment revised the Operating License and Technical Specifications.

*Date of initial notice in* ***Federal Register***: February 12, 2008 (73 FR 8072). The supplemental letter dated October 27, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 24, 2008.

No significant hazards consideration comments received: No.

**Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the

Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007, (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer ™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer ™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

**Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* November 12, 2008.

*Description of amendment request:* These amendments revise Technical Specification (TS) 3.3.3.1, ''Radiation Monitoring,'' and TS 3.4.6.1, ''Reactor Coolant System Leakage Detection Systems,'' at each unit to remove the requirement for one containment atmosphere gaseous radioactivity monitor to be operable in Modes 1, 2, 3 and 4. The requirement for one containment atmosphere particulate radioactivity monitor and one containment pocket sump level monitor to be operable in Modes 1, 2, 3 and 4 will remain. Additionally, the amendments make corresponding changes to Surveillance Requirements 4.3.3.1 and 4.4.6.1 and modifications to existing TS Limiting Condition for Operation (LCO) 3.4.6.1 action statements for each unit. Because the licensee was in a 30-day TS action statement completion time, these changes were processed as an exigent change in order to prevent an unnecessary shutdown and to allow the continued safe operation of the units.

*Date of issuance:* December 4, 2008.

*Effective date:* This license amendment is effective as of its date of issuance, to be implemented no later than 60 days after issuance.

*Amendment Nos.:* 322 and 314.

*Facility Operating License Nos. (DPR–77 and DPR–79):* Amendment revises the technical specifications.

*Public comments requested as to proposed no significant hazards consideration (NSHC):* Yes. Public notice of the proposed amendments was published in the *The Chattanooga Times Free Press* newspaper, located in Chattanooga, Tennessee on November 26, 2008. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated December 4, 2008.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

*NRC Branch Chief:* Thomas H. Boyce.

Dated at Rockville, Maryland, this 31st day of December 2008.

For the Nuclear Regulatory Commission.

**Robert A. Nelson,**

*Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E9–35 Filed 1–12–09; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Federal Register Notice

**DATE:** Weeks of January 12, 19, 26, February 2, 9, 16, 2009.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and closed.

**Week of January 12, 2009**

There are no meetings scheduled for the week of January 12, 2009.

**Week of January 19, 2009—Tentative**

There are no meetings scheduled for the week of January 19, 2009.

**Week of January 26, 2009—Tentative**

There are no meetings scheduled for the week of January 26, 2009.

**Week of February 2, 2009—Tentative**

*Wednesday, February 4, 2009*

1:30 p.m.

Briefing on Risk-Informed, Performance-Based Regulation (Public Meeting) (Contact: Gary Demoss, 301–251–7584)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

*Thursday, February 5, 2009*

9:30 a.m.

Briefing on Uranium Enrichment (Public Meeting)(Contact: Brian Smith, 301–492–3137)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

**Week of February 9, 2009—Tentative**

There are no meetings scheduled for the week of February 9, 2009.

**Week of February 16, 2009—Tentative**

There are no meetings scheduled for the week of February 16, 2009.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *darlene.wright@nrc.gov.*

Dated: January 8, 2009.

**Rochelle C. Bavol,**

*Office of the Secretary.*

[FR Doc. E9–585 Filed 1–9–09; 11:15 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** U.S. Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This gives notice of OPM decisions granting authority to make appointments underSchedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

**FOR FURTHER INFORMATION CONTACT:** M. Lamary, Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** Appearing in the listing below are the individual authorities established under Schedules A, B, and C between November 1, 2008, and November 30, 2008. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of September 30 is published each year.

**Schedule A**

No Schedule A appointments were approved for November 2008.

**Schedule B**

No Schedule B appointments were approved for November 2008.

**Schedule C**

The following Schedule C appointments were approved during November 2008.

*Section 213.3303 Executive Office of the President*

*Section 213.3305 Department of the Treasury*

DYGS00441 Director of Outreach to the Deputy Assistant Secretary (Financial Education). Effective November 05, 2008.

DYGS00488 Executive Assistant to the Special Envoy for China and the Strategic Economic Dialogue. Effective November 07, 2008.

*Section 213.3306 Department of Defense*

DDGS17174 Personal and Confidential Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective November 13, 2008.

DDGS17182 Confidential Assistant to the Under Secretary of Defense (Comptroller). Effective November 21, 2008.

*Section 213.3312 Department of the Interior*

DIGS01120 Special Assistant to the Director—Scheduling and Advance. Effective November 13, 2008.

DIGS01130 Director, External Affairs to the Chief of Staff. Effective November 13, 2008.

DIGS01131 Director, Intergovernmental Affairs to the Chief of Staff. Effective November 14, 2008.

*Section 213.3316 Department of Health and Human Services*

DHGS60522 Confidential Assistant to the Deputy Secretary, Health and Human Services. Effective November 07, 2008.

*Section 213.3325 United States Tax Court*

JCGS60056 00301 Chambers Administrator to the Chief Judge. Effective November 07, 2008.

*Section 213.3331 Department of Energy*

DEGS00681 White House Liaison to the Chief of Staff. Effective November 06, 2008.

DEGS00682 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective November 21, 2008.

*Section 213.3332 Small Business Administration*

SBGS00672 Special Assistant to the Chief of Staff. Effective November 05, 2008.

SBGS00653 Deputy General Counsel to the General Counsel. Effective November 13, 2008.

SBGS00674 Staff Assistant to the Associate Administrator for the Office of Field Operations. Effective November 25, 2008.

*Section 213.3337 General Services Administration*

GSGS60120 Public Affairs Specialist to the Associate Administrator for Citizen Services and Communications. Effective November 21, 2008.

*Section 213.3339 United States International Trade Commission*

TCGS60019 Staff Assistant (Economist) to a Commissioner. Effective November 25, 2008.

TCGS60036 Staff Assistant (Economist) to the Chairman. Effective November 25, 2008.

*Section 213.3343 Farm Credit Administration*

FLOT00027 Director to the Chairman, Farm Credit Administration Board. Effective November 13, 2008.

*Section 213.3384 Department of Housing and Urban Development*

DUGS60580 Congressional Relations Specialist to the Deputy Assistant Secretary for Congressional Relations. Effective November 13, 2008.

*Section 213.3396 National Transportation Safety Board*

TBGS91126 Confidential Assistant to the Vice Chairman. Effective November 13, 2008.

TBGS91126 Confidential Assistant to the Vice Chairman. Effective November 13, 2008.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

**Howard Weizmann,**

*Deputy Director.*

[FR Doc. E9–406 Filed 1–12–09; 8:45 am]

BILLING CODE 6325–39–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*
Form N–17f–1; SEC File No. 270–316; OMB Control No. 3235–0359.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form N–17f–1 (17 CFR 274.219) is entitled ''Certificate of Accounting of Securities and Similar Investments of a Management Investment Company in the Custody of Members of National Securities Exchanges.'' The form serves as a cover sheet to the accountant's certificate that is required to be filed periodically with the Commission pursuant to rule 17f–1 (17 CFR 270.17f–1) under the Act, entitled ''Custody of Securities with Members of National Securities Exchanges,'' which sets forth the conditions under which a fund may place its assets in the custody of a member of a national securities exchange. Rule 17f–1 requires, among other things, that an independent public accountant verify the fund's assets at the end of every annual and semi-annual fiscal period, and at least one other time during the fiscal year as chosen by the independent accountant. Requiring an independent accountant to examine the fund's assets in the custody of a member of a national securities exchange assists Commission staff in its inspection program and helps to ensure that the fund assets are subject to proper auditing procedures. The accountant's certificate stating that it has made an examination, and describing the nature and the extent of the examination, must be attached to Form N–17f–1 and filed with the Commission promptly after each examination. The form facilitates the filing of the accountant's certificates, and increases the accessibility of the certificates to both Commission staff and interested investors.

Commission staff estimates that on an annual basis it takes: (i) 1 hour of clerical time to prepare and file Form N–17f–1; and (ii) 0.5 hour for the fund's chief compliance officer to review Form N–17f–1 prior to filing with the Commission, for a total of 1.5 hours. Each fund is required to make 3 filings annually, for a total annual burden per fund of approximately 4.5 hours.[1] Commission staff estimates that an average of 5 funds currently file Form N–17f–1 with the Commission 3 times each year, for a total of 15 responses annually.[2] The total annual hour burden for Form N–17f–1 is therefore estimated to be approximately 22.5 hours.[3]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collections of information required by Form N–17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange member. Responses will not be kept confidential. 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 control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503

[1] This estimate is based on the following calculation: (1.5 hours × 3 responses annually = 4.5 hours).

[2] This estimate is based on a review of Form N–17f–1filings made with the Commission over the last three years.

[3] This estimate is based on the following calculations: (4.5 hours × 5 funds = 22.5 total hours).

or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 7, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–442 Filed 1–12–09; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 11a–3, SEC File No. 270–321, OMB Control No. 3235–0358.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 11(a) of the Investment Company Act of 1940 (''Act'') (15 U.S.C. 80a–11(a)) provides that it is unlawful for a registered open-end investment company (''fund'') or its underwriter to make an offer to the fund's shareholders or the shareholders of any other fund to exchange the fund's securities for securities of the same or another fund on any basis other than the relative net asset values (''NAVs'') of the respective securities to be exchanged, ''unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers.'' Section 11(a) was designed to prevent ''switching,'' the practice of inducing shareholders of one fund to exchange their shares for the shares of another fund for the purpose of exacting additional sales charges.

Rule 11a–3 (17 CFR 270.11a–3) under the Act of 1940 is an exemptive rule that permits open-end investment companies (''funds''), other than insurance company separate accounts, and funds' principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment companies. The rule requires a fund, among other things, (i) to disclose in its prospectus and advertising literature the amount of any administrative or redemption fee imposed on an exchange transaction, (ii) if the fund imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years, and (iii) give the fund's shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule's requirements are designed to protect investors against abuses associated with exchange offers, provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and enable the Commission staff to monitor funds' use of administrative fees charged in connection with exchange transactions.

The staff estimates that there are approximately 1958 active open-end investment companies registered with the Commission as of September 2008. The staff estimates that 25 percent (or 490) of these funds impose a non-nominal administrative fee on exchange transactions. The staff estimates that the recordkeeping requirement of the rule requires approximately 1 hour annually of clerical time per fund, for a total of 490 hours for all funds.[1]

The staff estimates that 5 percent of these 1958 funds (or 98) terminate an exchange offer or make a material change to the terms of their exchange offer each year, requiring the fund to comply with the notice requirement of the rule. The staff estimates that complying with the notice requirement of the rule requires approximately 1 hour of attorney time and 2 hours of clerical time) per fund, for a total of approximately 294 hours for all funds to comply with the notice requirement.[2] The recordkeeping and notice requirements together therefore impose a total burden of 784 hours on all funds.[3] The total number of respondents is 588, each responding once a year.[4] The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N–1A registration statement for funds.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. 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 control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 7, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–443 Filed 1–12–09; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:* Rule 17f–1, SEC File No. 270–236, OMB Control No. 3235–0222.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities

[1] This estimate is based on the following calculations: (1958 funds ×0.25% = 490 funds); (490 × 1 (clerical hour) = 490 clerical hours).

[2] This estimate is based on the following calculations: (1958 (funds) × 0.05% = 98 funds); (98 × 1 (attorney hour) = 98 total attorney hours); (98 (funds) × 2 (clerical hours) = 196 total clerical hours); (98 (attorney hours) + 196 (clerical hours) = 294 total hours).

[3] This estimate is based on the following calculations: (294 (notice hours) + 490 (recordkeeping hours) = 784 total hours).

[4] This estimate is based on the following calculation: (490 fundsresponding to recordkeeping requirement + 98 funds responding to notice requirement = 588 total respondents).

and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17f–1 (17 CFR 270.17f–1) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a) is entitled: ''Custody of Securities with Members of National Securities Exchanges.'' Rule 17f–1 provides that any registered management investment company (''fund'') that wishes to place its assets in the custody of a national securities exchange member may do so only under a written contract that must be ratified initially and approved annually by a majority of the fund's board of directors. The written contract also must contain certain specified provisions. In addition, the rule requires an independent public accountant to examine the fund's assets in the custody of the exchange member at least three times during the fund's fiscal year. The rule requires the written contract and the certificate of each examination to be transmitted to the Commission. The purpose of the rule is to ensure the safekeeping of fund assets.

Commission staff estimates that each fund makes 1 response and spends an average of 3.5 hours annually in complying with the rule's requirements. Commission staff estimates that on an annual basis it takes: (i) 0.5 hours for the board of directors [1] to review and ratify the custodial contracts; and (ii) 3 hours for the fund's controller to assist the fund's independent public auditors in verifying the fund's assets. Approximately 5 funds rely on the rule annually, with a total of 5 responses.[2] Thus, the total annual hour burden for rule 17f–1 is approximately 17.5 hours.[3]

Funds that rely on rule 17f–1 generally use outside counsel to prepare the custodial contract for the board's review and to transmit the contract to the Commission. Commission staff estimates the cost of outside counsel to perform these tasks for a fund each year is $800.[4] Funds also must have an independent public accountant verify the fund's assets three times each year and prepare the certificate of examination. Commission staff estimates the annual cost for an independent public accountant to perform this service is $4000.[5] Therefore, the total annual cost burden for a fund that relies on rule 17f–1 would be approximately $4800.[6] As noted above, the staff estimates that 5 funds rely on rule 17f–1 each year, for an estimated total annualized cost burden of $24,000.[7]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collections of information required by rule 17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange member. Responses will not be kept confidential. 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 control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 7, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–444 Filed 1–12–09; 8:45 am]

**BILLING CODE 8011–01–P**

[1] Estimates of the number of hours are based on conversations withrepresentatives of mutual funds that comply with the rule. The actual number of hours may vary significantly depending on individual fund assets. The hour burden for rule 17f–1 does not include preparing the custody contract because that would be part of customary and usual business practice.

[2] Based on a review of Form N–17f–1 filings in 2006 and2007, the Commission staff estimates that an average of 5 funds rely on rule 17f–1 each year.

[3] This estimate is based on the following calculation: (5 respondents × 3.5 hours = 17.5 hours). The annual burden for rule 17f–1 does not include time spent preparing Form N–17f–1. The burden for Form N–17f–1 is included in a separate collection of information.

[4] This estimate is based on the following calculation: (2 hours of outside counsel time × $400 = $800). The staff has estimated the average cost of outside counsel at $400 per hour, based on information received from funds, fund intermediaries, and their counsel.

[5] This estimate is based on information received from fundrepresentatives estimating the aggregate annual cost of an independent public accountant's periodic verification of assets and preparation of the certificate of examination.

[6] This estimate is based on the following calculation: ($800 + $4000 =$4800).

[7] This estimate is based on the following calculation: (5 funds × $4800 =$24,000).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 28579; 812–13397]**

## Macquarie Global Infrastructure Total Return Fund Inc., et al.; Notice of Application

January 6, 2009.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment companies may issue.

**APPLICANTS:** Macquarie Global Infrastructure Total Return Fund Inc. (the ''Fund'') and Macquarie Capital Investment Management LLC (the ''Adviser'').

**FILING DATES:** June 15, 2007 and September 10, 2008.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 2, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 125 West 55th Street, New York, NY 10019, attention Richard C. Butt.

**FOR FURTHER INFORMATION CONTACT:** Wendy Friedlander, Senior Counsel, at (202) 551–6837, or James M. Curtis, Branch Chief, at (202) 551–6825 (Division of Investment Management, Office of Chief Counsel).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

**Applicants' Representations**

1. The Fund is a registered closed-end management investment company organized as a Maryland corporation that has total return and capital appreciation as its investment objectives.[1] The common shares issued by the Fund are listed on the New York Stock Exchange. The Fund has not issued preferred stock but may do so in the future. Applicants believe that the Fund's stockholders are generally conservative, dividend-sensitive investors who desire current income periodically and may favor a fixed distribution policy.

2. The Adviser is registered under the Investment Advisers Act of 1940 and is responsible for the overall management of the Fund. The Adviser is a subsidiary of MIHI LLC, which is an indirect subsidiary of Macquarie Group Limited, which provides, with its affiliated entities, international financial and investment banking services.

3. Applicants represent that prior to adopting any distribution policy in reliance on the requested order, the Fund's Board of Directors (the ''Board''), including a majority of the members of the Board who are not ''interested persons'' of the Fund (the ''Independent Directors'') as defined in section 2(a)(19) of the Act, will request, and the Adviser will provide, such information as is reasonably necessary for the Board to make an informed decision of whether the Fund should adopt a distribution policy. Applicants represent that, in particular, the Board and the Independent Directors will review information regarding the purpose and terms of a proposed distribution policy, the likely effects of such policy on the Fund's long-term total return (in relation to market price and net asset value (''NAV'') per common share) and the relationship between the Fund's distribution rate on its common shares under the policy and the Fund's total return on NAV per share. Applicants state that the Independent Directors also will consider what conflicts of interest the Adviser and the affiliated persons of the Adviser and the Fund might have with respect to the adoption or implementation of such policy. Applicants further state that after considering such information the Board, including the Independent Directors may approve a distribution policy and related plan (a ''Plan'') with respect to the Fund's common shares if they determine that such policy and Plan would be consistent with the Fund's investment objectives and in the best interests of the Fund's common shareholders.

4. Applicants state that the purpose of the Plan would be to permit the Fund to distribute to its stockholders as frequently as monthly a fixed percentage of the Fund's market price or a fixed percentage of the Fund's NAV per share, any of which may be adjusted from time to time. Applicants state that, under the Plan, the minimum annual distribution rate with respect to the Fund's common stock would be independent of the Fund's performance during any particular period, but would be expected to correlate with the Fund's performance over time. Applicants further state that, except for extraordinary distributions and potential increases or decreases in the final dividend periods in light of the Fund's performance for the entire calendar year and to enable the Fund to comply with the distribution requirements of Subchapter M of the Internal Revenue Code of 1986, as amended (the ''Code''), each distribution on the common stock would be at the stated rate then in effect.

5. Applicants state that the Board also will adopt policies and procedures under rule 38a–1 under the Act that will be reasonably designed to ensure that all notices sent to stockholders with distributions under the Plan (''Notices'') comply with condition II below, and that all other written communications by the Fund or its agents regarding distributions under the Plan include the disclosure required by condition III below. Applicants state that the Board also will adopt policies and procedures that will require the Fund to keep records that demonstrate the Fund's compliance with all of the conditions of the requested order and that are necessary for the Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its Notices. Applicants state that such records will be maintained for a period of at least six years from the date of the Board meeting at which the Plan is adopted, the first two years in an easily accessible place, or such longer period as may otherwise be required by law.

**Applicants' Legal Analysis**

1. Section 19(b) generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once each year. Rule 19b–1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code (''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental ''clean up'' distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that the one of the concerns underlying section 19(b) and rule 19b–1 is that shareholders might be unable to differentiate between regular distributions of capital gains and distributions of investment income. Applicants state, however, that rule 19a–1 effectively addresses this concern by requiring that a separate statement showing the sources of a distribution (*e.g.*, estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital) accompany any distributions (or the confirmation of the reinvestment of distributions) estimated to be sourced in part from capital gains or capital. Applicants state that the same information also is included in annual reports to shareholders and on its IRS Form 1099–DIV, which is sent to each common and preferred shareholder who received distributions during the year.

4. Applicants further state that the Fund will make the additional disclosures required by the conditions set forth below, and will adopt compliance policies and procedures in accordance with rule 38a–1 to ensure that all required Notices and disclosures are sent to shareholders. Applicants argue that by providing the information

[1] Applicants request that any order issued granting the relief requested in the application also apply to any closed-end investment company (''fund'') that in the future: (a) Is advised by the Adviser (including any successor in interest) or by any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser; and (b) complies with the terms and conditions of the requested order. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

required by section 19(a) and rule 19a–1, and by complying with the procedures adopted under the Plan and the conditions listed below, the Fund will ensure that its shareholders are provided sufficient information to understand that their periodic distributions are not tied to the Fund's net investment income (which for this purpose is the Fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Applicants also state that compliance with the Fund's compliance procedures and condition III set forth below will ensure that prospective shareholders and third parties are provided with the same information. Accordingly, applicants assert that continuing to subject the Fund to section 19(b) and rule 19b–1 would afford shareholders no extra protection.

5. Applicants note that section 19(b) and rule 19b–1 also were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants assert that the ''selling the dividend'' concern should not apply to closed-end investment companies, such as, which do not continuously distribute shares. According to Applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a Plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that common shares of closed-end funds that invest primarily in equity securities often trade in the marketplace at a discount to their NAV. Applicants believe that this discount may be reduced for closed-end funds that pay relatively frequent dividends on their common shares at a consistent rate, whether or not those dividends contain an element of long-term capital gain.

7. Applicants assert that the application of rule 19b–1 to a Plan actually could have an undesirable influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the implementation of a Plan imposes pressure on management (i) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b–1, and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants thus assert that the limitation on the number of capital gain distributions that a fund may make with respect to any one year imposed by rule 19b–1, may prevent the efficient operation of a Plan whenever that fund's realized net long-term capital gains in any year exceed the total of the periodic distributions that may include such capital gains under the rule.

8. In addition, Applicants assert that rule 19b–1 may cause fixed regular periodic distributions under a Plan to be funded with returns of capital [2] (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise could be available. To distribute all of a fund's long-term capital gains within the limits in rule 19b–1, a fund may be required to make total distributions in excess of the annual amount called for by its Plan, or to retain and pay taxes on the excess amount. Applicants thus assert that the requested order would minimize these effects of rule 19b–1 by enabling the funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

9. Applicants state that *Revenue Ruling 89–81* under the Code requires that a fund that has both common stock and preferred stock outstanding designate the types of income, *e.g.*, investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of *Revenue Ruling 89–81*, whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Applicants state that although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with *Revenue Ruling 89–81*.

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred stock issued by a closed-end fund. Applicants assert that such distributions are fixed or determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer and *Revenue Ruling 89–81* determines the proportion of such distributions that are comprised of the long-term capital gains.

11. Applicants also submit that the ''selling the dividend'' concern is not applicable to preferred stock, which entitles a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation value, credit quality, and frequency of payment. Applicants state that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for, and do not expect the liquidation value of their shares to change.

12. Applicants request an order under section 6(c) granting an exemption from the provisions of section 19(b) and rule 19b–1 to permit the Fund's common stock to distribute periodic capital gains dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common shares and as often as specified by or determined in accordance with the terms thereof in respect of its preferred shares.[3]

**Applicants' Conditions**

Applicants agree that, with respect to each fund seeking to rely on the order, the order will be subject to the following conditions:

**I. Compliance Review and Reporting**

The fund's chief compliance officer will: (a) Report to the fund Board, no less frequently than once every three months or at the next regularly scheduled quarterly board meeting, whether (i) the fund and the Adviser have complied with the conditions to the requested order, and (ii) a Material Compliance Matter, as defined in rule 38a–1(e)(2), has occurred with respect to

[2] Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

[3] Applicants state that a future fund that relies on the requested order will satisfy each of the representations in the application except that such representations will be made in respect of actions by the board of directors of such future fund and will be made at a future time.

compliance with such conditions; and (b) review the adequacy of the policies and procedures adopted by the fund no less frequently than annually.

**II. Disclosures to Fund Shareholders**

A. Each Notice to the holders of the fund's common shares, in addition to the information required by section 19(a) and rule 19a–1:

1. Will provide, in a tabular or graphical format:

(a) The amount of the distribution, on a per common share basis, together with the amounts of such distribution amount, on a per common share basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(b) The fiscal year-to-date cumulative amount of distributions, on a per common share basis, together with the amounts of such cumulative amount, on a per common share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(c) The average annual total return in relation to the change in NAV for the 5-year period (or, if the fund's history of operations is less than five years, the time period commencing immediately following the fund's first public offering) ending on the last day of the month prior to the most recent distribution declaration date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date; and

(d) The cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution declaration date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date.

Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

2. Will include the following disclosure:

(a) ''You should not draw any conclusions about the fund's investment performance from the amount of this distribution or from the terms of the fund's Plan'';

(b) ''The fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur for example, when some or all of the money that you invested in the fund is paid back to you. A return of capital distribution does not necessarily reflect the fund's investment performance and should not be confused with 'yield' or 'income' ''; [4] and

(c) ''The amounts and sources of distributions reported in this Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for [accounting and] tax reporting purposes will depend upon the fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The fund will send you a Form 1099–DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes.''

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

B. On the inside front cover of each report to shareholders under rule 30e–1 under the Act, the fund will:

1. Describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

2. Include the disclosure required by condition II.A.2.a above;

3. State, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to fund shareholders; and

4. Describe any reasonably foreseeable circumstances that might cause the fund to terminate the Plan and any reasonably foreseeable consequences of such termination.

C. Each report provided to shareholders under rule 30e–1 and in each prospectus filed with the Commission on Form N–2 under the Act, will provide the fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the fund's total return.

**III. Disclosure to Shareholders, Prospective Shareholders and Third Parties**

A. The fund will include the information contained in the relevant Notice, including the disclosure required by condition II.A.2 above, in any written communication (other than a Form 1099) about the Plan or distributions under the Plan by the fund, or agents that the fund has authorized to make such communication on the fund's behalf, to any fund common shareholder, prospective common shareholder or third-party information provider;

B. The fund will issue, contemporaneously with the issuance of any Notice, a press release containing the information in the Notice and will file with the Commission the information contained in such Notice, including the disclosure required by condition II.A.2 above, as an exhibit to its next filed Form N–CSR; and

C. The fund will post prominently a statement on its (or the Adviser's) Web site containing the information in each Notice, including the disclosure required by condition II.A.2 above, and will maintain such information on such Web site for at least 24 months.

**IV. Delivery of 19(a) Notices to Beneficial Owners**

If a broker, dealer, bank or other person (''financial intermediary'') holds common stock issued by the fund in nominee name, or otherwise, on behalf of a beneficial owner, the fund: (a) Will request that the financial intermediary, or its agent, forward the Notice to all beneficial owners of the fund's shares held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the Notice to each beneficial owner of the fund's shares; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the Notice to such beneficial owners.

**V. Additional Board Determinations for Funds Whose Shares Trade at a Premium**

If:

A. The fund's common shares have traded on the exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the fund's common shares as of the close of each trading day over a 12-week rolling period (each such 12-week

[4] This disclosure will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

rolling period ending on the last trading day of each week); and

B. The fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

1. At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board including a majority of the Independent Directors:

(a) Will request and evaluate, and the Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(b) Will determine whether continuation, or continuation after amendment, of the Plan is consistent with the fund's investment objective(s) and policies and in the best interests of the fund and its shareholders, after considering the information in condition V.B.1.a above; including, without limitation:

(1) Whether the Plan is accomplishing its purpose(s);

(2) The reasonably foreseeable effects of the Plan on the fund's long-term total return in relation to the market price and NAV of the fund's common shares; and

(3) The fund's current distribution rate, as described in condition V.B above, compared with the fund's average annual total return over the 2-year period, as described in condition V.B., or such longer period as the board deems appropriate; and

(c) Based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

2. The Board will record the information considered by it and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

### VI. Public Offerings

The fund will not make a public offering of the fund's common shares other than:

A. A rights offering below net asset value to holders of the fund's common stock;

B. An offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the fund; or

C. An offering other than an offering described in conditions VI.A and VI.B above, unless, with respect to such other offering:

1. The fund's average annual distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution declaration date,[5] expressed as a percentage of NAV per share as of such date, is no more than 1 percentage point greater than the fund's average annual total return for the 5-year period ending on such date;[6] and

2. The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified in accordance with the terms of any outstanding preferred stock that such fund may issue.

### VII. Amendments to Rule 19b–1

The requested relief will expire on the effective date of any amendment to rule 19b–1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–440 Filed 1–12–09; 8:45 am]

**BILLING CODE 8011–01–P**

[5] If the fund has been in operation fewer than six months, the measured period will begin immediately following the fund's first public offering.

[6] If the fund has been in operation fewer than five years, the measured period will begin immediately following the fund's first public offering.

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 28578; 812–13239]**

## SunAmerica Focused Alpha Growth Fund, Inc., et al.; Notice of Application

January 6, 2009.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment companies may issue.

**APPLICANTS:** SunAmerica Focused Alpha Growth Fund, Inc. (''FGF''), SunAmerica Focused Alpha Large-Cap Fund, Inc. (''FGI'') and AIG SunAmerica Asset Management Corp. (the ''Adviser'').

**FILING DATES:** October 17, 2005 and September 2, 2008.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 2, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o AIG SunAmerica Asset Management Corp., Harborside Financial Center, 3200 Plaza 5, Jersey City, NJ 07311–4992, Attention: Gregory N. Bressler.

**FOR FURTHER INFORMATION CONTACT:** Wendy Friedlander, Senior Counsel, at (202) 551–6837, or James M. Curtis, Branch Chief, at (202) 551–6825 (Division of Investment Management, Office of Chief Counsel).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

**Applicants' Representations**

1. FGF and FGI are registered closed-end management investment companies organized as Maryland corporations, and each has capital growth as its investment objective.[1] The common stock of FGF and FGI are listed on the New York Stock Exchange. FGF and FGI have not issued preferred stock. Applicants believe that the stockholders of FGF and FGI are generally conservative, dividend-sensitive investors who desire current income periodically and may favor a fixed distribution policy.

2. The Adviser is a Delaware corporation and is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser is the investment adviser for FGF and FGI and provides investment advice and management services to other mutual funds and accounts. The Adviser is a wholly-owned subsidiary of American International Group, Inc.

3. Applicants represent that prior to May 30, 2007, the Board of Directors (the ''Boards'') of FGF and FGI, including a majority of the members of each of the Boards who are not ''interested persons'' of each fund (the ''Independent Directors'') as defined in section 2(a)(19) of the Act, requested information, and the Adviser provided, such information as was reasonably necessary for the Boards to determine whether FGF or FGI should adopt a proposed distribution policy.

4. Applicants represent that at a meeting on May 30, 2007, the Directors reviewed the information regarding the purpose and terms of a proposed distribution policy, the likely effects of such policy on each fund's long-term total return (in relation to market price and net asset value (''NAV'') per common share) and the relationship between such fund's distribution rate on its common stock under the policy and the fund's total return on NAV per share. Applicants state that the Independent Directors of each fund also considered what conflicts of interest the Adviser and the affiliated persons of the Adviser and each fund might have with respect to the adoption or implementation of such policy.

5. Applicants state that at another meeting on August 27, 2007, the Boards of FGF and FGI, including the Independent directors, approved a revised distribution policy with respect to its fund's common stock (''Plan'') and determined that such Plan is consistent with such fund's investment objectives and in the best interest of such fund's common stockholders.

4. Applicants state that the purpose of each of the proposed Plans would be to permit each fund to distribute over the course of each year periodic and level distributions that would be independent of the fund's performance during any particular period but that would be expected to correlate with the fund's performance over time. Applicants explain that each distribution would be at the stated rate then in effect, except for extraordinary distributions and potential increases or decreases in the final dividend periods in light of the fund's performance for the entire calendar year and to enable the fund to comply with the distribution requirements of Subchapter M of the Internal Revenue Code of 1986 (the ''Code'') for the calendar year. Applicants state that the Boards of the funds will periodically review the amount of potential distributions in light of the investment experience of each fund, and may modify or terminate the fund's Plan at any time.

5. Applicants state that at the August 27, 2007 meeting, the Boards of FGF and FGI each also adopted policies and procedures under rule 38a–1 under the Act that are reasonably designed to ensure that all notices sent to FGF and FGI shareholders with distributions under the Plan (''Notices'') comply with condition II below, and that all other written communications by FGF and FGI or its agents regarding distributions under the Plan include the disclosure required by condition III below. Applicants state that the Boards of FGF and FGI each also adopted policies and procedures at that meeting that require FGF and FGI to keep records that demonstrate each fund's compliance with all of the conditions of the requested order and that are necessary for each fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its Notices.

**Applicants' Legal Analysis**

1. Section 19(b) generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once each year. Rule 19b–1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code (''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental ''clean up'' distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that the one of the concerns underlying section 19(b) and rule 19b–1 is that shareholders might be unable to differentiate between regular distributions of capital gains and distributions of investment income. Applicants state, however, that rule 19a–1 effectively addresses this concern by requiring that a separate statement showing the sources of a distribution (*e.g.*, estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital) accompany any distributions (or the confirmation of the reinvestment of distributions) estimated to be sourced in part from capital gains or capital. Applicants state that the same information also is included in FGF's and FGI's annual reports to shareholders and on their IRS Forms 1099–DIV, which are sent to each common and preferred shareholder who received distributions during the year.

4. Applicants further state that each of FGF and FGI will make the additional disclosures required by the conditions set forth below, and each of them has adopted compliance policies and procedures in accordance with rule 38a–1 to ensure that all required Notices and disclosures are sent to shareholders. Applicants argue that by providing the information required by section 19(a) and rule 19a–1, and by complying with the procedures adopted under each Plan and the conditions listed below, the funds would ensure that each fund's shareholders are provided sufficient information to understand that their periodic distributions are not tied to the fund's net investment income (which for this purpose is the fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Accordingly, applicants assert

[1] Applicants request that any order issued granting the relief requested in the application also apply to any closed-end investment company (''fund'') that in the future: (a) Is advised by the Adviser (including any successor in interest) or by any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser; and (b) complies with the terms and conditions of the requested order. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

that continuing to subject the funds to section 19(b) and rule 19b–1 would afford shareholders no extra protection.

5. Applicants note that section 19(b) and rule 19b–1 also were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants assert that the ''selling the dividend'' concern should not apply to closed-end investment companies, such as FGF and FGI, which do not continuously distribute shares. According to Applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a Plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that common shares of closed-end funds that invest primarily in equity securities often trade in the marketplace at a discount to their NAV. Applicants believe that this discount may be reduced for closed-end funds that pay relatively frequent dividends on their common shares at a consistent rate, whether or not those dividends contain an element of long-term capital gain.

7. Applicants assert that the application of rule 19b–1 to a Plan actually could have an undesirable influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the implementation of a Plan imposes pressure on management (i) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b–1, and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants thus assert that the limitation on the number of capital gain distributions that a fund may make with respect to any one year imposed by rule 19b–1, may prevent the efficient operation of a Plan whenever that fund's realized net long-term capital gains in any year exceed the total of the periodic distributions that may include such capital gains under the rule.

8. In addition, Applicants assert that rule 19b–1 may cause fixed regular periodic distributions under a Plan to be funded with returns of capital [2] (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise could be available. To distribute all of a fund's long-term capital gains within the limits in rule 19b–1, a fund may be required to make total distributions in excess of the annual amount called for by its Plan, or to retain and pay taxes on the excess amount. Applicants thus assert that the requested order would minimize these effects of rule 19b–1 by enabling the funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

9. Applicants state that *Revenue Ruling 89–81* under the Code requires that a fund that has both common stock and preferred stock outstanding designate the types of income, *e.g.*, investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of *Revenue Ruling 89–81*, whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Applicants state that although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with *Revenue Ruling 89–81*.

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred stock issued by a closed-end fund. Applicants assert that such distributions are fixed or determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer and *Revenue Ruling 89–81* determines the proportion of such distributions that are comprised of the long-term capital gains.

11. Applicants also submit that the ''selling the dividend'' concern is not applicable to preferred stock, which entitles a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation value, credit quality, and frequency of payment. Applicants state that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for, and do not expect the liquidation value of their shares to change.

12. Applicants request an order under section 6(c) granting an exemption from the provisions of section 19(b) and rule 19b–1 to permit each fund's common stock to distribute periodic capital gains dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common shares and as often as specified by or determined in accordance with the terms thereof in respect of its preferred shares.[3]

**Applicants' Conditions**

Applicants agree that, with respect to each fund seeking to rely on the order, the order will be subject to the following conditions:

**I. Compliance Review and Reporting**

The fund's chief compliance officer will: (a) report to the fund Board, no less frequently than once every three months or at the next regularly scheduled quarterly board meeting, whether (i) the fund and the Adviser have complied with the conditions to the requested order, and (ii) a Material Compliance Matter, as defined in rule 38a–1(e)(2), has occurred with respect to compliance with such conditions; and (b) review the adequacy of the policies and procedures adopted by the fund no less frequently than annually.

**II. Disclosures to Fund Shareholders**

A. Each Notice to the holders of the fund's common shares, in addition to the information required by section 19(a) and rule 19a–1:

1. Will provide, in a tabular or graphical format:

(a) The amount of the distribution, on a per common share basis, together with the amounts of such distribution amount, on a per common share basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized

[2] Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

[3] Applicants state that a future fund that relies on the requested order will satisfy each of the representations in the application except that such representations will be made in respect of actions by the board of directors of such future fund and will be made at a future time.

short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(b) the fiscal year-to-date cumulative amount of distributions, on a per common share basis, together with the amounts of such cumulative amount, on a per common share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(c) the average annual total return in relation to the change in NAV for the 5-year period (or, if the fund's history of operations is less than five years, the time period commencing immediately following the fund's first public offering) ending on the last day of the month prior to the most recent distribution declaration date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date; and

(d) the cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution declaration date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date.

Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

2. will include the following disclosure:

(a) ''You should not draw any conclusions about the fund's investment performance from the amount of this distribution or from the terms of the fund's Plan'';

(b) ''The fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur for example, when some or all of the money that you invested in the fund is paid back to you. A return of capital distribution does not necessarily reflect the fund's investment performance and should not be confused with 'yield' or 'income'';[4] and

(c) ''The amounts and sources of distributions reported in this Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for [accounting and] tax reporting purposes will depend upon the fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The fund will send you a Form 1099–DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes.''

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

B. On the inside front cover of each report to shareholders under rule 30e–1 under the Act, the fund will:

1. Describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

2. include the disclosure required by condition II.A.2.a above;

3. state, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to fund shareholders; and

4. describe any reasonably foreseeable circumstances that might cause the fund to terminate the Plan and any reasonably foreseeable consequences of such termination.

C. Each report provided to shareholders under rule 30e–1 and in each prospectus filed with the Commission on Form N–2 under the Act, will provide the fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the fund's total return.

**III. Disclosure to Shareholders, Prospective Shareholders and Third Parties**

A. The fund will include the information contained in the relevant Notice, including the disclosure required by condition II.A.2 above, in any written communication (other than a Form 1099) about the Plan or distributions under the Plan by the fund, or agents that the fund has authorized to make such communication on the fund's behalf, to any fund common shareholder, prospective common shareholder or third-party information provider;

B. The fund will issue, contemporaneously with the issuance of any Notice, a press release containing the information in the Notice and will file with the Commission the information contained in such Notice, including the disclosure required by condition II.A.2 above, as an exhibit to its next filed Form N–CSR; and

C. The fund will post prominently a statement on its (or the Adviser's) Web site containing the information in each Notice, including the disclosure required by condition II.A.2 above, and will maintain such information on such Web site for at least 24 months.

**IV. Delivery of 19(a) Notices to Beneficial Owners**

If a broker, dealer, bank or other person (''financial intermediary'') holds common stock issued by the fund in nominee name, or otherwise, on behalf of a beneficial owner, the fund: (a) Will request that the financial intermediary, or its agent, forward the Notice to all beneficial owners of the fund's shares held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the Notice to each beneficial owner of the fund's shares; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the Notice to such beneficial owners.

**V. Additional Board Determinations for Funds Whose Shares Trade at a Premium**

If:

A. The fund's common shares have traded on the exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the fund's common shares as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

B. The fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

1. At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board including a majority of the Independent Directors:

(a) Will request and evaluate, and the Adviser will furnish, such information

[4] This disclosure will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(b) will determine whether continuation, or continuation after amendment, of the Plan is consistent with the fund's investment objective(s) and policies and in the best interests of the fund and its shareholders, after considering the information in condition V.B.1.a above; including, without limitation:

(1) Whether the Plan is accomplishing its purpose(s);

(2) the reasonably foreseeable effects of the Plan on the fund's long-term total return in relation to the market price and NAV of the fund's common shares; and

(3) the fund's current distribution rate, as described in condition V.B above, compared to with the fund's average annual total return over the 2-year period, as described in condition V.B, or such longer period as the board deems appropriate; and

(c) based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

2. The Board will record the information considered by it and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

**VI. Public Offerings**

The fund will not make a public offering of the fund's common shares other than:

A. a rights offering below NAV to holders of the fund's common stock;

B. an offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the fund; or

C. an offering other than an offering described in conditions VI.A and VI.B above, unless, with respect to such other offering:

1. the fund's average annual distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution declaration date,[5] expressed as a percentage of NAV per share as of such date, is no more than 1 percentage point greater than the fund's average annual total return for the 5-year period ending on such date;[6] and

2. the transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified in accordance with the terms of any outstanding preferred stock that such fund may issue.

**VII. Amendments to Rule 19b–1**

The requested relief will expire on the effective date of any amendment to rule 19b–1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–416 Filed 1–12–09; 8:45 am]

BILLING CODE 8011–01–P

[5] If the fund has been in operation fewer than six months, the measured period will begin immediately following the fund's first public offering.

[6] If the fund has been in operation fewer than five years, the measured period will begin immediately following the fund's first public offering.

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, January 15, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, January 15, 2009 will be:

formal orders of investigation;

institution and settlement of injunctive actions;

institution and settlement of administrative proceedings of an enforcement nature; and

other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: January 8, 2009.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–462 Filed 1–12–09; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59211; File No. SR–BSE–2008–56]**

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to BOX Rules Governing Doing Business With the Public

January 7, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2008, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Chapter XI of the Boston Options Exchange (''BOX'') Rules by replacing the term ''Registered Options and Security Futures Principal'' (''ROSFP'') with ''Registered Options Principal'' (''ROP''), to modify the confirmation disclosure requirements to remain

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

consistent with other exchanges, and to eliminate a definition made obsolete by an earlier rule change. The text of the proposed rule change is available at the principal office of the Exchange, the Commission's Public Reference Room, and *http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange*.

**II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined in the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Chapter XI of the Boston Options Exchange (''BOX'') Rules by replacing the term ''Registered Options and Security Futures Principal'' (''ROSFP'') with ''Registered Options Principal'' (''ROP''). Although ROP was recently changed to ROSFP in the BOX Rules, the Exchange believes that the change from ROP to ROSFP may have created confusion among BOX participants, and that reverting to ROP will alleviate this confusion. Furthermore, the Exchange believes that reverting to ROP will provide consistency with the rules of other options exchanges, most of which use ROP rather than ROSFP.[3] The Exchange notes that the reversion to ROP does not affect the qualifications required to transact options business with the public.

The Exchange also proposes amending Chapter XI, Section 13 of the BOX Rules to clarify that an options confirmation need not disclose the exchange or exchanges on which an options transaction is executed. The rule will continue to require that written confirmations contain a description of each transaction in the options contract, the underlying security, the type of option, the option expiration month, exercise price, number of option contracts, premium, commissions, date of transaction and settlement date, and shall indicate whether the transaction is a purchase or sale and whether a principal or agency transaction. The confirmation shall also distinguish by appropriate symbols between Exchange transactions and other transactions in options contracts. This change will maintain consistency with other exchanges which have recently filed similar rule proposals.[4]

Lastly, the Exchange proposes elimination of the definition of ''closing purchase transaction'' as defined in Chapter I, Section 1 of the BOX Rules. The term ''closing purchase transaction'' does not appear in any other provision of the BOX Rules. Therefore, the definition is unnecessary.

2. Statutory Basis

The Exchange believes that the proposed change is consistent with the requirements of Section 6(b) of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, in that it will promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change will further the purposes of the Act by clarifying the use of certain terms consistent with their use by other self-regulatory organizations, and by clarifying the Exchange's options confirmation procedure rules.

*B. Self-Regulatory Organization's Statement of Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.stml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2008–56 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2008–56. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[3] *See* Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (SR–FINRA–2008–032) (changing the term ''Registered Options and Security Futures Principal'' to ''Registered Options Principal''). *See also* Securities Exchange Act Release No. 58129 (July 9, 2008), 73 FR 40895 (SR–ISE–2008–21); Securities Exchange Act Release No. 57738 (April 29, 2008), 73 FR 25805 (May 7, 2008) (SR–AMEX–2007–129); and Securities Exchange Act Release No. 56971 (December 14, 2007), 72 FR 72804 (December 21, 2007) (SR–CBOE–2007–106) (approving elimination of the positions and titles of Senior Registered Options Principal and Compliance Registered Options Principal).

[4] *See* Securities Exchange Act Release No. 58980 (November 19, 2008), 73 FR 72091 (November 26, 2008) (SR–CBOE–2008–61). *See also* Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (SR–FINRA–2008–032) (approving change clarifying confirmation disclosure requirements).

[5] 15 U.S.C. 78(f)(b).

[6] 15 U.S.C. 78(f)(b)(5).

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, located at 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2008–56 and should be submitted on or before February 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–439 Filed 1–12–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59209; File No. SR–CBOE–2008–132]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Regarding Fees for the CBOE Stock Exchange

January 7, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to amend its CBOE Stock Exchange (''CBSX'') Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, 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, CBOE 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 CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the CBSX Fees Schedule to adopt fees for transactions involving securities priced under $1. Specifically, for transactions of securities priced less than $1, the Exchange proposes a credit of 0.0020 times the principal amount of the trade for liquidity providers (makers); a charge of 0.0029 times the principal amount of the trade for removing liquidity (takers); and a charge of 0.0029 times the principal amount of the trade for an order routed to another exchange, except for an order routed as part of a Cross and Sweep Order, in which case the charge would be 0.0040 times the principal amount of the trade. The proposed changes will take effect on January 1, 2009.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[3] in general, and furthers the objectives of Section 6(b)(4)[4] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder. 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–CBOE–2008–132 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–132. 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

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–132 and should be submitted on or before February 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–391 Filed 1–12–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59210; File No. SR–CBOE–2008–118]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change Related to Obvious Error Rules

January 7, 2009.

On November 26, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rules 6.25 and 24.16 (collectively, the ''Obvious Error Rules'') to adopt procedures that would allow CBOE to review transactions on its own motion. The proposed rule change was published for comment in the **Federal Register** on December 8, 2008.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

The proposed rule change would provide that, in the interest of maintaining a fair and orderly market and for the protection of investors, the President of CBOE or his/her designee, who shall be an officer of CBOE but may not be a member (collectively ''CBOE officer''), may, on his or her own motion or upon request, determine to review any transaction occurring on CBOE that is believed to be erroneous.[4] CBOE would nullify or adjust a transaction reviewed pursuant to this new provision only if it is determined that the transaction is erroneous as provided in CBOE Rule 6.25(a)(1)–(6) or Rule 24.16(a)(1)–(6), as applicable.[5] Trading Officials (or the senior official in the control room, in the case of opening trades in CBOE Rule 5.4 restricted series being reviewed under CBOE Rule 6.25(a)(6) or Rule 24.16(a)(6)) may assist the CBOE officer in reviewing a transaction.

Under the proposed rule change, the CBOE officer would be required to act as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the rule provides that the CBOE officer would be required to act no later than 8:30 a.m. (CT) on the next trading day following the date of the transaction at issue. A member affected by a determination to nullify or adjust a transaction pursuant to this new provision would be permitted to appeal such determination in accordance with Rule 6.25(d) or Rule 24.16(d); however, a determination by a CBOE officer not to review a transaction, or a determination not to nullify or adjust a transaction for which a review was requested or conducted, is not appealable. Transactions adjusted or nullified pursuant to this new provision cannot be reviewed by an Obvious Error Panel under paragraph (c) of Rule 6.25.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6(b) of the Act[7] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[8] in that the proposal is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that, in approving proposals relating to adjustment or nullification of trades involving obvious errors, it has stated that the determination of whether an obvious error has occurred and the process for reviewing such a determination should be based on specific and objective criteria and subject to specific and objective procedures.[9] The Commission notes that the new provisions in the Obvious Error Rules also have specific and objective procedures for determining whether a trade should be adjusted or nullified. The purpose of the new provisions is only to enable a CBOE officer on his/her own motion or upon request, to provide relief in instances where parties failed to meet the established time reporting requirements in CBOE's Obvious Error Rules. The new provisions still require that the transaction be erroneous as provided in CBOE Rules 6.25 or 24.16, as applicable, and the new provisions set forth specific time frames and procedures. Therefore, the Commission believes that that proposed rule change is appropriate.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–2008–118) is hereby approved.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 59038 (December 2, 2008), 73 FR 74543.

[4] In the event a party to a transaction requests that the President or his/her designee review a transaction, the CBOE officer nonetheless would need to determine, on his or her own motion, whether to review the transaction. In addition, if a transaction is reviewed and a determination is rendered pursuant to paragraphs (b)(1) and (b)(2) of CBOE Rule 6.25 or Rule 24.16, relief shall not be granted under the new provision of the applicable Obvious Error Rule.

[5] The transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction, including consideration of whether the parties involved are CBOE market-makers, non-CBOE market makers, or customers pursuant to CBOE Rule 6.25(a)(1)(i)–(iv) and CBOE Rule 24.16(c).

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See, e.g.*, Securities Exchange Act Release Nos. 58778 (October 14, 2008), 73 FR 62577 (October 21, 2008) and 54228 (July 27, 2006), 71 FR 44066 (August 3, 2006) (SR–CBOE–2006–14) (approving revisions to CBOE's Obvious Error Rules).

[10] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–461 Filed 1–12–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59208; File No. SR–FINRA–2008–045]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto, To Amend the FINRA Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications

January 6, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 8, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') and amended on December 11, 2008,[3] the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the FINRA Rule 9520 Series, which governs the eligibility procedures for persons subject to certain disqualifications, to comport with the amended definition of disqualification in the FINRA By-Laws.

This Amendment No. 1 to SR–FINRA–2008–045 makes technical changes to the original filing filed on September 8, 2008. The text of the proposed rule change is attached as Exhibit 5 to this filing.[4] Amendment No. 1 replaces and supersedes the proposed rule change filed on September 8, 2008, in its entirety, except with regard to Exhibit 2, a proposed *Regulatory Notice* that details the proposed related eligibility procedures.[5]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In light of FINRA's obligation to enforce the federal securities laws, and as part of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc., and the formation of FINRA, FINRA adopted by Board and membership vote a revised By-Law definition of disqualification that is consistent with the federal securities laws, such that any person subject to a statutory disqualification under Section 3(a)(39) of the Act also is subject to disqualification under Article III, Section 4 of the FINRA By-Laws.[6] Consequently, as further detailed in the proposed *Regulatory Notice* (*see* Exhibit 2), FINRA's revised definition of disqualification incorporates three additional categories of statutory disqualification, including willful violations of the federal securities or commodities laws, grounds for statutory disqualification that were enacted in the Sarbanes-Oxley Act, and associations with certain other persons subject to disqualification.

Absent the proposed rule change, all persons subject to any of the added categories of disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry. The proposed rule change would both amend the text of the FINRA Rule 9520 Series generally to reflect the amended definition of disqualification in the By-Laws, as well as include the proposed *Regulatory Notice* that outlines in detail the applicable eligibility procedures. The amended FINRA Rule 9520 Series would incorporate by reference the procedures set forth in the *Regulatory Notice*. As further detailed in the *Regulatory Notice*, the need for a member to file an application with FINRA for approval notwithstanding the disqualification would depend on (1) The type of the disqualification; (2) the date of the disqualification; and (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

The proposed rule change would amend FINRA Rule 9522 to address the initiation of eligibility proceedings and the authority of FINRA's Department of Member Regulation (''Member Regulation'') to approve applications relating to a disqualification, where the disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or arises under Section 3(a)(39)(E) of the Act (i.e., the added categories of disqualification). Currently, FINRA Rule 9522(a)(1) provides, among other things, that if FINRA staff has reason to believe that a disqualification exists, FINRA staff will issue a written notice to the member or applicant for membership under NASD Rule 1013, specifying the grounds for such disqualification. The proposed amendments to FINRA Rule 9522(a)(1) provide that FINRA staff would issue such written notice with respect to the added categories of disqualification only when the member or applicant is required to file an application pursuant to the *Regulatory Notice.* Similarly, the proposed rule change would amend FINRA Rule 9522(b) to require a member to file an application with FINRA with respect to the added categories of disqualification only when instructed to submit one by the *Regulatory Notice*.

Moreover, under the current rules, Member Regulation is responsible for evaluating applications for relief from a disqualification filed by a disqualified member or sponsoring member. In certain circumstances, Member

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 to SR–FINRA–2008–045 replaced and superseded the original rule filing submitted to the Commission on September 8, 2008.

[4] The text of the proposed rule change to the FINRA Rule 9520 Series as set forth in Exhibit 5 reflects amendments adopted pursuant to proposed rule change SR–FINRA–2008–021, which was approved by the Commission. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021) (approval order). The FINRA Rule 9520 Series, as set forth in SR–FINRA–2008–021, became effective on December 15, 2008. *See* FINRA *Regulatory Notice* 08–57 (SEC Approves New Consolidated FINRA Rules) (October 2008).

[5] FINRA would issue the proposed *Regulatory Notice* upon the Commission's approval of the proposed rule change; the *Regulatory Notice* is written in a manner that assumes such approval.

[6] *See* Securities Exchange Act Release No. 55495 (March 20, 2007), 72 FR 14149 (March 26, 2007) (SR–NASD–2007–023) (notice). *See also* Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (SR–NASD–2007–023) (approval order), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008). *See also* NASD, SEC No-Action Letter, 2007 SEC No-Act. LEXIS 540 (July 27, 2007).

Regulation is authorized to approve the application, while in other cases, Member Regulation must make a recommendation to either approve or deny the applications to the National Adjudicatory Council (''NAC''). The proposed amendments to FINRA Rule 9522 would authorize Member Regulation to approve applications based on the added categories of disqualification. In the event Member Regulation does not approve these applications, the disqualified member or sponsoring member would have the right to have the matter decided by the NAC after a hearing and consideration by the Statutory Disqualification Committee under FINRA Rule 9524.

In addition, if Member Regulation determines that an application relating to a disqualification that arises from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or arises under Section 3(a)(39)(E) of the Act should be approved, but with specific supervisory requirements that have the consent of the disqualified member, sponsoring member and/or disqualified person, then proposed FINRA Rule 9523(b) would authorize Member Regulation to approve a supervisory plan, without submitting a recommendation to the Chairman of the Statutory Disqualification Committee, acting on behalf of the NAC. Consistent with the current rule regarding the submission of supervisory plans,[7] proposed FINRA Rule 9523(b)(1) would provide that, by submitting an executed letter consenting to a supervisory plan, a disqualified member, sponsoring member and/or disqualified person waive the following (in summary):

(a) The right to a hearing and any right of appeal to challenge the validity of the supervisory plan;

(b) The right to claim bias or prejudgment by Member Regulation or the General Counsel regarding the supervisory plan; and

(c) The right to claim a violation of the *ex parte* prohibitions or the separation of functions provisions of FINRA Rules 9143 and 9144, respectively, in connection with participation in the supervisory plan.

If the supervisory plan is rejected, the disqualified member, sponsoring member and/or disqualified person would have the right to proceed under FINRA Rule 9524.

The proposed rule change also would make several technical amendments. For example, the proposed rule change would amend FINRA Rule 9522(c) to allow a member that has filed a statutory disqualification application to withdraw that application after the start of a hearing but prior to the issuance of a decision by the NAC by filing a written notice with FINRA's Department of Registration and Disclosure and FINRA's Office of General Counsel. In addition, for purposes of clarity and consistency, the proposed rule change would amend FINRA Rule 9522(e) to replace references that Member Regulation ''may grant'' or ''may approve'' certain matters with ''is authorized to approve'' such matters.

The effective date will be 90 days following Commission approval of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the provisions of the Act noted above because it should allow FINRA to integrate filings mandated by the revised definition of disqualification into established programs that monitor subject persons and allow FINRA and the Commission to focus resources on filings that raise important investor protection concerns.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2008–045 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–045. 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.shtm*l). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–045 and should be submitted on or before February 3, 2009.

[7] *See* FINRA Rule 9523(b)(1) (to be renumbered to FINRA Rule 9523(a)(1)).

[8] 15 U.S.C. 78o–3(b)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–438 Filed 1–12–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59201; File No. SR–ISE–2008–101]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, LLC Relating to Amending the Fee Schedule

January 6, 2009.

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 31, 2008, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Schedule of Fees with respect to equity transactions. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com*.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

*Purpose*—Currently, the Exchange's Schedule of Fees for equity transactions consists of a tiered rebate structure for securities priced at or above $1.00 across all Tapes, averaged across an entire month, where the first five million maker shares executed on an average daily volume (ADV) basis receive a rebate of $0.0032 per share, with an increase in the rebate to $0.0035 for each maker share executed above five million ADV.

The Exchange now proposes to rescind the tiered rebate structure and implement a flat rebate, irrespective of ADV. The Exchange is amending the fee schedule in an effort to increase order flow in securities that are reported to Tape B. Accordingly, the Exchange proposes to adopt a fee structure for transactions in securities priced at or above $1.00 (excluding both order delivery and MidPoint Match orders) whereby the maker receives a per share rebate of $0.0035 for transactions in securities that are reported to Tape B and a per share rebate of $0.0029 for transactions in securities that are reported to Tape A and Tape C. The aforementioned fee changes will become operative on January 2, 2009.

The execution fee for orders that remove liquidity for securities, across all tapes, that trade at or above $1.00 will remain unchanged at $0.003. The execution fee for orders that remove liquidity for securities, across all tapes, priced under $1.00 remains unchanged, at 0.3% of trade value with no rebates for adding liquidity in such securities.

*Basis*—The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[3] in general, and furthers the objectives of Section 6(b)(4),[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, raising the rebate in Tape B securities may provide incentive to members to send order flow to the ISE for securities reported to Tape B.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2008–101 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–101. 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

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 19b–4(f)(2).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2008–101 and should be submitted on or before February 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–413 Filed 1–12–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59212, File No. SR–MSRB–2008–07]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change as Modified by Amendment No. 1 Relating to MSRB Rule G–34, CUSIP Numbers and New Issue Requirements, to Establish a Transparency System for Municipal Auction Rate Securities and Municipal Variable Rate Demand Obligations

January 7, 2009.

On November 18, 2008, the Municipal Securities Rulemaking Board (''MSRB''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to MSRB Rule G–34, CUSIP Numbers and New Issue Requirements, to establish a transparency system for municipal auction rate securities and municipal variable rate demand obligations. The proposed rule change was published for comment in the **Federal Register** on November 28, 2008.[3] The Commission received three comment letters about the proposed rule change.[4] On January 2, 2009, the MSRB filed Amendment No. 1 to the proposed rule change.[5] This order approves the proposed rule change as modified by Amendment No. 1.

The proposed rule change would establish a transparency system for municipal Auction Rate Securities (''ARS'') and municipal Variable Rate Demand Obligations (''VRDO''). The proposed rule change would: (i) Implement an electronic system that would collect and disseminate ARS and VRDO information (the ''Short-term Obligation Rate Transparency System Proposal''); (ii) provide free public access to information disseminated from the Short-term Obligation Rate Transparency (''SHORT'') System through the MSRB's Electronic Municipal Market Access (EMMA) system (the ''EMMA short-term obligation rate transparency service''); and (iii) amend Rule G–34, on CUSIP numbers and new issue requirements, to require brokers, dealers and municipal securities dealers (collectively ''dealers'') to report, or ensure the reporting of, interest rate and descriptive information to the SHORT System about ARS and VRDO following an ARS auction or VRDO interest rate reset. A full description of the proposal is contained in the Commission's Notice.

As previously noted, the Commission received three comment letters relating to the proposed rule change.[6] The commenters generally supported the concept of the proposal, but raised concerns about the timing of its implementation and certain data points required to be collected. WFBS commented only with respect to the proposed effective date of the proposal. WFBS requested that the implementation date of the proposal be extended to four months from the date of publication of the final rule so that changes needed to support the SHORT proposal could be designed, thoroughly tested and implemented prior to the proposed implementation date.

SIFMA supported the concept of collection and display of auction rate reset and remarketing rate reset information, and focused its comments on the timing of implementation and certain data points proposed to be collected. SIFMA stated that its members feel strongly that January 30, 2009 is an unrealistically short timeframe for implementing the new regulatory requirement. SIFMA noted that this year has been a historic year for technological and operational issues due to the market dislocation, and that this as well as other issues have resulted in many urgent technology and operation projects queued at broker dealer firms. SIFMA requested that the proposal be delayed until the later of April 1, 2009 or 90 days after the final rule is approved by the SEC.

SIFMA also recommended that maximum and minimum VRDO rates not be required by the SHORT system. SIFMA stated that the terms of VRDO securities, by and large, have been negotiated on a bespoke basis for each transaction, that maximum rate formulas are not standardized, and that the administrative burden of calculating and reporting the maximum rate for every reset period is in excess of the theoretical benefits it provides. SIFMA also found no evidence of minimum rates in any VRDO transaction and stated that this is a superfluous field which should be eliminated.

SIFMA stated that the broker dealers regulated by the MSRB do not have control over all of the ARS data points being requested in the proposal because broker dealers merely receive the auction information from the auction agent. Therefore SIFMA believes that there should be an acknowledgement in Rule G–34(c)(i) that the broker dealer is only responsible for forwarding the information it has received from the auction agent and not be responsible for the accuracy of that data.

RBDA stated in its letter that they support the implementation of the proposal as early as is practical, but believe the intended effective date of January 30, 2009 will not give market participants sufficient time to implement and thoroughly test automated systems that will facilitate compliance with rules associated with the new system. RBDA requested that the effective date for full

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58998 (Nov. 21, 2008), 73 FR 72540 (Nov. 28, 2008) (''Commission's Notice'').

[4] *See* letter from Jeffrey A. Schuh, Vice President, Chief Compliance Officer, Wells Fargo Brokerage Services, LLC (''WFBS''), dated December 18, 2008; letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), dated December 19, 2008; and letter from Michael Decker and Mike Nicholas, Co-Chief Executive Officers, Regional Bond Dealers Association (''RBDA''), dated December 29, 2008.

[5] In Amendment No. 1, the MSRB responded to the three comment letters and, in response to the comment letters, postponed the effective date of the proposed amendments to Rule G–34 that relate to Variable Rate Demand Obligations from January 30, 2009 to April 1, 2009. The proposed January 30, 2009 effective date for the proposed amendments to Rule G–34 that relate to Auction Rate Securities remains unchanged. This is a technical amendment and is not subject to notice and comment.

[6] *See supra* note 4.

implementation of the proposal be moved to April 1, 2009.

In Amendment No. 1, the MSRB responded to the three comment letters and, in response to the comment letters, postponed the effective date of the proposed amendments to Rule G–34 that relate to Variable Rate Demand Obligations from January 30, 2009 to April 1, 2009. The proposed January 30, 2009 effective date for the proposed amendments to Rule G–34 that relate to Auction Rate Securities remains unchanged.

The MSRB noted in response to the comments from SIFMA with respect to the data points to be collected that the SHORT System has been designed to accept reports of VRDO in which the minimum rate is unspecified by allowing a dealer to not include a value for the minimum rate. SIFMA also stated that some VRDO maximum rates are not stated in official documents for the VRDO or are set pursuant to a formula for which some VRDO maximum rates are not able to be calculated on the day that an interest rate reset occurs. The MSRB stated that the purpose of the requirement in the proposed amendments to Rule G–34 to report the current maximum rate is to improve the availability of important characteristics of a VRDO that have been set by drafters of official documents for VRDO. Therefore, dealers would be required to report under the proposed amendments to Rule G–34 VRDO maximum rates that are stated in official documents either as absolute values or that are able to be calculated pursuant to formulas on the day of an interest rate reset. For VRDO maximum rates that are not able to be calculated on the day an interest rate reset occurs, the SHORT System has been designed to accept a value of ''not calculable.'' In addition, the SHORT System also has been designed to accept reports of VRDO in which the maximum rate is unspecified by allowing a dealer to not include a value for the maximum rate.

The MSRB acknowledged that many of the items of information about ARS that would be required to be reported to the MSRB under the proposed amendments to Rule G–34 are produced by ARS auction agents and that dealers may not always be able to verify the accuracy of such information. Accordingly, the MSRB stated that it has designed the SHORT System to accept submissions of information directly from ARS auction agents and has incorporated into the proposed amendments to Rule G–34 that dealers ''may rely on the accuracy of such information if the [dealer] makes a good faith and reasonable effort to cause the Auction Agent to correct any inaccuracies known to the [dealer].'' In the event that an ARS auction agent does not submit information directly to the SHORT System but instead a dealer reports to the SHORT System information it receives from the ARS auction agent, the reporting dealer would have a similar responsibility for correcting any inaccuracies known to the dealer in the data provided to it by an ARS auction agent. Therefore, so long as the dealer reports the information about the auction as provided by the ARS auction agent and fulfills its responsibility to correct known inaccuracies, and the dealer does not itself introduce any inaccuracies to the data submitted, the dealer would be entitled to the same reliance as in the case of a direct submission to the SHORT System by the ARS auction agent. The Commission believes that the MSRB has adequately addressed the concerns raised by SIFMA about the collection of data points for VRDO and ARS.

The MSRB filed Amendment No. 1 in response to concerns raised by all three commenters about the effective date of the proposal. The proposed January 30, 2009 effective date for the proposed amendments to Rule G–34 that relate to Auction Rate Securities remains unchanged. While the MSRB acknowledged that some dealers may need additional time to perform and test system changes to report data to the MSRB using an automated system, the MSRB believes that dealers will be able to report information about ARS to the MSRB manually using the SHORT System Web User Interface if those system changes are not able to be fully implemented by January 30, 2009, particularly since the number of ARS issues is relatively small. In addition, since ARS are primarily a retail product, the MSRB believes it is important to provide transparency of ARS as early as practicable. Accordingly, the MSRB does not believe that a change to the proposed January 30, 2009 effective date for ARS is warranted. The Commission agrees that a change to the proposed January 30, 2009 effective date for ARS is not warranted because the dislocations in the ARS market necessitate the improvement of price transparency for ARS as soon as possible.

Amendment No. 1 postpones the effective date of the proposed amendments to Rule G–34 that relate to Variable Rate Demand Obligations from January 30, 2009 to April 1, 2009. While the SHORT System allows data to be reported manually using the SHORT System Web User Interface, the MSRB agrees with commenters that manual submission of data for VRDO would be impractical in many cases due to the high number of VRDO securities and the frequency with which VRDO interest rates reset. Therefore, the MSRB believes that a revised effective date of April 1, 2009 would allow additional time for dealers to implement automated systems to submit data about VRDO to the SHORT System and should address commenters concerns. The Commission believes that this extension provides a reasonable accommodation to dealers.

The Commission has carefully considered the proposed rule change, the comment letters received, and the MSRB's response to the comment letters and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB [7] and, in particular, the requirements of Section 15B(b)(2)(C) of the Act [8] and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[9] In particular, the Commission finds that the proposed rule change is consistent with the Act because it would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities by providing a centralized venue for free public access to information about ARS and VRDO. The proposed rule change would provide greater access to information about ARS and VRDO to all participants in the municipal securities market on an equal basis thereby removing potential barriers to obtaining such information and will allow the municipal securities industry to produce more accurate trade reporting and transparency. These factors serve to promote the statutory

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–4(b)(2)(C).

[9] *Id.*

mandate of the MSRB to protect investors and the public interest.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–MSRB–2008–07), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–441 Filed 1–12–09; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59203; File No. SR–NASDAQ–2008–084]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change to Require Limited Partnerships to Obtain Shareholder Approval for the Use of Equity Compensation and Make Other Clarifying Changes to the Listing Requirements for Limited Partnerships

January 6, 2009.

### I. Introduction

On November 18, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require limited partnerships to obtain shareholder approval for the use of equity compensation and to make other clarifying changes to the listing requirements for limited partnerships. The proposed rule change was published for comment in the **Federal Register** on December 2, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

### II. Description of the Proposal

Nasdaq's current listing requirements provide that issuers must obtain shareholder approval for a variety of corporate actions, including the issuance of equity compensation.[4] However, these requirements do not currently apply to Limited Partnerships (''LPs'').[5] Nasdaq is proposing to expand the requirement to obtain shareholder approval for equity compensation to entities that are LPs. As such, the proposed rule would provide that each issuer that is a limited partnership must obtain shareholder approval when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement is to be made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, as would be required under Nasdaq Rule 4350(i)(1)(A) and IM–43540–5.[6]

In addition, Nasdaq proposes to make two other changes to the listing requirements for LPs. Specifically, the Exchange proposes to amend the rules applicable to LPs to require that: (1) the auditor of a listed LP must be registered as a public accounting firm with the Public Company Accounting Oversight Board (''PCAOB''), as provided for in the Sarbanes-Oxley Act of 2002;[7] and (2) an LP must notify Nasdaq of any material non-compliance with the qualitative listing requirements for LPs in Rule 4360. Nasdaq states that when it adopted these requirements for other companies in 2003 in response to requirements imposed by the Sarbanes-Oxley Act, Nasdaq inadvertently excluded LPs from these requirements. The Exchange notes, however, that these requirements are already applicable to LPs. Specifically, with respect to the proposed auditor registration requirement, it is unlawful for an auditor to participate in the preparation or issuance of an audit report with respect to any listed company, including an LP, unless it is registered with the PCAOB.[8] With respect to the proposed notification requirement, each listed company is required to sign a listing agreement prior to listing on Nasdaq in which the company has agreed to promptly notify Nasdaq in writing of any corporate action or other event which will cause the company to cease to be in compliance with Nasdaq listing requirements.[9] As such, Nasdaq asserts that these changes are simply clarifying changes designed to highlight the requirements and facilitate understanding and compliance of the rules by LPs.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between issuers.[11]

The Commission notes the importance of shareholder approval rules, as such rules provide shareholders with a voice in transactions that are material to, and may have an effect on, their respective investments. With respect to equity compensation plans, shareholder approval rules also help to protect investors against the potential dilutive effect of such plans. The Commission acknowledges that treating LPs differently with respect to certain limited types of shareholder approval rules may be appropriate given the structure and use of LPs and the expectations of investors in such entities.[12] However, as the Commission has indicated previously, it believes that the rationale for treating an LP differently from other types of issuers with respect to shareholder input on equity compensation is less compelling.[13] Accordingly, the Commission believes that it is consistent with the protection of investors and the public interest to require LPs to obtain shareholder approval for the issuance of equity compensation, as it will ensure that investors in LP securities have a check on the potential dilution that may result from the issuance of equity-based awards. Further, by requiring LPs to obtain shareholder approval for stock

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[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59014 (November 25, 2008), 73 FR 73358.

[4] *See* Nasdaq Rule 4350(i)(1)(A).

[5] *See* Nasdaq Rules 4350(i)(1)(A) and 4360.

[6] *See* proposed Nasdaq Rule 4360(k).

[7] Section 102 of the Sarbanes Oxley Act, 15 U.S.C. 7212.

[8] *Id.*

[9] See *http://www.nasdaq.com/about/Listing_Agreement.pdf.*

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[12] For a detailed discussion of the reasons that LPs differ from other issuers and may be appropriately excluded from certain shareholder approval rules, see Securities Exchange Act Release No. 55796 (May 22, 2007), 72 FR 29566 (SR–NYSE–2007–28) (approving NYSE's proposal to exempt LPs from certain of its shareholder approval rules, excluding its equity compensation requirement).

[13] *See id.,* 72 FR at 29567.

option or other equity compensation plans under the same terms and conditions as other Nasdaq listed companies, the new rule will ensure that shareholders of all Nasdaq companies will have the same protections against the potential dilutive effects of such plans.

The Commission also believes that the proposed clarifying changes specifying that an auditor of a listed LP must be registered with the PCAOB and that an LP must notify Nasdaq of any material non-compliance with the corporate governance rules should eliminate any confusion regarding the requirements for LPs. As noted above, Nasdaq asserts that LPs are already subject to these requirements, but these proposed changes will ensure that such requirements are part of Nasdaq's rulebook governing the listing requirements for LPs and thus are transparent to issuers.[14] Accordingly, the Commission finds that the proposed rule change is consistent with the Act.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NASDAQ–2008–084) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–437 Filed 1–12–09; 8:45 am]

**BILLING CODE 8011–01–P**

[14] *See* supra notes 8 and 9 and accompanying text.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59202; File No. SR–NYSE–2008–132]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Introduce a NYSE Order Imbalance Information Fee

January 6, 2009.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to introduce a fee for access to its NYSE Order Imbalance Information datafeed.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE 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

(a) *The Service.*

In June 2008, the Exchange added Order Imbalance Information to the NYSE OpenBook® package of products.[3] For no additional charge, the Exchange decided to make available to recipients of NYSE OpenBook an additional datafeed containing Order Imbalance Information.

NYSE Order Imbalance Information is a datafeed of real-time order imbalances that accumulate prior to the opening of trading on the Exchange and prior to the close of trading on the Exchange. These orders are subject to execution at the market's opening or closing price, as the case may be, and represent issues that are likely to be of particular trading interest at the opening or closing.

The Exchange distributes information about these imbalances in real-time at specified intervals prior to the opening and closing auctions. Initially, the Exchange proposes to make order imbalance information available at the following intervals.

*For opening order imbalances:*

- Every five minutes between 8:30 a.m. EST and 9 a.m. EST.
- Every one minute between 9 a.m. EST and 9:20 a.m. EST.
- Every 15 seconds between 9:20 a.m. EST and the opening (or 9:35 a.m. EST if the opening is delayed).

*For closing order imbalances:*

- Every fifteen seconds between 3:40 p.m. EST and 3:50 p.m. EST.
- Every five seconds between 3:50 p.m. EST and 4 p.m. EST.

If the Exchange were to change these intervals, it would notify NYSE Order Imbalance Information recipients in advance and/or post the changes on the Exchange's Web site.

NYSE Order Imbalance Information also includes the imbalance information that the Exchange is required to disseminate under NYSE Rule 123C(5), as well as automated real-time streaming order imbalance information at specified intervals.

After consultation with its customers, the Exchange has determined to make the NYSE Order Imbalance Information datafeed available as a stand-alone market data product, separate and apart from NYSE OpenBook. This would enable all investors to gain access to information regarding opening and closing imbalances on the Exchange, especially because the Exchange is not imposing end-user fees, is not requiring end-users to sign contracts and is making vendor receipt and use of the information inexpensive and very few administrative burdens (*e.g.*, no reporting requirements and no end-user contracts).

Many investors have not been able to access this data. However, as a result of the Commission's NYSE ArcaBook Approval Order, the Exchange may now bring the NYSE order Imbalance Information product to market. The Exchange anticipates that this will provide important information to millions of investors.

In the Exchange's view, the Commission's recent ''Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data'' (the ''NYSE ArcaBook Approval Order'') makes this product offering possible. In the NYSE ArcaBook Approval Order, the Commission strongly supported the right of SROs to expand their market data offerings outside of the consolidated products that markets offer under joint industry plans such as the CTA Plan and the CQ Plan. It established fee-setting standards for market data products for those non-core offerings. Prior to the NYSE ArcaBook Approval Order, the Exchange's ability to bring the NYSE Order Imbalance Information product to market was limited distribution to NYSE OpenBook subscribers only. That order affirmed the Commission's embrace of allowing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–59039 (December 2, 2008); File No. SR–NYSEArca–2006–21.

market forces to determine the fairness and reasonableness of fees for non-core products, such as NYSE Order Imbalance Information. As a result, the Exchange is now able to make this important information available to millions of investors, investors who do not desire to subscribe to NYSE OpenBook services in order to receive NYSE Order Imbalance Information.

(b) *The Fee.* The Exchange proposes to charge recipients of the NYSE Order Imbalance Information datafeed $500 per month. The fee applies whether the recipient receives the datafeed directly from the Exchange or indirectly from an intermediary. The fee entitles the datafeed recipient to make displays of that information available to an unlimited number of subscribers for no extra charge. The Exchange is not proposing to impose an end-user or display device fee on those subscribers.

The fee would allow vendors to redistribute NYSE Order Imbalance Information without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, without having to procure contracts with its subscribers for the benefit of the Exchange and without having to report the number of its subscribers.

By establishing the access fee at an inexpensive rate and declining to impose an end-user fee on the consumption of NYSE Order Imbalance Information, the Exchange seeks to enable all investors to gain access to information regarding opening and closing imbalances on the Exchange. The fee enables the investment community that has an interest in the receipt of order imbalance information to contribute to the Exchange's operating costs in a manner that is appropriate for this market data product.

In setting the level of the NYSE Order Imbalance Information fee, the Exchange took into consideration several factors, including:

i. Consultation with some of the entities that the Exchange anticipates will be the most likely to take advantage of the proposed product;

ii. The contribution of market data revenues that the Exchange believes is appropriate for the investment community that has an interest in the receipt and use of order imbalance information; and

iii. The fact that the proposed fee provides an alternative to the receipt of NYSE Order Imbalance Information as part of NYSE OpenBook.

In short, the Exchange believes that the proposed NYSE Order Imbalance Information fee would reflect an equitable allocation of its overall costs to users of its facilities.

(c) *The Fee is Fair and Reasonable.* The Exchange believes that $500 access fee for NYSE Order Imbalance Information comports with the standard that the Commission established for determining whether market data fees relating to non-core market data products are fair and reasonable. In NYSE ArcaBook Approval Order, the Commission reiterated its position from its release approving Regulation NMS that it should ''allow market forces, rather than regulatory requirements, to determine what, if any, additional quotations outside the NBBO are displayed to investors.''[4]

The Commission went on to state that:

> The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system.[5]

The Commission then articulated the standard that it will apply in assessing the fairness and reasonableness of market data fees for non-core products, as follows:

> With respect to non-core data, * * * the Commission has maintained a market-based approach that leaves a much fuller opportunity for competitive forces to work. This market-based approach to non-core data has two parts. The first is to ask whether the exchange was subject to significant competitive forces in setting the terms of its proposal for non-core data, including the level of any fees. If an exchange was subject to significant competitive forces in setting the terms of a proposal, the Commission will approve the proposal unless it determines that there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder.[6]

The Exchange believes that the proposed access fee is fair and reasonable by this standard or any other standard. The Exchange is subject to significant competitive forces and the low level at which the Exchange proposes to establish the NYSE Order Imbalance Information access fee represents, in part, a response to that competition. To start, the Exchange competes intensely for order flow. It competes with the other 10 national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility and Trade Reporting Facilities, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow ''and the competition is fierce.''[7]

The Exchange believes that making the NYSE Order Imbalance Information datafeed available to vendors at $500 per month and allowing the vendors to redistribute that data to an unlimited number of their customers at no additional charge would help the Exchange to compete for order flow by making the Exchange's order imbalance information freely available to millions of investors. The Exchange hopes that some of those investors may favor the Exchange with order flow as a result of access to the imbalance information.

In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the NYSE Order Imbalance Information access fee fails to meet the requirement of the Exchange Act.

In sum, NYSE's compelling need to attract order flow imposes significant competitive pressure on NYSE to act equitably, fairly, and reasonably in setting the NYSE Order Imbalance Information access fee. Making that data readily available to investors is a response to that pressure.

(d) *Continued Distribution Through NYSE OpenBook.* The Exchange would continue to permit NYSE OpenBook datafeed recipients to receive the NYSE Order Imbalance Information datafeed as part of the NYSE OpenBook package without having to pay the $500 fee or any other additional charge. Those NYSE OpenBook datafeed recipients may then redistribute the NYSE Order Imbalance Information to any of their subscribers, whether or not the subscriber also receives NYSE OpenBook information. The Exchange imposes no end-user charge on those subscribers.

(e) *Contracts.* The Exchange proposes to provide the NYSE Order Imbalance Information datafeed available under the same contracting arrangement that the Commission has approved for the receipt and use of market datafeeds under the CTA and CQ Plans. That arrangement contemplates that each datafeed recipient enter into the Commission-approved standard form of ''Agreement for Receipt and Use of Market Data'' that Network A uses for data redistributors and other parties that use the data for purposes other than

[4] *See* Regulation NMS Release, 70 FR at 37566–37567 (addressing differences in distribution standards between core data and non-core data).

[5] NYSE ArcaBook Approval Order at pp 46–47.

[6] *Id.* at pp. 48–49.

[7] *Id.* at p 52.

interrogation.[8] Exhibit A to each of those agreements would need to be updated to reflect the receipt and use of NYSE Order Imbalance Information. The arrangement does not require an end-user of the information (other than a data feed recipient) to enter into any agreement.

2. Statutory Basis

The bases under the Securities Exchange Act of 1934 (the ''1934 Act'') for the proposed rule change are the requirement under section 6(b)(4)[9] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under section 6(b)(5)[10] that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposal benefits investors by facilitating their prompt access to widespread, free NYSE Order Imbalance Information.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2008–132 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–132. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–NYSE–2008–132 and should be submitted on or before February 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–414 Filed 1–12–09; 8:45 am]

**BILLING CODE 8011–01–P**

[8] The Participants in the CTA and CQ Plans first submitted the Consolidated Vendor Form to the Commission for immediate effectiveness in 1990. *See* Release No. 34–28407 (September 6, 1990); 55 FR 37276 (September 10, 1990) (File No. 4–281). The Commission approved a revised version of it in 1996 in conjunction with the participants' restatement of the CTA and CQ Plans. *See* Release No. 34–37191 (May 9, 1996); 61 FR 24842 (May 16, 1996) (File No. SR–CTA/CQ–96–1).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59207; File No. SR–NYSE–2008–134]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 1500 (''MatchPoint'') To Clarify the Functionality of the Intra-Day Matching Sessions in Relation to Order Entry, Correction and Cancellation Capabilities, and When the MatchPoint System Cancels Unexecuted Orders Back to the User and Disseminates Intra-Day and After Hours Trade Reports

January 6, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 22, 2008, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Exchange Rule 1500 (NYSE MatchPoint℠) (''MatchPoint'') to clarify the functionality of the intra-day matching sessions in relation to order entry, correction and cancellation capabilities, and when the MatchPoint system cancels unexecuted orders back to the User and disseminates intra-day and after hours trade reports. The text of the proposed rule change is available at *http://www.nyse.com*, NYSE, and the Commission's Public Reference Room.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange seeks to amend Exchange Rule 1500 (''NYSE MatchPoint'') to clarify the functionality of the intra-day matching sessions, and the timing of the dissemination of intra-day and after hours trade reports and when unexecuted orders are cancelled back to the User (*i.e.*, those customers entering orders into MatchPoint). Intra-day matching sessions begin at 9:45 a.m., 10:00 a.m., 11:00 a.m., 12:00 p.m., 1:00 p.m., 2:00 p.m. and 3:00 p.m. A MatchPoint after hours matching session occurs at 4:45 p.m.

The MatchPoint rule provides that a User can only enter, correct and cancel an order prior to commencement of a pre-determined one-minute matching session (see subsection (d)(2) of Rule 1500). However, subsequent to the September 2008 launch of the intra-day matching sessions, Exchange staff became aware that the MatchPoint system permits orders to be entered, corrected and cancelled during the one-minute intra-day matching sessions up to and including the time the algorithm randomly selects the Reference Price and commences the ''matching process.'' The ''matching process'' continues with the execution of orders and allocation of executed shares among the orders. MatchPoint orders cannot be entered, corrected or cancelled once the ''matching process'' has commenced.

For example, in the intended MatchPoint model, if a User entered an order into the MatchPoint system at 10:00:05 a.m. (5 seconds after the commencement of the 10:00 a.m. matching session), such order would be rejected by the MatchPoint system as untimely, and the order would not participate in the 10:00 a.m. matching session. However, as the system is functioning today, the User is able to enter, correct or cancel an order up to and including the time that the MatchPoint algorithm randomly selects the Reference Price and commences the matching process. Therefore, if a User enters a MatchPoint order into the MatchPoint system after the commencement of the 10:00 a.m. matching session at 10:00:05, the order may participate in the 10:00 a.m. matching session as long as the order is entered prior to the time the MatchPoint algorithm randomly selects the Reference Price and commences the matching process. Thus, if the Reference Price in this example is randomly selected at 10:00:10, the order that was entered at 10:00:05 will participate in the 10:00 matching session, but an order entered at 10:00:20 will not participate in the 10:00 matching session and will be rejected as untimely and cancelled back to the User. Thus, to be assured participation in the 10:00 a.m. matching session, a User must enter a MatchPoint order into the system anytime prior to the commencement of the 10:00 a.m. matching session.

The proposed rule change will clarify that the User may enter, correct or cancel an order up to and including the time that the MatchPoint algorithm randomly selects the Reference Price and commences the matching process. The Exchange believes the manner in which the MatchPoint intra-day matching process currently functions is appropriate in that it provides customers with a greater ability to manage orders because the orders are not necessarily held in the MatchPoint system for the entire one-minute session, and the customers are able to react more quickly to the market. Further, more customers may have the opportunity to enter, correct or cancel orders for a particular matching session in a timely fashion without having to wait a full hour for the next matching session to commence.

Additionally, the Exchange seeks to amend and clarify subsection (b)(2)(F) of NYSE Rule 1500 (''NYSE MatchPoint Orders'') to reflect the actual functionality of the MatchPoint system and to conform this subsection with the other proposed amendments to the Rule. In the intra-day and after hours MatchPoint matching sessions, the cancelling back of unexecuted orders and dissemination of trade reports actually occur immediately after completion of the ''matching process'' and not after completion of the ''matching session.'' Therefore, the definition of NYSE MatchPoint orders will include language that indicates that unexecuted orders will be cancelled back to the User ''immediately upon completion of the *matching process* in the relevant *one-minute* matching session,'' and that trade reports will be disseminated immediately after completion of the ''matching process.'' [4]

Additionally, the Exchange seeks to amend and clarify subsections (c)(1)(B) and (c)(1)(C) of NYSE Rule 1500 regarding MatchPoint intra-day matching sessions when the market is crossed. The MatchPoint rule provides the following:

> (B) If the NBBO for a particular security is locked at the time of a MatchPoint matching session during the regular trading hours of the Exchange, the matching session shall execute orders at the locked price. Unexecuted MatchPoint orders in that security shall be immediately cancelled back to the User upon completion of the matching session.
>
> (C) If the NBBO for a particular security is crossed at the time of a MatchPoint matching session during the regular trading hours of the Exchange, the matching session in that particular security shall not occur. Unexecuted MatchPoint orders in that security shall be immediately cancelled back to the User upon completion of the matching session.

The Exchange is proposing to amend the rule text in subsections (c)(1)(B) to clarify that during any intra-day matching session, the MatchPoint system will execute orders at the locked price when the market is locked at the time the MatchPoint algorithm randomly selects the Reference Price and commences the matching process—and not at the commencement of the particular matching session. Further, the proposed text will indicate that unexecuted orders will be cancelled back to the User immediately upon completion of the ''matching process''—and not at the completion of the ''matching session.''

The Exchange is proposing to amend the rule text in subsections (c)(1)(C) to clarify that during any intra-day matching session, if the NBBO for a particular security is crossed at the time the ''MatchPoint algorithm randomly selects the Reference Price,'' the matching session in that particular security will not occur, and unexecuted orders will be cancelled back to the User immediately upon completion of the ''matching process''—and not at the completion of the ''matching session.''

The Exchange believes that the way the MatchPoint system currently functions in relation to the dissemination of trade reports, crossed markets and the time the unexecuted orders are cancelled back to the User are beneficial functionalities for all customers. These functionalities will,

[4] *See* proposed NYSE Rule 1500 (c)(1).

among other things, provide customers with more immediate information regarding the processing of their orders and enable them to better manage their order flow. The immediacy of this information allows the customer to respond more quickly and more strategically to the movement of the market.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') [5] for this proposed rule change is the requirement under Section 6(b)(5) [6] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act because it clarifies the operation of the MatchPoint trading platform in relation to order entry, correction and cancellation capabilities during the intra-day matching sessions, and when the MatchPoint system cancels unexecuted orders back to the User and disseminates intra-day and after hours trade reports.[7] By clarifying these functionalities of the MatchPoint trading platform, a trading platform that is available to all members of the Exchange and those non-members who are authorized to access the platform as a Sponsored Participant, the proposed rule change promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.[8]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to the 30th day 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 requested that the Commission waive the 30-day operative delay and designate the proposed rule change to become operative upon filing. The Exchange believes that the operative date should be waived so that NYSE Rule 1500 will accurately reflect the technological functioning of the MatchPoint system and will immediately provide customers transparency regarding how their MatchPoint orders are being processed. The Exchange believes this will permit customers to better manage their order flow and trading decisions by being able to rely on the MatchPoint system.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In particular, the Commission believes that the proposed rule change should clarify the functioning of MatchPoint intra-day matching sessions in relation to automated order entry, correction and cancellation capabilities, when locked and crossed markets are identified, when the MatchPoint system cancels unexecuted orders back to the User, and when the system disseminates intra-day and after hours trade reports. The Commission further believes that investors should have access to accurate information regarding how their MatchPoint orders are being processed without delay. Accordingly, the Commission designates the proposed rule change to be operative upon filing with the Commission.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–134 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–134. 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

[5] 15 U.S.C. 78f(a).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* e-mail, dated January 6, 2009, from Jean Walsh, Managing Director, NYSE, to Nathan Saunders, Special Counsel, and Steve Varholik, Attorney, Division of Trading and Markets, Commission.

[8] *See id.*

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

[12] *Id.*

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–134 and should be submitted on or before February 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–415 Filed 1–12–09; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11614 and #11615]**

### Hawaii Disaster #HI–00016

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Hawaii (FEMA–1814–DR), dated 01/05/2009.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 12/10/2008 through 12/16/2008.

*Effective Date:* 01/05/2009.

*Physical Loan Application Deadline Date:* 03/06/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 10/05/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 01/05/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* City and County of Honolulu, Kauai.

*The Interest Rates are:*

| | Percent |
|---|---|
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 4.500 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| The number assigned to this disaster for physical damage is 11614B and for economic injury is 11615B. | |

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E9–421 Filed 1–12–09; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 11612 and # 11613]**

### Hawaii Disaster #HI–00015

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Hawaii (FEMA–1814–DR), dated 01/05/2009.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 12/10/2008 through 12/16/2008.

*Effective Date:* 01/05/2009.

*Physical Loan Application Deadline Date:* 03/06/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 10/05/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance,U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 01/05/2009, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties (Physical Damage and Economic Injury Loans):* City and County of Honolulu.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage | |
| Homeowners With Credit Available Elsewhere | 5.375 |
| Homeowners Without Credit Available Elsewhere | 2.687 |
| Businesses With Credit Available Elsewhere | 7.750 |
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 4.500 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| For Economic Injury: | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 11612B and for economic injury is 116130.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E9–422 Filed 1–12–09; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 11604]**

### Maine Disaster # ME–00016 Declaration of Economic Injury

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Maine, dated 01/06/2009.

*Incident:* Fire.

*Incident Period:* 09/14/2008.

**DATES:** *Effective Date:* 01/06/2009.

*EIDL Loan Application Deadline Date:* 10/06/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and

Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Piscataquis.

*Contiguous Counties: Maine:* Aroostook, Penobscot, Somerset.

*The Interest Rate is:* 4.000.

The number assigned to this disaster for economic injury is 116040.

The State which received an EIDL Declaration # is MAINE.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: January 6, 2009.

**Sandy K. Baruah,**

*Acting Administrator.*

[FR Doc. E9–427 Filed 1–12–09; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 11607 and # 11608]**

### Massachusetts Disaster # MA–00020

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Massachusetts (FEMA—1813—DR), dated 01/05/2009.

*Incident:* Severe Winter Storm and Flooding.

*Incident Period:* 12/11/2008 and continuing.

**DATES:** *Effective Date:* 01/05/2009.

*Physical Loan Application Deadline Date:* 03/06/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 10/05/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 01/05/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Berkshire, Franklin, Hampden, Hampshire, Worcester.

*The Interest Rates are:*

| | Percent |
|---|---|
| Other (Including Non-Profit Organizations) with Credit Available Elsewhere | 4.500 |
| Businesses and Non-Profit Organizations without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 11607B and for economic injury is 11608B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E9–423 Filed 1–12–09; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11525 and #11526]**

### Missouri Disaster Number MO–00033

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1809–DR), dated 11/13/2008.

*Incident:* Severe Storms, Flooding, and a Tornado.

*Incident Period:* 09/11/2008 through 09/24/2008.

*Effective Date:* 12/19/2008.

*Physical Loan Application Deadline Date:* 01/12/2009.

*EIDL Loan Application Deadline Date:* 08/13/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Missouri, dated 11/13/2008 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary County: (Physical Damage and Economic Injury Loans):*Montgomery.

All other counties contiguous to the above named primary county have previously been declared.

*Contiguous Counties: (Economic Injury Loans Only):* All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E9–410 Filed 1–12–09; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 11602 and # 11603]**

### Missouri Disaster # MO–00034

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA–1809–DR), dated 11/13/2008.

*Incident:* Severe Storms, Flooding, and a Tornado.

*Incident Period:* 09/11/2008 through 09/24/2008.

*Effective Date:* 11/13/2008.

*Physical Loan Application Deadline Date:* 01/12/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/13/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road,Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 11/13/2008, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Adair, Audrain, Barry, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Chariton, Christian, Clark, Crawford,Douglas, Dunklin, Howard, Howell,Knox, Lewis, Lincoln, Linn,Madison, Maries, Marion, Miller,Mississippi, New Madrid, Oregon, Ozark,Perry, Ralls, Randolph, Ray,Reynolds, Ripley, Sainte Genevieve, Schuyler,Scotland, Scott, Shannon, Shelby,Stoddard, Stone, Sullivan, Taney,Texas, Wayne, Webster, Wright.

The Interest Rates are:

| | Percent |
|---|---|
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 5.250 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 11602B and for economic injury is 11603B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E9–412 Filed 1–12–09; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Disaster Declaration #11605 and #11606 New Hampshire Disaster #NH–00010

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Hampshire (FEMA–1812–DR), dated 01/02/2009.

*Incident:* Severe Winter Storm.

*Incident Period:* 12/11/2008 and continuing.

**DATES:** *Effective Date:* 01/02/2009.

*Physical Loan Application Deadline Date:* 03/03/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 10/02/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 01/02/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

*The following areas have been determined to be adversely affected by the disaster:*

*Primary Counties:* Belknap, Carroll, Cheshire, Coos, Grafton, Hillsborough, Merrimack, Rockingham, Strafford, Sullivan.

*The Interest Rates are:*

| | Percent |
|---|---|
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 4.500 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| The number assigned to this disaster for physical damage is 11605B and for economic injury is 11606B. | |

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E9–419 Filed 1–12–09; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### National Small Business Development Center Advisory Board

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Notice of open Federal advisory committee meeting.

**SUMMARY:** The SBA is issuing this notice to announce the location, date, time and agenda for the next meeting of the National Small Business Development Center (SBDC) Advisory Board.

**DATES:** The meeting will be held on Tuesday, January 27, 2009 at 1 p.m. EST.

**ADDRESSES:** This meeting will be held via conference call.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meeting of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of this meeting is to discuss the following issues pertaining to the SBDC Advisory Board:

—SBA Update from AA/OSBDC

—ASBDC Spring Conference in March

**FOR FURTHER INFORMATION CONTACT:** The meeting is open to the public; however advance notice of attendance is requested. Anyone wishing to be a participant must contact Alanna Falcone by Friday, January 23, 2009, by fax or e-mail in order to be placed on the agenda. Alanna Falcone, Program Analyst, 409 Third Street, SW., Washington, DC 20416, Phone 202–619–1612, Fax 202–481–0134, e-mail *alanna.falcone@sba.gov*.

Additionally, if you need accommodations because of a disability or require additional information, please contact Alanna Falcone at the information above.

**Cherylyn H. Lebon,**

*Committee Management Officer.*

[FR Doc. E9–428 Filed 1–12–09; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activity Seeking OMB Approval

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

**ACTION:** Notice.

**SUMMARY:** The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 24, 2008, vol. 73, no. 207, page 63540. The respondents to this information collection are FAR Part 135 and Part 121 operators. The FAA will use the information to ensure compliance and adherence to the regulations.

**DATES:** Please submit comments by February 12, 2009.

**FOR FURTHER INFORMATION CONTACT:** Carla Mauney at *Carla.Mauney@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Federal Aviation Administration (FAA)**

*Title:* Part 65, Certification: Airmen Other Than Flight Crewmembers, Subpart C, Aircraft Dispatchers and App. A Aircraft Dispatcher Courses.

*Type of Request:* Extension without change of a currently approved collection.

*OMB Control Number:* 2120–0648.

*Forms(s)* There are no FAA forms associated with this collection.

*Affected Public:* An estimated 36 Respondents.

*Frequency:* This information is collected on occasion.

*Estimated Average Burden Per Response:* Approximately 57 hours per response.

*Estimated Annual Burden Hours:* An estimated 4,679 hours annually.

*Abstract:* The respondents to this information collection are FAR Part 135 and Part 121 operators. The FAA will use the information to ensure compliance and adherence to the regulations.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on Jan. 5, 2009.

**Carla Mauney,**

*FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. E9–341 Filed 1–12–09; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Availability of the Final Environmental Assessment (Final EA) and Section 4(f) Evaluation; Notice of Alaska National Interests Lands Conservation Act (ANILCA) Section 810 Evaluation; and Notice of Public Comment Period and Schedule of the Public Informational Meeting, Final EA Public Hearing, and ANILCA Section 810 Hearing for the Proposed Airport Improvement Project for the Barter Island Airport, Kaktovik, AK

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

**ACTION:** Notice of availability of Final EA, notice of public informational meeting and Final EA hearing, notice of ANILCA Section 810 hearing, and notice of public comment period.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality regulations (40 CFR Part 1500–1508), and FAA Orders 1050.1E and 5050.4B, the FAA is issuing this notice to advise the public that the Final EA and Section 4(f) Evaluation for the Barter Island Airport Improvements has been prepared and is available for public review and comment. An ANILCA Section 810 evaluation is included in the Final EA. The purpose and need for the proposed project is also disclosed in the Final EA. Reasonable, prudent, and feasible alternatives are being considered, including the no-action alternative.

Written requests for copies of the Final EA can be submitted to the individual listed in the section titled **FOR FURTHER INFORMATION CONTACT**. Written comments on the Final EA should be submitted to the address listed in the section titled *''Written Comments Should be Sent to''*. A public hearing will be held on February 17, 2009. The public comment period will commence on January 20, 2009 and will close at 5 p.m. (ADT) on February 24, 2009.

*Location of the Preferred Alternative:* The Preferred Alternative would relocate the airport approximately 1 mile southwest of the community of Kaktovik, on Barter Island. Barter Island is part of the North Slope Borough and is located along the Beaufort Sea Coast of Alaska north of the mainland of the Arctic National Wildlife Refuge. The City of Kaktovik (Kaktovik), an Inupiat village of approximately 300 people, is the only inhabited community on Barter Island.

*Public Comment and Public Hearing:* The public comment period on the Final EA will start on January 20, 2009 and will end at 5 p.m. (ADT) on February 24, 2009. One combined public information meeting, Final EA public hearing, and ANILCA Section 810 hearing will be held on February 17, 2009 at the Kaktovik City Hall, 2051 Barter Island Avenue, Kaktovik, AK 99747. The meeting and hearing will be from 6:00 to 8:00 pm (ADT) with a 30-minute informational presentation beginning at 6:15 pm and the public and ANILCA Section 810 hearing beginning at 7 p.m. A court reporter will be present during the hearing to formally record public comment.

**Final EA Availability and Review**

Copies of the Final EA, with its Section 4(f) and ANILCA Section 810 Evaluations, may be viewed during regular business hours at the following locations:

1. North Slope Borough Capital Improvement Project Office, 3000 C St., Suite 104, Anchorage, AK, 99503. Laura Strand, Project Administrator, (907) 646–8274.
2. City of Kaktovik, Mayor's Office, P.O. Box 27, 2051 Barter Avenue, Kaktovik, Alaska 99747. Elizabeth Rexford, 907–640–6313. Open: 8:30 a.m.—5 p.m. M–F.
3. North Slope Borough Village Liaison, P.O. Box 102, 4070 Hula Hula Avenue, Kaktovik, Alaska 99747. Nora Jane Burns, 907–640–6128.
4. North Slope Borough Public Works, 1689 Okpik Street, Barrow, Alaska 99723. Sophia Amling, 907–852–0271. Open: 8:30 a.m.—5 p.m. M–F.

The Final EA, Section 4(f) Evaluation, and ANILCA Section 810 Evaluation may also be viewed at the following Web site: *http://www.hdlalaska.com/currentprojects.htm*. The North Slope Borough has a limited number of hard-copy Final EA documents for distribution upon request. If you desire a hard-copy of the Final EA, please contact the North Slope Borough at (907) 646–8274.

Comments on the Final EA or ANILCA Section 810 Evaluation may also be presented verbally at the public hearing. Written comments may be submitted to during the public meeting and hearing and through Tuesday, February 24, 2009 at the address listed in the section titled *''Written Comments Should be Sent to''*.

The FAA encourages all interested parties to provide comments concerning the content of the Final EA, including the Section 4(f) and ANILCA Section 810 Evaluations. Comments should be as specific as possible and address the

analysis of potential environmental impacts and the adequacy of the proposed action or merits of alternatives and the mitigation being considered. Reviewers should organize their participation so that it is meaningful and makes the agency aware of the viewer's interests and concerns by using quotations and other specific references to the text of the Final EA and related documents. Comments that could have been raised with specificity during the comment period on the Draft EA may not be considered if they are not raised until after release of the Final EA. This is to ensure that substantive comments and concerns are made available to the FAA in a timely manner so that the FAA has an opportunity to address them.

**SUPPLEMENTARY INFORMATION:** The FAA as lead agency has prepared the Final EA for the Proposed Action and alternatives to address recurrent flooding and subsequent storm damage to the Barter Island Airport, Kaktovik, Alaska.

North Slope Borough published the Draft EA on behalf of the FAA on March 7, 2008. The Draft EA was prepared in accordance with the National Environmental Policy Act of 1969, Council on Environmental Quality regulations (40 CFR Part 1500–1508), and FAA Orders 1050.1E and 5050.4B. The Draft EA disclosed the environmental consequences of four separate alternatives associated with the proposed improvements at the Barter Island Airport. These alternatives included:

- Reconstructing the existing airport;
- Constructing a new airport on Barter Island and relocating the existing landfill and sewage lagoon;
- Constructing a new airport on the Alaska mainland south of Barter Island; and
- Continuing to maintain and operate the current airport as is (No Action Alternative).

In preparing the Final EA, the FAA considered all comments received on the Draft EA. The FAA addressed substantive comments with supplemental analysis documented in the Final EA. This supplemental analysis includes detailed disclosure on potential project impacts to subsistence resources and uses, air quality, noise, socioeconomics, environmental justice, and Department of Transportation Section 4(f) resources.

The proposed airport improvements under the FAA's Preferred Alternative would be completed during the 2010–2012 time period and would result in non-significant impacts to wetlands, wildlife habitat, vegetation, subsistence resources, air, and noise.

Section 810 of ANILCA requires an evaluation of the effects of actions and their alternatives presented in the Final EA on subsistence resources and activities occurring on public lands in the project area. The evaluation contained in the Subsistence Appendix of the Final EA indicates that no alternatives in the EA, including the FAA's Preferred Alternative, would significantly impair subsistence resources or restrict subsistence activities. As noted above, the FAA will hold a public hearing to receive comments on potential project effects on subsistence in conjunction with the public hearing conducted for the Final EA. At the end of the public comment period on the Final EA, the FAA will address any substantive comments and issue a decision.

**FOR FURTHER INFORMATION CONTACT:** Leslie Grey AAL–614, Project Manager, Federal Aviation Administration, Alaskan Region, Airports Division, 222 W. 7th Avenue #14, Anchorage, AK, 99513–7504. Ms. Grey may be contacted during business hours at (907) 271–5453 (phone) and (907) 271–2851 (facsimile).

*Written Comments Should be Sent to:* Hattenburg Dilley and Linnell, ATTN: Barter Island EA, 3335 Arctic Boulevard, Suite 100, Anchorage, AK 99503, or submitted by e-mail to *tmitchell@hdlalaska.com*.

All comments must be received no later than 5 pm (ADT) on February 24, 2009.

Issued in Anchorage, Alaska on January 7, 2009.

**James W. Lomen,**

*Deputy Division Manager, Airports Division, Alaskan Region.*

[FR Doc. E9–479 Filed 1–12–09; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2009–01]**

### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before January 23, 2009.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2008–1136 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Maria G. Delgado, ANM–113, (425) 227–2775, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; or Ralen Gao, ARM–200, (202) 267–3168, FAA, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 7, 2008.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2008–1136.

*Petitioner:* L–3 Communications Integrated Systems.

*Section of 14 CFR Affected:* 14 CFR 26.47.

*Description of Relief Sought:* The petitioner requests an exemption from the requirements of § 26.47 for several Airbus Model A340–200, –211, and –213 airplanes and Boeing Model 747–430, 747SP, and 767–200 airplanes, modified in accordance with certain supplemental type certificates (STCs). Section 26.47 requires holders of, and applicants for, an STC to develop damage tolerance data for airplane alterations and repairs. Section 26.47 is intended to apply to airplanes operating under part 121 or 129. The airplanes, which the petitioner is seeking exemption for, are not currently operating in the United States under part 121 or 129, nor is there any plan to do so in the future.

[FR Doc. E9–380 Filed 1–12–09; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2009–06]**

### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before January 23, 2009.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2008–1156 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Maria G. Delgado, ANM–113, (425) 227–2775, FAA, Transport Airplane Directorate, 1601 Lind Ave., SW., Renton, Washington 98057–3356; or Ralen Gao, ARM–200, (202) 267–3168, FAA, Office of Rulemaking, 800 Independence Ave., SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC., on December 7, 2009.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2008–1156.

*Petitioner:* L–3 Communications Integrated Systems.

*Section of 14 CFR Affected:* 14 CFR 26.47.

*Description of Relief Sought:* The petitioner requests an exemption from the requirements of § 26.47 for a Boeing Model 727–212 airplane, modified in accordance with a certain supplemental type certificates (STC). Section 26.47 requires holders of, and applicants for, an STC to develop damage tolerance data for airplane alterations and repairs. Section 26.47 is intended to apply to airplanes operating under parts 121 or 129. The airplanes, which the petitioner is seeking exemption for, are not currently operating in the United States under parts 121 or 129, nor is there any plan to do so in the future.

[FR Doc. E9–381 Filed 1–12–09; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2009–02]**

### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before January 23, 2009.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2008–1137 using any of the following methods:

- *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://*

*www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Maria G. Delgado, ANM–113, (425) 227–2775, FAA, Transport Airplane Directorate, 1601 Lind Ave., SW., Renton, Washington 98057–3356; or Ralen Gao, ARM–200, (202) 267–3168, FAA, Office of Rulemaking, 800 Independence Ave., SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 7, 2009.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2008–1137.

*Petitioner:* L–3 Communications Integrated Systems.

*Section of 14 CFR Affected:* 14 CFR 26.47.

*Description of Relief Sought:* The petitioner requests an exemption from the requirements of § 26.47 for two Boeing Model 747–47C airplanes, modified in accordance with certain supplemental type certificates (STCs). Section 26.47 requires holders of, and applicants for, an STC to develop damage tolerance data for airplane alterations and repairs. Section 26.47 is intended to apply to airplanes operating under parts 121 or 129. The airplanes, which the petitioner is seeking exemption for, are not currently operating in the United States under parts 121 or 129, nor is there any plan to do so in the future.

[FR Doc. E9–382 Filed 1–12–09; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2009–04]**

### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATE:** Comments on this petition must identify the petition docket number involved and must be received on or before January 23, 2009.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2008–0743 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Maria G. Delgado, ANM–113, (425) 227–2775, FAA, Transport Airplane Directorate, 1601 Lind Ave., SW., Renton, Washington 98057–3356; or Ralen Gao, ARM–200, (202) 267–3168, FAA, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 7, 2009.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2008–0743.

*Petitioner:* L–3 Communications Integrated Systems.

*Section of 14 CFR Affected:* 14 CFR 26.47.

*Description of Relief Sought:* The petitioner requests an exemption from the requirements of § 26.47 for several Boeing Model 727, 747, and 747SP airplanes and McDonnell Douglas Model DC–9–32 (VC–9C) and DC–9–32F (C–9A, C–9B) airplanes, modified in accordance with certain supplemental type certificates (STCs). Section 26.47 requires holders of, and applicants for, an STC to develop damage tolerance data for airplane alterations and repairs. Section 26.47 is intended to apply to airplanes operating under parts 121 or 129. The airplanes, which the petitioner is seeking exemption for, are not currently operating in the United States under parts 121 or 129, nor is there any plan to do so in the future.

[FR Doc. E9–383 Filed 1–12–09; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2009–03]**

### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR.

The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATE:** Comments on this petition must identify the petition docket number involved and must be received on or before January 23, 2009.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2008–1145 using any of the following methods:

- *Government-wide Rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Maria G. Delgado, ANM–113, (425) 227–2775, FAA, Transport Airplane Directorate, 1601 Lind Ave., SW., Renton, Washington 98057–3356; or Ralen Gao, ARM–200, (202) 267–3168, FAA, Office of Rulemaking, 800 Independence Ave., SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 7, 2009.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2008–1145.

*Petitioner:* L–3 Communications Integrated Systems.

*Section of 14 CFR Affected:* 14 CFR 26.47.

*Description of Relief Sought:* The petitioner requests an exemption from the requirements of § 26.47 for a Boeing Model 777–200 airplane, modified in accordance with certain supplemental type certificates (STCs). Section 26.47 requires holders of, and applicants for, an STC to develop damage tolerance data for airplane alterations and repairs. Section 26.47 is intended to apply to airplanes operating under parts 121 or 129. The airplanes, which the petitioner is seeking exemption for, are not currently operating in the United States under parts 121 or 129, nor is there any plan to do so in the future.

[FR Doc. E9–384 Filed 1–12–09; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Second Meeting—Special Committee 219—Attitude and Heading Reference Systems (AHRS)

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

**ACTION:** Notice of RTCA Special Committee 219 meeting: Attitude and Heading Reference.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 219 meeting: Attitude and Heading Reference Systems (AHRS).

**DATES:** The meeting will be held on February 3–5, 2009, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at 1828 L Street, NW., Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 219 meeting. The agenda will include:

- Opening Session (Welcome, Introductions and Administrative Remarks).
- Agenda Overview.
- Review/Approve first meeting summary, RTCA Paper No. 249–08/SC219–002 October 8, 2008.
- Review group document preparation options, and adopt a method if appropriate.
- Working Group (WG) reports;
- WG–1.
- WG–2.
- WG–3.
- New assignments.
- Working group sessions.
- Closing Session (Any Other Business, Establish Agenda, Date and Place of Next Meeting, Review minutes from the current meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 7, 2009.

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. E9–491 Filed 1–12–09; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; State Of Washington

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Revised Notice of Intent.

**SUMMARY:** The Federal Highway Administration (FHWA) is issuing this revised notice to advise the public, affected Tribal nations, and agencies that an environmental impact statement (EIS) will be prepared for a proposal to expedite construction of pontoons needed to replace the floating section of the SR 520 Evergreen Point Bridge in the event of a catastrophic failure.

**FOR FURTHER INFORMATION CONTACT:** Randy Everett, Federal Highway Administration, 915 2nd Avenue, Room 3142, Seattle, Washington, 98174, Telephone: (206) 220–7536; Susan Haupt, Washington State Department of

Transportation, 600 Stewart Street, Suite 520, Seattle, Washington, 98101, Telephone: (206) 770–3519.

**SUPPLEMENTARY INFORMATION:** The FHWA is issuing a Revised Notice of Intent (NOI) to advise the public of revisions to the scope of the environmental impact statement (EIS) for the proposed development of a site to build pontoons for the SR 520 bridge in case of a catastrophic failure. A NOI was published in the January 3, 2008, **Federal Register**. The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT), has revised the scope of the EIS since that time and will prepare an EIS on a proposal to expedite construction of pontoons needed to replace the existing traffic capacity of the State Route 520 (SR 520) Evergreen Point Bridge, and to store those pontoons until they are needed for catastrophic failure response or incorporated into the anticipated SR 520 bridge replacement. FHWA and WSDOT will prepare the EIS in accordance with the provisions of the National Environmental Policy Act (NEPA), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), and Washington's State Environmental Policy Act (SEPA).

The EIS will evaluate potential effects on the physical, human, and natural environments. Alternatives under consideration will include (1) taking no action and (2) building a new pontoon construction facility. Each proposed location for the casting basin facility will be evaluated as a separate alternative.

Information describing the proposed action and a request for comments will be sent to appropriate Federal, State, and local agencies, and to Tribal nations, private organizations, and citizens who have previously expressed or are known to have interest in this proposal. Public and agency scoping meetings were held in January 2008 for one site under consideration in Hoquiam, Washington. Additional public and agency scoping meetings will be held to solicit comments and provide information on other sites advanced for full assessment in the project EIS in January 2009. The public, agencies, and Tribal nations will be invited to comment on the Draft EIS, and a public meeting will be held during the Draft EIS comment period. Public notice will be given of the time and place of these meetings. Project information will be available for public, agency, and Tribal nation review prior to scheduled meetings.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 17, 2008.

**Stephen P. Boch,**

*Major Project Oversight Manager, Seattle, Washington.*

[FR Doc. E9–429 Filed 1–12–09; 8:45 am]

**BILLING CODE 4910–RY–P**

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## DEPARTMENT OF TRANSPORTATION [4910–RY]

### Federal Highway Administration

### Notice of Final Federal Agency Actions on a Proposed Highway Project in California

**AGENCY:** Federal Highway Administration (FHWA), U.S. DOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal agencies.

**SUMMARY:** This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(1)(1). These actions relate to a proposedHighway project on State Route 101 in San Francisco County, State of California. These actions grant approvals for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 13, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Cesar Perez, Senior Project DevelopmentEngineer, Federal Highway Administration, 650 Capitol Mall, #4–100, Sacramento, CA 95814, weekdays between 7 a.m. and 4 p.m., telephone 916–498–5065, *cesar.perez@fhwa.dot.gov*, or Jared Goldfine, Office Chief, California Department of Transportation, District 4, P.O. Box 23660, Oakland, CA 94623–0660, weekdays between 8 a.m. and 4:30 p.m., (510) 286–6203, *Jared.Goldfine@dot.ca.gov*.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in the State of California. The Doyle Drive project will replace the existing facility with a new six-lane facility and an southbound auxiliary lane between the Park Presidio Interchange and the new Presidio access at Girard Road. The new facility would consist of two 3.4 meter (11 foot) lanes and one 3.6 meter (12 foot) outside lane in each direction with 3.0-meter (10 foot) outside shoulders and 1.2-meter (4 foot) inside shoulders. The landscaped median between the northbound and southbound traffic lanes will vary from five meters (16 feet) to 12.5 meters (41 feet).

A 390 meter (1,279 foot) long high-viaduct will be constructed between the Park Presidio Interchange and San Francisco National Cemetery. Shallow cut-and-cover tunnels would extend 260 meters (853 feet) past the cemetery to east of Battery Blaney.

Actions by the Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment for the project. The Record of Decision (ROD) was approved on December 19, 2008. The ROD and other documents in the FHWA Administrative record file are available by contacting the FHWA or the California Department of Transportation at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act 42 U.S.C. 7401–7671(q).

3. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]. Migratory Bird Treaty Act [16 U.S.C. 703–712].

4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(aa)–11]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

5. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7U.S.C. 4201–4209]; The Uniform Relocation Assistance and Real Property Acquisition PoliciesAct of 1970, as amended.

6. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k).

7. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning andConstruction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(1)(1).

Issued on: January 6, 2009.

**Cindy Vigue,**

*Director, State Programs,Federal Highway Administration,Sacramento, California.*

[FR Doc. E9–459 Filed 1–12–09; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–1998–3637; FMCSA–2000–7006; FMCSA–2000–7165; FMCSA–2000–7363; FMCSA–2000–8203]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 14 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

#### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on December 15, 2008.

#### Discussion of Comments

FMCSA received no comment in this proceeding.

#### Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 14 renewal applications, FMCSA renews the Federal vision exemptions for Henry W. Adams, Delbert R. Bays, Eugene A. Gitzen, Nelson V. Jaramillo, Larry D. Johnson, Bruce T. Loughary, Demetrio Lozano, Wayne R. Mantela, Kenneth D. May, Gordon L. Nathan, Bernice R. Parnell, Patrick W. Shea, Roy F. Varnado, Jr., and Rick A. Young.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: January 6, 2009.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. E9–389 Filed 1–12–09; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Notice of Continuation of the Early Scoping—Efficient Transportation Decision Making Process for the South Florida East Coast Corridor Transit Analysis

**AGENCY:** Federal Transit Administration, U.S. Department of Transportation and Florida Department of Transportation.

**ACTION:** Continuation of the Early Scoping—Efficient Transportation Decision Making Process for the South Florida East Coast Corridor Transit Analysis.

**SUMMARY:** The Federal Transit Administration (FTA) and the Florida Department of Transportation (FDOT) issue this notice to advise governmental agencies, the public and other interested stakeholders of FTA's and FDOT's intent to continue the early scoping and planning-level National Environmental Policy Act (NEPA)/Florida's Efficient Transportation Decision Making (ETDM) process previously initiated for the South Florida East Coast Corridor Transit Analysis (SFECCTA) study. This notice is announcing to interested parties that additional early scoping meetings will be held at the beginning of the second phase of early scoping/ETDM on the dates provided below, and to inform the general public regarding the ongoing planning process.

The FTA and FDOT have been exploring transportation alternatives along an 85-mile section of the existing Florida East Coast (FEC) Railway freight corridor between Miami and Tequesta, Florida. A programmatic Tier 1 Draft Environmental Impact Statement (DEIS) developed an approach for evaluating impacts associated with various transportation improvement alternatives. The Tier 1 DEIS identified a number of transportation improvement alternatives that will be further evaluated in the continuation of the early scoping/ETDM process. This process is intended to result in selection of one or more locally-preferred transportation improvement alternatives. FDOT has been engaged in alternatives analysis and produced the Final Conceptual Alternatives Analysis/Environmental Screening Report (AA/ESR) that documents the results of the

first phase of the SFECCTA planning. An electronic copy of this interim report is available upon request from the contact below.

With the continuation of early scoping, the FTA and FDOT will discontinue the pursuit of a Tiered Programmatic EIS process and continue the statutorily required Alternatives Analysis process. Within this process, it is FDOT's intention to screen alternatives and determine transportation mode and general alignment within the corridor for each of the three independent corridor sections. At the conclusion of the early scoping process, the locally approved alternatives (LPAs) for each corridor segment will be adopted by the individual Metropolitan Planning Organizations and the Long Range Transportation Plans will be updated. FTA and FDOT will then prepare a Draft Environmental Impact Statement incorporating by reference all early scoping environmental planning efforts.

**DATES:** Written comments on this notice are welcomed and should be submitted to Mr. Scott P. Seeburger, Project Manager, Florida Department of Transportation, by March 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** Information requests are welcomed and should be submitted to: Scott P. Seeburger, Project Manager, Florida Department of Transportation, District 4, Planning and Environmental Management, 3400 West Commercial Boulevard, Fort Lauderdale, FL 33309–3421, (954) 777–4632, FAX (954) 777–4671, *scott.seeburger@dot.state.fl.us*.

*Public Meetings:* Early scoping meetings will be held at the following wheelchair-accessible locations to advise interested agencies and the public about continued early scoping efforts on the SFECCTA and to receive comments:

Town of Jupiter: Wednesday, January 21, 2009 from 6 to 8 p.m. at the Jupiter Town Hall Council Chamber, 210 Military Trail, Jupiter, Florida.

City of Boca Raton: Tuesday, January 27, 2009 from 3:30 to 5:30 p.m. and from 6 to 8 p.m., Boca Raton Community Center, Royal Palm Room, 150 Crawford Boulevard, Boca Raton, Florida.

City of West Palm Beach: Wednesday, February 4, 2009 from 3:30 to 5:30 p.m. and from 6 to 8 p.m., Cohen Pavilion, Kravis Center, 701 Okeechobee Boulevard, West Palm Beach, Florida.

City of Riviera Beach: Thursday, February 5, 2009 from 6 to 8 p.m. at Riviera Beach City Hall Council Chamber Room C202, 600 West Blue Heron Boulevard, Riviera Beach, Florida.

City of Miami: Tuesday, February 10, 2009 from 3:30 to 5:30 p.m. and from 6 to 8 p.m. at the Greater Bethel AME Church, 245 NW 8th Street, Miami, Florida.

City of Delray Beach: Wednesday, February 11, 2009 from 6 to 8 p.m. at Delray Beach City Hall, 100 NW 1st Avenue, Delray Beach, Florida.

Village of Miami Shores: Thursday, February 12, 2009 from 6 to 8 p.m. at the Miami Shores Country Club Ballroom, 10000 Biscayne Boulevard, Miami Shores, Florida.

City of Hollywood: Tuesday, February 17, 2009 from 6 to 8 p.m. at the Hollywood Center for the Performing Arts—Auditorium & Cafe, 1770 Monroe Street, Hollywood, Florida.

City of Pompano Beach: Wednesday, February 18, 2009 from 6 to 8 p.m. at the E. Pat Larkins Community Center Auditorium—West Side, 520 NW 3rd Street, Pompano Beach, Florida.

City of Aventura: Tuesday, February 24, 2009 from 6 to 8 p.m. at the Aventura Community Recreation Center—Classrooms 1A, 1B, and 2, 3375 NE 188th Street, Miami, Florida.

City of Ft. Lauderdale: Wednesday, February 25, 2009 from 5 to 7 p.m. at the African American Research Library, 2650 West Sistrunk Boulevard, Ft. Lauderdale, Florida.

**SUPPLEMENTARY INFORMATION:** The FTA and FDOT published a notice of intent (NOI) in the **Federal Register** on March 28, 2006 (Volume 71, Number 59) to advise the public of their intent to prepare a Tier 1 Programmatic Environmental Impact Statement (PEIS) for the SFECCTA to evaluate transit improvements in Miami-Dade, Broward, and Palm Beach Counties, Florida. To date, the exploration of transportation improvement alternatives for the 85-mile-long existing Florida East Coast (FEC) Railway between Miami and Tequesta has taken place in the context of FDOT's ETDM process and the NEPA tiering process. A broad range of conceptual alternatives were considered, including various transit technologies, corridor alignments, and station locations. Preliminary screening of these conceptual alternatives identified a single generalized alignment and four viable alternatives including regional rail, rapid rail, light rail, and bus rapid transit that are to be carried into the detailed screening phase along with the Transportation System Management (TSM) alternative. A discussion of these alternatives may be found in the AA/ESR.

While the programmatic or tiered NEPA–ETDM process was initially undertaken, the form, substance, and eventual outcome of that process, as it was being pursued, may be likened to another recognized NEPA process—early scoping. Early scoping is a NEPA process that is particularly useful in situations where, as here, proposed actions (the locally-preferred alternatives) have not been identified and multiple transportation alternatives are under consideration in a broad corridor. Although scoping normally follows issuance of a notice of intent, which must describe the ''proposed action,'' it ''may be initiated earlier, as long as there is appropriate public notice and enough information available on the proposal so that the public and relevant agencies can participate effectively.'' [See the Council on Environmental Quality, ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,'' 46 FR 18026, 18030 (1981) (Answer to Question 13)] Thus far, information developed cooperatively with more than 90 key agencies and stakeholders, as well as the public, is more than adequate to continue an effective early scoping process for transportation alternatives in the 85-mile long Florida East Coast Railway corridor.

**Continuation of the Early Scoping-ETDM Process**

The continuation of the early scoping-ETDM process will build upon the Tier 1 process and documents. Comments on the scope of alternatives and impacts will continue to be considered. Because FDOT may seek New Starts funding for one or more of the locally-preferred alternatives, the early scoping–ETDM process will also serve as the vehicle for consideration of alternatives consistent with the provisions of 49 U.S.C. 5309 (Alternatives Analysis). The early scoping-ETDM process has established and will continue to refine a well-defined statement of purpose and need for the transportation improvement projects, as well as alternative means of meeting that purpose and need, thereby promoting a more efficient NEPA process. Early scoping provides a means through which duplication, waste, and delay that could otherwise be experienced in situations such as this may be avoided. This is consistent with Environmental Streamlining provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

The next phase of the early scoping-ETDM process will examine technologies, including regional rail, rapid rail, light rail, and bus rapid transit; station locations and types; grade crossing issues; maintenance

facility and yard locations; locations for interconnecting passenger services between the existing South Florida Rail Corridor that is served by Tri-Rail Commuter services and the FEC Railway corridor; costs; funding; ridership; economic development; land use; engineering feasibility; and environmental factors in a selected corridor. To satisfy the § 5309 Alternatives Analysis requirement, FDOT will also evaluate options for transportation improvements in the study area that do not involve significant capital investment including TSM improvements and the implications of taking no action (*i.e.*, the ''no build'' alternative). It is the purpose of this early scoping-ETDM process, to identify mode and general alignment in the SFECC and develop a well defined locally preferred alternative.

In conjunction with issuance of this notice, and consistent with provisions of 23 U.S.C. 139, a plan for coordinating public and agency participation in and comment on the environmental review process for issues and alternatives under consideration here and at subsequent phases of the process will be prepared.

**Interim Report Availability**

The SFECCTA was begun using a Tiered Environmental Impact Statement NEPA process. In processing the Tier 1 Draft Final Programmatic Environmental Impact Statement (FPEIS), FTA and FDOT agreed that the process followed for Tier 1 is consistent with the NEPA early scoping process, and that this early scoping process will be continued through the next study phase including selection of one or more locally preferred alternatives (proposed actions) in the corridor. Under this process, the Tier 1 Draft FPEIS will be considered an interim planning report and, as such, has been renamed the Conceptual AA/ESR. FTA and FDOT will no longer engage in the NEPA tiering process.

In Tier 1, an iterative screening process was applied to a broad range of conceptual alternatives. A shortlist of modal technologies and a generalized alignment were selected consistent with the FTA definition of conceptual alternatives. The study applied corridor-level NEPA principles and processes in the evaluation of alternatives and their potential environmental impacts as well as in the collaboration with governmental agencies and the public involvement program. The entire process was documented in a programmatic Tier 1 DEIS that was circulated to affected Federal, State, and local government agencies and to other interested stakeholders. A Notice of Availability was published on October 13, 2006 (Volume 71, Number 198) for this document, and a public hearing was conducted on November 8, 9, and 15, 2006 at different venues in the study area.

The Tier 1 DEIS and the Conceptual AA/ESR serve as the administrative record documenting the NEPA analysis performed to support the advanced alternatives analysis phase of decision-making, federal agency oversight, agency coordination, and public comments and responses. As mentioned above, the AA/ESR will serve as an interim report for the early scoping-ETDM process now being used and is renamed as the final report, Conceptual AA/ESR. The report may be viewed or downloaded from the project's Web site at *www.sfeccstudy.com*. An electronic copy of this interim report is available upon request from the contact above. Also, bound copies of the Conceptual AA/ESR will be available for public review, between January 9, 2009 to March 10, 2009, at the following locations:

Florida Department of Transportation, District 4 Planning and Environmental Management, 3400 West Commercial Boulevard, Fort Lauderdale, FL 33309–3421, Phone: (954) 777–4632.

Florida Department of Transportation, District 6 Planning and Environmental Management Office, 1000 NW. 111th Avenue, Miami, FL 33172, Phone: (305) 470–5220.

Issued on: January 7, 2009.

**Ms. Yvette G. Taylor,**

*Regional Administrator, FTA Region 4.*

[FR Doc. E9–435 Filed 1–12–09; 8:45 am]

**BILLING CODE 4910–57–P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2008–0213; Notice 1]**

### Goodyear Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

Goodyear Tire & Rubber Company (Goodyear), has determined that certain passenger car tires manufactured during the period January 25, 2007 through July 24, 2008 do not fully comply with paragraph S5.5(e) of Federal Motor Vehicle Safety Standards (FMVSS) No. 139 *New Pneumatic Radial Tires for Light Vehicles*. Goodyear has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Goodyear has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Goodyear's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 9,864 size 245/45R17 95H Fierce HP brand passenger car tires manufactured during the period January 25, 2007 through July 24, 2008.

Paragraph S5.5(e) of FMVSS No. 139 requires in pertinent part:

> S5.5 Tire markings. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches * * *.
>
> (e) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire;* * *

Goodyear explains that the noncompliance is that the sidewall marking incorrectly identifies the generic material of the plies in the body of the tire as Nylon when they are in fact polyester. Specifically, the tires in question were inadvertently manufactured with ''Tread: 1 Polyester + 2 Steel Cords + 1 Nylon Cord. The labeling should have been ''Thread: 1 Polyester Cord + 2 Steel Cords + 1 Polyester Cord'' (emphasis added).

Goodyear states that it discovered the mold labeling error that caused the non-compliance during a routine quality audit.

Goodyear argues that the noncompliance is inconsequential to motor vehicle safety because the tires meet or exceed all applicable Federal Motor Vehicle Safety performance standards. All of the markings related to tire service (load capacity, corresponding inflation pressure, etc.)

are correct. The mislabeling of these tires creates no unsafe condition.

Goodyear states that the affected tire molds have been modified and all future production will have the correct material information shown on the sidewall.

Goodyear also points out that NHTSA has previously granted petitions for sidewall marking noncompliances that it believes are similar to the present noncompliance.

In summation, Goodyear states that it believes that because the noncompliances are inconsequential to motor vehicle safety that no corrective action is warranted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to vehicles and equipment that have already passed from the manufacturer to an owner, purchaser, or dealer.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

You may view documents submitted to a docket at the address and times given above. You may also view the documents on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets available at that Web site.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

*Comment closing date:* February 12, 2009.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8).

Issued on: January 8, 2009.

**Claude H. Harris**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. E9–517 Filed 1–12–09; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. Currently, the OCC is soliciting comment concerning its extension, without change, of an information collection titled, ''Release of Non-Public Information—12 CFR 4, Subpart C.'' The OCC is also giving notice that it has submitted the collection to OMB for review.

**DATES:** You should submit written comments by February 12, 2009.

**ADDRESSES:** You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0200, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to: OCC Desk Officer, 1557–0200, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to extend OMB approval of the following information collection:

*Title:* Release of Non-Public Information—12 CFR 4, Subpart C.

*OMB Control No.:* 1557–0200.

*Form No.:* None.

*Description:* This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The information requirements require individuals who are requesting non-public OCC information to provide the OCC with information regarding the requester's legal grounds for the request.

Release of non-public OCC information when the requester did not have sufficient legal grounds to obtain the information would inhibit open consultation between a bank and the OCC, thereby impairing the OCC's supervisory and regulatory mission. The OCC is entitled, under statute and case law, to require requesters to demonstrate that they have sufficient legal grounds for the OCC to release non-public OCC information. The OCC needs to know the requester's legal grounds to determine if it should release the requested non-public OCC information.

The information requirements in 12 CFR part 4, subpart C, are located as follows:

- 12 CFR 4.33: Request for non-public OCC records or testimony.
- 12 CFR 4.35(b)(3): Third parties requesting testimony.
- 12 CFR 4.37(a)(2): OCC former employee notifying OCC of subpoena.
- 12 CFR 4.37(a) and (b): Limitation on dissemination of released information.
- 12 CFR 4.39(d): Request for authenticated records or certificate of nonexistence of records.

The OCC uses the information to process requests for non-public OCC information and to determine if sufficient grounds exist for the OCC to release the requested information or provide testimony. This information collection makes the mechanism for processing requests more efficient and facilitates and expedites the OCC's release of non-public information and testimony to the requester.

*Type of Review:* Regular.

*Affected Public:* Businesses or other for-profit; individuals.

*Estimated Number of Respondents:* 110.

*Estimated Frequency of Response:* On occasion.

*Estimated Total Annual Burden:* 467 hours.

On November 3, 2008, the OCC published a notice in the **Federal Register** soliciting comment for 60 days on this information collection (73 FR 65447). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 6, 2009.

**Michele Meyer,**

*Assistant Director, Legislative & Regulatory Activities Division.*

[FR Doc. E9–431 Filed 1–12–09; 8:45 am]

**BILLING CODE 4810–33–P**

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## DEPARTMENT OF THE TREASURY

### Departmental Offices; Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW., Washington, DC, on February 3, 2009 at 10:30 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of the Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103–202, § 202(c)(1)(B)(31 U.S.C. 3 121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions, financing estimates and technical charts. This briefing will give the press an opportunity to ask questions about financing projections and technical charts. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Karthik Ramanathan, Acting Assistant Secretary for Financial Markets (202) 622–2042.

Dated: January 6, 2009.

**Karthik Ramanathan,**

*Acting Assistant Secretary for Financial Markets.*

[FR Doc. E9–399 Filed 1–12–09; 8:45 am]

**BILLING CODE 4810–35–M**

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Proposed Information Collection; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the

general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Recordkeeping Requirements for Securities Transactions—12 CFR part 12.''

**DATES:** You should submit comments by March 16, 2009.

**ADDRESSES:** Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0142, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0142, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to extend OMB approval of the following information collection:

*Title:* Recordkeeping Requirements for Securities Transactions—12 CFR part 12.

*OMB Number:* 1557–0142.

*Description:* This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The only revisions to the submission are the revised estimates, which have been updated.

The information collection requirements in 12 CFR part 12 are required to ensure national bank compliance with securities laws and to improve the protection afforded persons who purchase and sell securities through banks. The transaction confirmation information provides customers with a record regarding the transaction and provides banks and the OCC with records to ensure compliance with banking and securities laws and regulations. The OCC uses the required information in its examinations to, among other things, evaluate a bank's compliance with the antifraud provisions of the Federal securities laws.

The information collection requirements contained in 12 CFR part 12 are as follows:

- Section 12.3 requires a national bank effecting securities transactions for customers to maintain records for at least three years. The records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information.
- Section 12.4 requires a national bank to give or send to the customer a written notification of the transaction or a copy of the registered broker/dealer confirmation relating to the transaction.
- Sections 12.5(a), (b), (c), and (e) describe procedures a national bank may use as an alternative to complying with § 12.4, to notify customers of transactions in which the bank does not exercise investment discretion, trust transactions, agency transactions and certain periodic plan transactions.
- Sections 12.7(a)(1) through (a)(3) require a national bank to maintain and adhere to policies and procedures that assign responsibility for supervision of employees who perform securities trading functions; provide for the fair and equitable allocation of securities and prices to accounts; and provide for crossing of buy and sell orders on a fair and equitable basis.
- Section 12.7(a)(4) requires certain bank officers and employees involved in the securities trading process to report to the bank all personal transactions in securities made by them or on their behalf in which they have a beneficial interest.
- Section 12.8 requires a national bank seeking a waiver of one or more of the requirements of §§ 12.2 through 12.7 to file a written request for waiver with the OCC.

*Type of Review:* Regular.

*Affected Public:* Individuals; Businesses or other for-profit.

*Estimated Number of Respondents:* 497.

*Estimated Total Annual Responses:* 2,501.

*Estimated Frequency of Response:* On occasion.

*Estimated Total Annual Burden:* 2,711 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 6, 2009.

**Michele Meyer,**

*Assistant Director, Legislative and Regulatory Activities Division.*

[FR Doc. E9–433 Filed 1–12–09; 8:45 am]

**BILLING CODE 4810–33–P**

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## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Additional Designation of Entities Pursuant to Executive Order 13382

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 19 newly-designated entities whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'' and 123 related vessels.

**DATES:** The designation by the Director of OFAC of the 19 entities identified in this notice pursuant to Executive Order 13382 is effective on September 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: (202) 622–2490.

**SUPPLEMENTARY INFORMATION:**

**Electronic and Facsimile Availability**

This document and additional information concerning OFAC are

available from OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background:

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On September 10, 2008, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated 19 entities whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

1. ASIA MARINE NETWORK PTE. LTD. (a.k.a. ASIAN PERFECT MARINE PTE. LTD.; a.k.a. IRISL ASIA PTE. LTD.), 200 Middle Road, #14–01 Prime Centre 188980, Singapore [NPWMD].
2. CISCO SHIPPING COMPANY CO. LTD. (a.k.a. IRISL KOREA CO., LTD.; a.k.a. SEOUL INTERNATIONAL SHIPPING COMPANY; a.k.a. SISCO), 18th Floor, Sebang Building, 708–8, Yeoksam-dong, Kangnam-Gu, Seoul, Korea, South; 4th Floor, Sebang Building 68–46, Jwacheon-Dong, Dong-Gu, Busan, Korea, South [NPWMD].
3. IRAN O HIND SHIPPING COMPANY (a.k.a. IHSC; a.k.a. IRANO HIND SHIPPING COMPANY; a.k.a. IRANOHIND SHIPPING COMPANY (PJS); a.k.a. KESHTIRANI IRAN VE HEND SAHAMI KHASS), 265, Next to Mehrshad, Sedaghat St., Opposite of Mellat Park, Vali Asr Ave., Tehran 1A001, Iran; 18 Mehrshad Street, Sadaghat Street, Opposite of Park Mellat, Vali-e-Asr Ave., Tehran, Iran [NPWMD].
4. IRAN O MISR SHIPPING COMPANY (a.k.a. IRAN & EGYPT SHIPPING LINES; a.k.a. IRANMISR SHIPPING CO.), El Nahda Building, Elnahda St., 4th Floor, Port Said, Egypt; No. 41, 3rd Floor, Corner of 6th Alley, Sanaei St., Karim Khan Zand Ave., Tehran, Iran; 6 El Horreya Avenue, Alexandria, Egypt [NPWMD].
5. IRINVESTSHIP LTD., Global House, 61 Petty France, London SW1H 9EU, United Kingdom; Business Registration Document # 4110179 (United Kingdom) [NPWMD].
6. IRISL BENELUX NV, Noorderlaan 139, B–2030, Antwerp, Belgium; V.A.T. Number BE480224531 (Belgium) [NPWMD].
7. IRISL CHINA SHIPPING CO., LTD. (a.k.a. YI HANG SHIPPING COMPANY, LTD.), F23A–D, Times Plaza No. 1, Taizi Road, Shekou, Shenzhen 518067, China [NPWMD].
8. IRISL EUROPE GMBH, Schottweg 5, 22087, Hamburg, Germany; V.A.T. Number DE217283818 (Germany) [NPWMD].
9. IRISL (MALTA) LIMITED, Flat 1, 181, Tower Road, Sliema SLM 1604, Malta; Business Registration Document # C33735 (Malta); Tax ID No. MT 17037313 (Malta) [NPWMD].
10. IRISL MARINE SERVICES & ENGINEERING COMPANY (a.k.a. IMSENGCO; a.k.a. SHERKATE KHADAMTE DARYA AND MOHAMDESI KESHTIRANI), No. 221, Northern Iranshahr St., Karimkhan Ave., Tehran, Iran; Karim Khan Zand Ave., Iran Shahr Shomai, No. 221, Tehran, Iran; Sarbandar, Gas Station, P.O. Box 199, Bandar Imam Khomeini, Iran [NPWMD].
11. IRISL MULTIMODAL TRANSPORT CO. (a.k.a. RAIL IRAN SHIPPING COMPANY), No. 25, Shahid Arabi Line, Sanaei St., Karimkhan Zand St., Tehran, Iran [NPWMD].
12. IRISL (UK) LTD., 2 Abbey Rd., Barking, Essex IG11 7 AX, United Kingdom; Business Registration Document # 4765305 (United Kingdom) [NPWMD].
13. IRITAL SHIPPING SRL COMPANY, Ponte Francesco Morosini 59, 16126 Genova (GE), Italy; Commercial Registry Number GE 426505 (Italy); Italian Fiscal Code 03329300101 (Italy); V.A.T. Number 12869140157 (Italy) [NPWMD].
14. ISLAMIC REPUBLIC OF IRAN SHIPPING LINES (a.k.a. ARYA SHIPPING COMPANY; a.k.a. IRI SHIPPING LINES; a.k.a. IRISL; a.k.a. IRISL GROUP), No. 37, Aseman Tower, Sayyade Shirazee Square, Pasdaran Ave., P.O. Box 19395–1311, Tehran, Iran; No. 1, End of Shahid Mostafa Khomeini St., Tohid Square, P.O. Box 43145, Bandar Anzali 1711–324, Iran [NPWMD].
15. KHAZAR SEA SHIPPING LINES (a.k.a. DARYA–YE KHAZAR SHIPPING COMPANY; a.k.a. KHAZAR SHIPPING CO), M. Khomeini St., Ghazian, Bandar Anzali, Gilan, Iran; No. 1, End of Shahid Mostafa Khomeini St., Tohid Square, P.O. Box 43145, Bandar Anzali 1711–324, Iran [NPWMD].
16. OASIS FREIGHT AGENCIES (a.k.a. OASIS FREIGHT AGENCY LLC), Sharaf Building, 1st Floor, Al Mankhool St., Bur Dubai, P.O. Box 5562, Dubai, United Arab Emirates; Sharaf Building, No. 4, 2nd Floor, Al Meena Road, Opposite Customs, Dubai, United Arab Emirates; Kayed Ahli Building, Jamal Abdul Nasser Road (Parallel to Al Wahda St.), P.O. Box 4840, Sharjah, United Arab Emirates [NPWMD].
17. SHIPPING COMPUTER SERVICES COMPANY (a.k.a. SCSCO), No. 37, Asseman, Shahid Sayyad Shirazeesq, Pasdaran Ave., P.O. Box

1587553–1351, Tehran, Iran; No. 13, 1st Floor, Abgan Alley, Aban Ave., Karimkhan Zand Blvd., Tehran 15976, Iran [NPWMD].

18. SOUTH SHIPPING LINE IRAN (a.k.a. SOUTH SHIPPING LINES IRAN COMPANY), Qaem Magham Farahani St., Tehran, Iran; Apt. No. 7, 3rd Floor, No. 2, 4th Alley, Gandi Ave., Tehran, Iran [NPWMD].
19. VALFAJR 8TH SHIPPING LINE CO SSK (a.k.a. SHERKAT SAHAMI KHASS KESHTIRANI VALFAJR 8TH; a.k.a. VAL FAJR HASHT SHIPPING CO; a.k.a. VAL FAJR–E–8 SHIPPING COMPANY; a.k.a. VALFAJRE EIGHT SHIPPING CO; a.k.a. VESC), Shahid Azodi St., Karimkhan Zand Ave., Abiar Alley, P.O. Box 4155, Tehran, Iran; Abyar Alley, Corner of Shahid Azodi St. & Karim Khan Zand Ave., Tehran, Iran [NPWMD].

In addition to the entities listed above, OFAC has identified the following 123 vessels as property of the Islamic Republic of Iran Shipping Lines (IRISL). Banks are instructed to reject any funds transfer referencing a blocked vessel and must notify OFAC, via facsimile with a copy of the payment instructions that funds have been returned to the remitter due to the possible involvement of a SDN vessel in the underlying transaction. This instruction was inadvertently removed from the list of blocked persons, 31 CFR, Chapter V, Appendix A, on July 1, 2008.

The list of vessels is as follows:

1. ATTAR Bulk Carrier 43,706DWT 25,885GRT Malta flag (IRISL); Vessel Registration Identification IMO 9074092 (vessel) [NPWMD].
2. BRELYAN General Cargo Iran flag (IRISL); Vessel Registration Identification IMO 9138056 (vessel) [NPWMD].
3. BRIGHTNESS (a.k.a. IRAN BRIGHTNESS) General Cargo 24,065DWT 16,621GRT Malta flag (IRISL); Vessel Registration Identification IMO 9051648 (vessel)[NPWMD].
4. BRILLIANCE (a.k.a. IRAN BRILLIANCE) General Cargo 24,065DWT 16,621GRT Malta flag (IRISL); Vessel Registration Identification IMO 9051636 (vessel) [NPWMD].
5. DAIS (a.k.a. IRAN DAIS) Bulk Carrier 43,406DWT 25,768GRT Hong Kong flag (IRISL); Vessel Registration Identification IMO 8309696 (vessel) [NPWMD].
6. DANDY (a.k.a. IRAN DANDY) Bulk Carrier 43,279DWT 25,768GRT Hong Kong flag (IRISL); Vessel Registration Identification IMO 8320157 (vessel) [NPWMD].
7. DAPPER (a.k.a. IRAN DAPPER) Bulk Carrier 43,499DWT 25,768GRT Hong Kong flag (IRISL); Vessel Registration Identification IMO 8309646 (vessel) [NPWMD].
8. DECOROUS (a.k.a. IRAN DECOROUS) Bulk Carrier 43,369DWT 25,768GRT Hong Kong flag (IRISL); Vessel Registration Identification IMO 8309658 (vessel) [NPWMD].
9. DELEGATE (a.k.a. IRAN DELEGATE) Bulk Carrier 43,265DWT 25,768GRT Hong Kong flag (IRISL); Vessel Registration Identification IMO 8320121 (vessel) [NPWMD].
10. DELIGHT (a.k.a. IRAN DELIGHT) Bulk Carrier 43,218DWT 25,768GRT Hong Kong flag (IRISL); Vessel Registration Identification IMO 8320133 (vessel) [NPWMD].
11. DEVELOPER (a.k.a. IRAN DEVELOPER) Bulk Carrier 43,300DWT 25,768GRT IRAN flag (IRISL); Vessel Registration Identification IMO 8309660 (vessel) [NPWMD].
12. DEVOTEE (a.k.a. IRAN DEVOTEE) Bulk Carrier 43,369DWT 25,768GRT Hong Kong flag (IRISL); Vessel Registration Identification IMO 8309608 (vessel) [NPWMD].
13. DEVOTIONAL (a.k.a. IRAN DEVOTIONAL) Bulk Carrier 43,330DWT 25,768GRT Hong Kong flag (IRISL); Vessel Registration Identification IMO 8309684 (vessel) [NPWMD].
14. DIAMOND (a.k.a. IRAN DIAMOND) Bulk Carrier 43,369DWT 25,768GRT (IRISL); Vessel Registration Identification IMO 8309593 (vessel) [NPWMD].
15. DIGNIFIED (a.k.a. IRAN DIGNIFIED) Bulk Carrier 43,369DWT 25,768GRT Hong Kong flag (IRISL); Vessel Registration Identification IMO 8309610 (vessel) [NPWMD].
16. DIPLOMAT (a.k.a. IRAN DIPLOMAT) Bulk Carrier 43,262DWT 25,768GRT Hong Kong flag (IRISL); Vessel Registration Identification IMO 8309701 (vessel) [NPWMD].
17. DREAMLAND (a.k.a. IRAN DREAMLAND) Bulk Carrier 43,302DWT 25,770GRT Hong Kong flag (IRISL); Vessel Registration Identification IMO 8320183 (vessel) [NPWMD].
18. DRIFTER (a.k.a. IRAN DRIFTER) Bulk Carrier 43,499DWT 25,770GRT Hong Kong flag (IRISL); Vessel Registration Identification IMO 8320169 (vessel) [NPWMD].
19. DYNAMIZE (a.k.a. IRAN DYNAMIZE) Bulk Carrier 43,369DWT 25,768GRT Hong Kong flag (IRISL); Vessel Registration Identification IMO 8309634 (vessel) [NPWMD].
20. ELEVENTH OCEAN Container Ship 41,962DWT 36,014GRT Malta flag (IRISL); Vessel Registration Identification IMO 9209324 (vessel) [NPWMD].
21. FIFTH OCEAN Container Ship 79,030DWT 75,395GRT Malta flag (IRISL); Vessel Registration Identification IMO 9349667 (vessel) [NPWMD].
22. GOWHAR Ferry Iran flag (IRISL); Vessel Registration Identification IMO 9103087 (vessel) [NPWMD].
23. HORMUZ 2 Ferry Iran flag (IRISL); Vessel Registration Identification IMO 7904580 (vessel) [NPWMD].
24. IRAN ADL Bulk Carrier 37,537DWT 22,027GRT Iran flag (IRISL); Vessel Registration Identification IMO 8108559 (vessel) [NPWMD].
25. IRAN AFZAL Bulk Carrier 37,564DWT 22,027GRT Iran flag (IRISL); Vessel Registration Identification IMO 8105284 (vessel) [NPWMD].
26. IRAN AKHAVAN Bulk Carrier 34,859DWT 20,576GRT Iran flag (IRISL); Vessel Registration Identification IMO 8113009 (vessel) [NPWMD].
27. IRAN AMANAT Bulk Carrier 34,859DWT 20,576GRT Iran flag (IRISL); Vessel Registration Identification IMO 8112990 (vessel) [NPWMD].
28. IRAN AMIRABAD General Cargo 7,004DWT 5,750GRT Iran flag (IRISL); Vessel Registration Identification IMO 9368003 (vessel) [NPWMD].
29. IRAN ANZALI General Cargo 6,750DWT 5,750GRT Iran flag (IRISL); Vessel Registration Identification IMO 9367982 (vessel) [NPWMD].
30. IRAN ARAK Container Ship 29,870DWT 23,200GRT Iran flag (IRISL); Vessel Registration Identification IMO 9270646 (vessel) [NPWMD].
31. IRAN ARDEBIL Container Ship 37,875DWT 27,681GRT Iran flag (IRISL); Vessel Registration Identification IMO 9284154 (vessel) [NPWMD].
32. IRAN AZADI Bulk Carrier 35,839DWT 20,672GRT Iran flag (IRISL); Vessel Registration Identification IMO 7632838 (vessel) [NPWMD].
33. IRAN AZARBAYJAN Bulk Carrier 72,642DWT 39,424GRT Iran flag (IRISL); Vessel Registration Identification IMO 9193185 (vessel) [NPWMD].
34. IRAN BAGHAEI General Cargo 17,945DWT 13,914GRT Iran flag

(IRISL); Vessel Registration Identification IMO 7502734 (vessel) [NPWMD].

35. IRAN BAGHERI General Cargo 17,928DWT 13,914GRT Iran flag (IRISL); Vessel Registration Identification IMO 7428811 (vessel) [NPWMD].
36. IRAN BAM Bulk Carrier 73,664DWT 40,166GRT Malta flag (IRISL); Vessel Registration Identification IMO 9323833 (vessel) [NPWMD].
37. IRAN BASEER General Cargo 3,955DWT 3,638GRT Iran flag (IRISL); Vessel Registration Identification IMO 9010711 (vessel) [NPWMD].
38. IRAN BASHEER General Cargo 2,850DWT 2,563GRT Iran flag (IRISL); Vessel Registration Identification IMO 8215742 (vessel) [NPWMD].
39. IRAN BIRJAND Bulk Carrier 73,664DWT 40,166GRT Malta flag (IRISL); Vessel Registration Identification IMO 9305219 (vessel) [NPWMD].
40. IRAN BOJNOORD Bulk Carrier 73,518DWT 40,166GRT Malta flag (IRISL); Vessel Registration Identification IMO 9305207 (vessel) [NPWMD].
41. IRAN BRAVE General Cargo Malta flag (IRISL); Vessel Registration Identification IMO 9051650 (vessel) [NPWMD].
42. IRAN BROOJERDI General Cargo 17,929DWT 13,914GRT Iran flag (IRISL); Vessel Registration Identification IMO 7502722 (vessel) [NPWMD].
43. IRAN BUSHEHR Container Ship 30,146DWT 23,285GRT Iran flag (IRISL); Vessel Registration Identification IMO 9270658 (vessel) [NPWMD].
44. IRAN DALEER General Cargo 5,885DWT 4,954GRT Iran flag (IRISL); Vessel Registration Identification IMO 9118551 (vessel) [NPWMD].
45. IRAN DEYANAT Bulk Carrier 43,150DWT 25,168GRT Iran flag (IRISL); Vessel Registration Identification IMO 8107579 (vessel) [NPWMD].
46. IRAN DOLPHIN Bulk Carrier Hong Kong flag (IRISL); Vessel Registration Identification IMO 8320195 (vessel) [NPWMD].
47. IRAN ENTEKHAB Bulk Carrier 35,896DWT 20,811GRT Iran flag (IRISL); Vessel Registration Identification IMO 7632814 (vessel) [NPWMD].
48. IRAN ESTEGHLAL Bulk Carrier 35,839DWT 20,811GRT Iran flag (IRISL); Vessel Registration Identification IMO 7620550 (vessel) [NPWMD].
49. IRAN FARS Container Ship 33,702DWT 25,391GRT Iran flag (IRISL); Vessel Registration Identification IMO 9283021 (vessel) [NPWMD].
50. IRAN GHADEER General Cargo 3,955DWT 3,638GRT Iran flag (IRISL); Vessel Registration Identification IMO 9010723 (vessel) [NPWMD].
51. IRAN GHAZI Bulk Carrier 43,497DWT 25,768GRT Iran flag (IRISL); Vessel Registration Identification IMO 8309672 (vessel) [NPWMD].
52. IRAN GILAN Bulk Carrier 63,400DWT 39,424GRT Malta flag (IRISL); Vessel Registration Identification IMO 9193202 (vessel) [NPWMD].
53. IRAN GOLESTAN Bulk Carrier 72,162DWT 39,517GRT Malta flag (IRISL); Vessel Registration Identification IMO 9226944 (vessel) [NPWMD].
54. IRAN HAMADAN Bulk Carrier 72,162DWT 39,517GRT Malta flag (IRISL); Vessel Registration Identification IMO 9226956 (vessel) [NPWMD].
55. IRAN HAMZEH Bulk Carrier 43,288DWT 25,770GRT Iran flag (IRISL); Vessel Registration Identification IMO 8320171 (vessel) [NPWMD].
56. IRAN HORMUZ 12 General Cargo Iran flag (IRISL); Vessel Registration Identification IMO 9005596 (vessel) [NPWMD].
57. IRAN HORMUZ 14 General Cargo Iran flag (IRISL); Vessel Registration Identification IMO 9020778 (vessel) [NPWMD].
58. IRAN HORMUZ 21 General Cargo 1,000DWT 910GRT Iran flag (IRISL); Vessel Registration Identification IMO 8314263 (vessel) [NPWMD].
59. IRAN HORMUZ 22 General Cargo 1,000DWT 910GRT Iran flag (IRISL); Vessel Registration Identification IMO 8314275 (vessel) [NPWMD].
60. IRAN HORMUZ 23 General Cargo Iran flag (IRISL); Vessel Registration Identification IMO 8319782 (vessel) [NPWMD].
61. IRAN HORMUZ 25 General Cargo Iran flag (IRISL); Vessel Registration Identification IMO 8422072 (vessel) [NPWMD].
62. IRAN HORMUZ 26 General Cargo Iran flag (IRISL); Vessel Registration Identification IMO 8422084 (vessel) [NPWMD].
63. IRAN ILAM Container Ship 37,600DWT 27,681GRT Iran flag (IRISL); Vessel Registration Identification IMO 9283033 (vessel) [NPWMD].
64. IRAN JOMHURI Bulk Carrier 35,828DWT 20,811GRT Iran flag (IRISL); Vessel Registration Identification IMO 7632826 (vessel) [NPWMD].
65. IRAN KABEER General Cargo 5,885DWT 4,991GRT Iran flag (IRISL); Vessel Registration Identification IMO 9076478 (vessel) [NPWMD].
66. IRAN KASHAN Container Ship 29,870DWT 23,200GRT Iran flag (IRISL); Vessel Registration Identification IMO 9270696 (vessel) [NPWMD].
67. IRAN KERMAN Container Ship 41,978DWT 36,014GRT Malta flag (IRISL); Vessel Registration Identification IMO 9209350 (vessel) [NPWMD].
68. IRAN KERMANSHAH Bulk Carrier 75,249DWT 40,609GRT Cyprus flag (IRISL); Vessel Registration Identification IMO 9213399 (vessel) [NPWMD].
69. IRAN KHORASAN Bulk Carrier 72,622DWT 39,424GRT Malta flag (IRISL); Vessel Registration Identification IMO 9193214 (vessel) [NPWMD].
70. IRAN KOLAHDOOZ General Cargo 17,982DWT 13,914GRT Iran flag (IRISL); Vessel Registration Identification IMO 7428809 (vessel) [NPWMD].
71. IRAN MADANI Bulk Carrier 43,369DWT 25,768GRT Iran flag (IRISL); Vessel Registration Identification IMO 8309622 (vessel) [NPWMD].
72. IRAN MAHALLATI General Cargo 17,982DWT 13,914GRT Iran flag (IRISL); Vessel Registration Identification IMO 7428823 (vessel) [NPWMD].
73. IRAN MATIN General Cargo 24,065DWT 16,621GRT Iran flag (IRISL); Vessel Registration Identification IMO 9051624 (vessel) [NPWMD].
74. IRAN MAZANDARAN Bulk Carrier 74,642DWT 39,424GRT Malta flag (IRISL); Vessel Registration Identification IMO 9193197 (vessel) [NPWMD].
75. IRAN MODARES Bulk Carrier 33,663DWT 20,049GRT Iran flag (IRISL); Vessel Registration Identification IMO 7618985 (vessel) [NPWMD].
76. IRAN NABUVAT General Cargo 19,212DWT 14,856GRT Iran flag (IRISL); Vessel Registration Identification IMO 7618571 (vessel) [NPWMD].

77. IRAN NAVAB (a.k.a. IRAN DESTINY) Bulk Carrier 43,329DWT 25,768GRT Iran flag (IRISL); Vessel Registration Identification IMO 8320145 (vessel) [NPWMD].
78. IRAN NOWSHAHR General Cargo 7,004DWT 5,676GRT Iran flag (IRISL); Vessel Registration Identification IMO 9367994 (vessel) [NPWMD].
79. IRAN PIROOZI Container Ship 33,835DWT 25,391GRT Iran flag (IRISL); Vessel Registration Identification IMO 9283007 (vessel) [NPWMD].
80. IRAN SARBAZ Bulk Carrier 34,859DWT 20,576GRT Iran flag (IRISL); Vessel Registration Identification IMO 8113011 (vessel) [NPWMD].
81. IRAN SEPAH Bulk Carrier 33,856DWT 20,361GRT Iran flag (IRISL); Vessel Registration Identification IMO 7375363 (vessel) [NPWMD].
82. IRAN SHAHED General Cargo 3,480DWT 2,615GRT Iran flag (IRISL); Vessel Registration Identification IMO 9184691 (vessel) [NPWMD].
83. IRAN SHALAMCHEH General Cargo 3,918DWT 3,135GRT Iran flag (IRISL); Vessel Registration Identification IMO 8820925 (vessel) [NPWMD].
84. IRAN SHARIAT Bulk Carrier 44,441DWT 25,168GRT Iran flag (IRISL); Vessel Registration Identification IMO 8107581 (vessel) [NPWMD].
85. IRAN TABAS Bulk Carrier 73,586DWT 40,166GRT Malta flag (IRISL); Vessel Registration Identification IMO 9305192 (vessel) [NPWMD].
86. IRAN TAKHTI General Cargo 23,720DWT 16,173GRT Iran flag (IRISL); Vessel Registration Identification IMO 7602194 (vessel) [NPWMD].
87. IRAN TEYFOURI General Cargo 23,720DWT 16,173GRT Iran flag (IRISL); Vessel Registration Identification IMO 7602211 (vessel) [NPWMD].
88. IRAN TORKAMAN General Cargo 7,004DWT 5,750GRT Iran flag (IRISL); Vessel Registration Identification IMO 9368015 (vessel) [NPWMD].
89. IRAN TUCHAL Container Ship 66,900DWT 53,453GRT Malta flag (IRISL); Vessel Registration Identification IMO 9346536 (vessel) [NPWMD].
90. IRAN YASOOJ Container Ship 33,813DWT 25,391GRT Iran flag (IRISL); Vessel Registration Identification IMO 9284142 (vessel) [NPWMD].
91. IRAN YAZD Bulk Carrier 72,642DWT 40,609GRT Cyprus flag (IRISL); Vessel Registration Identification IMO 9213387 (vessel) [NPWMD].
92. IRAN ZANJAN Container Ship 33,757DWT 25,391GRT Iran flag (IRISL); Vessel Registration Identification IMO 9283019 (vessel) [NPWMD].
93. KARIM (a.k.a. IRAN KARIM) Bulk Carrier 53,100DWT 31,117GRT Malta flag (IRISL); Vessel Registration Identification IMO 9465758 (vessel) [NPWMD].
94. LUCKY LILY (a.k.a. IRAN LUCKY LILY) General Cargo 22,882DWT 15,670GRT Malta flag (IRISL); Vessel Registration Identification IMO 9165827 (vessel) [NPWMD].
95. LUCKY MAN (a.k.a. IRAN LUCKY MAN) General Cargo 22,882DWT 15,670GRT Malta flag (IRISL); Vessel Registration Identification IMO 9165839 (vessel) [NPWMD].
96. MIR DAMAD Container Ship 5,012DWT 4,276GRT Malta flag (IRISL); Vessel Registration Identification IMO 9148491 (vessel) [NPWMD].
97. MIR EMAD Container Ship 5,012DWT 4,276GRT Malta flag (IRISL); Vessel Registration Identification IMO 9148518 (vessel) [NPWMD].
98. MIRZA KOCHEK KHAN Iran flag (IRISL); Vessel Registration Identification IMO 7027899 (vessel) [NPWMD].
99. NEGEEN Iran flag (IRISL); Vessel Registration Identification IMO 9071519 (vessel) [NPWMD].
100. NEW STATE (a.k.a. IRAN NEW STATE) Container Ship 41,937DWT 36,014GRT Malta flag (IRISL); Vessel Registration Identification IMO 9209336 (vessel) [NPWMD].
101. NINTH OCEAN General Cargo 22,882DWT 15,670GRT Malta flag (IRISL); Vessel Registration Identification IMO 9165798 (vessel) [NPWMD].
102. OCEAN CANDLE (a.k.a. IRAN OCEAN CANDLE) General Cargo 23,176DWT 16,694GRT Malta flag (IRISL); Vessel Registration Identification IMO 9167253 (vessel) [NPWMD].
103. PERSIAN GULF (a.k.a. IRAN PERSIAN GULF) Bulk Carrier 73,664DWT 40,166GRT Malta flag (IRISL); Vessel Registration Identification IMO 9305221 (vessel) [NPWMD].
104. PRETTY SEA (a.k.a. IRAN PRETTY SEA (KHUZESTAN)) General Cargo Malta flag (IRISL); Vessel Registration Identification IMO 9167277 (vessel) [NPWMD].
105. RA-EES ALI General Cargo 2,876DWT 2,576GRT Iran flag (IRISL); Vessel Registration Identification IMO 8203608 (vessel) [NPWMD].
106. RAHIM (a.k.a. IRAN RAHIM) Bulk Carrier 53,100DWT 31,117GRT Malta flag (IRISL); Vessel Registration Identification IMO 9465746 (vessel) [NPWMD].
107. SABALAN (a.k.a. IRAN SABALAN) Container Ship 66,900DWT 53,453GRT Malta flag (IRISL); Vessel Registration Identification IMO 9346524 (vessel) [NPWMD].
108. SAHAND (a.k.a. IRAN SAHAND) Container Ship 66,900DWT 53,453GRT Malta flag (IRISL); Vessel Registration Identification IMO 9328900 (vessel) [NPWMD].
109. SATTAR Bulk Carrier 43,419DWT 24,155GRT Malta flag (IRISL); Vessel Registration Identification IMO 9040479 (vessel) [NPWMD].
110. SEA BLOOM (a.k.a. IRAN SEA BLOOM) General Cargo 23,176DWT 16,694GRT Malta flag (IRISL); Vessel Registration Identification IMO 9167291 (vessel) [NPWMD].
111. SEA FLOWER General Cargo Malta flag (IRISL); Vessel Registration Identification IMO 9167289 (vessel) [NPWMD].
112. SEA STATE (a.k.a. IRAN SEA STATE) General Cargo 23,176DWT 16,694GRT Malta flag (IRISL); Vessel Registration Identification IMO 9167265 (vessel) [NPWMD].
113. SEVENTH OCEAN General Cargo 22,882DWT 15,670GRT Malta flag (IRISL); Vessel Registration Identification IMO 9165786 (vessel) [NPWMD].
114. SHAAFI (a.k.a. IRAN SHAAFI) Bulk Carrier 53,000DWT 32,474GRT Malta flag (IRISL); Vessel Registration Identification IMO 9386500 (vessel) [NPWMD].
115. SININ Bulk Carrier 52,466DWT 30,064GRT Malta flag (IRISL); Vessel Registration Identification IMO 9274941 (vessel) [NPWMD].
116. SIXTH OCEAN Container Ship 79,030DWT 75,395GRT Malta flag (IRISL); Vessel Registration Identification IMO 9349679 (vessel) [NPWMD].
117. TEEN Bulk Carrier 43,671DWT 26,828GRT Malta flag (IRISL); Vessel Registration Identification IMO 9101649 (vessel) [NPWMD].
118. TENTH OCEAN General Cargo 22,882DWT 15,670GRT Malta flag (IRISL); Vessel Registration Identification IMO 9165815 (vessel) [NPWMD].

119. TWELFTH OCEAN Container Ship 41,971DWT 36,014GRT Malta flag (IRISL); Vessel Registration Identification IMO 9209348 (vessel) [NPWMD].
120. VAAFI (a.k.a. IRAN VAAFI) Bulk Carrier 53,000DWT 32,474GRT Malta flag (IRISL); Vessel Registration Identification IMO 9387786 (vessel) [NPWMD].
121. ZAR 800DWT 644GRT Iran flag (IRISL); Vessel Registration Identification IMO 9260160 (vessel) [NPWMD].
122. ZIVAR Iran flag (IRISL); Vessel Registration Identification IMO 9260172 (vessel)[NPWMD].
123. ZOMOROUD Bulk Carrier Iran flag (IRISL); Vessel Registration Identification IMO 9138044 (vessel) [NPWMD].

Dated: December 23, 2008.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. E9–396 Filed 1–12–09; 8:45 am]

**BILLING CODE 4811–45–P**

## U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

### Notice of Open Public Hearing

**AGENCY:** U.S.-China Economic and Security Review Commission.

**ACTION:** Notice of open public hearing—February 17, 2009, Washington, DC.

**SUMMARY:** Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

*Name:* Carolyn Bartholomew, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.''

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on February 17, 2009 to address ''China's Role in the Origins of and Response to the Global Recession.''

**Background**

This event is the first in a series of public hearings the Commission will hold during its 2009 report cycle to collect input from leading academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The February 17 hearing will examine the origins of the financial crisis and their link to China, the effect of the crisis on the U.S.-China economic relationship, and China's short-term and long-term economic goals and prospects.

The February 17 hearing will be Co-chaired by Commissioners Michael R. Wessel and Daniel M. Slane.

Information on hearings, as well as transcripts of past Commission hearings, can be obtained from the USCC Web Site *http://www.uscc.gov*.

Copies of the hearing agenda will be made available on the Commission's Web Site *http://www.uscc.gov* as soon as available. Any interested party may file a written statement by February 17, 2009, by mailing to the contact below. On February 17, the hearing will be held in two sessions, one in the morning and one in the afternoon. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

*Date and Time:* Tuesday, February 17, 2009, 8:30 a.m. to 4:45 p.m. Eastern Standard Time. A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov* in the near future.

**ADDRESSES:** The hearing will be held on Capitol Hill in the Dirksen Senate Office Building located at First Street and Constitution Avenue, NE., Washington, DC 20510. The assigned hearing room will be announced in the near future and will be posted to the Commission's Web Site at *www.uscc.gov*. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington D.C. 20001; phone: 202–624–1409, or via e-mail at *kmichels@uscc.gov*.

**Authority:** Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: January 8, 2009.

**Kathleen J. Michels,**

*Associate Director, U.S.-China Economic and Security Review Commission.*

[FR Doc. E9–473 Filed 1–12–09; 8:45 am]

**BILLING CODE 1137–00–P**

Federal Register

Tuesday,
January 13, 2009

# Part II

# Department of Transportation

## Pipeline and Hazardous Materials Safety Administration

## 49 CFR Parts 171, 172, et al.

## Hazardous Materials: Improving the Safety of Railroad Tank Car Transportation of Hazardous Materials; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Parts 171, 172, 173, 174 and 179**

**[Docket No. FRA–2006–25169]**

**RIN 2130–AB69**

## Hazardous Materials: Improving the Safety of Railroad Tank Car Transportation of Hazardous Materials

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration (PHMSA), in coordination with the Federal Railroad Administration (FRA), is amending the Hazardous Materials Regulations to prescribe enhanced safety measures for rail transportation of poison inhalation hazard (PIH) materials, including interim design standards for railroad tank cars. Pending validation and implementation of the crashworthiness performance standard proposed in the NPRM issued under this docket on April 1, 2008, the rule mandates commodity-specific improvements in safety features and design standards for newly manufactured DOT specification tank cars. The rule also adopts a 50 mph speed restriction for loaded rail tank cars transporting PIH materials; an improved top fittings performance standard; an allowance to increase the gross weight of tank cars that meet the enhanced standards; and adoption of the industry standard for normalized steel in certain tank cars. The interim standards established in this rule will enhance the accident survivability of PIH tank cars when compared to existing regulations while providing tank car owners continued flexibility in car selection. Adoption of this interim standard will ensure the ongoing availability of tank cars while PHMSA and FRA complete research and testing on advanced tank car design to validate and implement a more stringent performance standard.

**DATES:** *Effective Date:* March 16, 2009. The incorporation by reference of the publication listed in the rule is approved by the Director of the Federal Register as of March 16, 2009.

*Incorporation by Reference Date:* The incorporation by reference of the publications adopted in § 171.7 of this final rule has been approved by the Director of the Federal Register as of March 16, 2009.

**FOR FURTHER INFORMATION CONTACT:** William Schoonover, (202) 493–6229, Office of Safety Assurance and Compliance, Federal Railroad Administration; Lucinda Henriksen, (202) 493–1345, Office of Chief Counsel, Federal Railroad Administration; or Michael Stevens, (202) 366–8553, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration.

**SUPPLEMENTARY INFORMATION:**

**Abbreviations and Terms Used in This Document**

AAR—Association of American Railroads
ASLRRA—American Short Line and Regional Railroad Association
BNSF—BNSF Railway Company
BLET—Brotherhood of Locomotive Engineers and Trainmen
CPC—Casualty Prevention Circular
CI—Chlorine Institute
CP—Canadian Pacific
CPR—Conditional Probability of Release
CSXT—CSXT Transportation
Department—U.S. Department of Transportation
DOW—Dow Chemical Company
DOT—U.S. Department of Transportation
Federal Hazmat Law—Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*)
FRA—Federal Railroad Administration
HMR—Hazardous Materials Regulations
NGRTCP—Next Generation Rail Tank Car Project
NPRM—Notice of Proposed Rulemaking
NTSB—National Transportation Safety Board
OMB—Office of Management and Budget
PHMSA—Pipeline and Hazardous Materials Safety Administration
PIH—Poison Inhalation Hazard
R&D—Research and Development
RSAC—Railroad Safety Advisory Committee
RSI—Railway Supply Institute
SAFETEA–LU—Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, Public Law 109–59
SBA—Small Business Administration
Tank Car Manual—Association of American Railroads Tank Car Committee Tank Car Manual
TCC—Association of American Railroads Tank Car Committee
TFI—The Fertilizer Institute
TIH—Toxic Inhalation Hazard
TSA—Department of Homeland Security, Transportation Security Administration
Trinity—Trinity Industries, Inc.
UTU—United Transportation Union
Union Tank—Union Tank Car Company
UP—Union Pacific Railroad Company
Volpe—Volpe National Transportation Systems Center

**Table of Contents for Supplementary Information**

I. Background
II. Statutory Authority, Congressional Mandate, and NTSB Recommendations
III. The Proposed Rule
IV. Discussion of Comments on the Proposed Rule
V. Discussion of Comments on Petitions for Interim Tank Car Standards
VI. Summary of Rule
VII. Section-by-Section Analysis
VIII. Regulatory Analyses and Notices
A. Statutory/Legal Authority for This Rulemaking
B. Executive Order 12866 and DOT Regulatory Policies and Procedures
C. Executive Order 13132
D. Executive Order 13175
E. Regulatory Flexibility Act and Executive Order 13272
F. Paperwork Reduction Act
G. Regulation Identifier Number (RIN)
H. Unfunded Mandates Reform Act
I. Environmental Assessment
J. Privacy Act

## I. Background

On April 1, 2008, PHMSA published a notice of proposed rulemaking (NPRM) proposing revisions to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to improve the crashworthiness protection of railroad tank cars designed to transport materials that are poisonous, or toxic, by inhalation (referred to as PIH or TIH materials). 73 FR 17818. The NPRM proposed enhanced tank car performance standards for head and shell impacts; operational restrictions for trains hauling tank cars containing PIH materials; interim operational restrictions for trains hauling tank cars used to transport PIH materials, but not meeting the enhanced performance standards; and an allowance to increase the gross weight on rail of tank cars that meet the enhanced tank-head and shell puncture-resistance systems.

The NPRM provided detailed background information on the need to enhance the crashworthiness protection of railroad tank cars, government and industry efforts to improve the safety of hazardous materials transportation via railroad tank car, and the Department's research efforts focused on tank car safety. As we explained in the NPRM, although rail transportation of hazardous materials is a safe method for moving large quantities of hazardous materials over long distances, rail tank cars used to contain these materials have not been designed to withstand the force of high-speed derailments and collisions. In the last several years, rail tank cars have been breached in numerous accidents, resulting in large releases of hazardous materials. Of particular concern, three of these accidents involved PIH materials: (1) The January 18, 2002, derailment of a Canadian Pacific (CP) train in Minot, North Dakota which resulted in a catastrophic release of anhydrous ammonia; (2) the June 28, 2004 collision

between trains operated by Union Pacific Railroad Company (UP) Burlington Northern and Santa Fe Railway Company (now known as BNSF Railway Company) in Macdona, Texas, involving a breach of a loaded tank car containing chlorine; and (3) the January 6, 2005 collision between two Norfolk Southern Railway Company (NS) trains in Graniteville, South Carolina, also involving the catastrophic rupture of a loaded chlorine tank car. As noted in the NPRM, although none of these accidents was caused by the hazardous materials tank cars, the failure of the tank cars involved led to fatalities, injuries, evacuations, and property and environmental damage.

In response to these accidents, related NTSB recommendations, and the Congressional mandate for tank car safety improvements in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59 (SAFETEA–LU), PHMSA and FRA initiated a comprehensive review of design and operational factors that affect rail tank car safety. As noted in the NPRM, DOT's on-going and multi-faceted strategy to enhance the safety of rail tank cars and transportation of hazardous materials by rail tank cars utilizes a risk-based, system-wide approach that addresses: (1) Tank car design and manufacturing; (2) railroad operational issues such as human factors, track conditions and maintenance, wayside hazardous detectors, signals and train control systems; and (3) improved planning and training for emergency response.

Subsequent to publication of the NPRM, DOT hosted a two-day technical symposium on tank car crashworthiness and held a series of public meetings to solicit feedback on the NPRM. Although participants at both the technical symposium and public meetings generally agreed with DOT's goal of improving the accident survivability of tank cars, commenters expressed practical concerns regarding DOT's specific proposals.

Also subsequent to publication of the NPRM, the Association of American Railroads (AAR) renewed the effectiveness of its previously suspended interchange standard for tank cars transporting PIH materials (Casualty Prevention Circular 1187 or CPC–1187). AAR's CPC–1187 implements interchange standards for the shell, head, and top fittings of PIH tank cars. Specifically, AAR's CPC–1187 interchange standard contains tank car head and shell design standards and an alternate performance standard based on the metric AAR terms ''conditional probability of release.'' The head and shell requirements of CPC–1187 can be met by using DOT specification tank cars of higher tank classes than required by DOT standards; however, tank cars built to meet the CPC–1187 standard would not meet the standards DOT proposed in the NPRM. CPC–1187 also requires tank cars used to transport PIH materials be equipped with top fittings protection systems designed to withstand, without loss of lading, a rollover with a linear velocity of 9 mph and that the top fittings protection system to be attached to the tank by welding.

In addition, in response to the NPRM, the overwhelming majority of industry commenters have expressed the view that the standards proposed in the NPRM are ''technology-forcing'' and that the tank car industry currently lacks the technological and engineering ability to manufacture tank cars meeting the proposed standards. According to commenters, the net effect of these ''competing'' standards in CPC–1187 and the NPRM has been that shippers and tank car purchasers (e.g., tank car lessors) cannot currently purchase PIH tank cars with any assurance that the cars will have a reasonable economic life.[1] Accordingly, commenters indicate that shippers and tank car owners are being forced to forego the phasing out of aging tank cars that they would normally retire and replace with new cars, potentially resulting in a shortage of cars needed for the transportation of PIH materials in the short term. While commenters generally express support for the development of a performance standard related to tank car puncture resistance, they recommend that DOT provide an interim solution to ensure the availability of PIH tank cars in the time period before DOT's proposed performance standards are finalized and tank cars can be built to meet those standards.

In this connection, in a petition dated July 3, 2008 (Joint Petition), the American Chemistry Council (ACC), American Short Line and Regional Railroad Association (ASLRRA), the Association of American Railroads (AAR), Chlorine Institute (CI), and Railway Supply Institute requested that the Department authorize interim standards for tank cars transporting PIH materials. In a separate petition filed on July 7, 2008, The Fertilizer Institute (TFI) made a similar request.[2] Each of these petitions is discussed in more detail below.

Based on comments received in response to the NPRM and the two petitions for rulemaking, in this rule FRA and PHMSA are adopting interim standards for tank cars used to transport PIH materials. This rule is an interim response based on current engineering judgments within the affected market sector. DOT intends to continue working with the industry to complete research and testing on advanced tank car design. Accordingly, we anticipate additional regulatory proceedings as the results of continuing government and private sector research and development are validated and the resulting technology is successfully implemented by industry. DOT intends that the standards set forth in this rule shall apply in the meantime, pending the development and commercialization of more stringent performance standards.

## II. Statutory Authority, Congressional Mandate, and NTSB Recommendations

Federal hazmat law authorizes the Secretary of DOT (Secretary) to ''prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.'' The Secretary has delegated this authority to PHMSA. 49 CFR 1.53(b). The HMR, promulgated by PHMSA under the authority provided in Federal hazmat law, are designed to achieve three goals: (1) To ensure that hazardous materials are packaged and handled safely and securely during transportation; (2) to provide effective communication to transportation workers and emergency responders of the hazards of the materials being transported; and (3) to minimize the consequences of an incident should one occur. The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety or security hazard and reducing the probability and quantity of a hazardous material release.

Under the HMR, hazardous materials are categorized by analysis and experience into hazard classes and packing groups based upon the risks that they present during transportation. The HMR specify appropriate packaging and handling requirements for hazardous materials, and require a

[1] The NPRM proposed the complete phase-out within eight years of all PIH tank cars not meeting the proposed performance standards. As noted above, cars built to meet the requirements of CPC–1187 would not meet the standards proposed in the NPRM and because of weight restrictions, it is possible that cars built to meet CPC–1187 might not be retrofitable to meet any portion of the final performance standard promulgated in this rulemaking.

[2] PHMSA assigned petition numbers P–1525 and P–1524 to the Joint Petition and TFI petition, respectively. On July 23, 2008, PHMSA published a notice soliciting public comment on the petitions under docket number PHMSA–2008–0182. 73 FR 42765.

shipper to communicate the material's hazards through the use of shipping papers, package marking and labeling, and vehicle placarding. The HMR also require shippers to provide emergency response information applicable to the specific hazard or hazards of the material being transported. Finally, the HMR mandate training requirements for persons who prepare hazardous materials for shipment or who transport hazardous materials in commerce. The HMR also include operational requirements applicable to each mode of transportation.

The Secretary also has authority over all areas of railroad transportation safety (Federal railroad safety laws, 49 U.S.C. 20101 *et seq.*), and has delegated this authority to FRA. 49 CFR 1.49. Pursuant to its statutory authority, FRA promulgates and enforces a comprehensive regulatory program (49 CFR parts 200–244) to address railroad track; signal systems; railroad communications; rolling stock; rear-end marking devices; safety glazing; railroad accident/incident reporting; locational requirements for the dispatch of U.S. rail operations; safety integration plans governing railroad consolidations; merger and acquisitions of control; operating practices; passenger train emergency preparedness; alcohol and drug testing; locomotive engineer certification; and workplace safety. FRA inspects railroads and shippers for compliance with both FRA and PHMSA regulations. FRA also conducts research and development to enhance railroad safety. In addition, both PHMSA and FRA are working with the emergency response community to enhance its ability to respond quickly and effectively to rail transportation accidents involving hazardous materials.

As noted above, on August 10, 2005, Congress passed SAFETEA–LU, which added section 20155 to the Federal hazmat law. 49 U.S.C. 20155. In part, section 20155 required FRA to (1) validate a predictive model quantifying the relevant dynamic forces acting on railroad tank cars under accident conditions, and (2) initiate a rulemaking to develop and implement appropriate design standards for pressurized tank cars.

In response to the accident in Minot, North Dakota, on January 18, 2002, in which a train derailment resulted in the catastrophic release of anhydrous ammonia leading to one death and 11 serious injuries, the NTSB made four safety recommendations to FRA specific to the structural integrity of hazardous material tank cars. The NTSB recommended that FRA analyze the impact resistance of steels in the shells of pressure tank cars constructed before 1989 and establish a program to rank those cars according to their risk of catastrophic failure and implement measures to eliminate or mitigate this risk. The NTSB also recommended that FRA validate the predictive model being developed to quantify the maximum dynamic forces acting on railroad tank cars under accident conditions and develop and implement tank car design-specific fracture toughness standards for tank cars used for the transportation of materials designated as Class 2 hazardous materials under the HMR. In response to the accident in Graniteville, South Carolina, on January 6, 2005, in which a train collision resulted in the breach of a tank car containing chlorine and nine people died from inhalation of chlorine vapors, the NTSB recommended, in part, that FRA ''require railroads to implement operating measures such as * * * reducing speeds through populated areas to minimize impact forces from accidents and reduce the vulnerability of tank cars transporting'' certain highly-hazardous materials. Each of these NTSB recommendations is discussed in the NPRM.[3]

The Department considers this rule responsive to section 20155's mandate, as well as to the NTSB recommendations. As discussed in more detail in section IV below, however, we recognize that this rule does not directly implement each of the relevant NTSB recommendations. Instead, the interim standards we are adopting in this rule are only the first part of a longer-term strategy to enhance the safety of rail shipments of PIH materials. Improving the safety and security of hazardous materials transportation via railroad tank car is an on-going process. We plan to continue to develop and validate a performance standard to further improve the crashworthiness of PIH tank cars, with a view towards incorporating the improved performance standard into the HMR. Going forward, FRA's hazardous materials research and development program will continue to focus on reducing the rate and severity of hazardous materials releases by optimizing the manufacture, operation, inspection, and maintenance procedures for the hazardous materials tank car fleet. In addition, we plan to continue our holistic approach to rail safety, as discussed in detail in the NPRM, including railroad operating and maintenance practices; railroad routing practices; shipper commodity handling practices; and emergency response procedures.

## III. The Proposed Rule

Generally, the NPRM proposed a two-pronged approach to enhancing the accident survivability of tank cars. First, the NPRM proposed to limit the operating conditions of tank cars transporting PIH materials. Second, the NPRM proposed enhanced tank-head and shell puncture resistance standards.

The NPRM described FRA's research demonstrating that the speed at which a train is traveling has the greatest effect on the closing velocity between cars involved in a derailment or accident situation and that the secondary car-to-car impact speed in such situations is approximately one-half the initial train speed (the speed of the train at the time of the collision or derailment). Based on this research, the Department recognized that limiting the operating speed of tank cars transporting PIH materials is one potential method to impose a control on the forces experienced by railroad tank cars. Accordingly, we proposed two operational speed restrictions:

(1) A maximum speed limit of 50 mph for all trains transporting railroad tank cars containing PIH materials; and

(2) A maximum speed limit of 30 mph in non-signaled (*i.e.*, dark) territory for all trains transporting railroad tank cars containing PIH materials, unless the material is transported in a tank car meeting the enhanced tank-head and shell puncture-resistance systems performance standards of this proposal.

As an alternative to the maximum speed limit of 30 mph in dark territory, we proposed submission for FRA approval of a complete risk assessment and risk mitigation strategy establishing that operating conditions over the subject track provide at least an equivalent level of safety as that provided by signaled track.

In conjunction with these speed restrictions, we also proposed improved tank-head and shell puncture-resistance standards. The enhanced standards proposed to require tank cars that transport PIH materials in the United States to be designed and manufactured with a shell puncture-resistance system capable of withstanding impact at 25 mph and with a tank-head puncture resistance system capable of

[3] *See* 73 FR 17818, 17826–28. The NPRM indicated that NTSB classified FRA's responses to Safety Recommendations R–05–15 and R–05–16 stemming from the Graniteville accident as ''Open-Response Received.'' Subsequently, in a letter dated June 7, 2007, however, NTSB classified these recommendations as ''Closed-Unacceptable Action'' and ''Open-Unacceptable Response.'' A copy of NTSB's June 7, 2007, letter is available in the docket.

withstanding impact at 30 mph. To ensure timely replacement of the PIH tank car fleet, we proposed an eight-year implementation schedule, contemplating design, development, and manufacturing ramp-up in the first two years, replacement of 50% of the fleet within the next three years, and replacement of the remaining 50% of the fleet in the following three years. As part of this implementation plan, we proposed the expedited replacement of tank cars used for the transportation of PIH materials manufactured before 1989 with non-normalized steel head or shell construction.[4] Recognizing that improvements in tank car performance have historically relied in large part on thicker and/or stronger steel, which brings with it a corresponding addition to the empty weight of the tank car, we also proposed an allowance to increase the gross weight on rail for tank cars designed to meet the proposed enhanced tank-head and shell puncture-resistance systems performance standards (up to 286,000 pounds).

## IV. Discussion of Comments on the Proposed Rule

Subsequent to publication of the NPRM, DOT hosted a technical symposium on tank car crashworthiness and conducted four public meetings to solicit comment on the proposed rule. The intent of the technology symposium was to provide a forum for FRA and PHMSA to share with the tank car industry the agencies' collective knowledge and experience in the testing and design of rail tank cars significantly more crashworthy than conventional tank cars, as well as to provide parties involved in the manufacturing, repairing, and testing of tank cars an opportunity to openly discuss issues related to the manufacturing of such tank cars.

We received approximately 50 written comments in response to the NPRM, including comments from members of the railroad and PIH shipping industry, trade organizations, local governments, tank car manufacturing and repair companies, members of Congress, as well as members of the general public. Several of these commenters also provided verbal comments at the public meetings held during the subsequent comment period. The following discussion provides an overview of the written and verbal comments DOT received in response to the NPRM and how DOT has chosen to address those comments in this rule. As previously noted, two petitions were filed requesting DOT to establish interim tank car standards; comments on these petitions are set forth in Section V. More detailed discussions of specific comments on the NPRM and the petitions for interim standards, as well as DOT's responses, can be found in the relevant Section-by-Section analysis portion of the preamble.

Generally, commenters recognize the need to improve the crashworthiness of PIH tank cars and express support for DOT's efforts in the NPRM. For example, the NTSB supports the stated goals of the NPRM and states that many aspects of the proposal, when implemented, will significantly improve the safety of the transportation of PIH materials in railroad tank cars. The AAR applauds DOT's issuance of the NPRM as a ''truly innovative approach'' to tank car design and CI indicates that the organization ''fully supports the major step forward'' DOT took in issuing the proposed rule. Although commenters also generally support the development of a performance standard focused on tank car puncture resistance such as that proposed[5] commenters also raise important practical concerns regarding DOT's specific proposals. The majority of commenters' concerns are focused on (1) the technical basis for and feasibility of achieving, in the short term, the proposed tank-head and shell puncture resistance performance standards; (2) the proposed eight-year implementation period, including the proposed accelerated replacement of cars constructed with non-normalized steel; (3) the proposed allowance to increase the gross weight on rail of PIH tank cars; (4) the proposed speed restrictions, particularly the interim 30 mph speed restriction in dark territory for tank cars not meeting the proposed enhanced performance standards, but used to transport PIH materials; (5) the lack of proposed enhancements to PIH tank car top fittings; (6) the need for an interim standard for tank cars used to transport PIH materials; and (7) the costs associated with implementing the proposed rule.

### *A. Proposed Performance Standards*

The majority of commenters express the view that although the 25 and 30 mph shell and head-impact puncture resistance standards are laudable goals, such proposed standards are ''technology forcing'' and achieving such impact resistance utilizing existing technology and currently accepted tank car engineering practices is not possible in the short term. For example, Dow, a driving force behind the Next Generation Rail Tank Car Project (NGRTCP),[6] suggests that although the 25 mph shell-impact puncture resistance system standard (which represents a six-fold performance improvement over existing chlorine tank cars) may be obtainable based upon the design concepts and technologies developed by the NGRTCP, the proposed 30 mph head impact standard (which represents a ten to twelve-fold improvement over existing chlorine cars) is outside the range of solutions contemplated by the Project. Noting that no existing tank car designs under review as part of the NGRTCP would meet the proposed head and shell-impact standards, tank car builders estimate that it will take up to ten years until a design proven to meet the proposed performance standards (both 25 mph shell-impact and 30 mph head-impact puncture resistance standards) could be ready for full-scale implementation. Other commenters indicate that it may take approximately three years until a design proven to meet the proposed 25 mph puncture resistance standard will be ready for full-scale implementation. These commenters' concerns regarding the time required until the tank car industry can meet the proposed performance standards are discussed in more detail below with other comments related to the proposed implementation period.

Some commenters, noting the synergy between the proposed 50 mph speed limit for PIH tank cars and the 25 mph shell impact puncture resistance performance standard, question the efficacy of the proposed 30 mph head-impact standard. As explained in the NPRM and by FRA staff at the May 28, 2008, public meeting, the 30 mph head impact standard was intended to protect against impacts when a tank car is involved in the primary collision (*i.e.*, impacts other than the secondary car-to-car impacts upon which the proposed 50 mph speed limit was based). FRA believes that in such instances, it is desirable to have additional head-impact protection strategies available to help reduce the risk of loss of lading and that the available space in front of the tank-head will accommodate sufficient energy absorbing material

[4] Non-normalized steel is steel that has not been subjected to a specific heat treatment procedure that improves the steel's ability to resist fracture.

[5] Trinity Industries, Inc. (Trinity), a tank car builder, comments that issuance of the proposed puncture resistance performance standard is inconsistent with SAFETEA–LU's mandate to develop ''appropriate design standards'' for pressurized rail tank cars. Although we respectfully disagree with Trinity's comment, we note that the issue would not appear to be relevant to this rule in that we are adopting tank car design standards.

[6] The NGRTCP is discussed in detail in the preamble to the NPRM. *See* 73 FR 17833–34.

between the head shield or jacket and the inner commodity tank. *See* 73 FR 17849.

NTSB acknowledges that establishing tank car puncture resistance at 25 mph would be an improvement that would enhance tank car safety. NTSB suggests, however, that such standard does not represent a standard for ensuring safety in 50-mph collisions because the general premise upon which the standard is based (*i.e.*, the finding by the Volpe National Transportation Systems Center (Volpe) that the secondary car-to-car impact speed is one-half that of the initial train speed) is not applicable to all derailment conditions. Specifically, noting the two-dimensional, linear model utilized in Volpe's research, NTSB recommends the development and validation of more technically rigorous models that include consideration of the many three-dimensional, highly nonlinear dynamic responses that occur in derailment situations. Noting that its Safety Recommendation R–04–06 contemplates the consideration of different types of critical-loading conditions observed in derailments, NTSB suggests that although improving the puncture-resistance of tank cars is an important safety enhancement, by itself, it does not fully respond to Safety Recommendation R–04–06. Accordingly, NTSB suggests that additional modeling and validation is necessary to understand the full range of dynamic responses that occur in derailments. We appreciate NTSB's comments in this regard and as we pursue continued research and development on advanced car design, we will continue to further refine our quantification of the dynamic forces acting on railroad tank cars in accident conditions.

CI notes that the proposed 30 mph head-impact standard represents an ''exponential increase in severity over the existing head protection requirement'' and questions whether the proposed standard goes beyond what is necessary to protect the integrity of the tank in real world accident scenarios. Noting its own efforts to address tank car puncture resistance, CI explains that its research demonstrates that a significant improvement (2x) in puncture resistance is possible if tank cars are constructed of steels with higher fracture toughness than AAR TC 128B steel (the steel typically used in tank car construction). Consistent with its Safety Recommendation R–04–07, NTSB similarly recommends that a standard for the fracture toughness of tank car construction materials be included in any final DOT tank car standard. NTSB suggests that the inherent material variability identified through FRA's research is common to the class of steel utilized and has been used in other applications to define fracture-based criteria. Although DOT believes that material properties play an important role in the performance of a tank car subjected to fatigue type loading, FRA's research has clearly demonstrated that for the impact conditions typical of accidents that result in a release, a holistic approach is required to prevent a breach of the commodity tank. As noted in the NPRM, however, DOT will continue to examine the dynamic fracture toughness of steels used in the construction of pressure tank cars in hazardous materials service and we will incorporate any workable tank car design-specific fracture toughness standards into the final performance standards.

Other commenters note that the Volpe concept work (described in detail at the technology symposium)[7] does not establish the feasibility of the proposed performance standards. Several commenters express the view that because the Volpe concept car differs significantly from traditional rail car designs and manufacturing methods, questions regarding the sill design, movement of the tank during yard impacts, how the car will be constructed, and other technical details need to be fully evaluated before the car can be manufactured and put into service. Commenters note that the proposed performance standards are based on impacts of 25 (shell) and 30 mph (head) from a 286,000 pound mass concentrated through a 6″ x 6″ impactor. Citing a recent head impact test by the NGRTCP, one tank car builder, American Railcar Industries (ARI), concludes that even meeting the 25 mph shell-impact puncture resistance standard requires a larger impactor, or less impacting weight. Another manufacturer suggests that it may be possible to achieve the 25 mph standard with the 6″ x 6″ impactor due to the deformations that are likely to occur, but the 30 mph standard probably would not be achievable.

Noting that current research has focused on development of a chlorine car (the Volpe ''concept car'') to meet the proposed performance standards, commenters express the view that other PIH materials (*e.g.*, anhydrous ammonia, ethylene oxide, methyl mercaptan, anhydrous hydrogen fluoride) have significantly different physical and chemical properties that must be accommodated in tank car designs. For example, product density affects how much product can be loaded into a car. Arkema, a shipper of methyl mercaptan, a raw material used in the production of animal feeds for the poultry and swine industry, notes that chlorine weighs approximately 12 pounds per gallon, while methyl mercaptan weighs only about 7.8 pounds per gallon. Because chlorine is a rather dense material as compared to other PIH materials, the typical chlorine car has smaller tank dimensions than tank cars designed to transport other PIH materials. As Dow notes, these smaller tank dimensions have allowed the NGRTCP to design a chlorine car with greater thickness and greater standoff distances (*i.e.*, the distance between the tank and the tank's outer protection) than may be possible for tank cars designed to carry other PIH commodities.

Commenters also suggest that the differing physicochemical properties and severity of hazards presented by various PIH materials need to be considered when designing tank cars to handle particular PIH materials. DGAC notes that many PIH materials are highly flammable and will ignite prior to the formation of a toxic cloud. As an example, BASF notes that ethylene oxide has flammability ranges between 3% and 100% in air and therefore, that an ethylene oxide release would result in a fire before there was an opportunity to affect the general population from a toxicity hazard. BASF further notes that there is a significant difference in the danger posed by a Zone B PIH material (*e.g.*, chlorine) versus a Zone D PIH material (*e.g.*, ethylene oxide).

Commenters further state that the disparate physicochemical properties of the various PIH materials shipped via railroad tank car have historically led to very specific car designs for certain materials. For example, DuPont notes that oleum and sulfur trioxide have relatively high freezing points. Accordingly, rail cars intended for the transportation of oleum and sulfur trioxide must be equipped with sufficient insulation capable of maintaining the temperature of the chemicals above their respective freezing points. Similarly, tank cars used to transport chlorosulfonic acid are constructed of stainless steel tanks to prevent discoloring of the acid. According to DuPont, there is no feasible alternative to stainless steel and the properties of the stainless steel inner tanks relative to the puncture resistance requirements of the proposed performance standards would have to be considered. Similarly, shippers of

[7] Copies of technical presentations from the symposium, as well as a summary of the symposium is available in the docket.

anhydrous hydrogen fluoride and hydrofluoric acid note that the corrosive properties of these chemicals have led to non-jacketed tank car designs for these particular commodities and that the non-jacketed cars allow for visual detection of any corrosive product on the outside of the commodity tank before it can compromise the integrity of the tank. Noting the Volpe concept car presented at the technology symposium and the NGRTCP car design rely on a ''sandwich'' (*i.e.*, layered design with a jacket encompassing supporting foam or other energy absorbing material surrounding and isolating the commodity tank from the structural forces of the moving train), these commenters suggest that such a design concept would introduce new maintenance and inspection challenges that could lead to a detriment in safety in that the inner tank could not be inspected as readily as is currently possible.

Although DOT recognizes commenters' concerns with commodity specific tank car design issues, as noted at the May 28, 2008 public meeting, the NPRM was not intended as a ''one size fits all'' approach. Specifically, as described at the technical symposium, the Volpe concept car is intended to demonstrate DOT's proposed approach to meeting the performance standards. DOT's approach, focusing on the energy absorbing capability of the tank car, is applicable to any type of tank car. DOT recognizes, however, that specific design elements would necessarily have to be modified for specific commodities.

Other commenters, including AAR and BNSF Railway Company (BNSF) suggest that the 6″ x 6″ impactor contemplated in the proposed rule is not representative of real world objects impacting tank cars and that any proposed standard needs to consider impacts other than carbody-to-carbody impacts, such as impacts by smaller, sharper objects; the crushing or tearing away of the shell; and oblique punctures or punctures away from the centerline of the tank. In support of this position, BNSF references five accidents on its railroad that resulted in releases from eight pressure tank cars over the last 12 years. Five of those eight releases did not involve carbody-to-carbody impacts. Instead those tank car releases involved: (1) Stub still failure due to a large vertical force on the draft gear which caused the sill to tear away a section of the tank shell, (2) puncture by pieces of broken rail, (3) the shearing off of liquid and vapor valves; (4) puncture by being struck by the corner of a flat car; and (5) puncture when the corner of an I-beam (which fell from a previous car) struck a tank car. Similarly, AAR expresses the view that the proposed performance standard is flawed because it focuses exclusively on the ability of tank car designs to absorb energy without releasing product and does not consider other possible modes of failure. Specifically, AAR suggests that DOT's focus on energy absorption effectively addresses punctures from ''large, blunt objects coming into contact with the tank head or shell from a perpendicular direction,'' but ignores other accident scenarios prevalent in railroad operations, including: (1) Punctures from smaller, sharper objects; (2) releases due to the tearing away of attachments to the shell; (3) cracking of the shell; and (4) oblique punctures and punctures away from the center of the head or the centerline of the shell. On the other hand, the Railway Supply Institute, Inc. (RSI) suggests that basing the proposed performance standard on a test utilizing a 6″ x 6″ impactor is not appropriate because the size of the impactor does not correlate to anything expected to be seen in the field. RSI suggests that the size of the impactor should be increased to more accurately reflect the face surface of a standard non-shelf coupler.

In response to the BNSF and AAR comments regarding the NPRM's focus on the energy absorption of impacts to tank cars, we note that the proposed head and shell impact standards were based on a series of complementary measures, including: (1) Blunting the load impacting the tank, (2) absorbing energy, (3) reinforcing the commodity tank, and (5) removal of in-train forces from the commodity tank. Although DOT continues to believe that this approach addresses each of the failure modes cited by commenters, as explained at the technology symposium, DOT recognizes that this approach is most effective in addressing carbody-to-carbody impacts that result in the bulk crushing and deformation of tank cars, and what DOT believes to be the most likely failure mode to result in a catastrophic release of hazardous materials, that is, the puncture of the head or shell by some intermediate size piece of railroad equipment (*e.g.*, coupler, drawbar, side or draft sill).

Commenters suggest that DOT should not promulgate final head and shell puncture-resistance standards until the NGRTCP has completed its work and compliant tank car designs have been developed, and cars have been built and tested for each PIH commodity. Dow indicates that the NGRTCP expects to have a prototype tank car built by the end of 2008 that would meet a 25 mph head and shell impact puncture resistance standard. Dow cautions, as do other commenters, that such a prototype car should be subjected to an additional period of in-service testing prior to being approved for use. Further, noting the ''evolutionary process'' of tank car safety enhancements, Dow concludes that the proposed performance standards are two to three generations ahead of what is currently achievable. Accordingly, in its comments, Dow urges the Department to adopt regulatory standards based on ''practical, proven, real world solutions.'' Similarly, commenters express the view that current generation PIH tank cars (*i.e.*, existing PIH rail car designs) are not inherently flawed or unsafe. Accordingly, these commenters suggest that DOT pursue a design that utilizes current car designs as a ''platform'' for safety and security enhancements.

Although DOT believes that the proposed performance standards can be met utilizing currently available materials and innovative engineering approaches to tank car design, as discussed above, we recognize the need to further model and validate any final performance standard. We also recognize the need to assist industry in developing the requisite technical expertise to accurately model and analyze the large deformation with material failure problems required to develop a significantly better tank car design (whether that final design is one, two, or three generations ahead of existing DOT specification cars). We will continue to work with the tank car manufacturing and shipping industries through a series of technical meetings to share the ongoing findings of FRA's tank car research program (including Volpe's modeling and testing efforts). The goal of this work will be to develop an improved performance standard for adoption into the HMR. Meanwhile, in order to ensure the ongoing availability of PIH tank cars, this rule establishes interim standards for tank cars that may be built prior to the development and commercialization of the final performance standard. This rule responds to commenters' recommendations that in the time period before the development and commercialization of a final performance standard, we adopt a design that utilizes current car designs as a basis for improvements. As discussed in more detail in sections VI and VII below, this rule adopts enhanced commodity-specific design standards for PIH tank cars based on existing DOT specification cars.

AAR urges DOT to adopt its ''conditional probability of release''

(CPR) metric in ascertaining the safety afforded by various tank car designs (*i.e.*, the probability of a release in the event of an accident). This request was reiterated in the Joint Petition for an interim standard in which the ACC, ASLRRA, AAR, CI, and RSI requested that DOT approve interim rail tank car standards that would incorporate design specifications as well as an alternative performance standard based on the CPR metric. The Joint Petition is discussed in more detail in section IV.F below. Although FRA believes that the analysis underlying the CPR metric is technically sound from the standpoint of implementation of standard statistical mathematics, FRA does not believe that the design of a tank car can rationally be based on statistical analysis alone. Instead, consideration of the physics that tank cars experience during accidents, derailments, and other types of rail incidents must be considered. FRA is also concerned that many of the issues raised by commenters concerning validation of the performance standard proposed in the NPRM apply equally to the ''improvement factor'' utilized in the Joint Petition. We note in this regard that the ''improvement factor'' was, in effect, reverse engineered from existing, available tank car specifications. The Joint Petition asks DOT to allow for alternative proofs that the tank car improvement factor for the commodity is met, even though different designs are employed than those specified as meeting the requirement. FRA does not believe that alternative proofs could be utilized in this context without reliance on broad assumptions that may not be supported by actual experience. Additionally, going through the exercise of attempting to prove an outcome that was tied to an available DOT specification in the first instance would be both awkward and likely fruitless, because the basis of the regression results rely on evaluation of traditional DOT specification cars. DOT is aware that this approach is built around an expectation that protective structures may be distributed between the tank and jacket or head shield as described in the petition for chlorine cars. Accordingly, this rule does not adopt the CPR metric as proposed by both AAR and the additional parties to the Joint Petition. However, DOT does accept the basic framework of specifications that the parties contemplate for use and provides a more direct and less cumbersome means to demonstrate the performance of alternative designs of the sort the petitioners sought.[8] The Department's rationale is discussed in more detail in section VI below.

*B. Proposed Implementation Period*

The majority of commenters also express the view that the proposed eight-year implementation period is overly-aggressive and not realistic. Specifically, commenters contend that design, development, and manufacturing ramp-up cannot be completed within the two-year period contemplated by the proposed rule. Commenters also state that the six-year fleet replacement period contemplated in the NPRM is too short, given the capital expenditures that would be required by individual fleet owners to replace their entire fleets in six years, the capacity of tank car manufacturers to manufacture new cars, and other market forces (*e.g.*, demand for ethanol tank cars). Further, several commenters express the opinion that the proposed rule's requirements that 50% of each owner's fleet be replaced with cars conforming to the proposed performance standards within five years of a final rule's effective date and the requirement that all PIH tank cars constructed of non-normalized steel in the head or shell be replaced within the same time frame are unjustified, and in some instances, impossible to meet.

With regard to the two-year design and manufacturing ramp-up period contemplated in the proposed rule,[9] commenters assert that it will take up to ten years until a proven design is ready for full-scale implementation.[10] Specifically, in written comments, as well as at the technical symposium, tank car builders explain that the time required to take a new tank car design from the conceptual research and development point to full-scale production is highly dependent on several competing factors. First, the extent to which a new design differs from traditional rail car design will affect the time required to finalize, test, and implement that design. Second, builders indicated that the time necessary to move from design to full-scale production will also be dependent on the extent of manufacturer re-tooling required, the extent of changes in fabrication protocols and welding protocols required, the extent of training and recertification of skilled workers in those new protocols and welding techniques required, the need to obtain potentially new materials, as well as the need for Chapter 11[11] service testing. Commenters suggest that a service trial period ranging from between 12 to 18 months to two years should be required for any new car with a design substantially different from current cars.

RSI asserts that the typical regulatory lead time for ''other federal performance standards that require new designs and engineering breakthroughs'' (*i.e.*, technology forcing regulations) is substantially longer than the two-year period contemplated by the proposed rule. According to RSI, new performance regulations in other transportation industries with ''significantly more resources allocated to research and development'' have allowed from three to six years for design development to the commencement of production. In support of this assertion, RSI cites a recent U.S. Environmental Protection Agency rule on locomotive emission standards, which allows seven years for compliance with performance standards requiring the development of new technology, while allowing one year for compliance with performance standards that can be met with existing technology.

Further, as discussed above, several commenters note that to date, research has focused on a chlorine car (the Volpe ''concept car'') designed to meet the proposed performance standards. Citing practical experience, commenters involved in the shipment of PIH materials other than chlorine (*e.g.*, anhydrous ammonia, ethylene oxide, methyl mercaptan, anhydrous hydrogen fluoride) express the view that any final tank car standards will need to take into consideration the physicochemical properties of specific PIH materials, as well as the differing hazards presented by each material. These commenters assert that this commodity-specific analysis will necessitate more time than

[8] Both the petition and this rule rely upon an assumption that, within reasonable bounds, distribution of protective structure between an exterior layer and the tank itself will produce the same results from the point of view of tank puncture resistance as using all of the material thickness in constructing the tank. Petitioners have not established that this is the case; however, engineers directing and conducting FRA-sponsored research are satisfied that the effects are likely commutative (additive), at least in the classic puncture scenarios described in the NPRM.

[9] *See* 73 FR 17846–47.

[10] Some commenters indicated that it would take at least three years to develop a compliant design (at least to the 25 mph puncture resistance standard) and some said it would take two years to get a design to market, provided a bigger impactor was used. These commenters, however, also noted that an additional service trial period would be necessary before the cars could reasonably be put into full service.

[11] Chapter 11 of the AAR's Manual of Standards and Recommended Practices, CII, M–1001, entitled ''Service-Worthiness Tests and Analyses for New Freight Cars.''

the two-year design and manufacturing ramp-up period proposed.

Asserting that a six-year replacement period for existing bulk packages is ''unprecedented,'' DGAC states that the proposed rule's six-year replacement period is ''unjustifiable from a cost benefit perspective.'' Arkema, a methyl mercaptan shipper, notes that there are a limited number of engineers and rail car manufacturers to meet the mandates of any new railcar design. Accordingly, Arkema expresses concern that first priorities for designing and building enhanced rail cars for PIH materials will focus on cars designed to transport those substances that make up the bulk of the PIH railcar fleet (*i.e.*, chlorine and anhydrous ammonia).

With regard to the proposed rule's requirement that all PIH tank cars constructed of non-normalized steel in the head or shell be replaced within five years after the final rule's effective date, (effectively, half-way through the six year proposed fleet replacement period), several commenters note the PIH shipping industry's voluntary efforts already underway to phase-out these tank cars. TFI, the national trade association that represents fertilizer producers, importers, wholesalers and retailers (*i.e.*, shippers of anhydrous ammonia), notes that its members are already voluntarily phasing-out the use of non-normalized steel cars for the transportation of anhydrous ammonia. Specifically, TFI states that its members utilize approximately 4,600 tank cars to ship anhydrous ammonia and only about 340 of those cars are pre-1989 non-normalized steel cars. Further, TFI notes that its members anticipate that these 340 non-normalized steel cars will be completely removed from their anhydrous ammonia fleets earlier than the five years proposed in the NPRM. For example, one member, CF Industries, Inc. (CF), states that, beginning in 2005, it began voluntarily to modernize its fleet of anhydrous ammonia tank cars by phasing out 313 of its pre-1989 non-normalized steel cars. CF indicates that it plans to remove the remaining 24 non-normalized steel cars from its fleet of anhydrous ammonia cars by the end of 2008.

Several commenters, citing present difficulties obtaining new PIH tank cars, raise the concern that if such difficulties are not resolved in the short term, shippers may be forced to keep these older cars longer or reduce the size of their fleets. These concerns are discussed in more detail below with other comments pertaining to the need for an interim standard for PIH tank cars.

CI comments that although it does not object to prioritizing the removal of pre-1989 tank cars constructed with non-normalized steel in any fleet replacement program, the accelerated retirement of these cars as proposed is not justified because there is not sufficient evidence demonstrating that such accelerated replacement will significantly enhance rail safety. Similarly, other chlorine shippers (PPG & U.S. Magnesium) say that early replacement of non-normalized steel cars as proposed is not justified since the performance of non-normalized cars has not differed significantly from that of normalized cars, and the cars show similar puncture resistance to normalized steel cars. Further, PPG notes that as proposed, the accelerated phase out of non-normalized PIH tank cars would require PPG to change out 75% of its fleet in three years, having a significant impact on PPG's earnings and putting PPG at a significant disadvantage relative to its competition. On the other hand, another chlorine shipper, Olin Corporation (Olin), does not object to the accelerated phase out of the pre-1989 non-normalized steel cars so long as the ''accelerated transition'' (presumably referring to the proposed requirement that one-half the fleet be replaced with cars meeting the enhanced performance standards within five years) is limited to non-normalized cars.

As an alternative to the overall eight-year implementation period proposed, both CI and TFI suggest that any final implementation period should be developed as part of a joint government/industry effort. PPG, which has a fleet of almost 2,600 owned and leased tank cars used for shipping chlor-alkali products, suggests that instead of specifying an implementation period in terms of a date certain, DOT incorporate a ''test plan'' into any final rule establishing enhanced tank car performance standards. Specifically, PPG suggests that such ''test plan'' include a statistically significant test fleet, a service trial period, and process for intermediate inspections. Dow recommends that DOT consider a longer transition period based upon the age, safety, and performance features of tank cars or to phase in new tank car standards for different PIH commodities over successive periods of time, allowing shippers to cascade cars down in service from higher to lower risk PIH materials. DOT appreciates the alternatives recommended by these commenters. Because the rule is limited to standards for new tank car construction in the time prior to the development, adoption, implementation and commercialization of a final performance standard, incorporation into this final rule of any of the recommendations is not appropriate at this time. We will, however, consider the specific recommendations as we develop regulatory requirements to implement a final performance standard.

With regard to the time period allowed for individual car owners to replace their existing PIH tank car fleets with tank cars meeting any final DOT standard, commenters suggest that consideration must be given to several competing factors on a fleet-by-fleet basis.[12] For example, several shippers have voluntarily upgraded their fleets over the last few years, and have purposefully ''over-built'' their tank cars with additional safety features not mandated by the HMR. These shippers express the view that unless consideration is given to these additional safety features already in place, they are effectively being penalized for voluntarily investing in those upgrades in the first place. Commenters also express the view that individual fleet size and age, annual shipment volumes, product characteristics, quantities of cars available for purchase or lease, and manufacturing delivery schedules are other factors that need to be considered on an individual fleet-by-fleet basis when determining an appropriate fleet replacement period.

We appreciate the comments regarding the need to consider adequate time for developing car designs, validating compliance with the performance standards, and ensuring the car is dynamically suitable and serviceable. DOT will consider these issues as we work to validate and finalize a performance standard for PIH tank cars and incorporate that standard into the HMR. We note that issues related to a delayed effective date would not appear to be relevant to this final rule, since builders can adapt existing tank car designs within a short time to meet the interim requirements. We also are modifying our proposal for phasing out cars constructed prior to 1989 with non-normalized steel in the head or shell. Although we continue to believe that an accelerated phase out of these cars is justified, we recognize the voluntary efforts already underway by many fleet owners to phase out these cars, in many cases on schedules more

[12] See Transcript of comments of PPG at May 14, 2008 meeting (available in the docket) and; written comments of U.S. Magnesium and ACC in the docket (document numbers 57 and 86).

aggressive than the five-year deadline proposed in the NPRM. Rather than imposing a fixed deadline, this rule requires rail car owners that elect to retire or remove rail tank cars from PIH service, other than because of damage to the cars, to prioritize the retirement or removal of pre-1989 non-normalized steel cars.

*C. Proposed Allowance To Increase the Gross Weight on Rail of PIH Tank Cars*

Although commenters raise practical concerns related to an increase to 286,000 pounds in the maximum gross weight on rail of hazardous materials tank cars, most generally support this aspect of DOT's proposal. Specifically, AAR indicates that the infrastructure of Class I carriers can generally accommodate the heavier cars and that short line railroads should generally be able to transport the heavier cars, with a few isolated weight restrictions (*e.g.*, bridges).[13] TFI expresses support for this aspect of DOT's proposal, but noting the practical issue that some anhydrous ammonia shipment origin and destination points cannot handle the heavier cars, TFI expresses concern that light loading (loading a tank car with less than its full capacity of product) and diversion to other modes of transportation (*e.g.*, highway) could occur. Similarly, CI indicates that although the proposed allowance to increase the maximum gross weight on rail would be a ''positive move removing regulatory burden on shippers using the heavier car,'' CI expresses the same concerns as TFI. Individual shippers and the DGAC commented similarly, with one shipper (U.S. Magnesium) noting that it expects to upgrade its own track this year to accommodate 286,000 pound cars. At the May 14, 2008 public meeting, a representative of Olin Corporation, one of the largest shippers of chlorine in North America, estimated that due to infrastructure issues, approximately 50% of Olin's customers are currently unable to receive 286,000 pound cars. Further, the Olin representative noted that if the current 500 psi tank car typically used to transport chlorine were replaced with a 600 psi car, as originally proposed by the AAR's interchange standard, due to the increased weight of the tank car itself, Olin would have to light load approximately half of its shipments by approximately six tons each. In other words, instead of shipping 90 tons of chlorine in one tank car, Olin would be limited to shipping only 84 tons per tank car. Assuming demand remained constant, as other commenters note, this light loading would translate into additional shipments of chlorine and potentially the need for additional tank cars in which to transport the chlorine.

In response to questions presented by the Department at the May 15, 2008 public meeting regarding exactly how many anhydrous ammonia origin and destination points would not be able to handle the heavier cars, in its written comments TFI notes that five of its members reported that approximately 2,758 shipments of anhydrous ammonia would be affected annually. In response to a similar question posed on May 14, 2008 to CI, the Institute reports that of the six member companies responding to the question, approximately 50% of the origin and destination points of each company would be unable to handle rail tank cars weighing 286,000 pounds. The American Chemistry Council (ACC), which represents companies that ship most, if not all, of the PIH materials other than anhydrous ammonia, similarly noted that not all shipper and receiver locations of its members can accommodate 286,000 pound gross weight on rail cars.

TFI and individual shippers of anhydrous ammonia suggest that a longer phase-in schedule would allow more time for infrastructure upgrades necessary to support the heavier car and suggest that DOT require that railroads prioritize upgrades in geographical areas through which PIH materials are typically transported.

Although we recognize the practical issues noted by commenters associated with utilizing heavier tank cars to transport PIH materials, we also note that AAR's existing interchange standards, applicable to all freight car types and products, provide for the free interchange of freight cars up to 286,000 pounds.[14] Accordingly, we understand that freight rail cars with a maximum gross weight on rail of 286,000 pounds have become the industry standard for Class I railroads and that a substantial portion of the entire North American freight car fleet (not just hazardous materials tank cars) already meets the 286,000 pound interchange standard.[15] Given anticipated growth and capacity issues, FRA believes that the number of 286,000 pound freight cars will continue to increase over the coming years as railroads and shippers seek to maximize the resulting efficiencies and reductions in operating costs associated with the use of these larger freight cars. In general, use of larger 286,000 pound rail cars reduces the number of cars needed to transport the same volume of cargo, allowing corresponding reductions in the number of trains and locomotives. These reductions produce savings in ownership, maintenance, and crew costs; improved net-to-tare ratio (ratio of goods carried to empty car weight); and reduced fuel costs associated with the decrement of the train resistance (fewer axles needed for equivalent car weight). Offsetting these cost advantages are higher maintenance of way costs (including costs to upgrade track from 263,000 pound compliant to 286,000 pound compliant). Although short lines in most instances do not handle traffic volumes sufficient to truly realize these cost savings, in order to participate in the national rail network (*i.e.*, to originate and terminate traffic from other railroads), short lines must be able to accommodate the equipment used by Class 1 carriers. Accordingly, short lines must upgrade the weight-bearing capacity of their tracks and bridges to handle 286,000 pound railcars or risk losing business. FRA understands that throughout the last several years the short line industry has been going through an extensive process of upgrading track infrastructure to accommodate 286,000 pound freight cars. The short line industry has been aided in this endeavor through state funding, tax credits, and most recently the Rail Revitalization and Improvement Funding (RRIF) program, which provides loans and loan guarantees for the acquisition, development, improvement, or rehabilitation of rail equipment or facilities.

Accordingly, as noted at the May 15, 2007 public meeting, FRA believes that infrastructure restrictions related to the use of 286,000 pound tank cars are for the most part limited to PIH shipment origin and destination points. FRA also believes that the railroad industry standard providing for 286,000 pound freight cars generally will lead to the upgrading of not only railroad infrastructure, but the infrastructure of companies that ship or receive by rail (whether via hazardous materials tank cars or other railroad freight cars).

As noted above, although several shippers raise practical concerns related to the proposed allowance to increase the maximum allowed gross weight on rail of hazardous materials tank cars,

[13] No short line railroad directly commented on the NPRM. However, the American Short Line and Regional Railroad Association did join in the petition filed by the AAR, ACC, and RSI.

[14] Standard S–286 is the existing industry standard for designing, building, and operating rail cars at gross weights between 263,000 pounds and 286,000 pounds.

[15] As noted in the NPRM, to date DOT has also issued several Special Permits allowing the use of tank cars weighing up to 286,000 pounds. *See e.g.*, 71 FR 47288, 27301 (Aug. 16, 2001) (Special Permit number DOT–SP 14167, Trinity Industries, Inc.).

several of those same shippers suggest that a longer phase-in period for enhanced tank cars would allow more time for infrastructure upgrades to handle the heavier cars. In addition, because the scope of this rule is limited to newly-manufactured cars, shippers will have the flexibility to use existing 263,000 pound cars where infrastructure does not support the heavier cars.

At the end of the day, most of the commenters that expressed concern about the 286,000 pound issue joined one of the two petitions for rulemaking seeking establishment of interim tank car standards. Both petitions advocate increases in package strength that inevitably will either lead to construction of 286,000 pound cars (if allowed) or reduced-capacity 263,000 pound cars. Our economic analysis recognizes that, for an interim period during which remaining facilities are being improved to handle 286,000 pound cars, some additional shipments will be required. This should not impose an impossible burden on anyone; in fact, most commenters, while expressing some concern about increased costs, express considerable support for the adoption and implementation of safety improvements.

*D. Proposed Speed Restrictions*

The NPRM proposed a maximum speed limit of 50 mph for all trains containing railroad tank cars used to transport PIH materials, and a maximum speed limit of 30 mph in non-signaled (dark) territory for all trains with railroad tank cars transporting PIH materials, unless the material is transported in a tank car meeting the proposed enhanced tank-head and shell puncture-resistance systems. The NTSB and several members of the PIH shipping industry (tank car owners and lessees) express support for these proposed operational restrictions. For example, noting that the NTSB has attributed recent incidents involving the breach of chlorine tank cars to railroad operational issues, CI expresses its full support for the proposed operational restrictions. Another commenter (Occidental Chemical Corporation (OxyChem)) suggests that the proposed rule should have included additional operational improvements and restrictions by railroads and notes that although the speed and the presence of signaled versus dark territory are factors impacting the likelihood and severity of an accident, other factors (such as traffic density, bidirectional traffic, number of switches along a line, population densities, positive train control, and placement of PIH tank cars within trains) also need to be considered. Noting operational restrictions imposed through a recent Special Permit issued to BNSF Railway authorizing the railroad to operate outside the requirements of 49 CFR 174.14 (commonly known as the 48-hour rule) in order to better manage its PIH movements over non-signaled track, OxyChem suggests that similar operating restrictions be incorporated into the final rule.[16]

Although expressing support ''in principle'' for the proposed speed restrictions, NTSB asserts that such restrictions do not fully address its Safety Recommendations R–05–15 and R–05–16 relating to operating speeds in non-signaled territory. Specifically, NTSB notes that its Safety Recommendation R–05–15 applies to any train operating in non-signaled territory, with no system to provide train crews with advance notice of switch positions; the NPRM would apply only to tank cars transporting PIH materials. Similarly, NTSB notes that its Safety Recommendation R–05–16 includes operating measures (including positioning tank car toward the rear of trains and reducing speeds through populated areas) designed to minimize impact forces from accidents and to reduce the vulnerability of tank cars transporting PIH materials; neither of which were considered in the NPRM. Although, as discussed below, DOT agrees with NTSB that reduced train speed in non-signaled territory can be part of a strategy to mitigate the effects of train accidents, we do not believe that Recommendations R–05–15 and R–05–16 can be effectively implemented in their entirety without introducing additional safety risks and an extreme economic burden on industry.[17] As we work to develop and implement a final performance standard, however, we will continue to evaluate the potential of any feasible operating measures to minimize the impact forces from accidents and reduce the vulnerability of PIH tank cars.

Some of the same shippers expressing support for the proposed operational restrictions, however, also express concern regarding the potential negative impacts of the speed restrictions, including longer transit times, increased costs, potential increase in number of cars needed to meet demand, and apparent competing goals of Transportation Security Administration (TSA) initiatives to reduce the transit time of PIH materials, including reducing the dwell time of PIH shipments in transportation through high density population centers. Similarly, citing the same concerns noted above, other PIH material shippers express the view that the detrimental effects of certain aspects of the proposed operational restrictions would outweigh any safety benefits to be derived from such restrictions. For example, the National Association of Chemical Distributors (NACD) expresses concern with the proposed interim 30 mph speed restriction in dark territory for PIH tank cars not meeting the enhanced performance standards proposed. Specifically, NACD asserts that such a speed limit is ''contrary to the important objective of having these materials in transit for as short of a time as possible.'' NACD further asserts that the 30 mph speed limit would provide no guarantee that incidents would be eliminated. Further, NACD asserts that ''if two trains traveling at 30 mph were to crash, the result would be the same as that of a crash involving a single train traveling at 60 mph.''

NACD also expresses the view that the proposed 30 mph speed limit would adversely affect the timely delivery of anhydrous ammonia, a time-sensitive product given the short window of opportunity for application in agricultural operations. Similarly, Dow suggests that the operating restrictions proposed in the NPRM (taken together with other regulatory requirements), would ''only exacerbate'' the current situation of the tank car industry and even ''accepting the optimistic assumption in the NPRM that compliant tank cars will be available for purchase in two years, TIH shippers are likely to require more tank cars before then, if the proposed operating restrictions'' are implemented in the meantime.[18]

Subject to certain practical concerns, AAR and the Class I railroads (including CSXT, CP, and NS), generally support the proposed 50 mph maximum speed

[16] *See* Special Permit No. DO–SP 14436 (Jan. 30, 2008). The Special Permit provides BNSF with relief from the requirements of the 48 hour rule when transporting TIH materials over certain dark territory routes, subject to certain conditions (*e.g.*, maximum authorized speed of 35 mph, route must be evaluated and inspected by qualified railroad track department personnel prior to train hauling PIH materials traversing the track, trains hauling PIH materials must hold the main line during meets, and trains on sidings must stop before a PIH train passes).

[17] FRA's specific concerns with these Safety Recommendations are discussed in the NPRM. 73 FR 17828.

[18] Arkema indicated that it does not support maximum speed limit restrictions based solely on railcar content and that any speed limit restrictions should also be based on ''roadbed construction and environment.'' In response to this comment, DOT notes that FRA's track safety standards (49 CFR part 213) mandate minimum safety requirements that a track must meet and the condition of the track is directly tied to the maximum allowable operating speed for the track.

limit for all tank cars transporting PIH materials. However, these commenters strongly oppose the proposed interim 30 mph restriction in dark territory for tank cars not meeting the proposed tank head and shell impact performance standards.[19] First, acknowledging that as proposed, both the 30 and 50 mph speed limits would apply to residue tank car shipments of PIH materials, AAR expresses the view that the risk of a significant release of a PIH material ''from residue shipments is so small that the costs imposed on railroads and society from either speed limit cannot be justified.'' AAR also notes that the Department's analysis of costs related to the proposed 50 mph restriction in the Regulatory Impact Analysis (RIA) accompanying the NPRM appears to assume that the only trains that would be impacted by the 50 mph speed restriction would be trains operating with fewer than five tank cars containing PIH materials in accordance with industry's standard practice (*i.e.*, AAR's Circular OT–55–I).[20] Since Circular OT–55–I only applies to loaded tank cars, AAR reasons that DOT must be ''assuming that its proposal also only applies to loaded tank cars.'' Further, AAR asserts that DOT's estimate in the RIA that there are 78,000 tank car loads of PIH materials annually is reasonable only if residue shipments are not counted. AAR further asserts that should DOT desire to apply either proposed speed restriction to residue shipments, publication of a new NPRM would be required.

The commenting Class I railroads echoed AAR's views regarding residue tank cars and suggested that as an alternative DOT adopt a requirement that ''virtually all PIH be removed from a tank car before it is returned to the delivering rail carrier.''

As noted above, AAR and most of the Class I railroads that provided written comments strongly oppose the proposed 30 mph interim speed limit for tank cars transporting PIH materials in dark territory that do not meet the enhanced performance requirements of the rule. These commenters reiterate the practical concerns expressed by shippers, assert that DOT did not adequately justify the proposed restriction, and suggest that the proposed restriction would have an adverse effect on railroad operations (*e.g.*, increased switching, delays and/or increased transit times for virtually all railroad customers thereby reducing equipment utilization (which would exacerbate existing capacity constraints), and increasing dwell time of PIH tank cars in yards and terminals). In addition, CP asserts that the NPRM's focus on PIH shipments traversing ''non-signaled territory does not appear to be rationally related'' to the stated purpose of the rule (*i.e.*, to minimize the probability of release from a PIH tank car in the event of an accident).

AAR notes that the proposed 30 mph speed limit would require railroads to adjust their operations in one of two ways. First, railroads could group PIH shipments in fewer trains, thereby limiting the number of trains that would be subject to the speed restriction. AAR asserts, however, that the ability of railroads to group PIH cars in fewer trains is limited by the regulatory requirement to expedite hazardous materials shipments. *See* 49 CFR 174.14 (prohibiting, with certain exceptions, carriers from holding hazardous materials shipments for longer than 48 hours at any one location). Further, AAR asserts that to the extent railroads are able to group PIH tank cars in fewer trains, the dwell time for such shipments would necessarily increase; which is directly counter to TSA's efforts to reduce dwell time for PIH shipments. CP estimates that holding PIH tank cars for consolidation into fewer trains on one line segment of 430 miles of non-signaled track between Portal, ND and Glenwood, MN (Portal-Glenwood line), would increase dwell time by a minimum of 4 days in each direction (*i.e.*, 8 days on a round trip). CP further notes that such consolidation would result in an additional 1–2 switching moves during the course of each PIH shipment, which AAR suggests could have an adverse safety impact by increasing the exposure of employees to injury.

Second, AAR notes that railroads could slow all trains with PIH shipments in non-signaled territory to the proposed 30 mph limit. AAR asserts that an overall reduction in speeds for all PIH-hauling trains would adversely affect railroad operations by decreasing overall system velocity, which could potentially lead to diversion of some traffic to other modes of transportation.[21]

CSXT asserts that the proposed 30 mph interim speed restriction in dark territory is based on two faulty assumptions: (1) That only trains actually containing a PIH tank car would be affected by the proposed restriction; and (2) that as new cars meeting the proposed performance requirements come into service, the number of trains that will be affected by the speed restriction will decrease. CSXT contends that, given its train scheduling methodology, both of these assumptions are false. According to CSXT, ''[t]he projected run time of a scheduled merchandise train (*i.e.*, a train potentially carrying non-hazardous as well as hazardous freight) is based on three factors: (1) The maximum authorized speeds in the timetable, (2) the meet and pass planning in [the CSXT] systems, and (3) the historical run times of trains on the subdivision.'' In building initial train profiles under the provisions of the proposed rule, CSXT contends that it would have to assume the most restricted scenarios (*i.e.*, assume that all general merchandise trains operating in non-signaled territory would have a PIH car) and that ''[m]aking tactical changes daily based on the actual train consist would simply not be viable.''

According to CSXT, 17 of its 51 scheduled general merchandise trains operating in non-signaled territory would be unable to make the crew change point if a 30 mph speed restriction were imposed. In these 17 instances, CSXT notes that having to routinely re-crew trains en route would disrupt operations, creating at a minimum, ''17 daily choke points on the CSXT network.'' Further, CSXT contends that the proposed 30 mph speed restriction would result in a 10% reduction in capacity on one densely traveled line. Although CSXT did not identify the line at issue, it reported that the potential effects of a 35 mph speed restriction and a 40 mph speed restriction on this same line and concluded that restrictions would result in capacity reductions of 7% and 4%, respectively. CSXT further notes that each of these analyses considered absolutely perfect operating conditions,

[19] CSXT noted that OT–55–I's 50 mph speed limit on key trains ''does not have the same network implications as dropping from 50 to 30 mph. In maintaining network fluidity, homogeneity of speeds is invaluable. If a train ordinarily can operate for parts of its run at above 50 mph, but is forced on occasion to limit speeds to 50, the adverse effects are generally not extensive. In addition, general merchandise trains that operate out of areas where TIH is sourced are scheduled with the expectation that they will always be limited to 50 mph.'' NS further noted that they treat all trains containing one or more loaded PIH tank cars (as opposed to OT–55–I's five or more loaded PIH tank cars) as key trains. Accordingly, NS's standard practice is to operate trains with one or more loaded PIH tank cars no faster than 50 mph.

[20] A copy of AAR Circular OT–55–I is available in the docket and a more detailed discussion of the Circular's recommended practices is included in the NPRM. 73 FR 17831.

[21] Although commenters caution that diversion of PIH shipments to other transportation modes (*e.g.*, motor carrier) may occur if rail transportation becomes too cumbersome or expensive, it appears that any such diversion would be limited due to safety and cost considerations. Commenters note it takes approximately four truck loads to transport the same capacity as one rail tank car. Commenters further note that diversion to motor carrier is generally only cost effective for relatively short moves (*i.e.*, moves up to 500 miles).

with no track curfews, other network congestion issues, or localized difficulties.

Finally, CSXT explains that rail network velocity directly impacts how fast privately owned freight cars cycle. Increasing network velocity enables a carrier to handle more freight with existing car capacity, while providing good customer service. Implicit in CSXT's comments is the suggestion that decreasing network velocity will lead to longer equipment cycle times, and thus, additional rail freight cars, not only for the PIH shipping industry, but non-PIH rail shippers as well.[22]

Similar to CSXT's comments, CP asserts that DOT underestimated the costs of implementing the proposed 30 mph speed restriction. Specifically, CP analyzed the potential costs of implementing the restriction in two primary corridors of its network that include significant amounts of non-signaled track—approximately 430 miles of non-signaled track between Portal, ND and Glenwood, MN and approximately 266 miles of non-signaled track between Noyes, MN and Glenwood, MN. Assuming that the 30 mph speed restriction would apply to all trains carrying PIH shipments over these non-signaled line segments, CP determined that the proposed 30 mph speed limit would result in direct increased operating costs of $7 million per year (approximately $3.5 million in train miles costs and another $3.5 million in train re-crewing costs). Over the proposed eight year implementation period, these costs would total $56 million. Noting that DOT estimated in the RIA that the proposed restriction would cost the rail industry as a whole approximately $133.87 million over eight years (not including costs incurred by BNSF), CP expresses the view that its finding of a $56 million increase in operating costs for its two lines strongly suggests that the RIA's cost estimate substantially underestimated the potential economic burden that the restriction would impose on the rail industry.

CP further notes that in addition to the increased direct operating costs in the form of train miles and re-crewing costs, analysis indicated that the proposed 30 mph speed restriction would increase running time by five hours for all trains carrying PIH tank cars between Portal and Glenwood. This, CP asserts, would impact not only PIH shipments, but every other car moving in a train that was subject to the 30 mph restriction, and given the time-sensitive commodities moved on the CP lines at issue, could cause shippers of time-sensitive commodities to divert their shipments from CP's lines to motor carriers. Further, noting that installing a signal system on the Portal-Glenwood line would require a capital investment of $36–$71 million, with additional annual maintenance costs of $400,000–$800,000, CP asserts that eliminating the non-signaled lines within its network is cost prohibitive.

Putting aside the estimated impacts of the proposed interim 30 mph restriction, AAR and CP, in particular, assert that DOT did not adequately justify the proposed requirement. These commenters contend that DOT's analysis of 19 accidents since 1967 provides an insufficient basis for the proposed speed restriction because of the limited number of accidents considered, all of which involved chlorine or anhydrous ammonia tank cars breached due to head and shell punctures, cracks, or tears. Further, noting changes in the railroad operating environment since 1965, CP asserts that DOT's analysis ''led it to make findings based on circumstances that no longer exist.'' Noting the various mean and median speeds at which the 19 cited accidents occurred, these commenters also question DOT's proposed 30 mph threshold and instead suggest that a higher speed threshold may be more appropriate. CP estimates that the costs of imposing 30, 35, 40 and 45 mph speed restrictions in dark territory would result in cost increases relative to the revenue generated by PIH shipments of 27%, 16%, 8%, and 2%, respectively. Again, contending that this cost burden would impact not only the PIH shipping and receiving industries, but all rail customers, CP suggests that DOT consider alternatives to the proposed 30 mph dark territory speed restriction to improve the safety of railroad tank car PIH transportation.

Although DOT remains firmly convinced that reduced train speed in dark territory can be part of an interim strategy to mitigate the effects of train accidents in some instances, DOT is not adopting the 30 mph speed limitation in this final rule. In proposing the restriction, we envisioned it as a temporary measure with a foreseeable life span, for which potential impacts could reasonably be foreseen. As a result of DOT's decision to authorize the construction of interim cars that will not meet the performance standards proposed in the NPRM, and the expectation that these cars will have a useful life of at least two decades, estimating the potential impact of the 30 mph speed restriction is extremely difficult. Moreover, the time horizon within which the speed restrictions would remain in effect would be substantially expanded. Traffic continues to grow on the national rail system, even on many non-signaled rail lines. As capacity is constrained, the cost of any restriction on the speed of trains will markedly increase. Further, we are persuaded by the comments filed by CSXT (discussed above) that the introduction of speed-restricted cars could significantly upset its operating plan because of its inability to anticipate which trains would need to transport PIH cars on any given day and because of the ripple effects of delays.

Finally, DOT believes that the recently published final rule on routing of sensitive hazardous materials, including PIH shipments, provides a useful framework for better targeting risk reduction strategies.[23] The interim final rule requires rail carriers to analyze the safety and security risks of the routes currently used to transport certain high-risk hazardous materials, including PIH materials, and all available alternative routes. Rail carriers must use that analysis to select routes that pose the fewest overall safety and security risks. In addition, under authority granted in 49 U.S.C. 20502, DOT may require implementation of supportable risk reduction measures, including the installation of signal and train control systems. Taken together, these measures allow DOT and the railroads to develop ways to target and address excess risk in dark territory.

In this rule, DOT is adopting the proposed overall 50 mph speed restriction for loaded PIH tank cars. Commenters are correct that we did not clearly state our intention to subject residue shipments to the 50 mph speed restriction in the NPRM; certainly, the supporting RIA did not account for the added costs that would result from the inclusion of residue shipments. While we continue to believe that residue shipments of PIH materials pose a safety risk that is directly related to the amount of material remaining in the tank, we note that the reduced product load may contribute to somewhat less frequent releases than from fully loaded cars, stemming in part from the reduced mass of the car, and that the consequences of an accident involving a residue shipment will generally be less severe than the consequences of an accident involving a fully loaded car. For these reasons, we agree with commenters that the costs associated

[22] CSXT references the present high demand for coal transportation and suggests that ''productivity of utility companies' car fleets should be a national priority.''

[23] 73 FR 72182 (Nov. 26, 2008).

with imposing the overall speed restriction on residue shipments would likely outweigh any safety benefits. Therefore, in this rule we are not adopting the overall 50 mph speed restriction for tank cars containing residues of PIH materials. We encourage railroads to apply the overall 50 mph speed restriction to residue shipments where such application is feasible and practicable.

*E. PIH Tank Car Top Fittings*

Noting ongoing government and industry research efforts to develop consensus-based industry standards for enhanced tank car top fittings protection, in the NPRM we did not propose to revise current requirements for tank car top fittings.[24] Specifically, we stated that adopting new standards (by rulemaking or otherwise) for top fittings protection would be inappropriate because it was not yet clear what modifications would provide a substantial improvement in the ability of top fittings to: (1) Withstand accident conditions, while providing at least the same level of protection from non-accident releases; (2) continue to work with industry's existing loading and unloading infrastructure; and (3) maintain compatibility with current emergency response requirements (*e.g.*, compatibility with Emergency Kit C, which is used to contain leaks in and around the pressure relief device and valves in the case of chlorine cars). 73 FR 17840. In the NPRM, we also noted that although incidents involving tank car top fittings do occur, historical accident data demonstrate that top fittings are not a significant factor in the risk associated with large product losses. *Id.*

Several commenters express disagreement with our conclusions and suggest that we incorporate improved top fittings standards in a final rule addressing enhanced tank car specifications. For example, BNSF asserts that ''[t]op fittings protection needs to be addressed by DOT, either specifically in the requirements of the Final Rule or by including or formally recognizing the industry's interchange standards in the Final Rule.'' BNSF cites a May 17, 2008 derailment in Lafayette, Louisiana, resulting in the release of over 8,000 gallons of hydrochloric acid when a tank car's top fittings were sheared off. The release resulted in the mandatory evacuation of several thousand residents. BNSF notes that although hydrochloric acid is not a PIH material, a tank car containing a PIH material was next to the derailed hydrochloric acid tank car in the consist.

Noting DOT's stated reliance on an analysis of 14 chlorine tank car releases between 1965 and 2005, with one release of 1,000 gallons,[25] AAR asserts that ''DOT can hardly minimize the significance of a loss of 1,000 gallons * * * when it has just issued an interim final rule addressing the routing of TIH materials where it bases a decision to regulate on the potential for a release from tank cars containing 320 gallons or less.'' *See* 74 FR 20752, 20758 (Apr. 16, 2008). AAR further notes that according to the Railroad Tank Car Safety Research and Test Project's analysis of lading losses, losses from the top fittings account for 20 percent of 135 releases from pressure cars in mainline accidents where five percent or more of the lading was released;[26] in AAR's words, ''hardly an insignificant percentage.'' In its comments to the docket, AAR urges us to adopt the top-fittings standard of CPC–1187.[27] AAR notes that the AAR Tank Car Committee has already approved two designs meeting both the CPC–1187 standard and DOT standards, and that a third design meeting the CPC–1187 standard is authorized under a DOT special permit.

Another commenter, TGO Technologies, Inc., suggests that any new tank car design must include secondary containment of the manway. TGO asserts that measures such as lowering the profile of the valves, installing a roll bar, welding the protective housing to the pressure plate (as opposed to bolting it), and similar measures, may provide ''some protection'' against releases, but not equal to what a passive secondary containment system could provide. Although DOT understands the value of secondary containment systems in certain situations, we do not believe that reliance on such systems would be appropriate in attempting to increase the crashworthiness of railroad tank cars transporting PIH materials.

Recognizing that since publication of the NPRM, industry has developed several improved top fittings designs,[28] and in response to commenters' suggestions that we address top fittings, in this rule DOT is modifying requirements in the HMR applicable to PIH tank car top fittings. The specific modifications adopted are discussed in more detail in the section by section analysis of § 179.102–3 below.

*F. The Need for an Interim Standard for Tank Cars Used To Transport PIH Materials*

PIH shippers that submitted comments on the NPRM note that, unlike other railroad freight cars, hazardous materials tank cars are primarily owned or leased by shippers, not the railroads. The overwhelming majority of these commenters recommend that DOT adopt an interim tank car standard, with an appropriate grandfathering period for tank cars meeting such standard, as a solution to ensure the availability of PIH tank cars in the time period before DOT's proposed performance standards are finalized and tank cars can be built to meet those standards. PIH shippers explain that obtaining new or leased PIH tank cars at the present time is very difficult, if not impossible. Commenters note that, subsequent to publication of the NPRM, AAR renewed its previously suspended interchange standard (Casualty Prevention Circular 1187 or CPC–1187) for tank cars transporting PIH materials.[29] Although the tank car head and shell requirements of CPC–1187 can be met by using DOT specification tank cars of higher tank classes than required by DOT standards, tank cars built to meet the CPC–1187 standard would not meet the performance standards proposed in the NPRM. Commenters express concern that the tank cars could not be retrofitted to meet any final DOT standard because of the weight of the cars. Coupled with the general consensus of the tank car industry that the tank head and shell puncture resistance performance requirements proposed in the NPRM are ''technology-forcing,'' commenters assert that the tank car market is effectively frozen. According to these commenters, shippers and other tank car purchasers (*e.g.*, tank car lessors) cannot purchase PIH tank cars with any assurance that the cars will have a reasonable economic life. According to these commenters, this uncertainty

[24] *See* 73 FR 17840. The existing regulatory requirements for top fittings are found at 49 CFR 179.100–12.

[25] 73 FR 17840.

[26] AAR cites the Railroad Tank Car Safety Research and Test Project, ''Safety Performance of Tank Cars in Accidents: Probabilities of Lading Loss,'' RA–05–02, p. 30 (Jan. 2006).

[27] The top fittings standard proposed in the Joint Petition discussed above is the top fittings standard of CPC–1187.

[28] Although some of these designs are still undergoing service trials, each have been found to improve the ability of the fittings to withstand accident conditions (and not adversely affect the potential for non-accident releases), work with industry's existing loading and unloading practices, and maintain compatibility with current emergency response equipment.

[29] CPC–1187 is discussed in detail in the preamble to the NPRM. 73 FR 17832–17833 and in AAR's comments responding to the NPRM. *See* document no. 79 in the docket.

encourages lessors to delay purchases or to exit the market altogether, in either case leading to the delayed phase-out of aging tank cars that would normally be replaced with newer, safer cars and, potentially, a shortage of PIH tank cars.

Several commenters suggest specific interim solutions. Some recommend that DOT grandfather existing PIH tank cars under any final rule. Others recommend that DOT grandfather tank cars constructed to meet the standards of CPC–1187, assuring purchasers of these tank cars that the cars will be afforded a reasonable economic useful life. Commenters suggest grandfathering periods from 15–50 years.

For example, Dow suggests an interim chlorine tank car utilizing a current 105J600W car with full-height head shields, 1.1360 inch head thickness and 0.9819 inch shell thickness; or an enhanced 105J500W car with full-height head shields, and with head, head shield and jacket thickness to achieve an equivalent level of puncture resistance as the enhanced 105J600W, or any alternative design that can be demonstrated to achieve an equivalent puncture resistance. Similarly, Dow suggests an interim ethylene oxide car utilizing a 105J500W car with full-height head shields, 1.0300 inch head thickness and 0.8900 inch shell thickness; or an enhanced 105J300W or 105J400W car with full-height head shields, and with head, head shield and jacket thickness to achieve an equivalent level of puncture resistance as the enhanced 105J500W, or any alternative design that can be demonstrated to achieve an equivalent puncture resistance. Dow recommends that any such interim car be authorized for its intended service for at least 25 years from its original build date.

The Ethylene Oxide/Ethylene Glycols Panel of the Ethylene Oxide Safety Task Group of the ACC recommends a retrofit approach to an interim ethylene oxide tank car. Specifically, this Task Group suggests an interim standard for ethylene oxide tank cars complying with at least the 105J300W specification, insulated tanks and protected with an outer steel jacket at least 0.375 inches thick and constructed of steel similar to TC128B. The Task Group further proposes that a tank car meeting such interim standard be authorized for ethylene oxide service for 50 years from its original construction.

In addition to these specific suggestions for interim tank car standards, as noted in the ''Background'' section above, industry participants filed two petitions requesting that the Department amend the HMR to authorize interim standards for tank cars transporting PIH materials. The Joint Petition, filed by ACC, ASLRRA, AAR, CI and RSI (Petitioner Group) seeks DOT approval of interim rail tank car standards that could be met in three different ways. First, the Joint Petition contemplates a commodity-specific scaled step up in the DOT specification tank car used to transport PIH commodities. In other words, the Joint Petition proposes that where the HMR currently require a 105*300W car (DOT specification tank car authorized for transportation of chlorine) or 112*340W car (DOT specification tank car authorized for transportation of anhydrous ammonia), as a stepped improvement, the proposed interim standard would require a 105J500W or 112J500W car,[30] with a minimum head and shell thickness of 13/16 inches and a full-height ½-inch thick or equivalent head shield. Similarly, the Joint Petition proposes that where the HMR currently require a 105*500W or 105*600W tank car, as a stepped improvement, the proposed interim standard would require a 105J600W car, with a minimum head and shell thickness of 15/16 inches and full-height ½-inch thick or equivalent head shield.

Second, the Joint Petition contemplates an alternative performance standard based on the CPR metric discussed above. This alternative performance standard utilizes relative probabilities that conventional tank cars and tank cars with thicker tanks will release hazardous materials in an accident. In the Joint Petition, this relative comparison between two conditional probabilities is referred to as the ''Tank Improvement Factor'' (TIF). The Joint Petition contains a table showing the TIF for 25 PIH materials commonly transported by railroad tank car.

Third, the Joint Petition requests that DOT allow alternative methodologies to demonstrate improvement equivalent to the TIF calculation.

The Joint Petition proposes a specific design standard for chlorine tank cars, which Petitioners assert would achieve the desired CPR improvement. The initial chlorine tank car design standard proposed was a 105J500W tank car with a head, shell, jacket, and head shield, 0.777 inch thick, 0.777 inch thick, 0.375 inch thick, and a 0.625 inches thick, respectively. In comments submitted on July 25, 2008, the Petitioner Group modified the proposed chlorine design standard to a 105J500W tank car with a total head and head shield thickness of 1.636 inches and a total shell and jacket thickness of 1.102 inches. Both proposed design standards specified that the jacket be constructed of steel with a minimum tensile strength of 70 ksi and minimum elongation in two inches of 21%.

The Joint Petition also proposes a top fittings protection standard that would require top fittings to be designed to withstand, without loss of lading, a rollover with a linear velocity of nine mph. Noting that the HMR currently mandate that the top fittings protection system be bolted to the tank, the Joint Petition suggests that the 9 mph rollover standard necessitates, instead, that the top fittings protection system be attached to the tank by welding. This top fittings arrangement is consistent with CPC–1187's requirement.

Finally, the Joint Petition proposes that DOT grandfather tank cars built to meet the proposed standards for 25 years after the effective date of the final rule in this docket.

In its petition, TFI expresses support for many aspects of the Joint Petition, but also contends that the unique characteristics of its members' fleets of anhydrous ammonia tank cars necessitate special consideration by DOT. Noting the safety features of the typical anhydrous ammonia tanks cars currently in service, DOT112J340W tank cars, TFI proposes that these cars remain in production until January 1, 2009 and proposes set useful lives of these cars of approximately 20–25 years. As an interim car to be manufactured starting January 1, 2009 until cars are available under any DOT final performance standard, TFI proposes DOT 112J400 pound cars with thicker jackets and a guaranteed useful life of 25 years from the date of a final rule in this docket.

DOT agrees with commenters' assertions that an interim solution is necessary. Accordingly, this rule amends the HMR by specifying enhanced commodity-specific design standards for PIH tank cars constructed after March 16, 2009. The standards specified are based on existing DOT specification cars and modified top fitting designs developed by industry since publication of the NPRM. This rule provides for a 20-year expected PIH service life of tank cars meeting these interim standards. As noted above, this rule is an interim solution to the market issues identified by commenters. DOT intends to move forward as expeditiously as possible with the development and validation of an enhanced performance standard for PIH tank cars, and the incorporation of such enhanced standard into the HMR.

[30] A DOT class 112 car differs from a DOT class 105 car in that it is not insulated.

Although as noted in section A above, we have not adopted the exact standards proposed by AAR and the Petitioner Group, we utilized the Group's basic framework of proposed specifications to develop a more direct and less cumbersome means of demonstrating the performance of alternative tank car designs, which takes into consideration the physics that tank cars experience during accidents, derailments, and other types of rail incidents. This methodology results in interim standards generally consistent with that proposed by both the Petitioner Group and TFI.[31]

**V. Discussion of Comments on Petitions for Interim Tank Car Standards**

On July 23, 2008, PHMSA published the petitions submitted by the Petitioner Group and TFI and requested comments on their merits (73 FR 42765). Approximately 20 persons submitted comments, including industry associations, PIH shippers and receivers, a tank car manufacturing and repair company, the American Association for Justice, and representatives of local governments and emergency response teams. Although most commenters reiterate their support for DOT's development of a performance standard as proposed in the NPRM, the overwhelming majority of commenters express support for the development of interim PIH tank car standards with an accompanying grandfather period. For example, Dow supports both the Joint Petition and TFI's petition and suggests that an interim final rule for PIH tank cars should include (1) tank car safety improvements ''based upon currently available and proven construction materials, design concepts and technologies''; and (2) a reasonable economic life for tank cars built during the interim period. Similarly, Olin's Chlor Alkali Products Division suggests that adoption of the interim standard in the Joint Petition would lead to immediate safety improvements and make it economically viable for tank car owners to replace existing tank cars at the end of their useful lives with newer, safer cars, thereby ensuring shippers would have access to adequate PIH tank cars to meet service needs. PPG expresses support for the Joint Petition and asserts that interim standards are necessary to provide alternatives for tank car designs that would ensure the continued safe shipment of chlorine and allow for a design that can be retrofitted in the future to meet any final performance standard.

One commenter, DuPont, contends that the Joint Petition's proposal is ''far too generic and does not adequately address the crashworthiness and commodity-specific requirements for tank car design.'' DuPont suggests that the TIF contemplated in the Joint Petition is ''not a true indicator'' of a tank car's crashworthiness and that a ''strictly probabilistic approach,'' such as the CPR metric proposed in the Joint Petition is not appropriate. Further, DuPont suggests that each PIH commodity must be considered individually as interim performance standards are developed.

As discussed in Section IV.A of this preamble and the Section-by-Section analysis of § 173.244, we agree that the purely statistical analysis of CPR is not the best metric for measuring the effectiveness of tank car improvements. We also appreciate DuPont's concerns regarding the commodity-specific requirements for tank car design. Accordingly, in this rule we have adopted commodity-specific design standards for PIH tank cars based on existing DOT specification cars. We recognize that as a result of the differing physicochemical properties of certain PIH commodities, such as chlorosulfonic acid and anhydrous hydrogen fluoride, unique tank car designs have developed over time and are currently authorized by special permit. We do not intend to supplant those special permits with this rule. Shippers may continue use of the existing tank cars under these special permits. Additionally, the special permit process provides for the development and authorization of alternative tank car designs as contemplated by the Joint Petition. Specifically, the special permit process enables tank car owners and manufacturers to develop variations in tank car designs, using materials and techniques that are not currently authorized. We anticipate that shippers and tank car manufacturers will continue to perform safety equivalency evaluations and submit special permit applications to address variations in tank car designs for particular materials.

Although we agree with DuPont's suggestion that a performance standard should be the ultimate goal of any effort to specify tank car improvements, we do not believe that such a standard is necessary to achieve the purposes of this interim rule. Instead, we believe the commodity-specific design standards based on existing DOT specification cars provides a commercially feasible and effective method of improving the accident survivability of PIH tank cars in the near term. As noted earlier in this document, this rule is the first part of a longer-term strategy to enhance the safety of rail shipments of PIH materials. We plan to continue to develop and validate performance standards that further improve the crashworthiness of PIH tank cars.

As discussed above, the Joint Petition also proposes a top fittings protection standard that would require top fittings to be designed to withstand, without loss of lading, a rollover with a linear velocity of nine mph and permit top fittings protection system to be attached to the tank by welding. In its comments, DuPont expresses concern about the proposed top fittings protection standard, stating that inspections of similar designs have shown that corrosion can develop in welded protective housings and that such corrosion could impact the structural integrity of the housing, reducing its effectiveness in the event of a rollover. DuPont notes that it is ''aware of no data analyzing the impact of the corrosion risk on the overall integrity of the housing (and related impact on overall tank car safety) as compared to the current bolted housing design.'' As noted in the section-by-section analysis of § 179.102–3 below, we share DuPont's concern regarding the welding of the top fittings protective housing to the tank, and accordingly, we have not adopted this aspect of the Joint Petition.

Several anhydrous ammonia shippers and receivers submitted comments supporting the TFI petition, including its proposal to permit cars currently used to transport anhydrous ammonia to remain in service for 20–25 years. Although we appreciate TFI's desire for assurance as to a guaranteed PIH service life of its existing anhydrous ammonia fleet, such assurance is outside the scope of this rule. This rule addresses only PIH tank cars constructed after March 16, 2009 and cars built to meet the standards set forth in this rule. This rule does not limit the PIH service life of existing PIH tank cars meeting the requirements of the HMR prior to this rule's effective date nor does it provide a guaranteed PIH service life for the existing fleet. The issue of

[31] In its petition, TFI further suggests an accelerated phase-out of pre-1989 tank cars constructed utilizing non-normalized steel by December 31, 2010. Although we have not adopted this proposal, as noted in section IV.B and discussed in more detail in the section-by-section analysis of § 173.31, this rule does require rail car owners that retire or remove rail tank cars from PIH service to prioritize the retirement or removal of pre-1989 non-normalized steel cars. In addition, we note that this rule addresses only PIH tank cars constructed after March 16, 2009 and cars built to meet the standards set forth in this rule. This rule does not limit the PIH service life of existing PIH tank cars meeting the requirements of the HMR prior to this rule's effectiveness.

grandfathering the existing PIH tank car fleet will be addressed with DOT's promulgation of a final performance standard.

In its petition, TFI proposes an interim standard for anhydrous ammonia cars that would incorporate the current DOT 112J400 pound cars with thicker jackets to enhance accident survivability. We agree that a 112J400W car with a thicker jacket and head will provide a significant safety improvement over existing 112J340W cars. Accordingly, this rule specifies that newly constructed cars designed for anhydrous ammonia service must meet the 105J500I or 112J500I specifications, and also authorizes a 400 pound car, as proposed by TFI, with a thicker jacket and head.

## VI. Summary of Rule

This rule prescribes enhanced safety measures for rail transportation of PIH materials, including improvements in the safety features of DOT specification tank cars. Pending further validation and implementation of the crashworthiness performance standard proposed in the NPRM, this rule amends the HMR to prescribe enhanced commodity-specific design standards for PIH tank cars based on existing DOT specifications. The amendments require that shell and/or jacket thickness be increased for each commodity and that full head shields be used where not already required. The increases in package crashworthiness are generally scaled in the same manner as previous DOT specifications, and the general intent is that the increases in package robustness be accommodated within a gross weight on rail limitation of 286,000 pounds. This rule adds new engineering analysis to support adding thickness to the head shield and jacket. Additionally, this rule puts in place new requirements for enhancement of top fittings protection systems and nozzle arrangements. This rule also implements a proposed 50 mph speed limit for all loaded, placarded rail tank cars used to transport PIH materials.

As discussed above, this rule will not implement the proposed interim 30 mph speed limit in dark territory for tank cars transporting PIH materials that do not meet the proposed enhanced performance requirements. In addition, in response to comments, this rule does not implement the proposed expedited replacement requirement for PIH tank cars manufactured before 1989 with non-normalized steel head or shell construction as proposed. Instead this rule requires that tank car owners prioritize retirement or replacement of pre-1989 non-normalized steel cars when retiring or removing cars from PIH materials service.

As stated above, although DOT believes that this rule incrementally improves the crashworthiness protection of newly manufactured tank cars designed for the transportation of PIH materials, DOT intends that the standards set forth in this rule apply on an interim basis, until such time as final performance standards are developed and tank cars are available meeting such standards. DOT believes that PIH tank cars built to the final performance standards will be significantly safer than cars built to these interim standards. Accordingly, DOT does not intend that the entire PIH tank car fleet be replaced with cars meeting these interim requirements.[32] To the contrary, beyond the numbers necessary to meet new business demands and to replace cars that are damaged or have reached the end of their service lives, acquisition of cars meeting the interim standards will tend to diminish potential safety benefits by delaying the introduction of cars built to the final performance standards. Instead, DOT expects that tank car owners will acquire cars meeting these interim standards to replace existing PIH tank cars that are retired, scrapped, damaged, or otherwise taken out of service in the normal course of operations and to meet new business needs, only as necessary to efficiently and safely manage their PIH tank car fleets pending the development and implementation of final performance standards addressing the crashworthiness of PIH tank cars.

## VII. Section-by-Section Analysis

*Part 171*

Section 171.7—Reference Material

This section addresses reference materials that are incorporated by reference into the HMR. In the NPRM, we proposed to allow an increase in the gross weight on rail of tank cars to 286,000 pounds and accordingly, we proposed to amend § 171.7(a)(3), the table of material incorporated by reference, to add the entry for AAR Standard S–286–2002, Specification for 286,000 lbs. Gross Rail Load Cars for Free/Unrestricted Interchange Service, revised as of 2005. Subsequently, FRA learned that AAR revised Standard S–286–2002 in 2006 and renamed the standard ''S–286, Free/Unrestricted Interchange for 286,000 lb Gross Rail Load Cars''. AAR Standard S–286 is the existing industry standard for designing, building, and operating rail cars at gross weights between 263,000 pounds and 286,000 pounds. As discussed in the analysis of § 179.13, in this rule we are adopting the proposal to allow an increase in the gross weight on rail of tank cars. Accordingly, we are adopting the proposal to incorporate the AAR Standard, only revising the rule text to incorporate the most recent version of the Standard. By incorporating the standard into the HMR, we will ensure that tank cars exceeding the existing 263,000 pound limitation and weighing up to 286,000 pounds gross weight on rail are mechanically and structurally sound.

*Part 172*

The Hazardous Materials Table in § 172.101 is amended to consolidate and update the special provisions applicable to the rail tank car transportation of PIH materials. The revisions to the table are for ease of reference only and do not substantively change the requirements applicable to the transportation of PIH materials by railroad tank cars.

*Part 173*

Section 173.31—Use of Tank Cars

Existing § 173.31 addresses the use of tank cars to transport hazardous materials and contains various safety system and marking requirements. The NPRM proposed to revise existing paragraphs (a)(6), (b)(3), (b)(6) and (e)(2)(ii), as well as add new paragraphs (b)(7) and (b)(8). This rule implements revisions to paragraphs (b)(6) and (e)(2)(ii) and adds new paragraphs (e)(2)(iii) and (e)(2)(iv). The proposed revision to paragraph (a)(6) is unnecessary because this rule implements a marking under § 179.22 that does not change the existing delimiters specified in the paragraph. The proposed revision to paragraph (b)(3) is unnecessary because this rule does not modify the existing head protection requirements specified in the paragraph. Proposed new paragraphs (b)(7) and (b)(8) related to the enhanced tank shell puncture-resistance systems. This rule does not mandate the proposed tank head and shell puncture-resistance performance standards. Therefore, the proposed revisions to these paragraphs are not adopted in this rule.

Current paragraph (b)(6) requires tank car owners to implement measures to ensure the phased-in completion of modifications previously required by the Department and to annually report progress on such phased-in implementation. We proposed to modify

[32] As noted in the Regulatory Impact Analysis accompanying this rule, DOT estimates that the fleet of interim PIH tank cars will at most represent approximately 14% of the total PIH tank car fleet (roughly 2,044 tank cars).

paragraph (b)(6) by deleting references to various compliance dates that have now passed. This rule adopts the proposed deletions from paragraph (b)(6).

Current paragraph (e)(2) requires tank cars used to transport PIH materials to have a minimum tank test pressure of 20.7 Bar (300 psig), head protection, and a metal jacket. In this rule, we are revising this paragraph to remove the outdated compliance date in paragraph (e)(2)(ii), and cross reference the applicable authorized tank car specifications and standards listed in § 173.244(a)(2) and (3) and § 173.314(c) and (d).

We are also adding new paragraphs (e)(2)(iii) and (iv). New paragraph (e)(2)(iii) authorizes the use of PIH tank cars meeting the applicable authorized tank car specifications and standards listed in § 173.244(a)(2) or (3) or § 173.314(c) or (d) for 20 years after the date of original construction. New paragraph (e)(2)(iv) requires that if a tank car owner retires or otherwise removes a tank car from PIH materials service, that owner must retire or remove cars constructed of non-normalized steel in the head or shell before removing any car in PIH materials service constructed of normalized steel meeting the applicable DOT specification. Because a car damaged as a result of an accident no longer meets DOT specifications, and the decision to remove this car from service may actually be that of the damaging railroad, this requirement does not apply to the replacement of such damaged cars (*i.e.*, a car owner is free to replace a damaged car with a car constructed to meet this interim standard regardless of whether the damaged car was a pre-1989 car of non-normalized steel construction, or a newer car constructed of normalized steel).

Section 173.244—Bulk Packaging for Certain Pyrophoric Liquids (Division 4.2), Dangerous When Wet (Division 4.3) Materials, and Poisonous Liquids With Inhalation Hazards (Division 6.1)

This section sets forth bulk packaging requirements for certain Division 4.2, 4.3, and 6.1 materials. The NPRM did not propose revisions to this section. However, in this rule, we are revising paragraph (a) to authorize new tank car specifications for tank cars manufactured after March 16, 2009, for the listed PIH materials. Generally, the tank car specifications authorized in this section are a step up from the specifications currently mandated by the HMR for each commodity, consistent with the proposal in the Joint Petition. Recognizing that the HMR do not require all PIH commodities to be transported in tank cars equipped with thermal protection, the specifications authorized include both class 105 and 112 cars. We are also revising paragraph (a) to include the language from special provisions B71, B72, and B74 (which are removed from the § 172.101 Hazardous Materials Table) as a matter of convenience for the reader.

Paragraph (a)(3) provides an alternative authorized tank car to that listed in column (2) of the table in paragraph (a), that provides an equivalent level of safety. This alternative would allow the use of a car with a tank constructed to a lower test pressure within the same DOT class, provided that the added steel necessary for the higher pressure is moved from the tank to the tank car jacket and head. This provision responds to the Petitioner Group's request that DOT provide an alternative performance standard to the stepped-up commodity specific tank car specifications, and also responds to TFI's request to authorize on an interim basis 112J400 cars with thicker jackets for anhydrous ammonia service.

The Petitioner Group requested that DOT authorize cars that meet a formula [33] demonstrating that improvements to the head or shell are at least as good as the design standards (*i.e.*, the stepped-up commodity-specific tank car specifications) in terms of CPR. The petitioners suggest that this alternative will provide an opportunity to retrofit these tank cars at some future point in order to achieve an equivalent level of safety to any changing regulatory requirements or technology improvements.

As noted in section IV.F above, the Petitioner Group proposes a specific alternative design standard for chlorine tank cars: a DOT 105J500W tank car with a total head and head shield thickness of 1.636 inches and a total shell and jacket thickness of 1.102 inches. The jacket material would be 70,000 p.s.i. minimum tensile strength steel, having a minimum elongation of 21 percent in two inches.

As previously stated, DOT remains unconvinced that the CPR metric is the best means of determining tank car improvements. However, DOT agrees that the Petitioner Group's proposal for an alternative car is a valid concept. We note, however, that the Petitioner Group's proposal (in Exhibit 1 to the petition pertaining to 25 different PIH materials and the proposed alternative chlorine tank car design) is based on a single tank car diameter per commodity. Mandating minimum thicknesses without specifying mandatory diameters would be inconsistent with the current regulatory structure applicable to pressure vessels. Additionally, tank car manufacturers may desire to vary the tank diameters to offer a variety of configurations depending on shippers' needs and their own manufacturing processes. The HMR provide a formula that enables a builder to calculate the tank thickness based upon the chosen diameter.[34] In addition, the calculations provide an incentive for using steels with a higher tensile strength. By using AAR TC–128, Grade B steel with a tensile strength of 81,000 k.s.i. tensile strength, the tank shell can be manufactured at 84.3% of the thickness mandated for a car of the same diameter manufactured from steels with lower tensile strengths (*e.g.*, 70,000 k.s.i. to 80,000 k.s.i.).

The DOT alternative tank car outlined in paragraph (a)(3) mirrors the approach used by the Petitioner Group in developing its alternative, but does not limit the tank diameter or force the builder to use a lower tensile steel by adding forming thicknesses when determining how much steel to move from the tank shell and head to the head shield and jacket. DOT finds that the effect of steel in the tank and head or jacket is, at a minimum, commutative and can be transferred with relative ease provided that minimum equivalent thicknesses are maintained. Because of the variances in commodity, tank diameter, length, and steel, DOT's alternative tank car provides equivalent safety to the specified car through a more generally applicable performance standard. The concept is simple: § 179.100–6(a) requires the wall thickness after forming for tank shell and heads to be no less than the minimum thickness listed in the § 179.101–1 Table or the calculation provided. For pressure tank cars greater than 400 pounds with an inside diameter above 100 inches, the formula thickness will always set the minimum. Therefore, under DOT's approach, the difference in the required plate thickness, based on the calculations of the specified and alternative cars, is added to the alternative car in the form of extra thickness in its tank car jacket and head shield.

There are, however, several limitations to the alternative. First, a reduction in tank test pressure of only one level is permitted. Second, the tank

[33] The formula proposed is:

1 – (CPR of tank car/CPR of minimum specification tank car) ≥ TIF for the commodity.

[34] *See* § 179.100–6(a).

car head shield and jacket must be made from tank car carbon steel authorized in § 179.100–7. Finally, if the tank shell and head are constructed from AAR TC–128, Grade B steel and the jacket and head shield are made from authorized steel with a 70,000 p.s.i. tensile strength, the material being transferred to the head shield and jacket must include a 15.7 percent addition to account for the shift in steel to a lower tensile strength.

Because the carbon steel plate used in the Petitioner Group's specified car has a tensile strength of 81,000 p.s.i., if steel plate of a lower tensile strength is used to add thickness, the equivalent level of safety standard demands that the measured difference in thickness be augmented by a factor to account for that lower tensile strength. The difference in tensile strengths between 81,000 ksi steel and the other common plate, with a tensile strength of 70,000 ksi, is a factor of 1.157 when, for instance, ASTM A–516, Grade 70 is used in lieu of AAR TC–128 Grade B steel. This means that, in addition to the measured difference between the shells of the two cars, the thickness of the added steel of a lower tensile must itself be increased by the equivalency factor. For example, the § 179.100–6 formula for the shell plate thickness of a 600 pound test car that is 106 inches in diameter requires AAR TC–128, Grade B plate of .981 inch thickness. A 500 pound car built of this diameter and this steel requires a shell .818 inches thick, for a difference of .163 inches. If this required additional thickness is of 70,000 p.s.i. tensile strength steel, .163 must be multiplied by 1.157, for a total addition of .189 inches to the existing 11 gage (.1196 inch) jacket structure and .5 inch head shield.

FRA has determined that this equivalency factor is valid for all tank cars over 100 inches in diameter and over 400 pounds test pressure.

Section 173.249—Bromine

Current § 173.249 sets forth specific packaging requirements, including specific tank car requirements, for bromine, a PIH material. The NPRM proposed to add a new paragraph (g) to the section, clarifying that railroad tank cars transporting bromine must comply with the enhanced tank-head and shell puncture-resistance requirements of proposed §§ 179.16(b) and 179.24. Because we are not adopting the proposed tank-head and shell puncture-resistance requirements in this rule, we are instead revising this section to add a new paragraph (g) clarifying that railroad tank cars built after March 16, 2009, and used to transport bromine must meet the applicable authorized tank car specification listed in the table in § 173.244(a)(2) or the alternative specified in § 173.244(a)(3).

Section 173.314—Compressed Gases in Tank Cars and Multi-Unit Tank Cars

Current § 173.314 sets forth specific filling limits and tank car packaging requirements for various compressed gases, including chlorine, a PIH material. Although in the NPRM our proposed revisions to this section were limited to paragraph (k), which contains specific tank car packaging requirements relevant to chlorine, in this rule we are revising paragraphs (c), (d), and (k).

Current paragraph (c) sets forth specific compressed gas filling limits for tank cars and commodity-specific authorized tank car classes for particular commodities. In this rule, we are amending the table in paragraph (c) to authorize specifications for tank cars manufactured after March 16, 2009 for the listed PIH materials. We are adding note 11 to the table to make clear that for tank cars built prior to March 16, 2009 and used to transport PIH materials, the current class of authorized tank cars may continue to be used, provided the tank cars have been approved by the AAR Tank Car Committee for transportation of the specified material. Similarly, we are adding note 12 to the table to make clear that for tank cars built on or after March 16, 2009, only tank cars meeting the listed authorized tank car specifications in column 4 of the table (or the alternative requirements of paragraph (d)) may be used to transport PIH materials. Multi-unit tank car tanks and forged-welded tank car tanks (*e.g.*, DOT 106, DOT 109, and DOT 110) may continue to be used as authorized. Similar to the authorized specifications in § 173.244, the authorized specifications in this section are a step up (*i.e.*, a higher test pressure) from the specifications currently mandated by the HMR for each commodity, consistent with the proposal in the Joint Petition. Again, recognizing that the HMR do not require all PIH commodities to be transported in tank cars equipped with thermal protection, the specifications authorized include both class 105 and 112 cars.

Consistent with the revisions in § 173.244(a)(3), currently reserved paragraph (d) is added to provide an alternative to constructing a car meeting the authorized tank car specifications listed in column (3) of the table in paragraph (c), provided the alternative car achieves an equivalent level of safety. The technical basis for this alternative is described above in the discussion of § 173.244(a)(3).

The NPRM proposed to revise paragraph (k) to make clear that railroad tank cars transporting chlorine must comply with the enhanced tank-head and shell puncture-resistance requirements of proposed §§ 179.16(b) and 179.24. Because we are not adopting the proposed tank-head and shell puncture-resistance requirements, we are instead revising paragraph (k) to clarify that railroad tank cars built after March 16, 2009 and used to transport chlorine must meet the applicable authorized tank car specification in the table immediately following paragraph (c). We are also revising this paragraph to provide that tank cars constructed after March 16, 2009 used for the transportation of chlorine may be equipped with a pressure relief device required for a DOT 105A300W car, but that the car may not be restenciled to the lower test pressure.

In the NPRM, we proposed to replace the current insulation system of 2-inches glass fiber over 2-inches ceramic fiber with a requirement to meet the existing thermal protection requirements of § 179.18, or with a system that has an overall thermal conductance of no more than 0.613 kilojoules per hour, per square meter, per degree Celsius temperature differential. As noted in the NPRM, this proposal was intended to allow flexibility in the use of the interstitial space between the tank shell and jacket for crush energy management purposes. Because we are not adopting the proposed tank head and shell impact performance standards which would necessitate use of the interstitial space, we have decided not to adopt the proposed regulatory change at this time.

Section 173.323—Ethylene Oxide

Existing § 173.323 sets forth specific packaging requirements, including tank car requirements, for ethylene oxide, a PIH material. Specifically paragraph (c)(1) contains requirements for transporting ethylene oxide in railroad tank cars. In the NPRM we proposed to revise paragraph (c)(1) to make clear that railroad tank cars transporting ethylene oxide must comply with the proposed enhanced tank-head and shell puncture-resistance requirements of proposed §§ 179.16(b) and 179.24. Because we are not adopting the proposed tank-head and shell puncture resistance requirements, we are instead revising paragraph (c)(1) to clarify that railroad tank cars built after March 16, 2009 and used to transport ethylene oxide must meet the applicable authorized tank car specification listed

in the table in § 173.314(c) or the requirements of § 173.314(d).

*Part 174*

Section 174.2—Limitation on Actions by States, Local Governments, and Indian Tribes

Section 174.2 is unchanged from that proposed in the NPRM and simply informs the public of statutory provisions which govern the preemptive effect of the rule. Although we did not receive any comments responding to proposed § 174.2, we did receive comments related to the NPRM's discussion of the preemptive effect of the proposed rule in the Regulatory Notices section of the preamble. Those comments, as well as our responses, are discussed in the Regulatory Notices section below.

Section 174.86—Maximum Allowable Operating Speed

Current § 174.86 addresses the maximum allowable operating speed for molten metals and molten glass. The NPRM proposed to add new paragraphs (b) and (c) limiting the operating speed of all railroad tank cars transporting PIH materials to 50 mph, and in non-signaled territory limiting the operating speed of railroad tank cars transporting PIH materials to 30 mph, unless alternative measures providing an equivalent level of safety are provided, or the material is being transported in a tank car conforming to the proposed enhanced tank-head and shell impact puncture resistance requirements.

As discussed in section IV.B above, this rule adopts the proposed 50 mph restriction for all trains transporting loaded, placarded tank cars containing PIH materials, but does not adopt the proposed interim 30 mph restriction in dark territory. Accordingly, in this final rule, we are revising paragraph (b) to restrict the operating speed of trains transporting any loaded, placarded tank cars containing PIH materials to 50 mph. We are not adopting the proposed revisions to paragraph (c).

*Part 179*

Section 179.8—Limitation on Actions by States, Local Governments, and Indian Tribes

Section 179.8 is unchanged from that proposed in the NPRM and simply informs the public of statutory provisions which govern the preemptive effect of the rule. Although we did not receive any comments responding to proposed § 179.8, we did receive comments related to the NPRM's discussion of the preemptive effect of the proposed rule in the Regulatory Notices section of the preamble. Those comments, as well as our responses, are discussed in the Regulatory Notices section below.

Section 179.13—Tank Car Capacity and Gross Weight Limitation

Existing § 179.13 sets forth tank car capacity and gross weight limitations. Specifically, this section provides that tank cars may not exceed a capacity of 34,500 gallons or 263,000 pounds gross weight on rail. In the NPRM, recognizing that safety improvements would necessitate an increase in the weight of a tank car, we proposed to revise this section to allow an increase in the gross weight on rail to 286,000 pounds for tank cars constructed to meet the proposed head and shell impact puncture-resistance standards. Although this rule does not adopt the proposed performance standards, the safety improvements mandated in this rule may necessitate the construction of heavier cars, and as discussed in section IV.C above, this rule adopts the proposal to allow an increase in the gross weight on rail of tank cars constructed to meet the new interim standards provided the weight increases are not used to increase product capacity.

Section 179.16—Tank-Head Puncture-Resistance Systems

Current § 179.16 contains the tank-head puncture resistance requirements applicable to tank cars currently required under the HMR to have tank-head puncture-resistance systems. The NPRM proposed to amend this section to specify an enhanced tank-head puncture-resistance performance standard for tank cars used to transport PIH materials. Because we are not adopting the proposed tank-head puncture-resistance performance standard, this rule does not modify the requirements of this section. As noted above, however, DOT plans to continue to develop and validate a performance standard such as that proposed to further improve the crashworthiness of PIH tank cars.

Section 179.22—Marking

Existing § 179.22 contains marking requirements applicable to railroad tank cars. Specifically, this section provides that tank cars must be marked in accordance with the Tank Car Manual and assigns meaning to each of the delimiters used in tank car specification markings. This rule adds a new paragraph (e) which requires that tank cars manufactured after *March 16, 2009* to meet the requirements of § 173.244(a)(2) or (3) or § 173.314(c) or (d) be marked with an ''I'' following the test pressure instead of the letter ''W.'' This marking requirement is intended to allow ready identification of tank cars constructed to meet these interim standards.

Section 179.100–3—Type

Current § 179.100–3 provides general requirements for the construction of pressure tank cars designed for hazardous materials transportation. Although the NPRM did not propose a revision to this section, consistent with the recommendation of some commenters during the public outreach process prior to promulgation of the NPRM,[35] this rule revises currently reserved paragraph (b) to adopt the long standing industry standard (AAR interchange requirement) requiring head shields and shells of newly constructed pressure tank cars to be constructed of normalized steel.

Section 179.102–3—Materials Poisonous by Inhalation

This rule adds a new § 179.102–3 which addresses certain aspects of the design of PIH material tank cars constructed to meet the requirements of § 173.244(a)(2) and (3) and § 173.314(c) and (d). First, in response to commenters recommendations, paragraph (a) includes a performance standard for tank car top fittings protection, based on industry's development of several improved top fitting designs since publication of the NPRM.

As discussed above, the Petitioner Group proposed a top fittings protection standard that would require top fittings to be designed to withstand, without loss of lading, a rollover with a linear velocity of nine miles per hour. Further, the Petitioner Group proposed that DOT allow the top fittings protective housing to be attached to the tank by welding, as opposed to the HMR's current requirement that the top-fittings protection system be bolted to the tank.

Although we adopted the proposed nine miles per hour performance standard, we did not adopt the allowance for welding of the protective housing to the tank. Additionally, new § 179.102–3 provides an alternative standard that we believe addresses the intent of the Petitioner Group's request, and recognizes the views expressed by other commenters with regard to top fittings. Particularly, in the Department's public outreach efforts prior to publication of the NPRM, commenters expressed general agreement that two of the most important factors for top fitting

[35] *See* Transcript of Dec. 14, 2006 public meeting.

survivability in an accident are lowering the profile of the fittings to reduce vulnerability and strengthening the protection surrounding the fittings. *See* 73 FR 17840. Although the manway nozzle is not a part of a tank car's top fittings protection system for regulatory purposes,[36] the nozzle is integral to protecting top fittings in accident scenarios. If the nozzle fails, regardless of the strength of the fittings themselves, a release will occur. Accordingly, paragraph (a) requires the top fittings of tank cars constructed after March 16, 2009 to be enclosed within a protective housing and cover. The protective housing system and the tank nozzle must be capable of sustaining, without failure, a rollover accident at nine miles per hour. Paragraph (a) further defines ''failure'' as occurring when ''the deformed protective housing contacts any of the service equipment or when the tank retention capability is compromised.'' Although the Petitioner Group's proposed top fittings standard was based on the ability of top fittings to withstand a nine mph rollover ''without loss of lading,'' we note that the underlying research considered failure to occur whenever the deformed protective housing came into contact with any of the service equipment, or whenever the tank retention capability was compromised in any other manner. Accordingly, we believe the ''failure'' criteria in § 179.102–3(a)(1) is consistent with that proposed by the Petitioner Group.

Recognizing that the top fittings arrangements of different conventional DOT specification tank cars have varying performance levels, in paragraph (b) DOT has provided an alternative for the top fitting protection portion of this requirement. Under the alternative, tank cars must be equipped with a nozzle that meets the nine miles per hour roll-over requirement, but may have a top fittings protection system that prevents the release of product from any top fitting in the case of an accident where the top fittings would be sheared off. If this alternative is used, the required excess flow devices must be mechanically operated.

DOT notes that currently only one special permit (DOT SP–14167, issued to Trinity Industries, Inc. on April 20, 2006) authorizes the welding of the top fittings protection system to the tank. Because of the relative lack of service trial data from the alternate welding design, in this rule, DOT has chosen to retain the current standard requiring that the top fittings protection system be bolted to the manway cover. DOT reminds tank car builders that, upon application, DOT will consider requests for special permits to continue to evaluate new designs deviating from the requirements of the HMR. In addition, DOT will consider incorporating any special permit for alternate designs into the regulations as soon as adequate service data is available.

We note that in developing these standards for top fittings protection, we considered various alternatives. We considered adopting just the Petitioner Group's proposed nine miles per hour rollover standard. Recognizing that the top fittings arrangements of different conventional DOT specification tank cars have varying performance levels, we considered adopting a standard that required the doubling of the speed that the top fittings of current tank cars authorized for particular PIH materials could withstand. We also considered adopting just a standard providing that if the top fittings were sheared off, no product would be released. We believe that the 9 mph rollover standard in paragraph (a)(1), coupled with the alternative top fittings standard in (a)(3), represents a realistic and complementary approach in reducing the likelihood of releases through the valves and fittings by requiring the strengthening of all aspects of the tank car that impact the performance of the top fittings and allowing for innovations currently underway in the industry that prevent release if the protective housing and valves are sheared off. As noted in the NPRM, however, FRA has an ongoing research program focused on improving the performance of tank car top fittings in the event of roll-over incidents. We will continue this research effort and if the research demonstrates additional improvements can be made, we will propose such improvements in a subsequent rulemaking. DOT specifically requests comment on the standards set forth in § 179.102–3 of this rule.

New paragraph (b) includes a requirement that the tank jacket applied to a car meeting the standards specified in § 173.244(a)(3) or § 173.314(d) must undergo an engineering analysis as part of the Certificate of Construction consideration and grant process. The analysis must demonstrate that the jacket will not shift under the forces generated in a 6 mph coupling. This requirement is necessary because the alternative car jacket is certain to be significantly heavier that the 11 gauge jacket now used as an industry standard. That jacket has a proven history over many years of not shifting during normal railroad transportation, including switch yard impacts of at least 6 miles per hour. In order to keep a heavier jacket similarly anchored, additional support is necessary to achieve the same level of safe performance. Several builders have indicated that they are considering, for instance, doubling the number of jacket anchor points. In order to allow the builders maximum flexibility to design a jacket anchoring system that will restrain a heavier jacket, DOT has mandated a performance, rather than a design, requirement.

Section 179.102–17—Hydrogen Chloride, Refrigerated Liquid

Existing § 179.102–17 sets forth specific tank car packaging requirements for hydrogen chloride, refrigerated liquid, a PIH material. The NPRM proposed to add a new paragraph (m) to the section to make clear that railroad tank cars transporting hydrogen chloride must comply with the proposed enhanced tank-head and shell puncture-resistance requirements of §§ 179.16(b) and 179.24. Because we are not adopting the proposed tank-head and shell puncture resistance requirements, we are instead revising this section to add a new paragraph (m) clarifying that railroad tank cars built after March 16, 2009 and used to transport hydrogen chloride must meet the applicable authorized tank car specification listed in the table in § 173.314(c) or the alternative specified in § 173.314(d).

## VII. Regulatory Analyses and Notices

### *A. Statutory/Legal Authority for This Rulemaking*

This rule is published under authority of the Federal hazmat law. Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. SAFETEA–LU, which added § 20155 to the Federal hazmat law, requires, in part, that FRA (1) validate a predictive model quantifying the relevant dynamic forces acting on railroad tank cars under accident conditions and (2) initiate a rulemaking to develop and implement appropriate design standards for pressurized tank cars. Additionally, the Federal Railroad Safety Act, 49 U.S.C. 20101 *et seq.,* authorizes the Secretary to issue regulations governing all areas of railroad transportation safety.

[36] Nozzles are considered part of the tank for regulatory requirements. *See* 49 CFR 179.100–12. Top fittings protection systems include the manway plate, the protective housing, the cover, and the enclosed valves or fittings.

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

This rule has been evaluated in accordance with existing policies and procedures, and determined not to be economically significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). This rule is a significant regulatory action under § 3(f) Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget (OMB). The rule is a significant rule under the Regulatory Policies and Procedures order issued by the DOT (44 FR 11034). We have prepared and placed in the docket a regulatory impact analysis (RIA) addressing the economic impact of this rule.

The RIA includes qualitative discussions and quantitative measurements of costs related to implementation of this rule. The costs are primarily for additional labor and material to incorporate the improved PIH tank car crashworthiness features. In addition, there are costs associated with tank car design modifications, increased PIH tank car traffic, fuel for heavier tank cars, and the 50 mph operating restriction.

The RIA also provides estimates of potential savings from derailments and other accidents in which PIH tank car integrity will be less likely to be compromised as a result of implementing this rule. Such benefits include the saving of lives, the avoidance of injuries, and the avoidance of evacuations, environmental cleanup, track and road closures, and property and business damages. Additional societal benefits are also discussed, but their value is translated into monetary terms only to the extent practicable with the information available. The analysis also includes business benefits associated with the fact that the operating restriction will result in fuel savings.

For the 30-year period analyzed, the rule is estimated to have quantified costs totaling $153 million with a PV (7%) of $83.6 million. The business and other societal (non-safety) benefits discussed total $37.64 million. As noted in the RIA, the likely effectiveness of this rule can be represented by a percentage falling between 27 and 69 percent and for costs and benefits to break even, interim PIH tank cars would have to achieve a minimum average effectiveness of 64 percent. Although the large number of factors impacting any analysis of the effectiveness of the designs required by this rule prevents an exact determination of the effectiveness of this rule, because it is very likely the number of events with respect to which puncture is possible will tend to cluster toward the lower range of energies actually encountered, achievement of the 64 percent effectiveness rate is a plausible outcome. As also noted in the RIA, DOT is confident from a public policy standpoint that the petitioners are advancing sound arguments for DOT taking the requested action. Further, industry's expressed need for Federal action to address a safety gap via their petitions demonstrates a certain willingness to accept the costs associated with the manufacture and operation of interim tank cars meeting the requirements of this rule.

The results of the RIA analysis are sensitive to various inputs and assumptions. DOT believes that the range of benefit levels show that, despite the uncertainty surrounding the assumptions related to release consequences, much needed safety benefits would be realized through implementation of this rule. Absent issuance of this rule, availability of essential materials would be threatened. Unfortunately, no engineering consensus yet exists that would provide a complete foundation for moving forward with the performance standard that DOT proposed in its NPRM. However, the petitions for interim standards provide the opportunity to begin to close the gap within the bounds of accepted technology. This rulemaking addresses industry's current need to procure PIH tank cars while reducing the risk presently attending transportation of PIH materials by railroad tank car within a time certain. Providing reassurance to the communities through which these trains travel, that feasible action has been taken to safeguard those potentially affected, itself provides societal benefits.

The RIA also notes that although quantitative methodologies such as a benefit-cost analysis are a useful way of organizing and comparing the favorable and unfavorable effects of regulatory changes such as this rule, a benefit-cost analysis does not provide the policy answer, but rather defines and displays a useful framework for debate and review. Hence, the RIA is only one tool which can be utilized when considering such a policy change.

*C. Executive Order 13132*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This rule amends PHMSA's existing regulations on the design and manufacturing of rail tank cars authorized for the transportation of PIH materials and the handling of rail shipments of PIH materials in these rail tank cars. As discussed below, State and local requirements on the same subject matters covered by PHMSA's existing regulations and the amendments proposed in this NPRM, including certain State common law tort actions, are preempted by 49 U.S.C. 5125 and 20106. At the same time, this NPRM does not propose any regulation that would have direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Additionally, it would not impose any direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Through FRA and PHMSA, DOT comprehensively and intentionally regulates the subject matter of the transportation of hazardous materials by rail, thereby setting the Federal standard of care that railroads must meet, and this rule is part of this regulatory scheme. These regulations leave no room for State, local or Indian tribe standards established by any means (e.g., statutory, regulatory, or common law) dealing with the subject matter covered by the DOT regulations. States are free of course to craft standards that address the extremely rare ''essentially local safety and security hazard'' so long as the standards otherwise (1) meet the three part test of 49 U.S.C. 20106 and (2) are not preempted under 49 U.S.C. 5125. Tort suits may be brought when they are based on a violation of the Federal standard of care; failure to comply with a plan created pursuant to a Federal requirement; or failure to comply with a State law or regulation that is permitted under § 20106.

As discussed in the NPRM's preamble, the preemption provisions of both the Federal hazardous materials transportation law (HMTA), 49 U.S.C. 5125, and the former Federal Railroad Safety Act of 1970 (FRSA), 49 U.S.C. 20106, govern the preemptive effect of this rule.[37] State and local requirements, including State common law tort actions, are preempted by 49 U.S.C. 5125 and 20106, respectively, when

[37] See the ''Regulatory Analyses and Notices'' discussion of Executive Order 13132 (73 FR 17852). Section 20106 preemption applies to DOT regulations promulgated pursuant to both the FRSA and the HMTA. *See CSXT* v. *Williams,* 406 F. 3d 667, 671 n.6 (D.C. Cir. 2005); *see also CSXT Transp.* v. *Easterwood,* 507 U.S. 658, 663 n.4 (1993); *CSXT Transp.* v. *Public Utils. Comm'n of Ohio,* 901 F. 2d 497 (6th Cir. 1990).

such non-Federal requirements cover the same subject matter as the requirements in the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180, and other DOT regulations and orders, or are inconsistent with the HMR. A State may adopt, or continue in force a law, regulation, or order covering the same subject matter as a DOT regulation or order applicable to railroad safety and security (including the requirements in this subpart), only when the additional or more stringent state law, regulation, or order is necessary to eliminate or reduce an essentially local safety or security hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not unreasonably burden interstate commerce. (''Local safety and security hazard exception'' found in § 20106(a)(2).)

The HMTA at § 5125 contains an express provision preempting State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This rule addresses both subjects 2 and 5 noted above and therefore preempts any State, local or Indian tribe requirement that is not substantively the same as PHMSA's regulations on these subject matters, as those regulations are amended by this rule. The effective date of preemption under 49 U.S.C. 5125 is April 13, 2009.

The FRSA also contains a preemptive provision that pertains to safety regulations issued by DOT. Section 20103 authorizes the Secretary of Transportation to prescribe regulations and issue orders for every area of railroad safety. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the local safety or security exception to § 20106. The courts have construed the ''essentially local safety or security'' exception very narrowly, holding that it is designed to enable States to respond to local situations which are not statewide in character and not capable of being adequately encompassed within uniform national standards. *See, e.g., Union Pacific R.R.* v. *California Pub. Util. Comm'n,* 346 F.3d 851, 860 (9th Cir. 2003) (CPUC). The intent of § 20106 is to promote national uniformity in railroad safety and security standards. 49 U.S.C. 20106(a)(1).

The Supreme Court has consistently found that § 20106 preempts not only State statutes, but State common law as well. *See Norfolk Southern Ry.* v. *Shanklin,* 529 U.S. 344 (2000), and *Easterwood* (holding that under § 20106 state law claims are preempted whenever the Secretary of Transportation has issued regulations that ''cover'' the subject matter of the state law claims, including common law claims). In *Easterwood,* the Supreme Court found that FRA's regulations that ''substantially subsume'' the subject matter of the relevant State law will cause § 20106 to apply, and it ruled that the railroad could not be held liable on the grounds that it negligently permitted its train to operate too fast under the circumstances when the train was operating within the speed limits imposed by FRA regulations. 507 U.S. at 664. Accordingly, with the exception of a provision directed at an essentially local safety or security hazard, § 20106 preempts any State statutory, regulatory, or common law standard covering the same subject matter as a DOT regulation or order.

As noted in the NPRM, in 2007, Congress clarified the availability of State law causes of action under § 20106 arising out of activities covered by Federal requirements (Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law No. 110–53 § 1528, 121 Stat. 453). As amended, § 20106(b) permits certain State tort actions arising from events or activities occurring on or after January 18, 2002 (the date of the Minot, North Dakota hazardous materials train accident), for the following: (1) A violation of the Federal Standard of care established by regulation or order issued by the Secretary of Transportation (with respect to railroad safety) or the Secretary of Homeland Security (with respect to railroad security); (2) a party's failure to comply with, its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the two Secretaries; or (3) a party's violation of a State standard that is necessary to eliminate or reduce an essentially local safety or security hazard, is not incompatible with a law, regulations, or order of the United States Government, and does not unreasonably burden interstate commerce.

As we noted in the NPRM, this exception to preemption is limited. By its terms, the exception applies only to an action in State court seeking damages for personal injury, death or property damage. The statute does not provide for the recovery of punitive damages in the permitted common law tort actions. In addition, the statute permits actions for violation of an internal control plan, rule, or standard only to the extent that it is created pursuant to a Federal regulation or order issued by DOT or DHS. These limitations are consistent with well established judicial precedent and the legislative history of the 2007 amendment. As noted in the NPRM, while parties are encouraged to go beyond the minimum regulatory standards, elements of their plan that establish policies, procedures, or requirements that are not imposed by a Federal regulation are not ''created pursuant to'' a Federal regulation or order. Accordingly, there is no authorization of a common law tort action alleging a violation of those aspects of such an internal plan, rule, or standard related to the subject matter of this regulation that exceed the minimum required or are otherwise not specifically required by the Federal regulation or order. Where the Federal regulation has established the standard of care, a railroad or another regulated entity does not alter that standard of care by creating a plan based on a higher standard. Finally, as indicated in the NPRM, nothing in § 20106 creates a Federal cause of action on behalf of an injured party or confers Federal question jurisdiction for such State law causes of action. *See* § 20106(c).

In response to the NPRM's discussion of the preemptive effect of § 20106 relevant to the proposed rule, we received comments from four parties: AAR, the American Association for Justice (AAJ), the Brotherhood of Locomotive Engineers and Trainmen (BLET), and the United Transportation Union (UTU). In both the May 29, 2008 meeting and written comments to the docket, AAR expressed the view that DOT's preamble discussion of the preemptive effect of the proposed rule

was correct and referred to comments it had filed in previous FRA proceedings.

Citing the 2007 amendment to § 20106, at the May 29, 2008 public meeting and in written comments, AAJ expressed the view that neither § 20106 or § 5125 authorizes preemption of state common law claims. AAJ requested that we revise the preamble discussion of preemption to delete any language regarding the preemption of state common law claims.

AAJ asserted that Federal railroad regulations ''have never lawfully preempted State law claims,'' the HMR ''do not broadly preempt state tort actions,'' and ''State common law should act in conjunction with Federal regulations to govern railroad safety issues.'' It stated that the 2007 amendment to § 20106 ''sends a loud and clear message that § 20106 in no way preempts state common law claims.'' In support of this assertion, AAJ cited several cases addressing preemption in various contexts, including an unreported Minnesota state court decision arising out of the Minot derailment, that was decided several months before the amendment, *In re Soo Line R.R. Co. Derailment of January 18, 2002 in Minot, ND,* 2006 WL 1153359. In that decision, the court found for various reasons that plaintiffs' claims were not preempted. AAJ cited *In Re Soo Line* for the case's reliance on the well-settled ''presumption against preemption'' noted in *Easterwood. See Easterwood,* 507 U.S. at 664 (noting that ''preemption will not lie unless it is the 'clear and manifest purpose of Congress.' '' citing *Rice* v. *Santa Fe Elevator Corp.,* 331 U.S. 218, 230 (1947)). AAJ's comments, however, fail to recognize that, as noted above, the Court in *Easterwood* held that federal regulations preempt state law claims, including common law claims, whenever the Secretary of Transportation has issued regulations that cover the subject matter of the state law claim. 507 U.S. at 664–65, 674. *See also* CPUC, 346 F.3d at 861. Moreover, the Court held that ''[l]egal duties imposed on railroads by the common law fall within the scope of [the] broad phrases'' of the FRSA preemption provision. *Easterwood,* 507 U.S. at 664. The 2007 amendment clarified that state tort claims are not preempted in certain circumstances; *i.e.*, when the state claim is based on the violation of the Federal standard of care, failure to comply with a plan created pursuant to a Federal requirement, or failure to comply with a State law or regulation the subject matter of which has not been covered by a Federal requirement, or if covered, is permitted under the local safety and security hazard exception requirements of § 20106.

Also citing the 2007 amendment to § 20106, BLET and UTU disagreed with our assertion that common law state tort actions are permissible for violations of internal plans, rules, or standards ''only when'' such plans, rules, or standards ''are created pursuant to Federal regulation or order issued by DOT or DHS to the minimum required by the Federal regulation or order.'' BLET and UTU requested that the preamble discussion of violations of internal plans, rules, or standards be revised to indicate that § 20106 ''permits actions for violation of an internal plan, rule, or standard that is created pursuant to a Federal regulation or order issued by DOT or DHS.''

BLET and UTU claimed that the exception to preemption in § 20106(b)(1)(B) is construed too narrowly in the NPRM because that discussion applied the exception only to State causes of action for violations of those portions of a party's plan that were minimally required by Federal regulation or order. Based upon the reading of the plain language of the statute, as well as the legislative history of the 2007 amendment, DOT respectfully disagrees with BLET and UTU comments. The exception to preemption in § 20106(b)(1)(B) is necessarily limited to those elements of a party's plan that are created pursuant to a Federal regulation or order. Plans, or provisions in a plan that are not required by a Federal regulation are not ''created pursuant to'' that regulation, and section 20106(b) does not subject parties to tort liability for failure to comply with them. BLE and UTU asserted that to construe the statute as DOT did in the NPRM would eliminate any additional liability based on compliance with a party's plan, because there would only be liability when the regulation is violated. This is incorrect. Federal regulations requiring the creation of a plan are violated if a party fails to create a plan, or to create a plan with the required elements and to abide by the required elements. Parties are also subject to tort liability for their failure to comply with any other requirements contained in the Federal regulation.

As previously noted, DOT through FRA and PHMSA has comprehensively regulated the subject matter of the transportation of hazardous materials by rail. FRA has adopted a comprehensive set of Federal regulations governing the safety of rail carrier operations (passenger and freight, including hazardous materials). Among the matters covered by FRA regulations are train speed, track and roadbed conditions, signal systems, brake system standards, hours of service requirement for railroad employees, operating practices, and drug and alcohol testing for railroad employees. See 49 CFR Parts 200–244. FRA's track safety standards (49 CFR Part 213) prescribe, among other things, maintenance and inspection requirements and maximum speeds for each class of track, and restrict the transportation of hazardous materials only on low speed excepted track. FRA's regulations are tailored to the nation's operating environment in order to provide for the safety of rail operations, including the carriage of hazardous materials, in the United States.

PHMSA has similarly adopted comprehensive Federal regulations covering all transportation of hazardous materials, including transportation by rail, in the HMR. See the discussion in the preamble to the NPRM, 73 FR at 17819. The HMR address all areas of hazardous materials transportation, including operating requirements for rail, highway, air, and vessel transportation; comprehensive rail tank car standards and rail tank car specifications (including PHMSA approval of tank car designs); training requirements for persons who prepare hazardous materials for shipment or who transport hazardous materials; security plan requirements covering the transportation of hazardous materials from origin to destination (including the selection of routes); and the reporting of hazardous materials incidents. The operating requirements for railroads include restrictions on the placement of hazardous material cars in trains.

Taken together, these regulations are intended to establish comprehensive requirements for the safe and secure rail transportation of hazardous materials. Accordingly, 49 U.S.C. 5125 and 20106 preempt any State law, regulation, or order, including State common law, concerning the hazardous material tank car packaging (*e.g.*, including, but not limited to, the design, manufacturing, maintenance, repair, and inspection of hazardous materials tank cars), and the rail transportation of hazardous materials in tank cars.

This rule on PIH tank car crashworthiness further refines DOT's comprehensive regulation of hazardous materials tank car safety, leaving no room for State statutory, regulatory, or common law standards. Accordingly, DOT contends that §§ 5125 and 20106 preempt any State law, rule, or regulation, or common law theory of liability that might purport to impose differing or more stringent standards,

rules, or regulations relevant to the design, manufacturing, construction, maintenance, repair, inspection, or transportation of hazardous materials tank cars. For example, DOT intends this rule to preempt any State law, rule or regulation, or common law theory of liability that would require a railroad, tank car owner, lessor or lessee, to utilize tank cars meeting more stringent safety requirements than those contained in the HMR.

As noted above, however, parties are encouraged to go beyond the minimum regulatory requirements in establishing and implementing plans, rules, and procedures for safe transportation operations. On subjects covered by Federal regulatory requirements, such as the rail transportation of hazardous materials, such additional requirements that a party voluntarily imposes upon itself do not establish an enforceable standard of care and, even if violated, cannot support a common law tort claim under the preemption standards and exceptions in § 20106. *See Shanklin,* 529 U.S. at 357 (finding that Federal regulations detailing what types of grade crossing warning devices must be installed under Federal program establish a ''federal standard for the adequacy of those devices that displace state tort law addressing the same subject'').

*D. Executive Order 13175*

We analyzed this rule in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this rule does not significantly or uniquely affect tribes and does not impose substantial and direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

*E. Regulatory Flexibility Act and Executive Order 13272*

To ensure potential impacts of rules on small entities are properly considered, we developed this rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities.

As discussed in earlier sections of this preamble, DOT initiated this rulemaking in response to accidents involving catastrophic failures of rail tank cars, NTSB recommendations and growing public and industry concern over the risks of transporting PIH materials by rail. In 2005 SAFETEA–LU directed the Secretary of Transportation to ''initiate a rulemaking to develop and implement appropriate design standards for pressurized tank cars.'' This rule is responsive to SAFETEA–LU's mandate, as well as recommendations of the NTSB.

In the NPRM, DOT proposed enhanced tank car performance standards for head and shell impacts; operational restrictions for trains hauling tank cars containing PIH materials; interim operational restrictions for trains hauling tank cars used to transport PIH materials, but not meeting the enhanced performance standards; and an allowance to increase the gross weight on rail of tank cars that meet the enhanced tank-head and shell puncture-resistance systems. (See section I of preamble). The current rule is a ''natural outgrowth'' of information gathered in response to the NPRM. The rule is less prescriptive and permits more operational flexibility, while making it clear that the standards set forth in this rule serve as interim standards until such time as final performance standards are developed and tank cars are available meeting such standards. The rule retains the maximum speed limit of 50 mph for all railroad tank cars used to transport PIH materials, but no longer mandates a maximum speed limit of 30 mph for PIH tank cars in non-signaled (*i.e.*, dark) territory. The rule provides for enhanced safety based on commodity specific design standards for PIH tank cars, resulting in a less burdensome policy alternative that still yields incremental improvements in safety. The rule also retains the allowance for increasing the maximum gross weight on rail of hazardous materials tank cars to 286,000 pounds. The rule further requires that tank car owners prioritize retirement or replacement of pre-1989 non-normalized steel cars when retiring or removing cars from PIH materials service. In addition, in response to industry comments, DOT is adopting a performance standard for top fittings.

DOT has considered comments submitted to the docket and at public hearings in response to the NPRM. DOT appreciates the information provided by many parties and especially notes the petitions presented by industry trade groups representing railroad and shipper entities. TFI submitted a petition, and a coalition consisting of ACC, ASLRRA, AAR, CI, and RSI separately submitted a petition. The proposed rule, and consequently the IRFA, included as part of the NPRM, have been modified as a result, as described above. In this rule, DOT has adjusted the proposals in the NPRM to reduce the impact on all entities. Given these changes, DOT is able to certify that the rule will result in ''no significant economic impact on a substantial number of small entities.'' The reasons for this certification are explained in the following section of this preamble.

I. Description of Regulated Entities and Impacts

The ''universe'' of the entities under consideration includes only those small entities that can reasonably be expected to be directly affected by the provisions of this rule. Three types of small entities are potentially affected by this rule: (1) PIH material shippers and tank car owners, (2) small railroads, and (3) a small tank car manufacturer.

''Small entity'' is defined in 5 U.S.C. 601 section 601(3) defines a ''small entity'' as having the same meaning as ''small business concern'' under § 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of ''small entities'' not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operations. The U.S. Small Business Administration (SBA) stipulates ''size standards'' for small entities. It provides that the largest a for-profit railroad business firm may be (and still classify as a ''small entity'') is 1,500 employees for ''Line-Haul Operating'' railroads, and 500 employees for ''Short-Line Operating'' railroads.[38] For PIH material shippers potentially impacted by this rule, SBA's size standard is 750 or 1,000 employees, depending on the industry the shipper is in as determined by its North American Industry Classification System (NAICS) Code. The SBA size standard for rail tank car manufacturers, under the category of ''railroad rolling stock manufacturing'', NAICS Code 336510, is 1,000 employees.

SBA size standards may be altered by Federal agencies in consultation with SBA, and in conjunction with public

[38] ''Table of Size Standards,'' U.S. Small Business Administration, January 31, 1996, 13 CFR Part 121. *See also* NAICS Codes 482111 and 482112.

comment. Pursuant to the authority provided to it by SBA, FRA has published a final policy, which formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad.[39] Currently, the revenue requirements are $20 million or less in annual operating revenue, adjusted annually for inflation. The $20 million limit (adjusted annually for inflation) is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment.[40] The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. As proposed in the NPRM, DOT is using this definition for this rulemaking.

A. Shippers

Almost all hazardous materials tank cars, including those cars that transport PIH materials, are owned or leased by shippers. DOT believes that a majority, if not all, of these shippers are large entities. As noted in the Initial Regulatory Flexibility Analysis (IRFA) prepared in support of the NPRM, DOT used data from the DOT/PHMSA Hazardous Materials Information System (HMIS) database to screen for PIH material shippers that may be small entities. The HMIS uses the SBA size standards as the basis for determining if a company qualifies as a small business. DOT also gathered data from industry trade groups such as the ACC and TFI to help identify the number of small shippers that might be affected. After identifying the set of small businesses that could potentially be impacted, DOT cross-referenced this group with *The Official Railway Equipment Register* (October, 2007) to determine if any of these actually own tank cars subject to this rule.

From the DOT/PHMSA HMIS database, and industry sources, DOT found eight small shippers that might be impacted. By further checking information available on the companies' websites, all eight shippers are noted as being subsidiaries of larger businesses. Out of these eight, however, only one owns tank cars that would be affected. The remaining seven shippers either do not own tank cars or own tank cars that would not be affected by this rule. The one remaining small shipper potentially impacted has annual revenues that exceed by 20 times the FRA size standard for a small entity. Further, although this shipper is for-profit, the parent company is a non-profit. Thus, DOT is confident that there are very few or no PIH material shippers that are small businesses affected by this rule.

Among all PIH shippers in the industry, the rule will result in approximately a 14% car replacement rate over 6 years, or 2,044 cars. The rule reduces the impact from the NPRM, which would have affected 100% of the cars. Regarding the heavier 286,000-pound cars, affecting only 14% of the cars means that older 263,000-pound cars can be used in the relatively small number of locations that cannot accept the 286,000-pound cars. In other words, by affecting a relatively small portion of the fleet, the rule allows shippers sufficient flexibility to manage their fleets in a manner that mitigates any impact. See the preamble above for a detailed discussion of the comments received regarding 286,000-pound cars. Given that there is widespread industry support for heavier cars, and industry interchange rules would have moved the industry to adopt 286,000-pound cars as standard practice in the absence of the rule, DOT does not expect the impact of the heavier cars to be significant. In addition, the rule is permissive in nature, that is, 286,000-pound cars are allowed but not mandated.

Finally, no small shippers provided any oral comments during DOT's six days of public meetings. Nor did any small shippers provide any written comments to the public docket for this rulemaking.

B. Railroads

DOT estimates that approximately 46 railroads meeting the definition of ''small entity'' as described above transport PIH materials via railroad tank car.[41] Because this rule applies to all of these railroads, we have concluded that a substantial number of small entities will be impacted.

However, the overall impact on small railroads will not be significant. All railroads that transport PIH materials via railroad tank car, including the 46 railroads identified as small entities, would still have to incur the additional expense to accommodate 286,000-pound tank cars to comply with the new AAR PIH tank car standard (*i.e.*, a 286,000-pound tank car equipped with additional head protection, thicker shell, and modified top fittings). (See the preamble above for a more detailed discussion of the new AAR PIH tank car standard.)

Recognizing the growing use of rail cars with gross weight on rail exceeding 263,000 pounds for non-hazardous commodities, such as grain, this rule provides the flexibility to design a tank car for the transportation of PIH materials weighing up to 286,000 pounds, in line with AAR's existing standard S–286 Accordingly, the actual impact of the general increase in gross weight on rail of products in this commodity group in relation to the overall transition now being completed within the industry (which has been eased by tax incentives and, in some cases, government-guaranteed loan arrangements) should not be substantial. While we recognize that some small railroads will not be able to accommodate the additional weight on some of their bridges and track, we believe that railroads that handle PIH cars have, in general, already made or are making the transition to track structures and bridges capable of handling 286,000-pound cars in line with the general movement in the industry toward these heavier freight cars. These railroads include many switching and terminal railroads that are partially or totally owned by Class 1 railroads as interline connections. These connections have previously mandated upgrading to 286,000-pound capability.

For example, in 2005, the Texas Transportation Institute reported that 42 percent of the short-line railroad miles that were operated in Texas that year had already been upgraded, nine percent would not need an upgrade, and 47 percent needed upgrading if they wanted to transport any type of 286,000-pound shipments.[42] In addition, the results of a 1998–1999 survey conducted by the ASLRRA indicated that 41 percent of respondent short-line railroads could handle 286,000-pound rail cars and 87 percent of the respondent short-line railroads indicated that they would need to accommodate 286,000-pound railcars in the future.[43] More current data from the

[39] *See* 68 FR 24891 (May 9, 2003).

[40] For further information on the calculation of the specific dollar limit, please see 49 CFR Part 1201.

[41] Data provided by Railinc, Corp. (a subsidiary of AAR) indicates that approximately 80 short-line and regional railroads transport PIH materials via railroad tank car. Of these 80 railroads, 34 are regional railroads that meet the Surface Transportation Board's definition of a Class II railroad, and thus, are not considered ''small entities'' for the purposes of this IRFA.

[42] Jeffrey E. Warner & Manuel Solari Terra, ''Assessment of Texas Short Line Railroads, '' Texas Transportation Institute (Nov. 15, 2005).

[43] The Ten-Year Needs of Short Line and Regional Railroads, Standing Committee on Rail Transportation, American Association of State Highway and Transportation Officials, Washington, DC (Dec. 1999). This report was based on a survey conducted by the ASLRRA in 1998 and 1999 with data from 1997.

ASLRRA suggests that many of the railroads needing future capability to handle 286,000-pound rail loads for this rule have been upgraded within the past two years.[44] In addition, industry comments to the NPRM support DOT's understanding that the railroads are almost all capable of transporting 286,000-pound cars.

Furthermore, as noted for Shippers above, the rule is affecting a much smaller percent of the cars (14%) than the NPRM would have, allowing the industry flexibility to route heavier cars to locations that are equipped to handle them, and use the lighter cars where needed. In general, most of the impacts will not burden the 46 small railroads potentially affected by this rule.

It should be noted that the ASLRRA represents a majority of small railroads. The ASLRRA was a co-signer in the petition to PHMSA requesting an interim PIH tank car standard with implications for car weights up to 286,000 pounds, which is the basis of this rule.

C. Manufacturers

DOT estimates that there are five tank car builders in the United States. All but one are large entities in themselves or are subsidiaries of larger conglomerates. For example, Union Tank Car Company employs about 850 people at just one plant in Louisiana. As another example, Trinity Rail Group is a subsidiary of Trinity Industries, Inc., which has 14,400 employees and about $3.9 billion in annual revenues (Trinity Rail Group has about $2.3 billion in annual revenues.) Although all of the large rail tank car manufacturers will be affected, the small manufacturer identified would likely not be significantly impacted for the following reasons. First, pressure tank car manufacturing is a very small part of this entity's business. This company offers repair, maintenance, manufacturing, and fleet management services. Fifty percent or less of this company's business is manufacturing of tank cars (an average of 40 tank cars each year); and five percent or less of such manufacturing is of pressure tank cars. In addition, this manufacturer has not built a pressure tank car in several years. The company has stated that if it were to build pressure tank cars under this rule, it would incur increased material costs, which would be passed on to the buyer. Furthermore, it would likely incur no additional design or retooling costs because it uses pre-made head-shields and could simply use thicker steel for manufacturing pressure tank cars.

Note that the rule also mitigates the economic impact by achieving additional safety by enhancing existing designs and reducing the percent of cars that will be affected as noted above.

II. Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Pipeline and Hazardous Materials Safety Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small railroads and manufacturers may be affected by the rule, none of the two groups of entities will be significantly impacted.

*F. Paperwork Reduction Act*

This final rule results in an increase in the information collection and recordkeeping burden under OMB Control Number 2137–0559, ''(Rail Carriers and Tank Car Tanks Requirements) Requirements for Rail Tank Car Tanks—Transportation of Hazardous Materials by Rail.''

Pursuant to 5 CFR 1320.8(d), PHMSA is required to provide interested members of the public and affected agencies with an opportunity to comment on information collection and recordkeeping requests. This final rule identifies a revised information collection request PHMSA will submit to the Office of Management and Budget (OMB) for approval based on the requirements in this final rule.

PHMSA developed information collection burden estimates to reflect proposals in the NPRM. Based on comments received from the affected market sector in response to the NPRM and two petitions for rulemaking, FRA and PHMSA are adopting interim standards for tank cars used to transport PIH materials and limiting the operating speeds of all loaded, placarded PIH tank cars to 50 mph. DOT intends that the standards set forth in this final rule serve as interim standards until such times as final performance standards are developed and tank cars are available meeting such standards. Therefore, PHMSA estimates that the total information collection and recordkeeping burdens for OMB Control Number 2137–0559 due to the amendments in this final rule would be as follows:

*Total Annual Number of Respondents:* 400.

*Total Annual Responses:* 16,781.

*Total Annual Burden Hours:* 3,546.

*Total Annual Burden Cost:* $220,436.25.

Direct your requests for a copy of the information collection to Deborah Boothe or T. Glenn Foster, U.S. Department of Transportation, Pipeline & Hazardous Materials Safety Administration (PHMSA), East Building, Office of Hazardous Materials Standards (PHH–11), 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–8553.

*G. Regulation Identifier Number (RIN)*

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

*H. Unfunded Mandates Reform Act*

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of 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 $141,100,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector.

This rule will not result in the expenditure of more than $141,100,000 (adjusted annually for inflation) by the public sector in any one year, and thus preparation of such a statement is not required.

*I. Environmental Assessment*

There are no significant environmental impacts associated with this final rule. In fact, as discussed in the preamble to the NPRM, the enhanced standards of this rule should have a positive impact on the environment because such standards will enhance the accident survivability of newly constructed tank cars used to transport PIH materials, thereby

[44] John Gallagher, ''Tank Car Tensions,'' Traffic World (June 19, 2006).

minimizing the possibility that PIH materials would be released from those cars.

*J. Privacy Act*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

**List of Subjects**

*49 CFR Part 171*

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

*49 CFR Part 172*

Exports, Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

*49 CFR Part 173*

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

*49 CFR Part 174*

Hazardous materials transportation, Radioactive materials, Rail carriers, Railroad safety, Reporting and recordkeeping requirements.

*49 CFR Part 179*

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

**The Rule**

■ On the basis of the foregoing, PHMSA amends title 49, Chapter I, Subchapter C, as follows:

## PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

■ 2. In § 171.7, in paragraph (a)(3), in the Table of Material Incorporated by Reference, under the entry ''Association of American Railroads,'' revise the address and add the entry ''AAR Standard S–286, Free/Unrestricted Interchange for 286,000 lbs. Gross Rail Load Cars, Adopted 2002; Revised: 2003, 2005, 2006,'' to read as follows:

**§ 171.7 Reference material.**

(a) * * *

(3) *Table of material incorporated by reference.* * * *

| Source and name of material | 49 CFR reference |
|---|---|
| * * * * * * * | |
| *Association of American Railroads*, American Railroads Building, 50 F Street, NW., Washington, DC 20001; telephone (877) 999–8824, *http://www.aar.org/publications.com*; | |
| * * * * * * * | |
| AAR Standard 286; AAR Manual of Standards and Recommended Practices, Section C, Car Construction Fundamentals and Details, Standard S–286, Free/Unrestricted Interchange for 286,000 lb Gross Rail Load Cars (Adopted 2002; Revised: 2003, 2005, 2006) | 179.13 |
| * * * * * * * | |

## PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 3. The authority citation for part 172 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

■ 4. In § 172.101:

■ a. In the Hazardous Materials Table, in Column (7), remove ''B71'' in the following entry:

Hydrogen fluoride, anhydrous

■ b. In the Hazardous Materials Table, in Column (7), remove ''B72'' in the following entries:

Acrolein, stabilized
Bromine pentafluoride
Ethyl isocyanate
Ethyleneimine, stabilized
Iron pentacarbonyl
Isobutyl isocyanate
Isopropyl isocyanate
Methoxymethyl isocyanate
Methyl chloroformate
Methyl chloromethyl ether
Methyl isocyanate
Methyl vinyl ketone, stabilized
Methylhydrazine
n-Propyl isocyanate tert-Butyl isocyanate
Toxic by inhalation liquid, N.O.S. *with an inhalation toxicity lower than or equal to 200 ml/m$^3$ and saturated vapor concentration greater than or equal to 500 $LC_{50}$*
Toxic by inhalation liquid, flammable, N.O.S. *with an inhalation toxicity lower than or equal to 200 ml/m$^3$ and saturated vapor concentration greater than or equal to 500 $LC_{50}$*
Toxic by inhalation liquid, water reactive, N.O.S. *with an inhalation toxicity lower than or equal to 200 ml/m$^3$ and saturated vapor concentration greater than or equal to 500 $LC_{50}$*
Toxic by inhalation liquid, oxidizing, N.O.S. *with an inhalation toxicity lower than or equal to 200 ml/m$^3$ and saturated vapor concentration greater than or equal to 500 $LC_{50}$*
Toxic by inhalation liquid, corrosive, N.O.S. *with an inhalation toxicity lower than or equal to 200 ml/m$_3$ and saturated vapor concentration greater than or equal to 500 $LC_{50}$*

■ c. In § 172.101, in the Hazardous Materials Table, in Column (7), remove ''B74'' in the following entries:

Allyl alcohol
Allyl chloroformate
Allylamine
Arsenic trichloride
Boron tribromide
Bromine trifluoride
n-Butyl chloroformate
n-Butyl isocyanate
Chloroacetone, stabilized
Chloroacetonitrile
Chloroacetyl chloride
2-Chloroethanal
Chloropicrin
Chloropivaloyl chloride
Chlorosulfonic acid (*with or without sulfur trioxide*)
Crotonaldehyde, stabilized

Cyclohexyl isocyanate
3, 5-Dichloro-2,4,6-trifluoropyridine
Diketene, stabilized
Dimethyl sulfate
Dimethylhydrazine symmetrical
Dimethylhydrazine unsymmetrical
Ethyl chloroformate
Ethyl chlorothioformate
Ethyldichloroarsine
Ethylene chlorohydrin
Ethylene dibromide
Hexachlorocyclopentadiene
Hydrogen cyanide, solution in alcohol *with not more than 45% hydrogen cyanide*
Isopropyl chloroformate
Methacrylonitrile, stabilized
Methanesulfonyl chloride
Methyl bromide and ethylene dibromide mixture, liquid
Methyl iodide
Methyl isothiocyanate
Methyl orthosilicate
Methyl phosphonic dichloride
2-Methyl-2-heptanethiol
Nitric acid, red fuming
Perchloromethyl mercaptan
Phenyl isocyanate
Phenyl mercaptan
Phenylcarbylamine chloride
Phosphorus oxychloride
Phosphorus trichloride
n-Propyl chloroformate
Sulfur trioxide, stabilized
Sulfuric acid, fuming with 30 percent or more free sulfur trioxide
Sulfuryl chloride
Thiophosgene
Titanium tetrachloride
Toxic by inhalation liquid, N.O.S. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 $LC_{50}$*
Toxic by inhalation liquid, flammable, N.O.S. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 $LC_{50}$*
Toxic by inhalation liquid, water reactive, N.O.S. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 $LC_{50}$*
Toxic by inhalation liquid, corrosive, N.O.S. *with an inhalation toxicity lower than or equal to 1000 ml/m³ and saturated vapor concentration greater than or equal to 10 $LC_{50}$*
Trichloroacetyl chloride
Trimethoxysilane
Trimethylacetyl chloride

■ d. The Hazardous Materials Table is amended by revising the following entries in the appropriate alphabetical sequence to read as follows:

§ 172.101 HAZARDOUS MATERIALS TABLE

| Symbols | Hazardous materials descriptions and proper shipping names | Hazard class or division | Identification numbers | PG | Label codes | Special provisions (§ 172.102) | (8) Packaging (§ 173 ***) Exceptions | Non-bulk | Bulk | (9) Quantity limitations (See §§ 173.27 and 175.75) Passenger aircraft/rail | Cargo aircraft only | (10) Vessel stowage Location | Other |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8A) | (8B) | (8C) | (9A) | (9B) | (10A) | (10B) |
| | [REVISE] | | | | | | | | | | | | |
| | | * | | * | * | * | * | | * | | * | | |
| | Acrolein, stabilized. | 6.1 | UN1092 | I | 6.1, 3 | 1, B9, B14, B30, B42, B77, T22, TP2, TP7, TP13, TP38, TP44. | None | 226 | 244 | Forbidden | Forbidden | D | 40 |
| | | * | | * | * | * | * | | * | | * | | |
| | Adhesives, *containing a flammable liquid.* | 3 | UN1133 | I | 3 | T11, TP1, TP8, TP27. | 150 | 201 | 243 | 1 L | 30 L | B. | |
| | | * | | * | * | * | * | | * | | * | | |
| + | Bromine | 8 | UN1744 | I | 8, 6.1 | 1, B9, B85, N34, N43, T22, TP2, TP10, TP12, TP13. | None | 226 | 249 | Forbidden | Forbidden | D | 12, 40, 66, 74, 89, 90 |
| | | * | | * | * | * | * | | * | | * | | |
| + | Bromine solutions | 8 | UN1744 | I | 8, 6.1 | 1, B9, B85, N34, N43, T22, TP2, TP10, TP12, TP13. | None | 226 | 249 | Forbidden | Forbidden | D | 12, 40, 66, 74, 89, 90 |
| + | Bromine solutions | 8 | UN1744 | I | 8, 6.1 | 2, B9, B85, N34, N43, T22, TP2, TP10, TP12, TP13. | None | 227 | 249 | Forbidden | Forbidden | D | 12, 40, 66, 74, 89, 90 |
| | | * | | * | * | * | * | | * | | * | | |
| | Hydrogen fluoride, anhydrous. | 8 | UN1052 | I | 8.6.1 | 3, B7, B46, B77, N86, T10, TP2. | None | 163 | 244 | Forbidden | Forbidden | D | 40 |
| | | * | | * | * | * | * | | * | | * | | |
| | Nitric oxide, compressed. | 2.3 | UN1660 | | 2.3, 5.1, 8 | 1, B77 | None | 337 | None | Forbidden | Forbidden | D | 40, 89, 90 |
| | Nitric oxide and dinitrogen tetroxide mixtures*or* Nitric oxide and nitrogen dioxide mixtures. | 2.3 | UN1975 | | 2.3, 5.1, 8 | 1, B77 | None | 337 | None | Forbidden | Forbidden | D | 40, 89, 90 |
| | | * | | * | * | * | * | | * | | * | | |
| + | Tetranitromethane | 5.1 | UN1510 | I | 5.1, 6.1 | 2, B32, T20, TP2, TP13, TP38, TP44. | None | 227 | None | Forbidden | Forbidden | D | 40, 66 |
| | | * | | * | * | * | * | | * | | * | | |

■ 5. In § 172.102, in paragraph (c)(3), Special Provisions B42, B65 and B76 are revised and Special Provisions B64, B71, B72 and B74 are removed. The revisions read as follows:

**§ 172.102 Special provisions.**

* * * * *

(c) * * *

(3) * * *

**Code/Special Provisions**

* * * * *

B42 Tank cars constructed before March 16, 2009, must have a test pressure of 34.47 Bar (500 psig) or greater and conform to Class 105J. Each tank car must have a reclosing pressure relief device having a start-to-discharge pressure of 10.34 Bar (150 psig). The tank car specification may be marked to indicate a test pressure of 13.79 Bar (200 psig).

* * * * *

B65 Tank cars constructed before March 16, 2009, must have a test pressure of 34.47 Bar (500 psig) or greater and conform to Class 105A. Each tank car must have a reclosing pressure relief device having a start-to-discharge pressure of 15.51 Bar (225 psig). The tank car specification may be marked to indicate a test pressure of 20.68 Bar (300 psig).

* * * * *

B76 Tank cars constructed before March 16, 2009, must have a test pressure of 20.68 Bar (300 psig) or greater and conform to Class 105S, 112J, 114J or 120S. Each tank car must have a reclosing pressure relief device having a start-to-discharge pressure of 10.34 Bar (150 psig). The tank car specification may be marked to indicate a test pressure of 13.79 Bar (200 psig).

* * * * *

## PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 6. The authority citation for part 173 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 7. Amend § 173.31 as follows:

■ a. Revise paragraphs (b)(6) introductory text and (e)(2)(ii); and

■ b. Add new paragraphs (e)(2)(iii) and (e)(2)(iv).

The revisions and additions read as follows:

**§ 173.31 Use of Tank Cars.**

* * * * *

(b) * * *

(6) *Scheduling of modifications and progress reporting.* The date of conformance for the continued use of tank cars subject to paragraphs (b)(4), (b)(5), and (f) of this section and § 173.314(j) is subject to the following conditions and limitations.

* * * * *

(e) * * *

(2) * * *

(ii) Each tank car constructed on or after March 16, 2009, and used for the transportation of PIH materials must meet the applicable authorized tank car specifications and standards listed in § 173.244(a)(2) or (3) and § 173.314(c) or (d).

(iii) A tank car meeting the applicable authorized tank car specifications listed in § 173.244(a)(2) or (3), or § 173.314(c) or (d) is authorized for the transportation of a material poisonous by inhalation for a period of 20 years after the date of original construction.

(iv) A tank car owner retiring or otherwise removing a tank car from service transporting materials poisonous by inhalation, other than because of damage to the car, must retire or remove cars constructed of non-normalized steel in the head or shell before removing any car in service transporting materials poisonous by inhalation constructed of normalized steel meeting the applicable DOT specification.

* * * * *

■ 7. In § 173.244, revise paragraph (a) to read as follows:

**§ 173.244 Bulk packaging for certain pyrophoric liquids (Division 4.2), dangerous when wet (Division 4.3) materials, and poisonous liquids with inhalation hazards (Division 6.1).**

* * * * *

(a) *Rail cars:* (1) Class DOT 105, 109, 112, 114, or 120 fusion-welded tank car tanks; and Class 106 or 110 multi-unit tank car tanks. For tank car tanks built prior to March 16, 2009, the following conditions apply:

(i) Division 6.1 Hazard Zone A materials must be transported in tank cars having a test pressure of 34.47 Bar (500 psig) or greater and conform to Classes 105J, 106 or 110.

(ii) Division 6.1 Hazard Zone B materials must be transported in tank cars having a test pressure of 20.68 Bar (300 psig) or greater and conform to Classes 105S, 106, 110, 112J, 114J or 120S.

(iii) Hydrogen fluoride, anhydrous must be transported in tank cars having a test pressure of 20.68 Bar (300 psig) or greater and conform to Classes 105, 112, 114 or 120.

(2) For materials poisonous by inhalation, single unit tank cars tanks built prior to March 16, 2009 and approved by the Tank Car Committee for transportation of the specified material. Except as provided in § 173.244(a)(3), tank cars built on or after March 16, 2009 used for the transportation of the PIH materials listed below, must meet the applicable authorized tank car specification listed in the following table:

| Proper shipping name | Authorized tank car specification |
|---|---|
| Acetone cyanohydrin, stabilized (Note 1) | 105J500I<br>112J500I |
| Acrolein (Note 1) | 105J600I |
| Allyl Alcohol | 105J500I<br>112J500I |
| Bromine | 105J500I |
| Chloropicrin | 105J500I<br>112J500I |
| Chlorosulfonic acid | 105J500I<br>112J500I |
| Dimethyl sulfate | 105J500I<br>112J500I |
| Ethyl chloroformate | 105J500I<br>112J500I |
| Hexachlorocyclopentadiene | 105J500I<br>112J500I |
| Hydrocyanic acid, aqueous solution*or* Hydrogen cyanide, aqueous solution*with not more than 20% hydrogen cyanide (Note 2)* | 105J500I<br>112J500I |
| Hydrogen cyanide, stabilized (Note 2) | 105J600I |
| Hydrogen fluoride, anhydrous | 105J500I<br>112J500I |
| Poison inhalation hazard, Zone A materials not specifically identified in this table | 105J600I |
| Poison inhalation hazard, Zone B materials not specifically identified in this table | 105J500I<br>112J500I |
| Phosphorus trichloride | 105J500I<br>112J500I |
| Sulfur trioxide, stabilized | 105J500I<br>112J500I |
| Sulfuric acid, fuming | 105J500I<br>112J500I |
| Titanium tetrachloride | 105J500I<br>112J500I |

**Note 1:** Each tank car must have a reclosing pressure relief device having a start-to-discharge pressure of 10.34 Bar (150 psig). Restenciling to a lower test pressure is not authorized.

**Note 2:** Each tank car must have a reclosing pressure relief device having a start-to-discharge pressure of 15.51 Bar (225 psig). Restenciling to a lower test pressure is not authorized.

(3) As an alternative to the authorized tank car specification listed in the table in paragraph (a)(2) of this section, a car of the same authorized tank car specification but of the next lower test pressure, as prescribed in column 5 of the table at § 179.101–1 of this subchapter, may be used provided that

both of the following conditions are met:

(i) The difference between the alternative and the required minimum plate thicknesses, based on the calculation prescribed in § 179.100–6 of this subchapter, must be added to the alternative tank car jacket and head shield. When the jacket and head shield are made from steel with a minimum tensile strength from 70,000 p.s.i. to 80,000 p.s.i., but the required minimum plate thickness calculation is based on steel with a minimum tensile strength of 81,000 p.s.i., the thickness to be added to the jacket and head shield must be increased by a factor of 1.157. Forming allowances for heads are not required to be considered when calculating thickness differences.

(ii) The tank car jacket and head shield are manufactured from carbon steel plate as prescribed in § 179.100–7(a) of this subchapter.

* * * * *

■ 8. Amend § 173.249 as follows:

■ a. Revise the last sentence of paragraph (a); and

■ b. Add new paragraph (g).

The revisions and additions read as follows:

**§ 173.249 Bromine.**

* * * * *

(a) * * * Tank cars must conform to the requirements in paragraphs (a) through (g) of this section.

* * * * *

(g) Except as provided in § 173.244(a)(3), tank cars built on or after March 16, 2009 and used for the transportation of bromine must meet the applicable authorized tank car specification listed in the table in § 173.244(a)(2).

■ 9. In § 173.314:

■ a. Revise paragraph (c) introductory text and the table.

■ b. Add notes 11 and 12 to the end of paragraph (c).

■ c. Add a new paragraph (d).

The revisions and additions read as follows:

**§ 173.314 Compressed gases in tank cars and multi-unit tank cars.**

* * * * *

(c) *Authorized gases, filling limits for tank cars.* A compressed gas in a tank car or a multi-unit tank car must be offered for transportation in accordance with § 173.31 and this section. The gases listed below must be loaded and offered for transportation in accordance with the following table:

| Proper shipping name | Outage and filling limits (see note 1) | Authorized tank car class (see note 11) | Authorized tank car specification (see note 12) |
|---|---|---|---|
| Ammonia, anhydrous, or ammonia solutions > 50 percent ammonia. | Notes 2, 10 | 105, 112, 114, 120 | 105J500I, 112J500I |
| | Note 3 | 106 | |
| Ammonia solutions with > 35 percent, but ≤ 50 percent ammonia by mass. | Note 3 | 105, 109, 112, 114, 120. | |
| Argon, compressed | Note 4 | 107. | |
| Boron trichloride | Note 3 | 105, 106. | |
| Carbon dioxide, refrigerated liquid | Note 5 | 105. | |
| Chlorine | Notes 6, 13 | 105 | 105J600I |
| | 125 | 106. | |
| Chlorine trifluoride | Note 3 | 106, 110. | |
| Chlorine pentafluoride | Note 3 | 106, 110. | |
| Dimethyl ether | Note 3 | 105, 106, 110, 112, 114, 120. | |
| Dimethylamine, anhydrous | Note 3 | 105, 106, 112. | |
| Dinitrogen tetroxide, inhibited | Note 3 | 105, 106, 112 | 105J500I |
| Division 2.1 materials not specifically identified in this table. | Notes 9, 10 | 105, 106, 110, 112, 114, 120. | |
| Division 2.2 materials not specifically identified in this table. | Note 3 | 105, 106, 109, 110, 112, 114, 120. | |
| Division 2.3 Zone A materials not specifically identified in this table. | None | See § 173.245. | 105J600I |
| Division 2.3 Zone B materials not specifically identified in this table. | Note 3 | 105, 106, 110, 112, 114, 120. | 105J600I |
| Division 2.3 Zone C materials not specifically identified in this table. | Note 3 | 105, 106, 110, 112, 114, 120. | 105J500I |
| Division 2.3 Zone D materials not specifically identified in this table. | Note 3 | 105, 106, 109, 110, 112, 114, 120. | 105J500I, 112J500I |
| Ethylamine | Note 3 | 105, 106, 110, 112, 114, 120. | |
| Helium, compressed | Note 4 | 107. | |
| Hydrogen | Note 4 | 107. | |
| Hydrogen chloride, refrigerated liquid | Note 7 | 105 | 105J600I, 112S600I |
| Hydrogen Sulphide | Note 3 | 105, 106, 110, 112, 114, 120. | 105J600I |
| Hydrogen sulphide, liquefied | 68 | 106. | |
| Methyl bromide | Note 3 | 105, 106 | 105J500I |
| Methyl chloride | Note 3 | 105, 106, 112. | |
| Methyl mercaptan | Note 3 | 105, 106 | 105J500I |
| Methylamine, anhydrous | Note 3 | 105, 106, 112. | |
| Nitrogen, compressed | Note 4 | 107. | |
| Nitrosyl chloride | 124 | 105 | 105J500I |
| | 110 | 106. | |
| Nitrous oxide, refrigerated liquid | Note 5 | 105. | |
| Oxygen, compressed | Note 4 | 107. | |
| Phosgene | Note 3 | 106. | |
| Sulfur dioxide, liquefied | 125 | 105, 106, 110 | 105J500I |

| Proper shipping name | Outage and filling limits (see note 1) | Authorized tank car class (see note 11) | Authorized tank car specification (see note 12) |
|---|---|---|---|
| Sulfuryl fluoride | 120 | 105. | |
| Vinyl fluoride, stabilized | Note 8 | 105. | |

**11. For materials poisonous by inhalation, the single unit tank car tanks authorized are only those cars approved by the Tank Car Committee for transportation of the specified material and built prior to March 16, 2009.

12. Except as provided by paragraph (d) of this section, for materials poisonous by inhalation, fusion-welded tank car tanks built on or after March 16, 2009 used for the transportation of the PIH materials noted, must meet the applicable authorized tank car specification and must be equipped with a head shield as prescribed in § 179.16(c)(1).

(d) *Alternative tank car tanks for materials poisonous by inhalation.* (1) As an alternative to the authorized tank car specification noted in the column 4 of the table in paragraph (c) of this section, a car of the same authorized tank car specification but of the next lower test pressure, as prescribed in column 5 of the table at § 179.101–1, may be used provided both of the following conditions are met:

(i) The difference between the alternative and the required minimum plate thicknesses, based on the calculation prescribed in § 179.100–6 of this subchapter, is added to the alternative tank car jacket and head shield. When the jacket and head shield are made from any authorized steel with a minimum tensile strength from 70,000 p.s.i. to 80,000 p.s.i., but the required minimum plate thickness calculation is based on steel with a minimum tensile strength of 81,000 p.s.i., the thickness to be added to the jacket and head shield must be increased by a factor of 1.157. Forming allowances for heads are not required to be considered when calculating thickness differences as prescribed in this paragraph.

(ii) The tank car jacket and head shield must be manufactured from carbon steel plate as prescribed in § 179.100–7(a) of this subchapter.

* * * * *

(k) *Special requirements for chlorine.* (1) Tank cars built after September 30, 1991, must have an insulation system consisting of 5.08 cm (2 inches) glass fiber over 5.08 cm (2 inches) of ceramic fiber.

(2) Tank cars must have excess flow valves on the interior pipes of liquid discharge valves.

(3) Tank cars constructed to a DOT 105A500W specification and authorized for chlorine service prior to March 16, 2009 may be marked as a DOT 105A300W specification with the size and type of reclosing pressure relief valves required by the marked specification.

(4) Except as provided in § 173.314(d), tank cars constructed after March 16, 2009 and used for the transportation of chlorine must meet the authorized tank car specification listed in the table in paragraph (c) of this section. These tank cars may be equipped with a pressure relief device of the size and type authorized in paragraph (k)(3) of this section. Restenciling to a lower test pressure is not authorized.

* * * * *

■ 10. In § 173.323, revise paragraph (c)(1) to read as follows.

**§ 173.323 Ethylene Oxide.**

* * * * *

(c) * * *

(1) *Tank cars.* Class DOT 105 tank cars:

(i) Each tank car built before March 16, 2009 must have a tank test pressure of at least 20.7 Bar (300 psig); and

(ii) Except as provided in § 173.314(d), tank cars built on or after March 16, 2009 used for the transportation of ethylene oxide must meet the applicable authorized tank car specification listed in the table in § 173.314(c).

* * * * *

## PART 174—CARRIAGE BY RAIL

■ 11. The authority citation for part 174 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 12. Add new § 174.2 to read as follows:

**§ 174.2 Limitation on actions by states, local governments, and Indian tribes.**

Sections 5125 and 20106 of Title 49, United States Code, limit the authority of states, political subdivisions of states, and Indian tribes to impose requirements on the transportation of hazardous materials in commerce. A state, local, or Indian tribe requirement on the transportation of hazardous materials by rail may be preempted under either 49 U.S.C. 5125 or 20106, or both.

(a) Section 171.1(f) of this subchapter describes the circumstances under which 49 U.S.C. 5125 preempts a requirement of a state, political subdivision of a state, or Indian tribe.

(b) Under the Federal Railroad Safety Act (49 U.S.C. 20106), administered by the Federal Railroad Administration (*see* 49 CFR parts 200 through 244), laws, regulations and orders related to railroad safety, including security, shall be nationally uniform to the extent practicable. A state may adopt, or continue in force, a law, regulation, or order covering the same subject matter as a DOT regulation or order applicable to railroad safety and security (including the requirements in this subpart) only when an additional or more stringent state law, regulation, or order is necessary to eliminate or reduce an essentially local safety or security hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not unreasonably burden interstate commerce.

■ 13. Revise § 174.86 to read as follows:

**§ 174.86 Maximum allowable operating speed.**

(a) For molten metals and molten glass shipped in packagings other than those prescribed in § 173.247 of this subchapter, the maximum allowable operating speed may not exceed 24 km/hour (15 mph) for shipments by rail.

(b) For trains transporting any loaded, placarded tank cars containing a material poisonous by inhalation, the maximum allowable operating speed may not exceed 80.5 km/hour (50 mph) for shipments by rail.

## PART 179—SPECIFICATIONS FOR TANK CARS

■ 14. The authority citation for part 179 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128; 49 CFR part 1.53.

■ 15. Add new § 179.8 to read as follows:

**§ 179.8 Limitation on actions by states, local governments, and Indian tribes.**

Sections 5125 and 20106 of Title 49, United States Code, limit the authority of states, political subdivisions of states, and Indian tribes to impose

requirements on the transportation of hazardous materials in commerce. A state, local, or Indian tribe requirement on the transportation of hazardous materials by rail may be preempted under either 49 U.S.C. 5125 or 20106, or both.

(a) Section 171.1(f) of this subchapter describes the circumstances under which 49 U.S.C. 5125 preempts a requirement of a state, political subdivision of a state, or Indian tribe.

(b) Under the Federal Railroad Safety Act (49 U.S.C. 20106), administered by the Federal Railroad Administration (see 49 CFR parts 200–244), laws, regulations and orders related to railroad safety, including security, shall be nationally uniform to the extent practicable. A state may adopt, or continue in force, a law, regulation, or order covering the same subject matter as a DOT regulation or order applicable to railroad safety and security (including the requirements in this subpart) only when an additional or more stringent state law, regulation, or order is necessary to eliminate or reduce an essentially local safety or security hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not unreasonably burden interstate commerce.

■ 16. Revise § 179.13 to read as follows:

**§ 179.13 Tank car capacity and gross weight limitation.**

(a) Except as provided in paragraph (b) of this section, tank cars built after November 30, 1970, may not exceed 34,500 gallons (130,597 L) capacity or 263,000 pounds gross weight on rail. Existing tank cars may not be converted to exceed 34,500 gallons capacity or 263,000 pounds gross weight on rail.

(b) Tank cars meeting the applicable authorized tank car specifications listed in § 173.244(a)(2) or (3), or § 173.314(c) or (d) may not exceed 34,500 gallons (130,597 L) capacity or 286,000 pounds (129,727 kg) gross weight on rail. Tank cars exceeding 263,000 pounds and up to 286,000 pounds gross weight on rail must meet the requirements of AAR Standard S–286, Free/Unrestricted Interchange for 286,000 Lb Gross Rail Load Cars (IBR; *see* § 171.7 of this subchapter), except that any increase in weight above 263,000 may not be used to increase commodity quantity.

■ 17. In § 179.22, add paragraph (e) to read as follows:

**§ 179.22 Marking.**

* * * * *

(e) Each tank car manufactured after March 16, 2009 to meet the requirements of § 173.244(a)(2) or (3) or § 173.314(c) or (d) shall be marked with the letter ''I'' following the test pressure instead of the letter ''W''. (Example: DOT 105J600I).

■ 18. In § 179.100–3, add paragraph (b) to read as follows:

**§ 179.100–3 Type.**

* * * * *

(b) Head shields and shells of tanks built under this specification must be normalized. Tank car heads must be normalized after forming unless specific approval is granted for a facility's equipment and controls.

■ 19. Add § 179.102–3 to read as follows:

**§ 179.102–3 Materials poisonous by inhalation.**

(a) Each tank car built after March 16, 2009 for the transportation of a material poisonous by inhalation must, in addition to the requirements prescribed in § 179.100–12(c), enclose the service equipment within a protective housing and cover.

(1) Tank cars must be equipped with a top fitting protection system and nozzle capable of sustaining, without failure, a rollover accident at a speed of 9 miles per hour, in which the rolling protective housing strikes a stationary surface assumed to be flat, level and rigid and the speed is determined as a linear velocity, measured at the geometric center of the loaded tank car as a transverse vector. Failure is deemed to occur when the deformed protective housing contacts any of the service equipment or when the tank retention capability is compromised.

(2) As an alternative to the tank car top fitting protection system requirements in paragraph (a)(1) of this section, the tank car may be equipped with a system that prevents the release of product from any top fitting in the case of an accident where any top fitting would be sheared off. The tank nozzle must meet the performance standard in paragraph (a)(1) of this section and only mechanically operated excess flow devices are authorized.

(b) An application for approval of a tank car built in accordance with § 173.244(a)(3) or § 173.314(d) must include a demonstration, through engineering analysis, that the tank jacket and support structure system, including any anchors and support devices, is capable of withstanding a 6 mile per hour coupling without jacket shift such that results in damage to the nozzle.

■ 20. In § 179.102–17, add a new paragraph (m) to read as follows:

**§ 179.102–17 Hydrogen chloride, refrigerated liquid.**

* * * * *

(m) Except as provided in § 173.314(d), tank cars built on or after March 16, 2009 used for the transportation of hydrogen chloride, refrigerated liquid, must meet the applicable authorized tank car specification listed in § 173.314(c).

Issued in Washington, DC on December 23, 2008, under the authority delegated in 49 CFR Part 106.

**Carl T. Johnson,**

*Administrator.*

[FR Doc. E8–31056 Filed 1–12–09; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Tuesday,
January 13, 2009

# Part III

# Federal Trade Commission

## 16 CFR Parts 3 and 4
## Rules of Practice; Final Rule

**FEDERAL TRADE COMMISSION**

**16 CFR Parts 3 and 4**

**Rules of Practice**

**AGENCY:** Federal Trade Commission (''Commission'' or ''FTC'').

**ACTION:** Interim final rules with request for comment.

**SUMMARY:** The FTC is amending Parts 3 and 4 of its Rules of Practice, 16 CFR Parts 3 and 4, in order to further expedite its adjudicative proceedings, improve the quality of adjudicative decision making, and clarify the respective roles of the Administrative Law Judge (''ALJ'') and the Commission in Part 3 proceedings.

**DATES:** These interim final rules are effective on January 13, 2009. These amendments will govern all Commission adjudicatory proceedings that are commenced after January 13, 2009 The rules that were in effect before January 13, 2009 will govern all currently pending Commission adjudicatory proceedings. Written comments must be received on or before February 12, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Parts 3 and 4 Rules of Practice Rulemaking - P072104'' to facilitate the organization of comments. Please note that comments will be placed on the public record of this proceeding—including on the publicly accessible FTC website at (*http://www.ftc.gov/os/publiccomments.shtm*) — and therefore should not include any sensitive or confidential information. In particular, comments should not include any sensitive personal information, such as an individual's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records and other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. * * *,'' as provided in Section 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1]

Because paper mail in the Washington area, and specifically to the FTC, is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-part3rules*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-part3rules*). If this document appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *www.ftc.gov* to read this document and the news release describing it.

A comment filed in paper form should include the ''Parts 3 and 4 Rules of Practice Rulemaking - P072104'' reference both in the text and on the envelope, and should be mailed or delivered by courier to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex R), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

[1] 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:** Michael D. Bergman, Attorney, (202) 326-3184, or Lisa M. Harrison, Attorney, (202) 326-3204, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington DC 20580.

**SUPPLEMENTARY INFORMATION:** This discussion contains the following sections:

I. Overview of Proposal and Comments Received
II. Section-by-Section Analysis of Interim Final Rule Revisions
III. Invitation to Comment
IV. Interim Final Rule Revisions

## I. Overview of Proposal and Comments Received

In its October 7, 2008, Notice of Proposed Rulemaking (''NPRM''),[2] the Commission invited public comment on proposed amendments to its Rules of Practice governing formal adjudicatory (''Part 3'') proceedings. This public comment period closed on November 6, 2008. The Commission observed in the NPRM that it has periodically engaged in reform efforts to minimize delay and improve the quality of the administrative decisionmaking process in a fair manner fully consistent with the Administrative Procedure Act (''APA'')[3] without prejudicing the due process rights of the parties in these proceedings. Past reforms and the ones proposed in the NPRM have primarily dealt with the long-standing concerns of the courts and the bar that the Commission's Part 3 adjudicatory process has been too protracted.[4]

In merger cases, parties frequently argue that drawn out proceedings will result in their abandoning transactions before the antitrust merits can be adjudicated and indeed the protracted nature of Part 3 proceedings has contributed to the reluctance of some federal courts to grant preliminary relief in merger cases brought under Section

[2] 73 FR 58832 (Oct. 7, 2008).

[3] 5 U.S.C. 551 *et seq.*

[4] *See, e.g.*, *FTC v. Freeman Hosp.*, 911 F. Supp. 1213, 1228 n.8 (W.D. Mo. 1995) (''The average time from the issuance of a complaint by the FTC to an initial decision by an administrative law judge averaged nearly three years in 1988. Moreover, additional time will be required if that initial decision is appealed.''), *aff'd*, 69 F.3d 260 (8th Cir. 1995); *see also National Dynamics Corp. v. FTC*, 492 F.2d 1333, 1335 (2d Cir. 1974) (remarking upon the ''leisurely course typical of FTC proceedings''); J. Robert Robertson, *FTC Part III Litigation: Lessons from Chicago Bridge and Evanston Northwestern Healthcare*, **20 ANTITRUST 12** (Spring 2006); *Report of the American Bar Association Section of Antitrust Law Special Committee to Study the Role of the Federal Trade Commission*, **58 ANTITRUST L.J. 43**, 116 n.167 (1989) (''It is disappointing that the Commission * * * continues to have problems of delay.'').

13(b) of the FTC Act, 15 U.S.C. 53(b). Moreover, protracted Part 3 proceedings do not necessarily result in decisions that are more just or fair, and instead may result in substantially increased litigation costs for the Commission and respondents whose transactions or practices are challenged. For example, protracted discovery schedules and pretrial proceedings can result in nonessential discovery and motion practice that can be very costly to the Commission, respondents, and third parties.

One of the most critical advantages of administrative adjudications, and a cornerstone characteristic of administrative agencies, is expertise. As detailed more fully in the NPRM, the Congress and the Executive have long recognized that the ability of administrative agencies to apply their expertise and to devote substantial resources to complex problems calling for specialized knowledge is a critical advantage and an important reason for the creation of those agencies.[5] In creating the Commission, Congress intended the agency to use its substantive expertise and administrative adjudicative authority as a ''uniquely effective vehicle for the development of antitrust law in complex settings in which the agency's expertise [could] make a measurable difference,''[6] as well as to apply its specialized knowledge to consumer protection matters. Certainty and quality in Commission opinions could serve not only to improve the resolution of individual cases, but to provide broad guidance to industry and the public and help set the policy agenda.[7] With its expertise and unique institutional tools, the Commission was created to be—and continues to function as—a forum for expert adjudication.

The Commission also recognizes that the APA and the **ATTORNEY GENERAL'S FINAL REPORT**[8] contemplated an important role for the hearing examiner (the predecessor of the ALJ) in the adjudicatory process when acting as the presiding official to preside over prehearing proceedings, hear evidence and issue an initial decision.[9] Under the APA, the ALJ's authority is, however, ''subject to the published rules of the agency,'' a qualification which ''is intended to make clear the authority of the agency to lay down policies and procedural rules which will govern the exercise of such powers by [ALJs].''[10] Thus, while the Commission's rules provide the presiding ALJ with necessary tools to ''conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order,''[11] and with important duties including initial fact finding responsibilities, the ALJ must ultimately adhere to Commission decisions. The Commission believes the rules issued in this notice strike the appropriate balance between the important role played by the ALJ and the need to apply the Commission's expertise.

The proposed amendments announced in the October 7, 2008, NPRM were the culmination of a recent broad and systematic internal review to improve the Commission's Part 3 practices and procedures in light of recent adjudicatory experiences. The Commission undertook this effort in order to improve the Part 3 process through a comprehensive review, rather than piecemeal modifications of a limited number of rules, which would ensure that the rules are consistent with one another and that they are workable in practice. Input was obtained from various bureaus and offices within the Commission and staff further reviewed the APA's legal standards, the rules and procedures of the federal courts, and other agencies' adjudicative procedures.

The Commission intended for the proposed amendments to balance three important interests: the public interest in a high quality decisionmaking process, the interests of justice in an expeditious resolution of litigated matters, and the interest of the parties in litigating matters without unnecessary expense. For example, in principle, expedited adjudications, while maintaining the high quality of the proceeding, may impose costs on the parties or the agency that they may not need bear if the demands of a given case permit a more leisurely adjudicative process. Alternatively, attempts to increase efficiency or decrease costs to those involved could lead to trade offs in the quality of the ultimate result.

The most significant of the proposals in the NPRM included tighter time limits during the adjudicatory process leading up to the issuance of the initial decision, changes to ensure that the Commission can appropriately apply its legal and policy expertise earlier in the adjudicatory process, reforms in discovery and motions practice, the streamlining and expedition of evidentiary hearings, and a change in the Commission's process for handling motions to dismiss or to withdraw a case from administrative adjudication after a federal court's denial of a preliminary injunction in an action brought by the Commission.

The Commission received eight comments on the proposed amendments from seven individuals or entities: a joint comment from Robert Pitofsky[12] and Michael N. Sohn,[13] the Section of Antitrust Law of the American Bar Association (''Section''), Whole Foods Market, Inc. (''Whole Foods'') (two comments), Linda Blumkin,[14] the Chamber of Commerce of the United States of America (''Chamber''), Stephen Nagin,[15] and Richard Hallberg. Some commenters endorsed the objectives of the Commission's proposed amendments. The Section commented that it ''supports the Commission's efforts to expedite certain adjudicative proceedings, improve the quality of its adjudicative decision making, and clarify the respective roles'' of the Commission and the ALJ. The Pitofsky-Sohn comment noted that ''expediting Part 3 proceedings is a step in the right direction.''

But these and other commenters objected to various specific proposals and the absence of any proposal that would set a deadline on the Commission itself, in particular:

(i) the proposed time limits did not set deadlines for the Commission to resolve appeals from initial decisions; (ii) the time limits imposed on ALJs were too rigid and might deprive respondents in some proceedings of their due process right to be heard; (iii) the proposals enabled the Commission to decide dispositive motions while a case is pending before an ALJ and would, therefore, undermine the ALJ's

[5] **FINAL REPORT OF THE ATTORNEY GENERAL'S COMMITTEE ON ADMINISTRATIVE PROCEDURE 16** (1941) [hereinafter **ATTORNEY GENERAL'S FINAL REPORT**]; *see also* Marc Winerman, *The Origins of the FTC: Concentration, Cooperation, Control, and Competition*, **71 ANTITRUST L.J. 15** (2003) (discussing the formation and history of the FTC); D. Bruce Hoffman & M. Sean Royall, *Administrative Litigation at the FTC: Past, Present, and Future*, **71 ANTITRUST L.J. 319** (2003) (discussing the evolution of administrative adjudication at the FTC).

[6] *Hoffman & Royall*, *supra* note 5, at 319-20.

[7] *Id.*

[8] *See supra* note 5.

[9] *See* 5 U.S.C. 556(c).

[10] **ATTORNEY GENERAL'S MANUAL ON THE ADMINISTRATIVE PROCEDURE ACT 74-75** (1947) [hereinafter **ATTORNEY GENERAL'S MANUAL**]; *see also Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978) (holding that agencies have discretion to enact procedures where Congress provided agencies with ''the responsibility for substantive judgments.'').

[11] 16 CFR 3.42(c).

[12] Counsel to Arnold & Porter LLP and Sheehy Professor of Trade Regulation Law, Georgetown University Law Center. Mr. Pitofsky served as Chairman of the Commission and previously held other positions in the agency.

[13] Senior Partner, Arnold & Porter LLP and former General Counsel of the Commission.

[14] Former Assistant Director for General Litigation in the Bureau of Competition.

[15] Nagin, Gallup & Figueredo, PA.

independence; (iv) the Commission was changing its policy on when it would pursue a case after a denial of a preliminary injunction; and (v) the proposed rule explicitly stating that the Commission or a designated Commissioner could oversee portions of the pretrial process infringed on the ALJ's independence. Several commenters argued that the 30-day comment period was inadequate.

*i) Deadlines on Commission decision making.*

Upon consideration of the various comments, the Commission agrees that the proposed rules should set deadlines on the Commission to act on appeals of initial decisions. The Commission is now adopting in Rule 3.52 tight deadlines on its resolution of appeals. For cases in which the Commission seeks preliminary relief under Section 13(b) of the FTC Act, 15 U.S.C. 53(b), there will be automatic Commission review of the initial decision (*i.e.*, no notice of appeal will need to be filed), briefing will be completed within 45 days of the issuance of the initial decision, and the Commission will commit to issue its final decision within 45 days of oral argument (*i.e.*, within 100 days of the initial decision).[16] For all other cases, an appealing party will need to file its objections to the initial decision by filing a notice of appeal, all briefing will be completed within 67 days of the initial decision, and the Commission will commit to issue its final decision within 100 days of oral argument (*i.e.*, within six months of the initial decision).

Consistent with the need for expedited procedures, the Commission is also setting deadlines for when it must rule on dispositive motions, applications for interlocutory appeals, and motions to dismiss after the denial of a preliminary injunction.

*ii) Deadlines leading up to Initial Decision.*

The comments filed so far do not persuade the Commission that its default timing deadlines are unfair. Comments that the revised rules would unduly limit respondents' ability to engage in adequate discovery or develop their defenses, and, hence, would violate their right to due process, have yet to provide support for this argument. The APA does not expressly require discovery. *See McClelland v. Andrus*, 606 F.2d 1278, 1285 (D.C. Cir. 1979). Although ''discovery must be granted if in the particular situation a refusal to do so would so prejudice a party as to deny him due process,'' *id.* at 1286, it is difficult to see how the five and eight month deadlines from complaint to hearing, and the duration of pretrial discovery imposed by Rule 3.11(b), fail to satisfy due process. The comments thus far fail to demonstrate that respondents would not have adequate time to pursue broad discovery. Indeed, the revised rules allow the parties to move for more time upon a showing of good cause. Antitrust cases in federal court, such as the government's monopoly case against Microsoft and its merger case against Oracle, have gone to trial on roughly similar schedules, suggesting the reasonableness of such time frames.[17]

Further, the criticism in the comments received thus far that the time limits are too short fails to give adequate weight to provisions that authorize the Commission to grant extensions for ''good cause.'' The Commission anticipates that this authority will be used sparingly but is determined to use this authority whenever necessary to ensure that the parties have adequate time to prepare for trial and to present their case.

*iii) Dispositive motions.*

Commenters' concerns about the role of the Commission in deciding legal and policy issues early in the proceeding have not demonstrated that early Commission involvement improperly interferes with the independence of the ALJ. This is especially true in view of the role that Congress envisioned for the Commission as an expert adjudicator. Moreover, as explained in the analysis of Rule 3.22, while the APA does confer a variety of powers on the ALJ primarily during and after the conduct of the evidentiary hearing, this does not include the authority to rule on prehearing motions that turn on legal and policy determinations.[18] Rather, the ALJ's authority to rule on such motions depends on whether an agency has provided the ALJ with this power in an agency rule. Commission Rule 3.22 previously granted ALJ's this power, and the Commission plainly has the authority to limit it.

*iv) 1995 Policy Statement and procedures related to Part 3 proceedings following denial of a preliminary injunction.*

The Commission has adopted its proposal to amend Rule 3.26 to eliminate automatic withdrawals from adjudication or stays of Part 3 proceedings when a party files a motion for withdrawal or to dismiss based on the denial of a preliminary injunction in an ancillary federal court action brought by the Commission. The Commission, however, has also amended the Rule to promote more prompt consideration of whether to proceed with Part 3 by providing for the filing of such motions long before the Commission has an opportunity to exhaust its appeals as provided in the previous Rule, and has also set a 30-day deadline for the Commission to decide such motions. The Commission also reaffirms in this document its adherence to its 1995 Policy Statement calling for a case-by-case analysis of whether the Commission should pursue Part 3 litigation after it loses a preliminary injunction.[19]

*v) The proposed amendment providing express authority for the Commission or a Commissioner to preside over prehearing procedures.*

Commenters criticized as infringing on the independence of the ALJ proposed Rule 3.42(a) that would have made explicit the authority of the Commission or one of its members to preside over discovery or certain other prehearing procedures before transferring the matter to the ALJ. The Commission or its members have the authority to preside over prehearing procedures under the APA, 5 U.S.C. 556(b), as well as unamended Rule 3.42, and the collection of rule revisions adopted today reduce the need for early Commission involvement in case management. For these reasons, and to ensure there is no public misperception that the proposed revision unfairly enlarged the Commission's authority, the Commission has decided not to adopt the proposed revision to this rule.

*vi) Improving Part 3 litigation while protecting the rights of the parties.*

Upon consideration of all the comments received so far, the Commission believes that the rules will improve the Part 3 litigation process. The timing deadlines, while aggressive, are consistent with the manner in which federal courts can move in complex antitrust cases, and parties can seek to extend them when necessary. The rules

[16] The timing deadlines for the Commission's decisions on appeal or review, as with other rule deadlines, are subject to the timing requirements in Rule 4.3(a), which addresses, *inter alia*, when deadlines fall on a weekend or holiday.

[17] *See, e.g., United States v. Microsoft*, 253 F.3d 34 (D.C. Cir. 2001); *United States v. Oracle Corp.*, 331 F. Supp. 2d 1098 (N.D. Cal. 2004).

[18] For example, the APA authorizes the ALJ to ''dispose of procedural requests or similar matters'' during the hearing, subject to the published rules of the agency. 5 U.S.C. 556(c)(9).

[19] 60 FR 39741 (Aug. 3, 1995).

bring the Commission's expertise to bear sooner in the process, which can be expected to streamline cases, especially where the principal issue is legal not factual, while ensuring that the ALJs will continue to play the dominant role in managing the litigation and overseeing the evidentiary hearing.

*vii) Comment periods.*

As stated in the NPRM, the Commission sought public comment even though the proposed rule revisions relate solely to agency practice, and thus are not subject to the notice and comment requirements of the APA, 5 U.S.C. 553(b)(A). The Commission has been well served by the public comment period and the quality of many of the criticisms and suggestions undercuts the argument of some commenters that the 30-day comment period was too short. In any event, the rule amendments published in this notice are being issued only on an interim basis, and any rules that the Commission re-promulgates after the current comment period are not necessarily permanent. Instead, the Commission is instructing its internal Standing Committee on the Part 3 rules, as announced in the NPRM, to make recommendations bi-annually to the Commission on the need for changes to the Part 3 rules, including the rule revisions that become effective today and any rules that the Commission re-promulgates after the current comment period.

In view of the many modifications and additions to rule amendments proposed in the NPRM and described in Part II of this document, the Commission is requesting further comments on its adjudicatory reforms. The Commission will consider comments on any of the rule revisions issued today, but will especially welcome comment on any amendments that were not proposed in the NPRM.

The comments are addressed in more detail in the following section-by-section analysis of the interim final rule revisions.[20]

## II. Section-by-Section Analysis of Interim Final Rule Revisions

### Subpart A—Scope of Rules; Nature of Adjudicative Proceedings

*Section 3.1: Scope of the rules in this part.*

The proposed amendment would have allowed the ALJ or the Commission to shorten time periods set by the Rule, provided that the shortened time periods would not unfairly prejudice any party. This authority is intended for use in proceedings where expedited procedures would serve the public interest (*e.g.*, unconsummated mergers) or where the issues do not require elaborate discovery or evidentiary hearings (*e.g.*, cases where the parties agree that a copious evidentiary record already exists that merely needs to be supplemented). In response to a comment, the Commission is amending the Rule to provide that the ALJ or the Commission may shorten time periods with the consent of the parties. Because consent will be required, the Commission is eliminating as unnecessary the qualifications that the shortening of a time period must not ''unfairly prejudice any party'' and not violate a party's legal rights. The Commission has also amended the Rule to state that the Part 3 rules generally apply only to ''formal'' adjudicative proceedings, *i.e.*, those actions that are governed by the adjudicatory provisions of the APA, 5 U.S.C. 554, 556-57.

*Section 3.2: Nature of adjudicative proceedings.*

The Commission proposed technical revisions to this Rule that would clarify that Commission consideration of consent orders—in addition to negotiations of consent orders—are not adjudicative proceedings. The proposed changes also omitted from the list of excluded items proceedings under specific statutes that have rarely occurred in recent decades. No comments were received on the proposed revisions, and the Commission adopts them as proposed.

### Subpart B—Pleadings

*Section 3.11: Commencement of proceedings.*

The Commission proposed amending Rule 3.11(b) to specify that the actual date for the evidentiary hearing would be five months from the date the complaint is issued in merger cases and eight months from the date of the complaint in all other cases, while allowing the Commission discretion to determine a different date for the evidentiary hearing when it issues the complaint. The Commission would also be able to extend the date of the evidentiary hearing upon a good cause showing by movants, as set out in proposed Rule 3.21(c).

The Section and Whole Foods asserted that the five and eight month deadlines, along with the deadlines in other rules, are ''one-size-fits-all'' rules. These comments overlooked the Commission's ability to extend the hearing date for all types of cases where a party can show that it needs more time to prepare for trial. The Commission, in its discretion, could also consider other factors in determining whether to find good cause to extend the hearing date, for example, if a respondent agrees not to consummate a merger that has not been enjoined by a court during the pendency of the Part 3 proceeding.

The Section stated further that the five month deadline for consummated merger cases ''may be appropriate in some cases and not in other cases'' and that ''whether the matter was the subject of a preliminary injunction hearing'' should be one of the factors considered in setting the hearing date for consummated mergers. The Commission believes this comment has merit and is revising the Rule so that only those cases in connection with which the Commission has sought or is seeking relief under Section 13(b) of the FTC Act[21] will be subject to the five month deadline, unless of course the Commission sets a different date for the evidentiary hearing when it issues the complaint.The eight month deadline will apply to all other cases unless the Commission sets a different deadline when it issues the complaint. For example, it is possible that the Commission might set a consummated merger case, that was not the subject of a Section 13(b) action, under the five month schedule if an expedited schedule would be in the public interest.

The Commission typically seeks preliminary injunctive relief under Section 13(b) when it challenges an unconsummated merger, and the Part 3 proceedings in these cases are frequently the ones that are most in need of expedition. As noted above, parties have argued that protracted proceedings for merger cases could result in their abandoning transactions before their antitrust merits can be adjudicated. The interim final Rule, like the proposed Rule, provides the Commission discretion to determine a different date for the evidentiary hearing when it issues the complaint, and Rule 3.21(c) provides that the Commission

[20] The final rule amendments are not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2) or the requirements of the Paperwork Reduction Act, 44 U.S.C. 3518(c)(1)(B)(ii); 5 CFR 1320.4 (exempting information collected during the conduct of administrative proceedings or investigations).

[21] 15 U.S.C. 53(b).

may subsequently extend the date of the hearing upon a good cause showing by movants.

The Chamber and Whole Foods asserted that rules expediting proceedings may violate due process if they deny respondents a fair opportunity to develop their defense. Whole Foods stated further that the deadlines favor complaint counsel because respondents do not share complaint counsel's power to obtain fact discovery during the pre-complaint investigation conducted pursuant to Part 2 of the Commission's Rules of Practice.[22] The five and eight month pretrial periods, however, should provide sufficient time for respondents to obtain discovery. Rule 3.31(a) requires both complaint counsel and respondent's counsel to make comprehensive initial disclosures within five days of receipt of respondent's answer to the complaint. These disclosures include documents complaint counsel has obtained from third parties, subject to the limitations on discovery in Rule 3.31(c)(2). The rules allow respondents to serve immediately on other parties interrogatories and requests for production of documents. Further, the rules allow respondents to issue immediately subpoenas for discovery, subject to the restrictions of Rules 3.36 and 3.31(c)(2). In the unlikely event that a respondent does not have adequate time for discovery, the respondent may file a motion with the Commission to delay the hearing date.

Further, the APA does not expressly provide for discovery, and as at least two appellate courts have observed:

> The extent of discovery to which a party to an administrative proceeding is entitled is primarily determined by the particular agency. . . . [C]ourts have consistently held that agencies need not observe all the rules and formalities applicable to courtroom proceedings. If an agency has adopted rules providing for discovery in its proceedings, the agency is bound by those rules and must ensure that its procedures meet due process requirements.[23]

As demonstrated above, and based on the comments received thus far, the five and eight month deadlines more than satisfy due process requirements because respondent will have ample time for broad discovery and a respondent may also move for more time upon a showing of good cause under Rule 3.21(c).

The deadlines in Rule 3.11 are similar to the schedules established in some complex antitrust cases in federal district court, some of which have gone to trial in five months or less.[24] Moreover, other federal agencies provide limits on the pretrial process. For example, the Securities and Exchange Commission (''SEC'') puts cases on one of three tracks when it issues an order instituting administrative proceedings. For the longest track, SEC rules require that the hearing commence approximately four months from the date of the order.[25]

In contrast to the concerns raised by the Chamber and Whole Foods, the Section supported a far more accelerated pretrial schedule for unconsummated mergers. The Section advocated a five month period from complaint issuance to *final Commission order* for these cases. The Section's recommendation was based on its concern, shared by the Pitofsky-Sohn comment, that the proposed rules ''will not expedite Part 3 proceedings nearly enough to make them practicable for unconsummated mergers.''[26]

The Commission also proposed deleting Rule 3.11(c), which allowed the respondent to file a motion for more definite statement. These motions are seldom filed and even less likely to be granted because Commission complaints are typically very detailed. Moreover, under previous Rule 3.12, if a respondent elected to file a motion for more definite statement, the motion tolled the deadline for the answer to the complaint and would result in substantial delay in the proceedings. As noted below, respondents may still raise similar objections in a motion to dismiss. The Commission therefore adopts this change.

*Section 3.12: Answer.*

Proposed Rule 3.12(a) shortened the deadline for filing an answer from 20 to 14 days. The Section opposed a reduction in the time to answer the complaint, arguing that complaints can be very detailed and that respondents need adequate time to analyze the factual and legal allegations to respond properly, while the time saved by the Rule is modest. The Commission continues to believe, however, that 14 days to answer the complaint are sufficient for respondents who have become familiar with the issues during the Part 2 precomplaint investigation. While the Section argues that Part 2 ''is not a substitute for'' Part 3 proceedings and that respondents often are not made aware of ''the full range of facts'' or gain a complete understanding of the Commission's legal theory during Part 2, the fact remains that very few, if any, Part 3 cases are ever initiated without the respondent having had extensive meetings with the Commissioners and staff. By the time the Commission issues a complaint, the parties should be well aware of the agency's factual and legal assertions. Further, if necessary, the Commission may exercise its authority to extend the 14 days for good cause. *See* Rule 4.3(b). The Commission is adopting the revision as proposed.

Proposed Rule 3.12(a) also eliminated the provision in the Rule that allowed the filing of any motion to toll the deadline for respondents to file an answer to the complaint.[27] The Commission was concerned that this provision too broadly permitted the filing of any motion, regardless of its merit or requested relief, to substantially delay the beginning of the Part 3 proceeding. The Section objected that no answer should be required until, at least, resolution of a motion for a more definite statement or to strike that challenges the sufficiency of a complaint. The Commission notes that its complaints tend to be highly detailed and that motions for a more definite statement are rarely filed and more rarely granted. Respondents may, however, always file a motion to dismiss to challenge the sufficiency of the complaint if necessary. The revisions to Rule 3.12(a) will ensure an earlier prehearing conference, earlier discovery, and will expedite the ultimate resolution of the proceeding. The Commission adopts the revisions to Rule 3.12(a) as proposed.

The Commission also proposed in Rule 3.12(b) and (c) to eliminate the ALJ's authority to render an initial decision when the allegations of the complaint are admitted or there is a default. In those cases, the Commission would issue a final decision on the basis of the facts alleged in the complaint. While the Section suggested that a decision by an independent ALJ can be useful even without a record to review, the Commission believes that in these

[22] 16 CFR 2.1 *et seq.*

[23] *Pacific Gas & Elec. Co. v. FERC*, 746 F.2d 1383, 1387-88 (9th Cir. 1984) (citing *McClelland v. Andrus*, 606 F.2d 1278, 1285 (D.C. Cir. 1979)).

[24] *See, e.g., United States v. Microsoft*, 253 F.3d 34 (D.C. Cir. 2001); *United States v. Oracle Corp.*, 331 F. Supp. 2d 1098 (N.D. Cal. 2004).

[25] 17 CFR 201.360(a)(2).

[26] Both sets of comments noted that the proposed Rule fails to address a substantial source of delay—the time it takes the Commission to issue a final decision. As discussed below in the analysis of Rule 3.52, the Commission is responding to this concern by adopting rules that will expedite Commission review of initial decisions in all cases.

[27] This provision had been added by the Commission in its 2001 Rule amendments. *See* 66 FR 17622 (Apr. 3, 2001).

circumstances cases can be resolved more expeditiously without the intermediate step of an ALJ's initial decision; the only issues in such cases are legal or policy ones, in which the Commission's expertise is most relevant. The proposed revisions are adopted.

**Subpart C—Prehearing Procedures; Motions: Interlocutory Appeals; Summary Decisions**

*Rule 3.21: Prehearing procedures.*

The Commission proposed amendments to Rule 3.21 that would impose tighter deadlines on prehearing procedures. No comments on this Rule were received, and the Commission adopts the rule revisions as proposed. Rule 3.21(a) requires that the parties' initial meet-and-confer session take place within five days of the answer and requires the parties to discuss electronically stored information (''ESI'') at that time, including the scope of and the time period for the exchange of ESI and the format for exchanging such information. This change is intended to help expedite the case and facilitate resolution of production issues in ways that minimize costs. Rule 3.21(a) is also modified by deleting a phrase that suggested the parties should discuss a proposed hearing date because that date will already have been set by the Commission when it issued the complaint and the date can be modified only by the Commission upon a showing of good cause. Rule 3.21(a), as amended, specifies broad subjects to be discussed at the parties' meet-and-confer session(s) before the scheduling conference.

Rule 3.21(b) advances the deadline for the scheduling conference from 14 days after the answer is filed to 10 days after the answer is filed. Although the Commission extended the deadline to 14 days in 2001,[28] it believes the ten day deadline is reasonable for most cases. The Rule includes additional items to be discussed at the scheduling conference, such as stages of the proceeding that may be expedited. Under the Rule, the Commission contemplates that the parties will inform the ALJ of the results of their initial meeting(s) regarding their proposed discovery plan, including the disclosure of ESI, and that the ALJ will incorporate in the scheduling order a discovery plan that he or she deems appropriate.

Rule 3.21(c)(1) specifies that the ALJ's scheduling order will establish a schedule of proceedings that will permit the evidentiary hearing to commence on the date set by the Commission. The Rule also states that the Commission may, upon a showing of good cause, order a later date for the evidentiary hearing than the one specified in the complaint. The deadline for the prehearing scheduling conference and order and the more detailed requirements for both are intended to help keep the prehearing proceedings on track and enable the parties to contribute to a high quality record on which the ALJ can base his or her decisions.

Rule 3.21(c)(2) authorizes the ALJ to extend, upon a showing of good cause, any deadline in the scheduling order other than the date of the evidentiary hearing. Rule 3.21(f) states that the ALJ shall hold additional prehearing and status conferences or enter additional orders as may be needed to ''ensure the just and expeditious disposition of the proceeding and to avoid unnecessary cost.'' These revisions give the ALJ substantial flexibility and discretion to manage particular cases.

*Section 3.22: Motions.*

The proposed revision to Rule 3.22(a) provided that the Commission would resolve in the first instance motions to strike, motions for summary decision, and prehearing motions to dismiss, but provided the Commission discretion to refer the motion to the ALJ and to set a deadline in which the ALJ must rule on the motion. Significantly, the Section acknowledged in its comment that ''[e]arlier Commission involvement [to resolve dispositive motions] will undoubtedly result in more efficient resolution of these issues. Moreover, it will allow the Commission to apply its antitrust expertise to matters at an earlier stage. Delay occasioned by an erroneous ALJ decision on a dispositive motion * * * provides little benefit and exacts a toll on all participants in the process.''

Nonetheless, commenters (including the Section) criticized the proposed Rule change as unfairly invading the province of the independent ALJ and compromising the Commission's dual roles as prosecutor and adjudicator. For example, the Section argued that the proposed changes, while ''likely [to] reduce or avoid delay,'' could raise concerns about the impartiality and fairness of the Part 3 proceeding by permitting the Commission to adjudicate dispositive issues, including motions to dismiss challenging the facial sufficiency of a complaint, shortly after the Commission has voted out the complaint finding that it has ''reason to believe'' there was a law violation, without the benefit of an opinion by an independent ALJ. The Section added that, while ''it may sometimes be desirable for the Commission to address dispositive motions in the first instance, changing the Part 3 rules to make that the default procedure is unnecessary,'' and that ''concern about improving the quality of Commission decisions is better addressed by enhancing the antitrust expertise of the ALJs.'' The Pitofsky-Sohn comment similarly argued that the proposed rules, including Rule 3.22, would arguably infringe on the fairness of the Part 3 proceeding if the Commission more frequently ''invades what has heretofore been the province of an independent ALJ.'' Whole Foods argued that the rule change would compromise the independence of the ALJ, who will lose the opportunity to ''live with the case,'' will not write his initial decision on a ''clean slate,'' but will be unduly influenced by the ''entirely transparent views of the Commission delivered on less than a full record,'' and will lose his ability to effectively manage discovery. The Chamber and Blumkin comments similarly argued that this change would compromise the ALJ's independent decision making role.

Commenters, however, provided essentially no legal support for their argument that the Commission's resolution of dispositive motions in the first instance will unfairly prejudice litigants in Part 3 proceedings or would violate the APA. Most important, these comments failed to undermine the central premise supporting the rule change: that the Commission has the authority and expertise to rule initially on dispositive motions and that doing so will improve the quality of the decisionmaking and (as acknowledged by the Section) will expedite the proceeding.[29] This is because an erroneous decision by the ALJ on a dispositive motion dismissing the complaint may lead to unnecessary briefing, hearing, and reversal, resulting in substantial costs and delay to the litigants. Moreover, the APA does not confer on an ALJ the specific authority to rule on dispositive motions, and indeed, permits the Commission or Commissioners to act as presiding officers. *See* 5 U.S.C. 556(b).[30] It is

[28] *Id.*

[29] The Commission has in recent practice retained jurisdiction to resolve legal issues raised in a dispositive motion. *See, e.g., In re S. Carolina State Bd. of Dentistry*, 136 F.T.C. 229 (2004) (Commission retained jurisdiction to hear motions to dismiss and denied at that stage respondent's legal defense that its alleged unlawful activities were protected by the state action doctrine).

[30] Under the APA, the Commission or one of its Commissioners may take evidence at the hearing, 5 U.S.C. 556(b), and the Commission, on appeal or

Continued

therefore hard to see how allowing the Commission to rule on dispositive motions deprives an ALJ of the independence conferred by the APA or is unfair to the parties.

Codifying this approach will likely expedite the proceedings and save litigants resources to the extent the case is dismissed or the issues narrowed by the resolution of the legal or public interest issue. For example, a Commission order denying a motion to dismiss can articulate the legal standard to be applied to the facts alleged in the complaint and can be a useful tool to apply as facts are developed during discovery.[31]

Concerns raised by the Section that this rule change will result in ''the practical unavailability of a motion to dismiss'' because the Commission had just previously found there to be a ''reason to believe'' there was a law violation, are without support and are refuted by recent Commission practice.[32] Further, the logic of the argument about the benefit of delaying the Commission's involvement with the legal issues in a case would cast doubt on any effort to significantly reduce the time it takes for a case to reach the Commission for a final decision on both the law and the facts of the case. Indeed, the Section's proposal that the Commission issue a final decision in all unconsummated merger cases within five months after issuance of the complaint would have the Commission resolve the facts and law of the case within a few months after it voted to bring the case.

The Commission also proposed in paragraph (a) that rulings on motions to dismiss based on the alleged failure to establish a *prima facie* case would be deferred until after the hearing record is closed, and eliminated the provision in the previous Rule for a recommended ruling by the ALJ when certifying to the Commission a motion outside his or her authority to decide. The Commission received no comments on these proposals and they have been adopted as proposed.

Proposed paragraph (b) required that proceedings before the ALJ not be stayed during the Commission's consideration of the motion, unless otherwise ordered by the Commission. The Commission has revised the caption of paragraph (b) to ''Proceedings not stayed,'' to more accurately describe the subject matter of the paragraph. Proposed paragraph (e) required the ALJ to decide all motions within 14 days of the filing of all motion papers unless otherwise provided by rule or if the Commission extends the time for good cause. The purpose of proposed paragraph (b) was to ensure that discovery and other prehearing proceedings continue while the Commission deliberates over the dispositive motions, and paragraph (e) is similarly intended to expedite the proceedings. The Section objected that eliminating the stay for pre-answer motions will result in inadequate review of the sufficiency of a complaint, but as explained above, the Commission's complaints tend to be highly detailed and, in any event, respondents retain the right to challenge the sufficiency of a complaint by filing a motion to dismiss. Except for the revision of the caption of paragraph (b), paragraphs (b) and (e) are adopted as proposed.

The Section commented, however, that by not staying the Part 3 case during the pendency of a dispositive motion before the Commission and with no deadlines imposed on the Commission to resolve such motions, litigants (and the ALJ) will be disadvantaged by not knowing the precise scope of the issues to be addressed at the hearing or, indeed, whether there will be any hearing at all. The Commission agrees and has therefore revised paragraph (a) to require that the Commission resolve any dispositive motion within 45 days of the filing of the motion papers unless it finds there to be good cause for an extension. In those cases where the Commission grants a dispositive motion, that decision will constitute the agency's final decision in the case, and this 45 day period for deciding dispositive motions is therefore the same amount of time as the Commission has allocated for issuing its final decision following oral argument in cases where the Commission has sought relief under Section 13(b).

Proposed paragraph (c) also imposed word count limits on motion papers. Briefs in support of, and in opposition to, dispositive motions were to be limited to 10,000 words (approximately 40 double-spaced pages), and briefs in support of, and in opposition to, non-dispositive motions were limited to 2,500 words (approximately 10 double-spaced pages). The Commission received no comments on these word count limitations and they have been adopted as proposed.

Proposed paragraph (d) provided an automatic right of reply in support of dispositive motions, stated that reply and surreply briefs in support of non-dispositive motions ''shall be permitted only in circumstances where the parties wish to draw the ALJ's or the Commission's attention to recent important developments or controlling authority that could not have been raised earlier in the party's principal brief,'' and imposed a five day filing deadline for any authorized reply to a motion. No comments were received on these provisions and they are adopted as proposed.

The other proposed changes to Rule 3.22, such as eliminating previous paragraph (e) and redesignating previous paragraph (f) as paragraph (g), generated no comments and are adopted.

*Section 3.23: Interlocutory appeals.*

The Commission proposed amendments to Rule 3.23 that would expedite consideration by the ALJ and the Commission of certain applications by a party that seek discretionary review of an interlocutory ruling by the ALJ. As noted in the NPRM, the proposal left unchanged in paragraph (a) the types of rulings that the parties can ask the Commission to review without a determination by the ALJ that interlocutory review is appropriate.

In paragraph (b), the proposal continued to allow applications for interlocutory review of other rulings only on a determination that the ruling ''involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation or subsequent review will be an inadequate remedy.'' In order to reduce delay, the Commission proposed requiring the ALJ to make his or her determination whether the application for review involves such a controlling question within three days after the filing by a party of a request for such a determination. The revision eliminated the requirement that the ALJ provide a

review, may make its own legal determinations and *de novo* factual findings from the hearing record. *See, e.g.*, 5 U.S.C. 557(b) (''On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.'').

[31] Whole Foods mistakenly asserted that by deciding dispositive motions, such as motions for summary decision, the Commission will be taking away the independent role of the ALJ to interpret facts and parse the evidentiary record. On the contrary, such motions inherently do not resolve factual disputes, but rather resolve legal or policy issues where there are no genuine issues of material facts in dispute. This commenter acknowledged that motions raising ''purely legal defenses'' might be appropriate for the Commission to resolve.

[32] *See, e.g., S. Carolina State Bd. of Dentistry*, 136 F.T.C. 229 (denying respondent's motion to dismiss on state action grounds, but refusing to deny respondent's motion to dismiss on mootness grounds as urged by complaint counsel in favor of remanding to ALJ for limited discovery on mootness issue).

written justification for his or her determination. It also allowed the party to file its application for review with the Commission if the ALJ does not make a timely ruling on its request for a determination on the appropriateness of review. The Commission adopts these revisions as proposed.

Because the pendency of an application for review may leave a cloud over the proceeding before the ALJ, paragraph (d) of the proposed Rule would have treated the failure of the Commission to act within three days as a denial of the application. As suggested by the Section's comment, the Commission has eliminated this default provision and the Rule now requires instead that the Commission decide whether to entertain an appeal within three days after the filing of the answer to the application. The Commission has also adopted the Section's suggestion that the Rule make explicit that the denial of an application does not constitute a ruling on the merits of the appeal.

Also, to avoid unnecessary delay, the proposed Rule set shorter deadlines than the previous Rule for the filing of applications and answers and, to reduce burdens, imposed tighter limits than the previous Rule on the length of these filings. No comments were received on these provisions and the Commission has adopted them.

*Section 3.24: Summary decisions.*

Proposed paragraph (a), in conjunction with proposed Rule 3.22, was revised to permit the Commission in the first instance to resolve dispositive motions unless referred by the Commission to the ALJ. This proposal was criticized by many of the commenters as improperly infringing on the independence of the ALJ. These commenters asserted that, after the Commission issues a complaint, it should not intervene in the Part 3 proceedings until after the ALJ has conducted the Part 3 hearing and issued an initial decision. As noted in the analysis of Rule 3.22, the Commission may properly make initial rulings on dispositive motions presenting legal or public interest issues and doing so does not infringe on the ALJ's ability to preside over the evidentiary hearing and issue an initial decision.

Proposed paragraph (a) also required that summary decision motions be filed no later than 30 days before the evidentiary hearing instead of 20 days as in the unamended Rule. The proposed Rule also extended the deadline for filing affidavits in opposition to a summary decision motion from 10 to 14 days in order to provide the nonmoving party more time to oppose the motion where the moving party may have had months in which to prepare its summary decision brief and supporting papers. No comments were received on these proposals and they are therefore being adopted.

Proposed paragraph (a) also eliminated the previous 30 day deadline for ruling on a motion for summary decision but allowed the Commission to set a deadline for a decision when referring such a motion to the ALJ. As discussed above, several commenters complained that the lack of a Commission deadline to rule on dispositive motions while the Part 3 case is proceeding may unfairly prejudice litigants who do not know if or how the issues will be narrowed before the beginning of the evidentiary hearing. In response, in Rule 3.22 the Commission has imposed on itself a 45 day deadline to resolve dispositive motions. As noted earlier, this 45 day period for deciding dispositive motions is the same amount of time as the Commission has allocated for issuing its final decision following oral argument in cases where the Commission has sought relief under Section 13(b).

Finally, commenter Nagin suggested that, where an affidavit in support of or in opposition to a motion for summary decision is filed in bad faith, the list of possible disciplinary actions under Rule 3.24(b) be expanded, from ''reprimand, suspension or disbarment'' to include ''notice to all professional licensing, registration and certification entities to which a lawyer is subject to discipline.'' The Commission has the authority to refer unethical conduct to state bar associations and does not believe that a special provision for this is needed in the Rule on summary decisions.

*Section 3.26: Motions following denial of preliminary injunctive relief.*

Rule 3.26 was first adopted in connection with a 1995 Policy Statement, which explained that the Commission takes a case-by-case approach in deciding whether to pursue administrative litigation of a merger case following the denial of a preliminary injunction in federal court.[33] Many commenters objected to the Commission's proposal to eliminate provisions in the Rule for automatic withdrawals from adjudication or stays when a party moves for withdrawal or to dismiss after the Commission loses a motion for preliminary injunction in a merger case. Several commenters argued that the Commission should not pursue administrative litigation in merger cases if it loses its application for a preliminary injunction. Of course, if the Commission were to adopt a policy uniformly disclaiming any intent to pursue the Part 3 adjudication on the merits after losing a preliminary injunction, there would be no need for Rule 3.26 at all. The Commission does not choose to take that approach and instead adheres to the case-by-case approach of the 1995 Policy Statement.

Several comments argued that, by stating in the NPRM that continuation of the Part 3 adjudication after loss of a preliminary injunction should be the ''norm,'' the Commission's proposed amendment amounted to a reversal of its 1995 Policy Statement. According to that Statement,

> [I]t would not be in the public interest to forego an administrative trial solely because a preliminary injunction has been denied. Nor would it be in the public interest to require an administrative trial in every case in which a preliminary injunction has been denied. Thus, a case-by-case determination is appropriate. This approach gives the Commission the opportunity to assess such matters as (i) the factual findings and legal conclusions of the district court or any appellate court, (ii) any new evidence developed during the course of the preliminary injunction proceeding, (iii) whether the transaction raises important issues of fact, law, or merger policy that need resolution in administrative litigation, (iv) an overall assessment of the costs and benefits of further proceedings, and (v) any other matter that bears on whether it would be in the public interest to proceed with the merger challenge.[34]

The 1995 Statement, however, offered no view on whether the typical outcome of a case-by-case analysis would be to continue or to abandon Part 3 litigation. The Pitofsky-Sohn comment states that ''articulating such a 'norm' leaves the impression that the Commission will take little or no notice of what preliminary injunction courts have to say'' and points out that the NPRM was ''silent with respect to whether any or all of the factors [listed in the 1995 Statement and quoted above] will continue to be considered.''

The Commission continues to consider the five factors as highly relevant to any determination whether to proceed with Part 3 and anticipates that the parties will address them in their motion papers and, if a motion for withdrawal is granted, in their presentations during the time the case is

[33] 60 FR 39741 (1995).

[34] *Id.* at 39743.

withdrawn. The Commission, of course, will also continue to consider carefully the rulings by the district court and any appellate court rulings in deciding whether to proceed with Part 3. In this connection, the Commission urges parties to address anything in the judicial rulings that they believe is relevant to the public interest in further proceedings. Besides the factors listed in the 1995 Policy Statement, this would include, for example, a discussion of whether any judicial ruling on the merits of the challenge to the merger was based on a determination that the Commission had not even raised ''questions going to the merits so serious, substantial, difficult and doubtful as to make them fair ground for thorough investigation, study, deliberation and determination by the FTC in the first instance and ultimately by the Court of Appeals,'' the test articulated in such decisions as *FTC v. H.J. Heinz Co.*[35] and *FTC v. Whole Foods Market, Inc.*[36] for whether the Commission had made a sufficient showing of likelihood of success on the merits to warrant preliminary injunctive relief. Such a determination would itself raise serious questions about whether the Part 3 case should continue.

Although the Commission will maintain the case-by-case approach outlined in the 1995 Statement, this approach does not warrant the delays that result from automatic withdrawals or stays. The Commission, however, is committed to a prompt and careful consideration of the public interest and has accordingly added a requirement that it rule on motions to dismiss or for withdrawal from adjudication not later than 30 days after the filing of motion papers.

The Commission is making another change to the proposed amendment to ensure prompt consideration of the public interest in proceeding with the Part 3 litigation. Proposed paragraph (b) would have made explicit a requirement in the original Rule[37] that a motion to dismiss or for withdrawal be filed only after the exhaustion of appeals from the district court's denial of the preliminary injunction. This restriction could prevent the filing of motions to dismiss or for withdrawal from adjudication under this Rule until many months after the district court decision. In order to allow much more prompt consideration of the public interest in determining whether to proceed with the Part 3 case, the Commission has revised paragraph (b) to authorize the filing of a motion to dismiss or for withdrawal at any time within 14 days after, but not earlier than, a court of appeals has denied a Commission request for an injunction or stay pending appeal. For cases in which the Commission has not sought relief from the court of appeals within seven days following the denial of a preliminary injunction, the Rule revision authorizes the filing of a motion to dismiss or for withdrawal at any time within 14 days after the district court denies a Commission request for preliminary relief.

**Subpart D—Discovery; Compulsory Process**

*Section 3.31: General discovery provisions.*

The Commission proposed to revise Rule 3.31(b) to specify that the documents to be disclosed as part of the parties' mandatory initial disclosures include declarations or affidavits, as well as transcripts of investigational hearings and depositions, and that initial disclosures also include ESI. The reference to ESI would update the term ''data compilations'' and would parallel the 2006 amendment to Fed. R. Civ. P. 26(a)(1)(B). The proposed limitations on disclosure of ESI in Rule 3.31(c)(3) follow Fed. R. Civ. P. 26(b)(2)(B). In particular, the proposed provision in Rule 3.31(c)(3) that a party need not provide discovery of ESI from sources that the party identifies as not reasonably accessible because of undue burden or cost is anticipated to reduce delays and costs to the parties. There were no comments on these revisions and the Commission adopts them as proposed. As discussed below, the Commission also proposed to treat expert discovery in a new Rule 3.31A, thereby eliminating the provisions in paragraphs (b) and (c) governing expert discovery.

The proposed revisions to Rule 3.31(c)(2) would limit the scope of discovery for complaint counsel, respondents, and third parties who receive a discovery request. Complaint counsel would only need to search for materials that were collected or reviewed in the course of the investigation of the matter or prosecution of the case and that are in the possession, custody, or control of the Bureaus or Offices of the Commission that investigated the matter, including the Bureau of Economics. The ALJ could authorize for good cause additional discovery of materials in the possession, custody, or control of those Bureaus or Offices, or authorize other discovery pursuant to Rule 3.36. Neither complaint counsel, respondent, nor a third party receiving a discovery request under the rules would be required to search for materials generated and transmitted between an entity's counsel (including counsel's legal staff or in-house counsel) and not shared with anyone else, or between complaint counsel and non-testifying Commission employees, unless the ALJ determines there is good cause to provide such materials.

The Section argued that requiring respondents to satisfy the ''heightened requirements'' of good cause for agency materials that fall outside these limits could create a disparity in substantive outcomes in Part 3 proceedings and those in federal court. In fact, however, the proposed rule is similar to the restrictions on discovery in the Federal Rules of Civil Procedure. The Section admitted that ''the FRCP generally limit the discovery of evidence that is duplicative, privileged, or work product.'' As the Commission stated in the NPRM, the materials excluded by the proposed rule are frequently duplicative and almost always protected by the deliberative process or attorney-client privileges or as work product. In the rare event that material excluded by the proposed rule is not duplicative, privileged or work product, it should not be difficult for respondent to satisfy a good cause standard or the requirements of Rule 3.36. Moreover, any alleged disadvantage for respondents is offset by the corresponding limitations on discovery of materials held by respondents and third parties. The Commission is adopting the revisions to Rule 3.31(c)(2) as proposed.

Proposed Rule 3.31(d) would require the ALJ to issue the standard protective order set forth in an appendix to the Rule. The Section argued that the parties should be able to negotiate orders suited to the needs of the particular case. These negotiations, however, can substantially delay discovery, prevent the Commission from protecting confidential material in a uniform manner in all Part 3 cases, and reduce the confidence of third party submitters that their confidential submissions will be protected.

The Section specifically objected to a provision that would prohibit disclosure of confidential discovery materials to a respondent's in-house counsel. It asserted that, in many cases, this restriction would inhibit a respondent's ability to defend itself. The Commission's statutory obligation to maintain the confidentiality of

[35] 246 F.3d 708, 714-15 (D.C. Cir. 2001).

[36] No. 07-5276, 2008 U.S. App. LEXIS 24092, at *10 (D.C. Cir. Nov. 21, 2008) (Brown, J.); *id.* at *30 (Tatel, J., concurring).

[37] *See* 60 FR 39640, 39641; *In re Equitable Resources, Inc.*, No. 9322, 2007 F.T.C. LEXIS 49 (May 30, 2007).

commercially sensitive information,[38] however, raises serious questions about the wisdom of allowing disclosure of information in its custody to in-house counsel, who might intentionally or unintentionally use it for purposes other than assisting in respondent's representation, for example, by making or giving advice about the company's business decisions.[39] The Commission believes it is not sound policy to allow third party competitively sensitive information to be delivered to people who are in a position to misuse such information, even if inadvertently.

The proposed standard protective order covered ''sensitive personal information,'' which includes, but is not limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identified[40] by individual, such as an individual's medical records. The Commission is retaining this provision, and as discussed below, is making further conforming amendments to Rule 3.45, which will accord *in camera* treatment if such material is to be introduced as evidence or otherwise used in the proceeding. Likewise, the Commission is amending Rule 4.2, as explained further below, to govern the use of sensitive personal information in filings to the Commission.

The Nagin comment suggested several modifications to the standard protective order, including barring disclosure of confidential material to anyone affiliated with or employed ''directly or indirectly'' by a respondent, requiring notice if a party receives a discovery request from another government agency without regard to whether the request is part of an agency ''proceeding,'' and adding specific requirements for the disposition of electronically stored discovery materials at the end of the proceeding. It also recommended that parties maintain logs of all recipients of confidential discovery materials.

Although the term ''proceeding'' is broad enough to encompass government investigations, the Commission is revising paragraph 11 of the standard order to apply to discovery requests ''received in any investigation or in any other proceeding or matter.'' The Commission, however, is not convinced that the comment's other recommended modifications are needed to protect confidential discovery material.

The Commission has also eliminated paragraph (g) from the previous Rule. This paragraph applied to applications for the issuance of subpoenas to compel testimony at an adjudicative hearing pursuant to Rule 3.34. Because the Commission has amended Rule 3.34 to eliminate such applications, this paragraph is unnecessary.

Rule 3.31(g) (proposed Rule 3.31(h)), as revised, addresses the resources used to avoid the risk of privilege and work product waiver, which add to the costs and delay of discovery. The risk of waiver, and the time and effort needed to avoid it, are aggravated when the party is producing ESI. The proposed amendment would limit the risk of waivers resulting from inadvertent disclosures as long as parties take reasonable measures to protect privileged materials. The proposal did not address obligations imposed by state bar rules on attorneys who receive materials that appear to be subject to a privilege claim.

The FTC Act requires the Commission to protect ''privileged or confidential'' information.[41] By providing that the Commission will not treat genuinely inadvertent disclosures as waivers of privilege claims, the proposed amendment, together with the relevant provisions of the FTC Act, was intended to assure respondents and third parties alike that if otherwise privileged materials are held by the FTC, those materials will not readily find their way into the public record. In this regard, the protective order expressly includes privileged information in the order's definition of ''confidential materials'' subject to the protective order. No comments were received on the provision regarding inadvertent disclosure, and the Commission adopts it as proposed.

Rule 3.31(h) (proposed Rule 3.31(i)), as revised, prohibits the filing of discovery materials with the Office of the Secretary, the ALJ, or otherwise providing such materials to the Commission, except when used to support or oppose a motion or to offer as evidence. This change is similar to Fed. R. Civ. P. 5(d), which generally prohibits the filing of discovery material unless ordered by the court or used in the proceeding. No comments were received on this provision and the Commission adopts it as proposed.

*Section 3.31A: Expert discovery.*

Proposed Rule 3.31A mandated a schedule for the disclosure of potential expert witnesses, the production of expert reports, and the start and completion of expert depositions. The proposed Rule also incorporated and revised certain provisions contained in previous Rule 3.31(b) and (c). As discussed below, the Commission is revising the Rule to expressly address respondent's ability, in limited circumstances, to call surrebuttal witnesses and to file surrebuttal reports. The Commission is adopting the remaining provisions of Rule 3.31A as proposed.

The scheduling provisions in the Rule will provide for expert discovery in a more orderly and expeditious manner than what has occurred in past proceedings by not permitting expert discovery to begin until fact discovery is essentially completed. The Commission believes that discovery of experts, including the production of expert reports, will be less than thorough if facts potentially relevant to their opinions have yet to be discovered. The Rule requires the parties to serve each other with a list of experts that they intend to call at the hearing no later than one day after the close of fact discovery. Commenter Nagin asserted that requiring respondents to disclose their expert witnesses at the close of fact discovery invades the work product of respondents. The disclosure of expert witnesses is necessary, however, to allow the parties to prepare for depositions and to engage in other discovery relevant to that witness.

The Rule also limits the number of expert witnesses to five per side. The Section claimed that the revision should allow each party to call five experts, instead of limiting the number of experts to five per ''side.'' It has been the Commission's experience, however, that five expert witnesses per side is sufficient for each party to present its case in the vast majority of cases. The Rule also has a safety valve that allows a party to seek leave to call additional expert witnesses in extraordinary circumstances.

The Rule requires that each expert who will testify at the evidentiary hearing produce a written report, thereby eliminating the ALJ's authority to dispense with them. Preparation of a written expert report is a common requirement in federal courts and, given the Commission's goal of expedited proceedings, will be required during the

[38] *E.g.*, FTC Act 6(f), 15 U.S.C. 46(f).

[39] Although protective orders could limit in-house counsel's access only to less sensitive third party information, third party submitters during a Part 2 investigation could only guess what degree of protection would eventually be afforded their confidential information in a subsequent Part 3 proceeding.

[40] The final version of the standard protective order substitutes ''identifiable'' for ''identified.''

[41] FTC Act, 6(f), 21(d)(1)(B), 15 U.S.C. 46(f), 57b-2(d)(1)(B).

discovery period to allow the parties more effective and targeted discovery. Paragraph (c) of the Rule specifies additional requirements for expert reports, including ''a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding 4 years.'' The Nagin comment argued that every expert should be required to maintain a database with substantial information about his or her testimony in other proceedings. This suggestion overlooks the fact that individuals may serve as experts in proceedings in other forums before being asked to be an expert in a Commission Part 3 matter. An FTC rule could not require individuals to ''maintain'' such information when they are not involved in Commission proceedings, and to require an individual to create such a database once they are selected as an expert for a Part 3 matter would be unduly burdensome. The comment suggested further that the FTC maintain a database of all expert reports and expert testimony submitted in all Part 3 proceedings. The Commission already makes all of the trial testimony and exhibits available to the public—except for confidential material—and has begun posting trial testimony at *www.ftc.gov*.[42] The Commission declines the invitation to assume the additional burden suggested by the commenter.

The Rule provides that complaint counsel submit their initial expert reports first, followed by respondents' expert reports. Respondents' reports, of course, can rebut material in complaint counsel's initial expert reports. The Rule also explicitly authorizes complaint counsel to call rebuttal experts and, if complaint counsel intends to exercise this option, requires the experts to prepare rebuttal expert reports. Thus, the Rule allows complaint counsel's experts an opportunity to respond to respondents' expert reports. The Section asserted that respondents should also have the express right to call surrebuttal experts in all situations, not just when material outside the scope of a fair rebuttal is presented. While the Commission continues to believe that respondents should only be able to call surrebuttal experts in order to respond to new arguments raised by complaint counsel's rebuttal experts, it is clarifying the Rule so that the ''appropriate relief'' sought by respondents in this circumstance explicitly includes the right to seek leave to call surrebuttal experts and to file a surrebuttal report, and includes a deadline for respondents to file such a motion.

The Rule also excludes from expert discovery anyone who has been retained or specially employed by another party in anticipation of litigation or preparation for hearing unless he or she is expected to be called as a witness at the hearing, so as to prevent the discovery of the unpublished work product of non-testifying experts, particularly where such materials are proprietary and highly confidential. The discovery of such marginally relevant materials can be a major distraction from the central case and can have an adverse effect on the willingness of non-testifying experts to consult in the future.

*Section 3.33: Depositions.*

The Commission has added to paragraph (a) a reference to Rule 3.36, which provides that certain subpoenas requiring the appearance of certain persons may issue only upon a motion approved by the ALJ.

The proposed Rule added paragraph (b) to Rule 3.33, which allows the ALJ, upon a party's motion, to prevent the taking of a deposition if it would not meet the scope of discovery standard under Rule 3.31(c) or if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or if the evidence would be misleading, or based on considerations of undue delay, waste of time, or needless presentation of cumulative evidence (as set forth under Rule 3.43(b)). Proposed paragraph (b) also clarified that the fact that a witness testifies in an investigative hearing does not preclude the deposition of that witness.

The Section contended that the proposed revision is inconsistent with the Federal Rules of Civil Procedure, because Fed. R. Civ. P. 30(a)(2) sets out only limited circumstances when permission from a federal judge is required to take a deposition. In addition, the Section asserted that the revision imposes a burden on a party seeking to take the deposition to show that the evidence will be admissible. However, the Commission is adopting the revision as proposed. Under general principles of motions practice, the party filing a motion has the burden of persuasion. In this situation, the party moving to prevent the taking of the deposition would have the burden of showing that the evidence should be excluded for the reasons stated in the proposed Rule; there would not be a burden on the party seeking to take the deposition to show that the evidence will be admissible. The revision is therefore not a significant departure from the federal rules.

The Commission proposed revising paragraph (c) to stop the practice of filing notices of deposition with the Office of the Secretary, the ALJ, or otherwise providing such notices to the Commission, except as provided in proposed Rule 3.31(h). Such notices serve no purpose for the ALJ or the agency, and receipt of these notices causes unnecessary processing costs for the Commission. No comments were received on this proposal and the Commission adopts it as proposed.

Consistent with Rule 3.43, the Commission has proposed eliminating previous Rule 3.33(g)(1) because it contains hearsay-based limitations for the use of depositions. Revised Rule 3.43 reflects existing case law by providing for the admission of hearsay evidence in the evidentiary hearing if the evidence is ''relevant, material, and bears satisfactory indicia of reliability so that its use is fair.'' If meeting this standard, depositions, investigational hearings, and other prior testimony may be admitted. As discussed further below, the Commission is adopting Rule 3.43 as proposed, and accordingly is eliminating previous Rule 3.33(g)(1).

*Section 3.34: Subpoenas.*

The Commission proposed amending paragraphs (a) and (b) to authorize counsel for a party to sign and issue a subpoena on a form provided by the Secretary. These revisions are intended to expedite the commencement of hearings by speeding the issuance of discovery and hearing subpoenas. The definition of ''documents'' would also be revised to parallel Fed. R. Civ. P. 45(c)(1). No comments were received on these rule changes and the Commission adopts them as proposed.

The Commission also proposed revising paragraph (c) to reflect revised Rule 3.36, discussed below, which requires a special showing of need for subpoenas directed to the offices of the Commissioners, the General Counsel, Bureaus and Offices not involved in the matter, the ALJs, or the Secretary. No comments were received on the proposed revisions to Rule 3.36 and the Commission is adopting them as well as the corresponding changes in Rule 3.34(c).[43] The Commission is also adding a reference to the discovery limitations in Rule 3.31(c)(2).

[42] For example, the trial transcript for the *In re Rambus, Inc.* matter is available at (*http://www.ftc.gov/os/adjpro/d9302/exhibits/index.shtm*).

[43] *See infra* note 44.

*Section 3.35: Interrogatories to parties.*

The Commission proposed to add Rule 3.35(a)(3) to provide that interrogatories should not be filed with the Office of the Secretary, the ALJ, or otherwise provided to the Commission except as provided in proposed Rule 3.31(i) because ordinarily there is no reason to file discovery pleadings. No comments were received on this proposal and the Commission is adopting Rule 3.35(a)(3) as proposed.

Proposed Rule 3.35(b)(2) would allow parties to delay answering a contention interrogatory until the close of discovery, the pretrial conference, or ''other later time.'' Although the Section recognized that contention interrogatories usually are not answered in federal court cases until the end of fact discovery, it nonetheless asserted that the proposed Rule unfairly shifts the burden of seeking a response to a contention interrogatory to the party who propounds it. The Section also commented that the phrase ''other later time'' is ambiguous and may allow the recipient of such an interrogatory to evade an answer altogether. The purpose of the proposed Rule is to conform Commission practice with federal court practice and consistently allow a party to delay answering a contention interrogatory until fact discovery is almost complete. However, the proposed Rule also allowed a party posing a contention interrogatory to secure an earlier answer, if one was necessary, by filing a motion seeking an earlier answer. The Rule is not intended to allow an answering party to evade an answer, but to postpone answering until it has all the information it needs to supply a full answer. Accordingly, the Rule now clarifies that contention interrogatories must be answered by the time designated discovery has been completed, but in no case later than three days before the final pretrial conference.

*Section 3.36: Applications for subpoenas for records of or appearances by certain officials or employees of the Commission or officials or employees of governmental agencies other than the Commission, and subpoenas to be served in a foreign country.*

The Commission proposed to revise Rule 3.36 to require a special showing of need for subpoenas directed to the offices of the Commissioners, the General Counsel, Bureaus and Offices not involved in the matter, the ALJs, and the Secretary because these offices are unlikely to possess relevant, discoverable information that is not available from other sources. The Commission believed that the lack of useful additional information likely to be available from these offices suggested that the burden (and delay) of searches for responsive records and the creation of privilege logs should not be imposed without strong justification. The Commission's proposed revision to paragraph (b)(3) would require a showing of ''compelling need'' as the corresponding standard for witness testimony. No comments were received on these proposed amendments to Rule 3.36 and they are adopted as proposed.[44]

*Section 3.37: Production of documents, electronically stored information, and any tangible thing; access for inspection and other purposes.*

The Commission proposed to amend Rule 3.37 to include provisions from Fed. R. Civ. P. 34 on electronic discovery. The proposed amendment also provided that requests under this Rule not be filed with the Office of the Secretary, the ALJ or otherwise provided to the Commission, except as provided in proposed Rule 3.31(i). No comments were received on this proposal and it is adopted as proposed.

*Section 3.38: Motion for order compelling disclosure or discovery; sanctions.*

The Commission proposed amending Rule 3.38 to impose short deadlines for responses to and rulings on motions to compel and a 2,500 word limit for motions and answers. The Commission also proposed to amend the Rule to consolidate the sanctions for failure to comply with discovery and disclosure requirements and to add as a sanction the inability to call a witness who was not disclosed under Rule 3.31(b) or an expert not disclosed under proposed Rule 3.31A. No comments were received on the proposed amendments to Rule 3.38 and they are adopted as proposed.

*Section 3.38A: Withholding requested material.*

The Commission proposed to amend Rule 3.38A to modify the requirement that a privilege/work product log always contain specific information for each item being withheld. The Commission proposed to substitute the more flexible requirement in Fed. R. Civ. P. 26(b)(5)(A) that the schedule of withheld items ''describe the nature of the documents, communications, or tangible things not produced or disclosed — and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.'' This proposed requirement would permit parties to describe withheld items by categories, but only if the description ''will enable other parties to assess the claim.'' Unless such descriptions are sufficient, item-by-item descriptions would be required.

The proposed Rule also clarified that the log need not describe any material outside the scope of the duty to search set forth in revised Rule 3.31(c)(2) except to the extent that the ALJ has authorized additional discovery as provided in that Rule.

No comments were received on the proposed amendments to this Rule and they are adopted.

*Section 3.39: Orders requiring witnesses to testify or provide other information and granting immunity.*

The Commission proposed various technical revisions to this Rule. No comments were received on the proposed amendments and they are adopted.

**Subpart E—Hearings**

*Section 3.41: General hearing rules.*

The proposed revisions to Rule 3.41(b) required that the evidentiary hearing commence on the date set in the notice accompanying the complaint, limited the length of the evidentiary hearing to 210 hours (or the equivalent of 30 seven hour trial days) unless extended by the Commission, and established reasonable time allocations. The goal of these proposed revisions was to expedite the proceedings.

The Section commented that the proposed Rule should allow ''additional flexibility'' for the ALJ to extend the hearing length particularly for nonmerger cases involving multiple parties. Whole Foods complained that the proposed rule unfairly limited the ALJ's discretion over the length of the hearing and cited to the lack of such a limit in a recent Part 3 scheduling order, and the Chamber similarly asserted that the ALJ should decide if a longer trial is needed. The Commission believes that, in the vast majority of cases, 30 trial days is more than sufficient to complete the evidentiary hearing. Further, the Rule permits the Commission ''upon a showing of good cause'' to extend the commencement date or the length of the hearing if the case involves, for example, a particularly lengthy record or complex legal issues. For these reasons, the Rule is adopted as proposed.

[44] The Section did object to a related provision in proposed Rule 3.31(c)(2) to limit the scope of complaint counsel's obligation to search. As discussed earlier, the Commission is not persuaded by that objection.

Commenter Nagin recommended that under paragraph (b)(3), the Commission should clarify that the ALJ can hold a separate segment of the hearing relating to one or more respondents in case any particular claim or issue necessitates such treatment. The current language of this provision, which permits the Commission or ALJ to order separate hearings of any claim, any separate issue, or any number of claims or issues, sufficiently covers the scenario raised by this commenter and, therefore, no change to this provision is necessary.

Finally, the Commission's proposed amendment included a new paragraph (f), a provision moved (and revised) from previous Rule 3.51(a) concerning the effect of collateral federal court actions on Part 3 proceedings. The new provision states that the pendency of a collateral federal action will stay the Part 3 proceeding only if the Commission (as opposed to the ALJ) so orders ''for good cause,'' and that deadlines set by the rules will be tolled during the period of the stay. The Commission, and not the ALJ, should be authorized to stay the Part 3 proceeding pending a collateral action in federal court, since the granting of a stay is likely to implicate public interest considerations that the Commission, rather than the ALJ, should resolve.

*Section 3.42: Presiding officials.*

The proposed amendment would make explicit provision for the Commission to retain jurisdiction over a matter during some or all of the prehearing proceedings and to designate one or more Commissioners to preside. The Section objected that by '''codifying' the Commission's right to interject itself into prehearing case management, it may undermine the integrity of the process, compromise the ALJ, and create an appearance of unfairness.'' The Pitofsky-Sohn comment argued that ''the more the Commission invades what has heretofore been the province of an independent ALJ, the more it lends credence to concerns regarding the fairness of the Part 3 adjudicative process.''

The APA, 5 U.S.C. 556(b), and unamended Rule 3.42(a) allow the Commission or one or more Commissioners to preside over the hearing as ALJ. It therefore remains unclear how authorizing the Commission or a Commissioner to preside over the initial phases of the pretrial proceeding raises a legal issue or, for that matter, creates an appearance of unfairness. The package of rule amendments governing scheduling, discovery, and other aspects of the pretrial proceedings, however, will reduce the need for early Commission or Commissioner involvement in case management. Nor is the proposed Rule needed to authorize the Commission or a Commissioner to preside over the initial phases of the pretrial process; that authority is already implicit in Rule 3.42(a), which authorizes the Commission or one or more Commissioners to preside. The Commission, therefore, views the proposed amendment to Rule 3.42(a) as unnecessary and has not adopted it.

*Section 3.43: Evidence.*

The proposed revision in paragraph (b) defined hearsay evidence and expressly provided for the admission of such evidence if it ''is relevant, material, and bears satisfactory indicia of reliability so that its use is fair.'' The Section complained that expressly permitting the admission of hearsay evidence would create unnecessary disparities between Part 3 and federal court procedures that could lead to substantive differences in case outcomes. It also asserted that the unamended Rule, which it interprets as applying a case-by-case approach to hearsay, is preferable to ''the new default rule admitting hearsay evidence in every circumstance'' that might unfairly disadvantage respondents.

However, it is settled law that the Commission's Rules of Practice already permit the introduction of hearsay evidence, provided that it meets the standards of materiality, reliability, and relevance. *See, e.g.*, *In re Schering-Plough Corp.*, 136 F.T.C. 956, 1007 (2003), *vacated on other grounds*, 402 F.3d 1056 (11th Cir. 2005). As stated in the NPRM, and as acknowledged by the Section, administrative agencies are not bound by the stricter hearsay rules in the Federal Rules of Evidence, but must independently assess the reliability of the evidence itself.[45] The ALJ in the first instance, and the Commission in its *de novo* review, must determine the admissibility and probative value, if any, to be given to hearsay evidence by analyzing, for example, the possible bias of an out-of-court declarant, the context in which the hearsay material was created, whether the statement was sworn to, and whether it is corroborated or contradicted by other forms of direct evidence.

Proposed paragraph (b) also provided concrete examples of this principle by expressly stating that depositions, investigational hearings, and prior testimony in Commission and other proceedings, and any other form of hearsay, would be admissible and would not be excluded solely because they constitute or contain hearsay, if the testimony or other form of hearsay was sufficiently reliable and probative. Proposed paragraph (b) also provided that relevant statements or testimony by a party-opponent would be admitted; such statements do not constitute hearsay.

The proposed Rule was intended to ensure that ALJs do not take an overly narrow approach to admitting hearsay evidence. The proposed Rule did not, however, provide for the admission of hearsay evidence ''in every circumstance,'' but only where such evidence is sufficiently relevant, reliable and probative ''so that its use is fair.'' The Commission is adopting the hearsay provision in paragraph (b) as proposed.

The Section also argued that, if the amendment is to be adopted, it should require parties to provide notice every time they intend to introduce hearsay evidence to permit the opposing party to rebut the evidence, relying on the residual hearsay exception rule in Fed. R. Evid. 807 that requires such notice. Rule 807, however, does not govern the most familiar forms of admissible hearsay exceptions and the Commission is not persuaded that a blanket notice rule should apply to the admission of hearsay evidence in Part 3 proceedings. The Commission notes that the Rule contains provisions designed to protect against the unfair use of hearsay evidence by prohibiting the admission of unreliable, immaterial or duplicative hearsay evidence, by excluding relevant hearsay evidence ''if its probative value is substantially outweighed by the danger of unfair prejudice,'' and by providing the right of parties ''to submit rebuttal evidence'' to counter the admission of any hearsay evidence.

The Commission also proposed a new paragraph (c) to facilitate the admissibility of third party documents by self-authentication through a written declaration of the third party document custodian. This provision is analogous to Fed. R. Evid. 902(11). The

[45] *See* 5 U.S.C. 556(d) (APA provides that ''[a]ny oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.''); *see also J.A.M. Builders, Inc. v. Herman*, 233 F.3d 1350, 1354 (11th Cir. 2000) (hearsay admissible in administrative proceedings if ''reliable and credible''); *FTC v. Cement Inst.*, 333 U.S. 683, 705-06 (1948); *Richardson v. Perales*, 402 U.S. 389, 407-08 (1971); *Calhoun v. Bailar*, 626 F.2d 145, 148 (9th Cir. 1980); *Buchwalter v. FTC*, 235 F.2d 344 (2d Cir. 1956) (hearsay evidence is admissible in FTC administrative cases).

Commission received no comments on this provision and it is adopted as proposed.

Proposed paragraph (d)(1) expressly incorporated the APA standard in 5 U.S.C. 556(d) to allow a party ''to present its case or defense by sworn oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination, as in the discretion of the Administrative Law Judge, may be required for a full and true disclosure of the facts.'' While the Section objected that the proposed provision might be interpreted to limit cross-examination in violation of the APA, the new provision expressly incorporates the APA standard for the presentation of evidence. While the APA standard does not impose an absolute or unlimited right of cross examination,[46] it necessarily allows for all cross-examination in order to ascertain the ''full and true disclosure of the facts.'' This revision is adopted as proposed.

Commenter Nagin recommended that paragraph (e), which allows the disclosure and offering into evidence of any information obtained by the Commission, be amended to require adherence to other Part 3 rules in order to prevent ''unfairness or surprise.'' There is a large difference, however, between offering such evidence into the record and its admission into the record, and—given the mandatory disclosure requirements and other discovery obligations—there are sufficient protections in these rules against any unfair use of evidence by complaint counsel. The Commission is not persuaded that this change is necessary.

Finally, the Commission proposed in re-designated paragraph (f) a definition of ''official notice,'' and to provide that a party may controvert an officially noticed fact either by opposing the other party's request that official notice be taken or after it has been noticed by the ALJ or the Commission. Previous Rule 3.43 did not define official notice or what constitutes such notice. The Commission received no comments on this revision and it is adopted as proposed.

Other paragraphs in the proposed Rule were redesignated to accommodate new paragraphs and will be adopted as proposed.

*Section 3.44: Record.*

The Commission proposed to revise Rule 3.44 to require that witness testimony be video recorded digitally and made part of the official record along with the witness's written transcript. As noted in the NPRM, the purpose of the proposed revision is to enable the Commission, which is tasked with reviewing the record *de novo*, to independently assess witness demeanor when necessary. Courts have recognized the ''added value of demeanor evidence'' from video recording.[47] Requiring video recording of witness testimony will improve the quality of Commission decisions whenever witness demeanor is an important issue. No comments criticized this provision and it is adopted as proposed.

The Commission also proposed to revise paragraph (c) by deleting the word ''immediately'' at the beginning of the first sentence to provide the parties with three business days to review the record to determine if it is complete or needs to be supplemented. This revision generated no comments and is adopted as proposed.

*Section 3.45: In camera orders.*

The Commission proposed revising paragraph (b) to add a paragraph making clear that parties have no obligation to file or provide *in camera* versions of filings with sensitive materials with anyone other than opposing counsel and the ALJ during the proceedings, as well as with the Commission or federal courts during any appeals. No comments were received on this revision and the Commission adopts it as proposed.

Additional amendments are being made to conform the Commission's *in camera* procedures to the standard protective order that the Commission has adopted as final as an appendix to Rule 3.31, discussed above. Accordingly, paragraph (b) of Rule 3.45 has been further amended to incorporate the order's definition of ''sensitive personal information'' to be accorded *in camera* treatment if such material is to be introduced as evidence or otherwise used in the proceeding. Thus, where a party's proposed findings, briefs, or other documents, filings, and submissions contain such information, parties will be required to prepare public (redacted) and non-public (*in camera*) versions in order to avoid public disclosure, just as the parties are currently required to do under the Rule for other material granted *in camera* treatment or subject to a protective order. *See* Rule 3.45(d), (e). Likewise, the Commission is amending Rule 4.2, as explained further below, to require that parties minimize or omit sensitive personal information in their filings when such information is not needed for the conduct of the proceeding.

*Section 3.46: Proposed findings, conclusions, and order.*

The Commission proposed to revise paragraph (a) to provide expressly for the simultaneous filing of proposed findings of fact, conclusions of law, rule or order, and supporting briefs within 21 days of the close of the hearing record, as well as the optional filing of proposed reply findings, conclusions, and briefs within 10 days of the filing of the initial proposed findings. The previous Rule did not impose any deadlines or specify the order of these filings, requiring instead that such submissions be filed ''[u]pon the closing of the hearing record, or within a reasonable time thereafter fixed by the Administrative Law Judge.'' The proposed change was intended to require the orderly and timely submission of proposed findings and conclusions on which the ALJ may consult and to expedite the post-hearing phase and issuance of the initial decision.

Whole Foods commented that the proposed change ''revokes the ALJ's discretion over the timing of proposed findings of fact, conclusions of law and briefs in favor of rigid, one-size-fits-all time schedules.'' The schedule outlined in the proposed Rule, however, should be reasonable in the vast majority of cases. In the unusual situation, a party may move the ALJ under Rule 4.3 for an extension ''[f]or good cause shown.'' The revision is adopted as proposed.

**Subpart F—Decision**

*Section 3.51: Initial decision.*

The Commission proposed to revise paragraph (a) to require the initial decision to be filed within 70 days after the last-filed proposed findings of fact and conclusions of law (or 85 days after the closing of the hearing record if the parties waive filing proposed findings), but allowed the ALJ to extend these deadlines by 30 days ''for good cause.'' The previous Rule required that the initial decision be filed within 90 days of the close of the hearing record, but the Commission determined that setting the initial decision deadline to the filing of proposed findings and conclusions, on which the ALJ may consult in preparing his or her decision, was more reasonable than basing the deadline on the closing of the hearing record.

The proposed revision also maintained the previous Rule's over-all one year deadline for the issuance of the

[46] *See, e.g., Citizens Awareness Network, Inc. v. United States*, 391 F.3d 338, 351 (1st Cir. 2004); *Central Freight Lines, Inc. v. United States*, 669 F.2d 1063 (5th Cir. 1982).

[47] *See FTC v. Tarriff*, 557 F. Supp. 2d 92, 97 (D.D.C. 2008).

initial decision, but added that only the Commission could extend the one year deadline ''upon a finding of extraordinary circumstances and if appropriate in the public interest.'' The previous Rule permitted the ALJ to grant consecutive 60 day extensions upon a finding of ''extraordinary circumstances,'' but the Commission believed that the proposed revision would prevent protracted delays while still providing sufficient time for the ALJ to review the evidence and issue the initial decision.

The Section's comment was generally favorable, stating that while it ''believes that in most cases, expediting the merger review process is a positive step, such timing requirements are not universally applicable. The Section applauds this revision to speed up an ALJ's decision.'' The Section noted, however, that based on other deadlines imposed in these rules, the schedule for cases in which the hearing will typically be set for eight months after the complaint issues will likely result in the initial decision being filed slightly beyond the one year deadline. The Commission has eliminated the overall one year deadline for all cases. The Commission concludes that the filing of the initial decision within 70 days after the filing of the last-filed proposed findings and conclusions (or 30 days beyond that if the ALJ directs the one-time extension for ''good cause'') provides a sufficient time limit.

Based on these revisions to this paragraph, the Commission is also slightly modifying a sentence in the proposed Rule to now state that: ''The Commission may further extend any of these time periods for good cause.'' This modification imposes a standard for extensions and clarifies that the ALJ cannot extend the deadline beyond the 30 days provided in the Rule.

The Commission has also removed language from previous Rule 3.51(a) regarding the effect of a pending collateral federal court proceeding on a Part 3 case, and inserted revised language into Rule 3.41 as the stay and tolling provisions incident to collateral federal actions potentially affect more than the deadline for filing the initial decision.

Commenter Nagin recommended that paragraph (c), regarding the evidence to support an initial decision, be changed from ''reliable and probative evidence,'' to ''competent and reliable, probative evidence'' so as to be consistent with certain scientific nomenclature. The Commission does not believe that such a change materially alters the standard of evidence necessary to support an initial decision and therefore does not revise the Rule as suggested.

Finally, proposed paragraph (c)(2) required that the initial decision be filed in a word processing format that is accessible to the Commission on review. This revision generated no comments and is adopted as proposed.

*Section 3.52: Appeal from initial decision.*

The Commission proposed to revise paragraphs (b) and (c) to shorten the word counts for the principal appellate briefs from 18,750 words to 14,000 words (approximately 55 double-spaced pages), to revise paragraph (d) to shorten the word count limits for reply briefs to half of the principals' briefs (or 7,000 words), to make explicit that parties cannot raise new arguments or matters in reply briefs that could have been raised earlier, to revise paragraph (c) to reduce the word count limit for cross-appeal briefs to 16,500 words, and to revise paragraph (j) to limit the word count limit on *amicus* briefs to ''no more than one-half the maximum length authorized by these rules for a party's principal brief.'' The Commission also proposed to revise paragraph (k) to specify the contents of the brief that would count toward the word count limit. While the Commission is not required to follow the Federal Rules of Appellate Procedure in its Rules of Practice, these new word count limits are consistent with limits for analogous briefs under Fed. R. App. P. 28.1, 29 and 32.

As explained in the NPRM, while lengthier appellate briefs could be justified by the Commission's obligation to review the record *de novo*, the Commission's review is also enhanced by its access to the parties' proposed findings and conclusions filed with the ALJ. Further, the Commission may extend these word count limits if the case involves a particularly large record or complex legal issues. As noted in paragraph (k), however, the Commission will not lightly permit such extensions. The Commission received no comments on these suggested word count revisions and they are adopted as proposed.

The Commission is also imposing deadlines on the issuance of its final decision. The Commission had announced in the NPRM ''its intention to make best efforts to expedite its preparation and disposition of final orders and opinions in its review of initial decisions in adjudicatory proceedings.''[48] The Commission recognized that complaints about the protracted nature of Part 3 proceedings extend both to proceedings before the ALJ and to the Commission's issuance of the final decision.

Nonetheless, given the Commission's stated goal of expediting the Part 3 process, several commenters criticized the absence in the proposed rules of any formal deadlines for the Commission to issue its final decision of an appeal. For example, according to the Pitofsky-Sohn comment:

> The proposed changes to Part 3 do not address the absence in the present rules of any limitation on the Commission's time to render a decision in the event of an appeal from the ALJ's decision. It has been said that since 2000, it has taken the Commission an average of 18 months to render its own decision, even in those cases where no complicated remedial issues requiring further proceedings were involved. This hole should be plugged with a rule change requiring the Commission to render its decision within six months of the ALJ's ruling, except in narrow and unusual circumstances.

The Section commented that the rule proposals ''fail sufficiently to expedite Part 3 proceedings by not imposing a time within which the Commission should issue a final decision,'' which is ''the stage of the proceeding that consumes the greatest time.'' The Section recommended that, in unconsummated merger cases, the final Commission order be issued within five months from filing of the complaint and that, in general, the Commission issue its final order within 90 days after the initial decision. The Chamber also asserted that the Commission failed to place a deadline on ''a decision by the Commissioners, which is very often a source of substantial delay.'' Based on these concerns, the Commission is setting strict deadlines for the issuance of its final decisions in all Part 3 cases.

For cases in which the Commission has sought preliminary relief under Section 13(b) of the FTC Act[49] (typically unconsummated merger cases), the Commission has provided that it will review all initial decisions—without requiring a notice of appeal—and issue a final decision within 45 days of oral argument (*i.e.*, within 100 days of the filing of the initial decision).[50] Although the Section has urged the Commission to decide all merger cases within five months of the filing of the complaint,

[48] 73 FR at 58834.

[49] 15 U.S.C. 53(b).

[50] The timing deadlines for the Commission's decisions on appeal or review, as with other rule deadlines, are subject to the timing requirements in Rule 4.3(a). Thus, these deadlines may be enlarged slightly if, for example, a deadline were to fall on a weekend or holiday.

the Commission believes that this is a pace that unduly rushes the parties and virtually precludes any opportunity for the Commission to treat exhaustively any novel issues that may arise in a particular case. This deadline would also be faster than what federal courts frequently manage even for expedited permanent injunction cases on the merits (after which, like Commission decisions, appeals are to be filed in federal appellate courts).[51] This rule revision institutionalizes an approach for dealing with such cases on a consistent and even-handed basis as opposed to an expedited schedule being issued *ad hoc* on a case-by-case basis.

The Commission is also setting deadlines in all other cases in which preliminary relief was not sought, although on a less rapid schedule. These cases will typically include cases involving allegations of anticompetitive conduct, most cases challenging consummated mergers, and most consumer protection cases. In these matters, the Commission will issue its final decision within 100 days after oral argument (*i.e.*, within six months of the issuance of the initial decision).

To accommodate those expedited deadlines, the Commission is reducing the time in which parties may file briefs from the initial decision. For cases in which the Commission has sought preliminary relief under Section 13(b), there will be automatic Commission review of the initial decision (*i.e.*, no notice of appeal will be required). In these cases, a party objecting to any portion of the initial decision (*e.g.*, decision on liability or scope of remedy) must file its opening brief within 20 days of the issuance of the initial decision. Parties would respond to any objections filed by another party by filing answering briefs within 20 days of service of the opening brief, and any reply briefs would be due within five days of service of the answering brief. The Commission will schedule oral argument within 10 days after the deadline for the filing of any reply briefs and will issue its final decision within 45 days after oral argument.[52]

For all other cases, review by the Commission will not be automatic, but will normally be initiated by a party filing a notice of appeal (as under the previous Rule).[53] In these cases, any party objecting to any portion of the initial decision must file a notice of appeal within 10 days of the initial decision, or within five days of the initial notice if a party is filing a cross-appeal. Any party filing a notice of appeal (including a cross-notice of appeal) must then perfect its appeal by filing its opening brief within 30 days of the issuance of the initial decision. Parties may respond to opening briefs by filing answering briefs within 30 days of service of the opening briefs and may file reply briefs within seven days of service of the answering briefs. The Commission will schedule oral argument within 15 days after the deadline for the filing of the reply briefs, and the Commission will issue its final decision within 100 days after oral argument.[54]

The new Rule requires simultaneous briefing on review for all cases brought in Part 3. For that reason, the word count limitations in the former Rule for a combined answering and cross-appeal brief, and the additional rounds of briefing provided in the former Rule for cross-appeals, are unnecessary, and these provisions have been eliminated in the new Rule.

Finally, the Commission's proposal to revise paragraph (h) regarding oral arguments by striking the last two sentences generated no comments and will be adopted.

*Section 4.2: Requirements as to form, and filing of documents other than correspondence.*

The Commission has added a new paragraph (c)(4), and redesignated existing paragraph (c)(4) as (c)(5), to require that filing parties redact or omit ''sensitive personal information'' from their filings when such information is not needed for the conduct of the proceeding. Sensitive personal information, which is also protected by the standard protective order contained in Appendix A of Rule 3.31, will be accorded *in camera* treatment pursuant to Rule 3.45 if such material is to be introduced as evidence or otherwise used in the proceeding. These procedures, as amended, are intended to safeguard the confidentiality of such information in the event such information must be filed or otherwise used in the proceeding.

*Section 4.3: Time.*

The proposed revision to Rule 4.3(b) specified that the ALJ may extend a time period set by a Commission order only if the order expressly authorizes the ALJ to do so. It also added time limits regarding motions directed to the Commission to the list of extensions that only the Commission may grant. The revision also clarified that the ALJ may not enlarge any deadline that a rule specifically authorizes only the Commission to extend. No comments were received on these revisions and the Commission adopts them as proposed.

## III. Invitation To Comment

The Commission invites interested members of the public to submit written comments addressing any issues raised by the interim rule amendments. Such comments must be filed by February 12, 2009, and must be filed in accordance with the instructions in the **ADDRESSES** section of this document. While the Commission will consider all comments it receives, it is inviting comment in particular on the rules it is adopting which reflect changes from the proposed amendments.

## IV. Interim Final Rule Revisions

### List of Subjects in 16 CFR Part 3

Administrative practice and procedure.

### List of Subjects in 16 CFR Part 4

Administrative practice and procedure.

■ For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter 1, Subchapter A of the Code of Federal Regulations, parts 3 and 4, as follows:

## PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

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

**Authority:** 15 U.S.C. 46, unless otherwise noted.

■ 2. Revise § 3.1 to read as follows:

### § 3.1 Scope of the rules in this part.

The rules in this part govern procedure in formal adjudicative proceedings. To the extent practicable and consistent with requirements of law, the Commission's policy is to conduct such proceedings expeditiously. In the conduct of such proceedings the Administrative Law Judge and counsel for all parties shall make every effort at each stage of a proceeding to avoid delay. The

[51] *United States v. Carilion Health Sys.*, 707 F. Supp. 840, 841 (W.D. Va.), *aff'd*, No. 89-2625, 1989 WL 157282 (4th Cir. Nov. 29, 1989) (decision issued approximately nine months after complaint filed); *United States v. Primestar, Inc.*, No. 98-CV-01193 (D.D.C. filed May 12, 1998) (approximately nine months from complaint to trial on the merits).

[52] In the event that no objections to the initial decision are filed, the Commission in its discretion may schedule oral argument within 10 days after the deadline for the filing of objections, and will issue its final decision within 45 days after oral argument. If no oral argument is scheduled, the Commission will issue its final decision within 45 days after the deadline for the filing of objections.

[53] The Commission has retained Rule 3.53, which authorizes the Commission to place a case on its docket for review in the absence of an appeal.

[54] If no argument is scheduled, the Commission will issue its final decision within 100 days after the deadline for the filing of any reply briefs.

Commission, at any time, or the Administrative Law Judge at any time prior to the filing of his or her initial decision, may, with the consent of the parties, shorten any time limit prescribed by these Rules of Practice.

■ 3. Revise § 3.2 to read as follows:

**§ 3.2 Nature of adjudicative proceedings.**

Adjudicative proceedings are those formal proceedings conducted under one or more of the statutes administered by the Commission which are required by statute to be determined on the record after opportunity for an agency hearing. The term includes hearings upon objections to orders relating to the promulgation, amendment, or repeal of rules under sections 4, 5 and 6 of the Fair Packaging and Labeling Act, but does not include rulemaking proceedings up to the time when the Commission determines under § 1.26(g) of this chapter that objections sufficient to warrant the holding of a public hearing have been filed. The term also includes proceedings for the assessment of civil penalties pursuant to § 1.94 of this chapter. The term does not include other proceedings such as negotiations for and Commission consideration of the entry of consent orders; investigational hearings as distinguished from proceedings after the issuance of a complaint; requests for extensions of time to comply with final orders or other proceedings involving compliance with final orders; proceedings for the promulgation of industry guides or trade regulation rules; or the promulgation of substantive rules and regulations.

■ 4. Revise § 3.11 to read as follows:

**§ 3.11 Commencement of proceedings.**

(a) *Complaint.* Except as provided in § 3.13, an adjudicative proceeding is commenced when an affirmative vote is taken by the Commission to issue a complaint.

(b) *Form of complaint.* The Commission's complaint shall contain the following:

(1) Recital of the legal authority and jurisdiction for institution of the proceeding, with specific designation of the statutory provisions alleged to have been violated;

(2) A clear and concise factual statement sufficient to inform each respondent with reasonable definiteness of the type of acts or practices alleged to be in violation of the law;

(3) Where practical, a form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint; and

(4) Notice of the specific date, time and place for the evidentiary hearing. Unless a different date is determined by the Commission, the date of the evidentiary hearing shall be 5 months from the date of the administrative complaint in a proceeding in which the Commission, in an ancillary proceeding, has sought or is seeking relief pursuant to Section 13(b) of the FTC Act, 15 U.S.C. 53(b), and 8 months from the date of issuance of the administrative complaint in all other proceedings

■ 5. Revise § 3.12 to read as follows:

**§ 3.12 Answer.**

(a) *Time for filing.* A respondent shall file an answer within 14 days after being served with the complaint.

(b) *Content of answer.* An answer shall conform to the following:

(1) *If allegations of complaint are contested.* An answer in which the allegations of a complaint are contested shall contain:

(i) A concise statement of the facts constituting each ground of defense;

(ii) Specific admission, denial, or explanation of each fact alleged in the complaint or, if the respondent is without knowledge thereof, a statement to that effect. Allegations of a complaint not thus answered shall be deemed to have been admitted.

(2) *If allegations of complaint are admitted.* If the respondent elects not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that the respondent admits all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such an answer, the respondent may, however, reserve the right to submit proposed findings of fact and conclusions of law under § 3.46.

(c) *Default.* Failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of the respondent's right to appear and contest the allegations of the complaint and to authorize the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.

■ 6. Revise § 3.21 to read as follows:

**§ 3.21 Prehearing procedures.**

(a) *Meeting of the parties before scheduling conference.* As early as practicable before the prehearing scheduling conference described in paragraph (b) of this section, but in any event no later than 5 days after the answer is filed by the last answering respondent, counsel for the parties shall meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case. The parties shall also agree, if possible, on (1) a proposed discovery plan specifically addressing a schedule for depositions of fact witnesses, the production of documents and electronically stored information, and the timing of expert discovery pursuant to § 3.31A. The parties' agreement regarding electronically stored information should include the scope of and a specified time period for the exchange of such information that is subject to §§ 3.31(b)(2), 3.31(c), and 3.37(a), and the format for the disclosure of such information, consistent with § 3.31(c)(3) and § 3.37(c); (2) a preliminary estimate of the time required for the evidentiary hearing; and (3) any other matters to be determined at the scheduling conference.

(b) *Scheduling conference.* Not later than 10 days after the answer is filed by the last answering respondent, the Administrative Law Judge shall hold a scheduling conference. At the scheduling conference, counsel for the parties shall be prepared to address: (1) their factual and legal theories; (2) the current status of any pending motions; (3) a schedule of proceedings that is consistent with the date of the evidentiary hearing set by the Commission; (4) steps taken to preserve evidence relevant to the issues raised by the claims and defenses; (5) the scope of anticipated discovery, any limitations on discovery, and a proposed discovery plan, including the disclosure of electronically stored information; (6) issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial, and any request to bifurcate issues, claims or defenses; and (7) other possible agreements or steps that may aid in the just and expeditious disposition of the proceeding and to avoid unnecessary cost.

(c) *Prehearing scheduling order.* (1) Not later than 2 days after the scheduling conference, the Administrative Law Judge shall enter an order that sets forth the results of the conference and establishes a schedule of proceedings that will permit the evidentiary hearing to commence on the

date set by the Commission, including a plan of discovery that addresses the deposition of fact witnesses, timing of expert discovery, and the production of documents and electronically stored information, dates for the submission and hearing of motions, the specific method by which exhibits shall be numbered or otherwise identified and marked for the record, and the time and place of a final prehearing conference. The Commission may, upon a showing of good cause, order a later date for the evidentiary hearing than the one specified in the complaint. (2) The Administrative Law Judge may, upon a showing of good cause, grant a motion to extend any deadline or time specified in this scheduling order other than the date of the evidentiary hearing. Such motion shall set forth the total period of extensions, if any, previously obtained by the moving party. In determining whether to grant the motion, the Administrative Law Judge shall consider any extensions already granted, the length of the proceedings to date, the complexity of the issues, and the need to conclude the evidentiary hearing and render an initial decision in a timely manner. The Administrative Law Judge shall not rule on *ex parte* motions to extend the deadlines specified in the scheduling order, or modify such deadlines solely upon stipulation or agreement of counsel.

(d) *Meeting prior to final prehearing conference*. Counsel for the parties shall meet before the final prehearing conference described in paragraph (e) of this section to discuss the matters set forth therein in preparation for the conference.

(e) *Final prehearing conference*. As close to the commencement of the evidentiary hearing as practicable, the Administrative Law Judge shall hold a final prehearing conference, which counsel shall attend in person, to submit any proposed stipulations as to law, fact, or admissibility of evidence, exchange exhibit and witness lists, and designate testimony to be presented by deposition. At this conference, the Administrative Law Judge shall also resolve any outstanding evidentiary matters or pending motions (except motions for summary decision) and establish a final schedule for the evidentiary hearing.

(f) *Additional prehearing conferences and orders*. The Administrative Law Judge shall hold additional prehearing and status conferences or enter additional orders as may be needed to ensure the just and expeditious disposition of the proceeding and to avoid unnecessary cost. Such conferences shall be held in person to the extent practicable.

(g) *Public access and reporting*. Prehearing conferences shall be public unless the Administrative Law Judge determines in his or her discretion that the conference (or any part thereof) shall be closed to the public. The Administrative Law Judge shall have discretion to determine whether a prehearing conference shall be stenographically reported.

■ 7. Revise § 3.22 to read as follows:

**§ 3.22 Motions.**

(a) *Presentation and disposition*. Motions filed under § 3.26 or § 4.17 shall be directly referred to and ruled on by the Commission. Motions to dismiss filed before the evidentiary hearing, motions to strike, and motions for summary decision shall be directly referred to the Commission and shall be ruled on by the Commission unless the Commission in its discretion refers the motion to the Administrative Law Judge. Motions not referred to the Administrative Law Judge shall be ruled on by the Commission within 45 days of the filing of the last-filed answer or reply to the motion, if any, unless the Commission determines there is good cause to extend the deadline. If the Commission refers the motion to the Administrative Law Judge, it may set a deadline for the ruling by the Administrative Law Judge, and a party may seek review of the ruling of the Administrative Law Judge in accordance with § 3.23. During the time a proceeding is before an Administrative Law Judge, all other motions shall be addressed to and decided by the Administrative Law Judge, if within his or her authority. The Administrative Law Judge shall certify to the Commission a motion to disqualify filed under § 3.42(g) if the Administrative Law Judge does not disqualify himself or herself within 10 days. The Administrative Law Judge shall certify to the Commission forthwith any other motion upon which he or she has no authority to rule. Rulings containing information granted *in camera* status pursuant to § 3.45 shall be filed in accordance with § 3.45(f). When a motion to dismiss is made at the close of the evidence offered in support of the complaint based upon an alleged failure to establish a *prima facie* case, the Administrative Law Judge shall defer ruling thereon until immediately after all evidence has been received and the hearing record is closed. All written motions shall be filed with the Secretary of the Commission, and all motions addressed to the Commission shall be in writing. The moving party shall also provide a copy of its motion to the Administrative Law Judge at the time the motion is filed with the Secretary.

(b) *Proceedings not stayed*. A motion under consideration by the Commission shall not stay proceedings before the Administrative Law Judge unless the Commission so orders.

(c) *Content*. All written motions shall state the particular order, ruling, or action desired and the grounds therefor. Memoranda in support of, or in opposition to, any dispositive motion shall not exceed 10,000 words. Memoranda in support of, or in opposition to, any other motion shall not exceed 2,500 words. Any reply in support of a dispositive motion shall not exceed 5,000 words and any reply in support of any other motion authorized by the Administrative Law Judge or the Commission shall not exceed 1,250 words. These word count limitations include headings, footnotes, and quotations, but do not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, proposed form of order, and any attachment required by § 3.45(e). Documents that fail to comply with these provisions shall not be filed with the Secretary. Motions must also include the name, address, telephone number, fax number, and e-mail address (if any) of counsel and attach a draft order containing the proposed relief. If a party includes in a motion information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order, the party shall file 2 versions of the motion in accordance with the procedures set forth in § 3.45(e). The party shall mark its confidential filings with brackets or similar conspicuous markings to indicate the material for which it is claiming confidential treatment. The time period specified by § 3.22(d) within which an opposing party may file an answer will begin to run upon service on that opposing party of the confidential version of the motion.

(d) *Responses*. Within 10 days after service of any written motion, or within such longer or shorter time as may be designated by the Administrative Law Judge or the Commission, the opposing party shall answer or shall be deemed to have consented to the granting of the relief asked for in the motion. If an opposing party includes in an answer information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order, the

opposing party shall file 2 versions of the answer in accordance with the procedures set forth in § 3.45(e). The moving party shall have no right to reply, except for dispositive motions or as otherwise permitted by the Administrative Law Judge or the Commission. Reply and surreply briefs to motions other than dispositive motions shall be permitted only in circumstances where the parties wish to draw the Administrative Law Judge's or the Commission's attention to recent important developments or controlling authority that could not have been raised earlier in the party's principal brief. The reply may be conditionally filed with the motion seeking leave to reply. Any reply with respect to a dispositive motion, or any permitted reply to any other motion, shall be filed within 5 days after service of the last answer to that motion.

(e) *Rulings on motions*. Unless otherwise provided by a relevant rule, the Administrative Law Judge shall rule on motions within 14 days after the filing of all motion papers authorized by this section. The Commission, for good cause, may extend the time allowed for a ruling.

(f) *Motions for extensions*. The Administrative Law Judge or the Commission may waive the requirements of this section as to motions for extensions of time; however, the Administrative Law Judge shall have no authority to rule on *ex parte* motions for extensions of time.

(g) *Statement*. Each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), each motion for sanctions pursuant to § 3.38(b), and each motion for enforcement pursuant to § 3.38(c) shall be accompanied by a signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. If some of the matters in controversy have been resolved by agreement, the statement shall specify the matters so resolved and the matters remaining unresolved. The statement shall recite the date, time, and place of each such conference between counsel, and the names of all parties participating in each such conference. Unless otherwise ordered by the Administrative Law Judge, the statement required by this rule must be filed only with the first motion concerning compliance with the discovery demand at issue.

■ 8. Revise § 3.23 to read as follows:

**§ 3.23 Interlocutory appeals.**

(a) *Appeals without a determination by the Administrative Law Judge.*

(1) The Commission may, in its discretion, entertain interlocutory appeals where a ruling of the Administrative Law Judge:

(i) Requires the disclosure of records of the Commission or another governmental agency or the appearance of an official or employee of the Commission or another governmental agency pursuant to § 3.36, if such appeal is based solely on a claim of privilege: *Provided*, that the Administrative Law Judge shall stay until further order of the Commission the effectiveness of any ruling, whether or not appeal is sought, that requires the disclosure of nonpublic Commission minutes, Commissioner circulations, or similar documents prepared by the Commission, an individual Commissioner, or the Office of the General Counsel;

(ii) Suspends an attorney from participation in a particular proceeding pursuant to § 3.42(d); or

(iii) Grants or denies an application for intervention pursuant to the provisions of § 3.14.

(2) Appeal from such rulings may be sought by filing with the Commission an application for review within 3 days after notice of the Administrative Law Judge's ruling. An answer may be filed within 3 days after the application for review is filed. The Commission upon its own motion may enter an order staying compliance with a discovery demand authorized by the Administrative Law Judge pursuant to § 3.36 or placing the matter on the Commission's docket for review. Any order placing the matter on the Commission's docket for review will set forth the scope of the review and the issues which will be considered and will make provision for the filing of memoranda of law if deemed appropriate by the Commission.

(b) *Other interlocutory appeals*. A party may request the Administrative Law Judge to determine that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation or subsequent review will be an inadequate remedy. An answer may be filed within 3 days after the application for review is filed. The Administrative Law Judge shall issue a ruling on the request for determination within 3 days of the deadline for filing an answer. The party may file an application for review with the Commission within 1 day after notice that the Administrative Law Judge has issued the requested determination or 1 day after the deadline has passed for the Administrative Law Judge to issue a ruling on the request for determination and the Administrative Law Judge has not issued his or her ruling.

(c) The application for review shall attach the ruling from which appeal is being taken and any other portions of the record on which the moving party relies. Neither the application for review nor the answer shall exceed 2,500 words. This word count limitation includes headings, footnotes, and quotations, but does not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, proposed form of order, and any attachment required by § 3.45(e). The Commission may order additional briefing on the application.

(d) *Ruling on application for review.* Within 3 days after the deadline for filing an answer, the Commission will determine whether to grant the application for review. The denial of an application shall not constitute a ruling on the merits of the ruling that is the subject of the application.

(e) *Proceedings not stayed.* An application for review and appeal hereunder shall not stay proceedings before the Administrative Law Judge unless the Judge or the Commission shall so order.

■ 9. Revise § 3.24 to read as follows:

**§ 3.24 Summary decisions.**

(a) *Procedure*. (1) Any party may move, with or without supporting affidavits, for a summary decision in the party's favor upon all or any part of the issues being adjudicated. The motion shall be accompanied by a separate and concise statement of the material facts as to which the moving party contends there is no genuine issue for trial. Counsel in support of the complaint may so move at any time after 20 days following issuance of the complaint and any respondent may so move at any time after issuance of the complaint. Any such motion by any party, however, shall be filed in accordance with the scheduling order issued pursuant to § 3.21, but in any case at least 30 days before the date fixed for the hearing.

(2) Any other party may, within 14 days after service of the motion, file opposing affidavits. The opposing party shall include a separate and concise statement of those material facts as to which the opposing party contends there exists a genuine issue for trial, as

provided in § 3.24(a)(3). The parties may file memoranda of law in support of, or in opposition to, the motion consistent with § 3.22(c). If a party includes in any such brief or memorandum information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order, the party shall file 2 versions of the document in accordance with the procedures set forth in § 3.45(e). If the Commission (or, when appropriate, the Administrative Law Judge) determines that there is no genuine issue as to any material fact regarding liability or relief, it shall issue a final decision and order. In the event that the motion has been referred to the Administrative Law Judge, such determination by the Administrative Law Judge shall constitute his or her initial decision and shall conform to the procedures set forth in § 3.51(c). A summary decision, interlocutory in character and in compliance with the procedures set forth in § 3.51(c), may be rendered on the issue of liability alone although there is a genuine issue as to relief.

(3) Affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The Commission (or, when appropriate, the Administrative Law Judge) may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary decision is made and supported as provided in this rule, a party opposing the motion may not rest upon the mere allegations or denials of his or her pleading; the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue of material fact for trial. If no such response is filed, summary decision, if appropriate, shall be rendered.

(4) Should it appear from the affidavits of a party opposing the motion that it cannot, for reasons stated, present by affidavit facts essential to justify its opposition, the Commission (or, when appropriate, the Administrative Law Judge) may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or make such other order as is appropriate and a determination to that effect shall be made a matter of record.

(5) If on motion under this rule a summary decision is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Commission (or, when appropriate, the Administrative Law Judge) shall issue an order specifying the facts that appear without substantial controversy and directing further proceedings in the action. The facts so specified shall be deemed established.

(b) *Affidavits filed in bad faith.* (1) Should it appear to the satisfaction of the Commission (or, when appropriate, the Administrative Law Judge) at any time that any of the affidavits presented pursuant to this rule are presented in bad faith, or solely for the purpose of delay, or are patently frivolous, the Commission (or, when appropriate, the Administrative Law Judge) shall enter a determination to that effect upon the record.

(2) If upon consideration of all relevant facts attending the submission of any affidavit covered by paragraph (b)(1) of this section, the Commission (or, when appropriate, the Administrative Law Judge) concludes that action to suspend or remove an attorney from the case is warranted, it shall take action as specified in § 3.42(d). If the Administrative Law Judge to whom the Commission has referred a motion for summary decision concludes, upon consideration of all the relevant facts attending the submission of any affidavit covered by paragraph (b)(1) of this section, that the matter should be certified to the Commission for consideration of disciplinary action against an attorney, including reprimand, suspension or disbarment, the Administrative Law Judge shall certify the matter, with his or her findings and recommendations, to the Commission for its consideration of disciplinary action in the manner provided by the Commission's rules. If the Commission has addressed the motion directly, it may consider such disciplinary action without a certification by the Administrative Law Judge.

■ 10. Revise § 3.26 to read as follows:

**§ 3.26 Motions following denial of preliminary injunctive relief.**

(a) This section sets forth two procedures by which respondents may obtain consideration of whether continuation of an adjudicative proceeding is in the public interest after a court has denied preliminary injunctive relief in a separate proceeding brought under section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), in aid of the adjudication.

(b) A motion under this section shall be addressed to the Commission and filed with the Secretary of the Commission. If the Commission has filed a request for a stay, injunction, or other emergency relief pending appeal to a court of appeals, the motion must be filed within 14 days after, but no earlier than, the court of appeals has denied the Commission's request. In cases in which the Commission has not sought relief from the court of appeals within 7 days following the denial of a preliminary injunction, the motion must be filed within 14 days after the district court has denied preliminary relief.

(c) *Withdrawal from adjudication.* If a court has denied preliminary injunctive relief to the Commission in a section 13(b) proceeding brought in aid of an adjudicative proceeding, respondents may move that the proceeding be withdrawn from adjudication in order to consider whether or not the public interest warrants further litigation. Such a motion shall be filed jointly or separately by each of the respondents in the adjudicative proceeding. Complaint counsel may file a response within 14 days after such motion is filed. The matter will not be withdrawn from adjudication unless the Commission so directs.

(d) *Consideration on the record.* Instead of a motion to withdraw the matter from adjudication, any respondent or respondents may file a motion under this paragraph to dismiss the administrative complaint on the basis that the public interest does not warrant further litigation after a court has denied preliminary injunctive relief to the Commission. Complaint counsel may file a response within 14 days after such motion is filed. The filing of a motion to dismiss shall not stay the proceeding unless the Commission so directs.

(e) *Form.* Memoranda in support of or in opposition to such motions shall not exceed 10,000 words. This word count limitation includes headings, footnotes, and quotations, but does not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, proposed form of order, and any attachment required by § 3.45(e).

(f) *In camera materials.* If any filing includes materials that are subject to confidentiality protections pursuant to an order entered in either the proceeding under section 13(b) or in the proceeding under this part, such materials shall be treated as *in camera* materials for purposes of this paragraph and the party shall file 2 versions of the document in accordance with the procedures set forth in § 3.45(e). The time within which complaint counsel may file an answer under this paragraph

will begin to run upon service of the *in camera* version of the motion (including any supporting briefs and memoranda).

(g) *Ruling by Commission.* The Commission shall rule on any motion authorized by this section within 30 days after the filing of the motion and any memoranda in support of or in opposition to the motion.

■ 11. Revise § 3.31 to read as follows:

**§ 3.31 General discovery provisions.**

(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things for inspection and other purposes; and requests for admission. Except as provided in the rules, or unless the Administrative Law Judge orders otherwise, the frequency or sequence of these methods is not limited. The parties shall, to the greatest extent practicable, conduct discovery simultaneously; the fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(b) *Mandatory initial disclosures.* Complaint counsel and respondent's counsel shall, within 5 days of receipt of a respondent's answer to the complaint and without awaiting a discovery request, provide to each other:

(1) The name, and, if known, the address and telephone number of each individual likely to have discoverable information relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent, as set forth in § 3.31(c)(1); and

(2) A copy of, or a description by category and location of, all documents and electronically stored information including declarations, transcripts of investigational hearings and depositions, and tangible things in the possession, custody, or control of the Commission or respondent(s) that are relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent, as set forth in § 3.31(c)(1); unless such information or materials are subject to the limitations in § 3.31(c)(2), privileged as defined in § 3.31(c)(4), pertain to hearing preparation as defined in § 3.31(c)(5), pertain to experts as defined in § 3.31A, or are obtainable from some other source that is more convenient, less burdensome, or less expensive. A party shall make its disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation.

(c) *Scope of discovery.* Unless otherwise limited by order of the Administrative Law Judge or the Commission in accordance with these rules, the scope of discovery is as follows:

(1) *In general.* Parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent. Such information may include the existence, description, nature, custody, condition, and location of any books, documents, other tangible things, electronically stored information, and the identity and location of persons having any knowledge of any discoverable matter. Information may not be withheld from discovery on grounds that the information will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Limitations.* Complaint counsel need only search for materials that were collected or reviewed in the course of the investigation of the matter or prosecution of the case and that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter, including the Bureau of Economics. The Administrative Law Judge may authorize for good cause additional discovery of materials in the possession, custody, or control of those Bureaus or Offices, or authorize other discovery pursuant to § 3.36. Neither complaint counsel, respondent, nor a third party receiving a discovery request under these rules is required to search for materials generated and transmitted between an entity's counsel (including counsel's legal staff or in-house counsel) and not shared with anyone else, or between complaint counsel and non-testifying Commission employees, unless the Administrative Law Judge determines there is good cause to provide such materials. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the Administrative Law Judge if he or she determines that:

(i) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) The burden and expense of the proposed discovery outweigh its likely benefit.

(3) *Electronically stored information.* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On a motion to compel discovery, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Administrative Law Judge may nonetheless order discovery if the requesting party shows good cause, considering the limitations of paragraph (c)(2). The Administrative Law Judge may specify conditions for the discovery.

(4) *Privilege.* Discovery shall be denied or limited in order to preserve the privilege of a witness, person, or governmental agency as governed by the Constitution, any applicable act of Congress, or the principles of the common law as they may be interpreted by the Commission in the light of reason and experience.

(5) *Hearing preparations: Materials.* Subject to the provisions of § 3.31A, a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (c)(1) of this section and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of its case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Administrative Law Judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.

(d) *Protective orders; orders to preserve evidence.* In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section. The Administrative Law Judge may also deny discovery or make any other order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent undue delay in the proceeding. Such an order may also be issued to preserve evidence

upon a showing that there is substantial reason to believe that such evidence would not otherwise be available for presentation at the hearing.

(e) *Supplementation of disclosures and responses.* A party who has made a mandatory initial disclosure under § 3.31(b) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired if ordered by the Administrative Law Judge or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its mandatory initial disclosures under § 3.31(b) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(2) A party is under a duty to amend in a timely manner a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect.

(f) *Stipulations.* When approved by the Administrative Law Judge, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.

(g) *Inadvertent production.* The inadvertent production of information produced by a party or third party in discovery that is subject to a claim of privilege or immunity for hearing preparation material shall not waive such claims as to that or other information regarding the same subject matter if the Administrative Law Judge determines that the holder of the claim made efforts reasonably designed to protect the privilege or the hearing preparation material, provided, however, this provision shall not apply if the party, or an entity related to that party, who inadvertently produced the privileged information relies upon such information to support a claim or defense.

(h) *Restriction on filings.* Unless otherwise ordered by the Administrative Law Judge in his or her discretion, mandatory initial and supplemental disclosures, interrogatories, depositions, requests for documents, requests for admissions, and answers and responses thereto shall be served upon other parties but shall not be filed with the Office of the Secretary, the Administrative Law Judge, or otherwise provided to the Commission, except to support or oppose a motion or to offer as evidence.

**Appendix A to § 3.31: Standard Protective Order.**

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

**IT IS HEREBY ORDERED THAT** this Protective Order Governing Confidential Material (''Protective Order'') shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, ''confidential material'' shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. ''Sensitive personal information'' shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. ''Document'' shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. ''Commission'' shall refer to the Federal Trade Commission (''FTC''), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.

2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.

3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation ''CONFIDENTIAL—FTC Docket No. XXXX'' or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation ''CONFIDENTIAL—FTC Docket No. XXXX'' or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including

consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

■ 12. Add § 3.31A to read as follows:

**§ 3.31A Expert discovery.**

(a) The parties shall serve each other with a list of experts they intend to call as witnesses at the hearing not later than 1 day after the close of fact discovery, meaning the close of discovery except for depositions and other discovery permitted under § 3.24(a)(4), and discovery for purposes of authenticity and admissibility of exhibits. Complaint counsel shall serve the other parties with a report prepared by each of its expert witnesses not later than 14 days after the close of fact discovery. Each respondent shall serve each other party with a report prepared by each of its expert witnesses not later than 14 days after the deadline for service of complaint counsel's expert reports. Complaint counsel shall serve respondents with a list of any rebuttal expert witnesses and a rebuttal report prepared by each such witness not later than 10 days after the deadline for service of respondent's expert reports. Aside from any information required by paragraph (c), a rebuttal report shall be limited to rebuttal of matters set forth in a respondent's expert reports. If material outside the scope of fair rebuttal is presented, a respondent may file a motion not later than 5 days after the deadline for service of complaint counsel's rebuttal reports, seeking appropriate relief with the Administrative Law Judge, including striking all or part of the report, leave to submit a surrebuttal report by respondent's experts, or leave to call a surrebuttal witness and to submit a surrebuttal report by that witness.

(b) No party may call an expert witness at the hearing unless he or she has been listed and has provided reports as required by this section. Each side will be limited to calling at the evidentiary hearing 5 expert witnesses, including any rebuttal or surrebuttal expert witnesses. A party may file a motion seeking leave to call additional expert witnesses due to extraordinary circumstances.

(c) Each report shall be signed by the expert and contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data, materials, or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition

within the preceding 4 years. A rebuttal or surrebuttal report need not include any information already included in the initial report of the witness.

(d) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. Unless otherwise ordered by the Administrative Law Judge, a deposition of any expert witness shall be conducted after the disclosure of a report prepared by the witness in accordance with paragraph (a). Depositions of expert witnesses shall be completed not later than 65 days after the close of fact discovery. Upon motion, the Administrative Law Judge may order further discovery by other means, subject to such restrictions as to scope as the Administrative Law Judge may deem appropriate. A party, however, may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for hearing and who is not listed as a witness for the evidentiary hearing.

■ 13. Revise § 3.33 to read as follows:

**§ 3.33 Depositions.**

(a) *In general.* Any party may take a deposition of any named person or of a person or persons described with reasonable particularity, provided that such deposition is reasonably expected to yield information within the scope of discovery under § 3.31(c)(1) and subject to the requirements in § 3.36. Such party may, by motion, obtain from the Administrative Law Judge an order to preserve relevant evidence upon a showing that there is substantial reason to believe that such evidence would not otherwise be available for presentation at the hearing. Depositions may be taken before any person having power to administer oaths, either under the law of the United States or of the state or other place in which the deposition is taken, who may be designated by the party seeking the deposition, provided that such person shall have no interest in the outcome of the proceeding. The party seeking the deposition shall serve upon each person whose deposition is sought and upon each party to the proceeding reasonable notice in writing of the time and place at which it will be taken, and the name and address of each person or persons to be examined, if known, and if the name is not known, a description sufficient to identify them. The parties may stipulate in writing or the Administrative Law Judge may upon motion order that a deposition be taken by telephone or other remote electronic means. A deposition taken by such means is deemed taken at the place where the deponent is to answer questions.

(b) The Administrative Law Judge may rule on motion by a party that a deposition shall not be taken upon a determination that such deposition would not be reasonably expected to meet the scope of discovery set forth under § 3.31(c), or that the value of the deposition would be outweighed by the considerations set forth under § 3.43(b). The fact that a witness testifies at an investigative hearing does not preclude the deposition of that witness.

(c)(1) *Notice to corporation or other organization.* A party may name as the deponent a public or private corporation, partnership, association, governmental agency other than the Federal Trade Commission, or any bureau or regional office of the Federal Trade Commission, and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by any other procedure authorized in these rules.

(2) *Notice to Commission.* Except as provided in § 3.31(h), notices of depositions shall not be filed with the Office of the Secretary, the Administrative Law Judge, or otherwise provided to the Commission.

(d) *Taking of deposition.* Each deponent shall be duly sworn, and any party shall have the right to question him or her. Objections to questions or to evidence presented shall be in short form, stating the grounds of objections relied upon. The questions propounded and the answers thereto, together with all objections made, shall be recorded and certified by the officer. Thereafter, upon payment of the charges therefor, the officer shall furnish a copy of the deposition to the deponent and to any party.

(e) *Depositions upon written questions.* A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating:

(1) The name and address of the person who is to answer them, and

(2) The name or descriptive title and address of the officer before whom the deposition is to be taken.

A deposition upon written questions may be taken of a public or private corporation, partnership, association, governmental agency other than the Federal Trade Commission, or any bureau or regional office of the Federal Trade Commission in accordance with the provisions of § 3.33(c). Within 30 days after the notice and written questions are served, any other party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, the party taking the deposition may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, any other party may serve recross questions upon all other parties. The content of any question shall not be disclosed to the deponent prior to the taking of the deposition. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly to take the testimony of the deponent in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him or her. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

(f) *Correction of deposition.* A deposition may be corrected, as to form or substance, in the manner provided by § 3.44(b). Any such deposition shall, in addition to the other required procedures, be read to or by the deponent and signed by him or her, unless the parties by stipulation waive the signing or the deponent is unavailable or cannot be found or refuses to sign. If the deposition is not signed by the deponent within 30 days of its submission or attempted submission, the officer shall sign it and certify that the signing has been waived or that the deponent is unavailable or that the deponent has refused to sign, as the case may be, together with the reason for the refusal to sign, if any has been given. The deposition may then be used as though signed unless, on a motion to suppress under § 3.33(g)(2)(iv), the Administrative Law Judge determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. In addition to and not in lieu of the procedure for formal correction of the deposition, the deponent may enter in the record at the time of signing a list of objections to the transcription of his or her remarks, stating with specificity the alleged errors in the transcript.

(g) *Objections; errors and irregularities.*

(1) *Objections to admissibility*. Subject to the provisions of paragraph (g)(2) of this section, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(2) *Effect of errors and irregularities in depositions*-(i) *As to notice*. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(ii) *As to disqualification of officer*. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(iii) *As to taking of deposition*. (A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions are waived unless served in writing upon all parties within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(iv) *As to completion and return of deposition*. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, endorsed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or with due diligence might have been ascertained.

■ 14. Revise § 3.34 to read as follows:

**§ 3.34 Subpoenas.**

(a) *Subpoenas ad testificandum*. Counsel for a party may sign and issue a subpoena, on a form provided by the Secretary, requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena or to attend and give testimony at an adjudicative hearing.

(b) *Subpoenas duces tecum; subpoenas to permit inspection of premises*. Counsel for a party may sign and issue a subpoena, on a form provided by the Secretary, commanding a person to produce and permit inspection and copying of designated books, documents, or tangible things, or commanding a person to permit inspection of premises, at a time and place therein specified. The subpoena shall specify with reasonable particularity the material to be produced. The person commanded by the subpoena need not appear in person at the place of production or inspection unless commanded to appear for a deposition or hearing pursuant to paragraph (a) of this section. As used herein, the term ''documents'' includes written materials, electronically stored information, and tangible things. A subpoena *duces tecum* may be used by any party for purposes of discovery, for obtaining documents for use in evidence, or for both purposes, and shall specify with reasonable particularity the materials to be produced.

(c) *Motions to quash; limitation on subpoenas*. Any motion by the subject of a subpoena to limit or quash the subpoena shall be filed within the earlier of 10 days after service thereof or the time for compliance therewith. Such motions shall set forth all assertions of privilege or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits and other supporting documentation, and shall include the statement required by § 3.22(g). Nothing in paragraphs (a) and (b) of this section authorizes the issuance of subpoenas except in accordance with § 3.31(c)(2) and § 3.36.

■ 15. Revise § 3.35 to read as follows:

**§ 3.35 Interrogatories to parties**

(a) *Availability; procedures for use*. (1) Any party may serve upon any other party written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation, partnership, association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. For this purpose, information shall not be deemed to be available insofar as it is in the possession of the Commissioners, the General Counsel, the office of Administrative Law Judges, or the Secretary in his or her capacity as custodian or recorder of any such information, or their respective staffs.

(2) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to on grounds not raised and ruled on in connection with the authorization, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections, if any, within 30 days after the service of the interrogatories. The Administrative Law Judge may allow a shorter or longer time.

(3) Except as provided in § 3.31(h), interrogatories shall not be filed with the Office of the Secretary, the Administrative Law Judge, or otherwise provided to the Commission.

(b) *Scope; use at hearing*. (1) Interrogatories may relate to any matters that can be inquired into under § 3.31(c)(1), and the answers may be used to the extent permitted by the rules of evidence.

(2) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but such an interrogatory need not be answered until after designated discovery has been completed, but in no case later than 3 days before the final pretrial conference.

(c) *Option to produce records*. Where the answer to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. The specification shall include sufficient detail to permit the interrogating party to identify readily the individual documents from which the answer may be ascertained.

■ 16. Revise § 3.36 to read as follows:

**§ 3.36 Applications for subpoenas for records of or appearances by certain officials or employees of the Commission or officials or employees of governmental agencies other than the Commission, and subpoenas to be served in a foreign country.**

(a) *Form.* An application for issuance of a subpoena for the production of documents, as defined in § 3.34(b), or for the issuance of a request requiring the production of or access to documents, other tangible things, or electronically stored information for the purposes described in § 3.37(a), in the possession, custody, or control of the Commissioners, the General Counsel, any Bureau or Office not involved in the matter, the office of Administrative Law Judges, or the Secretary in his or her capacity as custodian or recorder of any such information, or their respective staffs, or of a governmental agency other than the Commission or the officials or employees of such other agency, or for the issuance of a subpoena requiring the appearance of a Commissioner, the General Counsel, an official of any Bureau or Office not involved in the matter, an Administrative Law Judge, or the Secretary in his or her capacity as custodian or recorder of any such information, or their respective staffs, or of an official or employee of another governmental agency, or for the issuance of a subpoena to be served in a foreign country, shall be made in the form of a written motion filed in accordance with the provisions of § 3.22(a). No application for records pursuant to § 4.11 of this chapter or the Freedom of Information Act may be filed with the Administrative Law Judge.

(b) *Content.* The motion shall make a showing that:

(1) The material sought is reasonable in scope;

(2) If for purposes of discovery, the material falls within the limits of discovery under § 3.31(c)(1), or, if for an adjudicative hearing, the material is reasonably relevant;

(3) If for purposes of discovery, the information or material sought cannot reasonably be obtained by other means or, if for purposes of compelling a witness to appear at the evidentiary hearing, the movant has a compelling need for the testimony;

(4) With respect to subpoenas to be served in a foreign country, that the party seeking discovery or testimony has a good faith belief that the discovery requested would be permitted by treaty, law, custom, or practice in the country from which the discovery or testimony is sought and that any additional procedural requirements have been or will be met before the subpoena is served; and

(5) If the subpoena requires access to documents or other tangible things, it meets the requirements of § 3.37.

(c) *Execution.* If an Administrative Law Judge issues an order authorizing a subpoena pursuant to this section, the moving party may forward to the Secretary a request for the authorized subpoena, with a copy of the authorizing order attached. Each such subpoena shall be signed by the Secretary; shall have attached to it a copy of the authorizing order; and shall be served by the moving party only in conjunction with a copy of the authorizing order.

■ 17. Revise § 3.37 to read as follows:

**§ 3.37 Production of documents, electronically stored information, and any tangible things; access for inspection and other purposes.**

(a) *Availability; procedures for use.* Any party may serve on another party a request: to produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy any designated documents or electronically stored information, as defined in § 3.34(b), or to inspect and copy, test, or sample any tangible things which are within the scope of § 3.31(c)(1) and in the possession, custody, or control of the party upon whom the request is served; or to permit entry upon designated land or other property in the possession or control of the party upon whom the order would be served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of § 3.31(c)(1). Each such request shall specify with reasonable particularity the documents or things to be produced or inspected, or the property to be entered. Each such request shall also specify a reasonable time, place, and manner of making the production or inspection and performing the related acts. Each request may specify the form in which electronically stored information is to be produced, but the requested form of electronically stored information must not be overly burdensome or unnecessarily costly to the producing party. A party shall make documents available as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in § 3.34. Except as provided in § 3.31(h), requests under this section shall not be filed with the Office of the Secretary, the Administrative Law Judge, or otherwise provided to the Commission.

(b) *Response; objections.* No more than 30 days after receiving the request, the response of the party upon whom the request is served shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form - or if no form was specified in the request - the party must state the form it intends to use. The party submitting the request may move for an order under § 3.38(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) *Production of documents or electronically stored information.* Unless otherwise stipulated or ordered by the Administrative Law Judge, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form in which it is ordinarily maintained or in a reasonably usable form; and

(iii) A party need not produce the same electronically stored information in more than one form.

■ 18. Revise § 3.38 to read as follows:

**§ 3.38 Motion for order compelling disclosure or discovery; sanctions.**

(a) *Motion for order to compel.* A party may apply by motion to the Administrative Law Judge for an order compelling disclosure or discovery, including a determination of the sufficiency of the answers or objections with respect to the mandatory initial disclosures required by § 3.31(b), a request for admission under § 3.32, a deposition under § 3.33, an interrogatory under § 3.35, or a production of documents or things or access for inspection or other purposes under § 3.37. Any memorandum in support of such motion shall be no longer than 2,500 words. Any response

to the motion by the opposing party must be filed within 5 days of receipt of service of the motion and shall be no longer than 2,500 words. These word count limitations include headings, footnotes, and quotations, but do not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, proposed form of order, and any attachment required by § 3.45(e). The Administrative Law Judge shall rule on a motion to compel within 3 business days of the date in which the response is due. Unless the Administrative Law Judge determines that the objection is justified, the Administrative Law Judge shall order that an initial disclosure or an answer to any requests for admissions, documents, depositions, or interrogatories be served or disclosure otherwise be made.

(b) If a party or an officer or agent of a party fails to comply with any discovery obligation imposed by these rules, upon motion by the aggrieved party, the Administrative Law Judge or the Commission, or both, may take such action in regard thereto as is just, including but not limited to the following:

(1) Order that any answer be amended to comply with the request, subpoena, or order;

(2) Order that the matter be admitted or that the admission, testimony, documents, or other evidence would have been adverse to the party;

(3) Rule that for the purposes of the proceeding the matter or matters concerning which the order or subpoena was issued be taken as established adversely to the party;

(4) Rule that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer, agent, expert, or fact witness, or the documents or other evidence, or upon any other improperly withheld or undisclosed materials, information, witnesses, or other discovery;

(5) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(6) Rule that a pleading, or part of a pleading, or a motion or other submission by the party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the party, or both.

(c) Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in an initial decision of the Administrative Law Judge or an order or opinion of the Commission. It shall be the duty of parties to seek and Administrative Law Judges to grant such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for withheld testimony, documents, or other evidence. If in the Administrative Law Judge's opinion such relief would not be sufficient, or in instances where a nonparty fails to comply with a subpoena or order, he or she shall certify to the Commission a request that court enforcement of the subpoena or order be sought.

■ 19. Revise § 3.38A to read as follows:

**§ 3.38A Withholding requested material.**

(a) Any person withholding material responsive to a subpoena issued pursuant to § 3.34 or § 3.36, written interrogatories requested pursuant to § 3.35, a request for production or access pursuant to § 3.37, or any other request for the production of materials under this part, shall assert a claim of privilege or any similar claim not later than the date set for production of the material. Such person shall, if so directed in the subpoena or other request for production, submit, together with such claim, a schedule which describes the nature of the documents, communications, or tangible things not produced or disclosed - and does so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim. The schedule need not describe any material outside the scope of the duty to search set forth in § 3.31(c)(2) except to the extent that the Administrative Law Judge has authorized additional discovery as provided in that paragraph.

(b) A person withholding material for reasons described in § 3.38A(a) shall comply with the requirements of that subsection in lieu of filing a motion to limit or quash compulsory process.

(Sec. 5 of the FTC Act (15 U.S.C. 45))

■ 20. Revise § 3.39 to read as follows:

**§ 3.39 Orders requiring witnesses to testify or provide other information and granting immunity.**

(a) Where Commission complaint counsel desire the issuance of an order requiring a witness or deponent to testify or provide other information and granting immunity under 18 U.S.C. 6002, Directors and Assistant Directors of Bureaus and Regional Directors and Assistant Regional Directors of Commission Regional Offices who supervise complaint counsel responsible for presenting evidence in support of the complaint are authorized to determine:

(1) That the testimony or other information sought from a witness or deponent, or prospective witness or deponent, may be necessary to the public interest, and

(2) That such individual has refused or is likely to refuse to testify or provide such information on the basis of his or her privilege against self-incrimination; and to request, through the Commission's liaison officer, approval by the Attorney General for the issuance of such order. Upon receipt of approval by the Attorney General (or his or her designee), the Administrative Law Judge is authorized to issue an order requiring the witness or deponent to testify or provide other information and granting immunity when the witness or deponent has invoked his or her privilege against self-incrimination and it cannot be determined that such privilege was improperly invoked.

(b) Requests by counsel other than Commission complaint counsel for an order requiring a witness to testify or provide other information and granting immunity under 18 U.S.C. 6002 may be made to the Administrative Law Judge and may be made *ex parte*. When such requests are made, the Administrative Law Judge is authorized to determine:

(1) That the testimony or other information sought from a witness or deponent, or prospective witness or deponent, may be necessary to the public interest, and

(2) That such individual has refused or is likely to refuse to testify or provide such information on the basis of his or her privilege against self-incrimination; and, upon making such determinations, to request, through the Commission's liaison officer, approval by the Attorney General for the issuance of an order requiring a witness to testify or provide other information and granting immunity; and, after the Attorney General (or his or her designee) has granted such approval, to issue such order when the witness or deponent has invoked his or her privilege against self-incrimination and it cannot be determined that such privilege was improperly invoked.

(18 U.S.C. 6002, 6004)

■ 21. Revise § 3.41, to read as follows:

**§ 3.41 General hearing rules.**

(a) *Public hearings.* All hearings in adjudicative proceedings shall be public unless an *in camera* order is entered by the Administrative Law Judge pursuant to § 3.45(b) of this chapter or unless otherwise ordered by the Commission.

(b) *Expedition.* Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place and shall continue, except for brief intervals of the sort normally involved in judicial proceedings, without suspension until concluded. The hearing will take place on the date specified in the notice accompanying the complaint, pursuant to § 3.11(b)(4), and should be limited to no more than 210 hours. The Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence or extend the number of hours for the hearing. Consistent with the requirements of expedition:

(1) The Administrative Law Judge may order hearings at more than one place and may grant a reasonable recess at the end of a case-in-chief for the purpose of discovery deferred during the prehearing procedure if the Administrative Law Judge determines that such recess will materially expedite the ultimate disposition of the proceeding.

(2) When actions involving a common question of law or fact are pending before the Administrative Law Judge, the Commission or the Administrative Law Judge may order a joint hearing of any or all the matters in issue in the actions; the Commission or the Administrative Law Judge may order all the actions consolidated; and the Commission or the Administrative Law Judge may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(3) When separate hearings will be conducive to expedition and economy, the Commission or the Administrative Law Judge may order a separate hearing of any claim, or of any separate issue, or of any number of claims or issues.

(4) Each side shall be allotted no more than half of the trial time within which to present its opening statements, *in limine* motions, all arguments excluding the closing argument, direct or cross examinations, or other evidence.

(5) Each side shall be permitted to make an opening statement that is no more than 2 hours in duration.

(6) Each side shall be permitted to make a closing argument no later than 5 days after the last filed proposed findings. The closing argument shall last no longer than 2 hours.

(c) *Rights of parties.* Every party, except intervenors, whose rights are determined under § 3.14, shall have the right of due notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing.

(d) *Adverse witnesses.* An adverse party, or an officer, agent, or employee thereof, and any witness who appears to be hostile, unwilling, or evasive, may be interrogated by leading questions and may also be contradicted and impeached by the party calling him or her.

(e) Requests for an order requiring a witness to testify or provide other information and granting immunity under 18 U.S.C. 6002 shall be disposed of in accordance with § 3.39.

(f) *Collateral federal court actions.*The pendency of a collateral federal court action that relates to the administrative adjudication shall not stay the proceeding unless a court of competent jurisdiction, or the Commission for good cause, so directs. A stay shall toll any deadlines set by the rules.

■ 22. Revise § 3.43 to read as follows:

**§ 3.43 Evidence.**

(a) *Burden of proof.* Counsel representing the Commission, or any person who has filed objections sufficient to warrant the holding of an adjudicative hearing pursuant to § 3.13, shall have the burden of proof, but the proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.

(b) *Admissibility.* Relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, and unreliable evidence shall be excluded. Evidence, even if relevant, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or if the evidence would be misleading, or based on considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Evidence that constitutes hearsay may be admitted if it is relevant, material, and bears satisfactory indicia of reliability so that its use is fair. Hearsay is a statement, other than one made by the declarant while testifying at the hearing, offered in evidence to prove the truth of the matter asserted. If otherwise meeting the standards for admissibility described in this paragraph, depositions, investigational hearings, prior testimony in Commission or other proceedings, and any other form of hearsay, shall be admissible and shall not be excluded solely on the ground that they are or contain hearsay. Statements or testimony by a party-opponent, if relevant, shall be admitted.

(c) *Admissibility of third party documents.* Extrinsic evidence of authenticity as a condition precedent to admissibility of documents received from third parties is not required with respect to the original or a duplicate of a domestic record of regularly conducted activity by that third party that otherwise meets the standards of admissibility described in paragraph (b) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority, certifying that the record:

(1) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(2) was kept in the course of the regularly conducted activity; and

(3) was made by the regularly conducted activity as a regular practice.

(d) *Presentation of evidence.*

(1) A party is entitled to present its case or defense by sworn oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the Commission or the Administrative Law Judge, may be required for a full and true disclosure of the facts.

(2) The Administrative Law Judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(i) Make the interrogation and presentation effective for the ascertainment of the truth;

(ii) Avoid needless consumption of time; and

(iii) Protect witnesses from harassment or undue embarrassment.

(3) As respondents are in the best position to determine the nature of documents generated by such respondents and which come from their own files, the burden of proof is on the respondent to introduce evidence to rebut a presumption that such documents are authentic and kept in the regular course of business.

(e) *Information obtained in investigations.* Any documents, papers, books, physical exhibits, or other materials or information obtained by the Commission under any of its powers may be disclosed by counsel representing the Commission when necessary in connection with adjudicative proceedings and may be offered in evidence by counsel representing the Commission in any such proceeding

(f) *Official notice.* ''Official notice'' may be taken of any material fact that is not subject to reasonable dispute in that it is either generally known within the Commission's expertise or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. If official notice is requested or is taken of a material fact not appearing in the

evidence in the record, the parties, upon timely request, shall be afforded an opportunity to disprove such noticed fact.

(g) *Objections.* Objections to evidence shall timely and briefly state the grounds relied upon, but the transcript shall not include argument or debate thereon except as ordered by the Administrative Law Judge. Rulings on all objections shall appear in the record.

(h) *Exceptions.* Formal exception to an adverse ruling is not required.

(i) *Excluded evidence.* When an objection to a question propounded to a witness is sustained, the questioner may make a specific offer of what he or she expects to prove by the answer of the witness, or the Administrative Law Judge may, in his or her discretion, receive and report the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

■ 23. Revise § 3.44 to read as follows:

**§ 3.44 Record.**

(a) *Reporting and transcription.* Hearings shall be stenographically reported and transcribed by the official reporter of the Commission under the supervision of the Administrative Law Judge, and the original transcript shall be a part of the record and the sole official transcript. The live oral testimony of each witness shall be video recorded digitally, and the video recording and the written transcript of the testimony shall be made part of the record. Copies of transcripts are available from the reporter at rates not to exceed the maximum rates fixed by contract between the Commission and the reporter.

(b) *Corrections.* Corrections of the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. Corrections ordered by the Administrative Law Judge or agreed to in a written stipulation signed by all counsel and parties not represented by counsel, and approved by the Administrative Law Judge, shall be included in the record, and such stipulations, except to the extent they are capricious or without substance, shall be approved by the Administrative Law Judge. Corrections shall not be ordered by the Administrative Law Judge except upon notice and opportunity for the hearing of objections. Such corrections shall be made by the official reporter by furnishing substitute type pages, under the usual certificate of the reporter, for insertion in the official record. The original uncorrected pages shall be retained in the files of the Commission.

(c) *Closing of the hearing record.* Upon completion of the evidentiary hearing, the Administrative Law Judge shall issue an order closing the hearing record after giving the parties 3 business days to determine if the record is complete or needs to be supplemented. The Administrative Law Judge shall retain the discretion to permit or order correction of the record as provided in § 3.44(b).

■ 24. Revise § 3.45 to read as follows:

**§ 3.45 In camera orders.**

(a) *Definition.* Except as hereinafter provided, material made subject to an *in camera* order will be kept confidential and not placed on the public record of the proceeding in which it was submitted. Only respondents, their counsel, authorized Commission personnel, and court personnel concerned with judicial review may have access thereto, provided that the Administrative Law Judge, the Commission and reviewing courts may disclose such *in camera* material to the extent necessary for the proper disposition of the proceeding.

(b) *In camera treatment of material.* A party or third party may obtain *in camera* treatment for material, or portions thereof, offered into evidence only by motion to the Administrative Law Judge. Parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days notice of the proposed use of such material. Each such motion must include an attachment containing a copy of each page of the document in question on which *in camera* or otherwise confidential excerpts appear. The Administrative Law Judge shall order that such material, whether admitted or rejected, be placed *in camera* only after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment or after finding that the material constitutes sensitive personal information. ''Sensitive personal information'' shall include, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. For material other than sensitive personal information, a finding that public disclosure will likely result in a clearly defined, serious injury shall be based on the standard articulated in *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); *see also Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977), which established a three-part test that was modified by *General Foods Corp.*, 95 F.T.C. 352, 355 (1980). The party submitting material for which *in camera* treatment is sought must provide, for each piece of such evidence and affixed to such evidence, the name and address of any person who should be notified in the event that the Commission intends to disclose *in camera* information in a final decision. No material, or portion thereof, offered into evidence, whether admitted or rejected, may be withheld from the public record unless it falls within the scope of an order issued in accordance with this section, stating the date on which *in camera* treatment will expire, and including:

(1) A description of the material;

(2) A statement of the reasons for granting *in camera* treatment; and

(3) A statement of the reasons for the date on which *in camera* treatment will expire, except in the case of sensitive personal information, which shall be accorded permanent *in camera* treatment unless disclosure or an expiration date is required or provided by law. For *in camera* material other than sensitive personal information, an expiration date may not be omitted except in unusual circumstances, in which event the order shall state with specificity the reasons why the need for confidentiality of the material, or portion thereof at issue is not likely to decrease over time, and any other reasons why such material is entitled to *in camera* treatment for an indeterminate period. If an *in camera* order is silent as to duration, without explanation, then it will expire 3 years after its date of issuance. Material subject to an *in camera* order shall be segregated from the public record and filed in a sealed envelope, or other appropriate container, bearing the title, the docket number of the proceeding, the notation ''*In Camera* Record under § 3.45,'' and the date on which *in camera* treatment expires. If the Administrative Law Judge has determined that *in camera* treatment should be granted for an indeterminate period, the notation should state that fact. Parties are not required to provide documents subject to *in camera* treatment, including documents obtained from third parties, to any individual or entity other than the Administrative Law Judge, counsel for other parties, and, during an appeal, the Commission or a federal court.

(c) *Release of in camera material. In camera* material constitutes part of the confidential records of the Commission and is subject to the provisions of § 4.11 of this chapter.

(d) *Briefs and other submissions referring to in camera or confidential information.* Parties shall not disclose information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order in the public version of proposed findings, briefs, or other documents. This provision does not preclude references in such proposed findings, briefs, or other documents to *in camera* or other confidential information or general statements based on the content of such information.

(e) *When in camera or confidential information is included in briefs and other submissions.* If a party includes specific information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order in any document filed in a proceeding under this part, the party shall file 2 versions of the document. A complete version shall be marked ''*In Camera*'' or ''Subject to Protective Order,'' as appropriate, on the first page and shall be filed with the Secretary and served by the party on the other parties in accordance with the rules in this part. Submitters of *in camera* or other confidential material should mark any such material in the complete versions of their submissions in a conspicuous matter, such as with highlighting or bracketing. References to *in camera* or confidential material must be supported by record citations to relevant evidentiary materials and associated Administrative Law Judge *in camera* or other confidentiality rulings to confirm that *in camera* or other confidential treatment is warranted for such material. In addition, the document must include an attachment containing a copy of each page of the document in question on which *in camera* or otherwise confidential excerpts appear, and providing the name and address of any person who should be notified of the Commission's intent to disclose in a final decision any of the *in camera* or otherwise confidential information in the document. Any time period within which these rules allow a party to respond to a document shall run from the date the party is served with the complete version of the document. An expurgated version of the document, marked ''Public Record'' on the first page and omitting the *in camera* and confidential information and attachment that appear in the complete version, shall be filed with the Secretary within 5 days after the filing of the complete version, unless the Administrative Law Judge or the Commission directs otherwise, and shall be served by the party on the other parties in accordance with the rules in this part. The expurgated version shall indicate any omissions with brackets or ellipses, and its pagination and depiction of text on each page shall be identical to that of the *in camera* version.

(f) *When in camera or confidential information is included in rulings or recommendations of the Administrative Law Judge.* If the Administrative Law Judge includes in any ruling or recommendation information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order, the Administrative Law Judge shall file 2 versions of the ruling or recommendation. A complete version shall be marked ''*In Camera*'' or ''Subject to Protective Order,'' as appropriate, on the first page and shall be served upon the parties. The complete version will be placed in the *in camera* record of the proceeding. An expurgated version, to be filed within 5 days after the filing of the complete version, shall omit the *in camera* and confidential information that appears in the complete version, shall be marked ''Public Record'' on the first page, shall be served upon the parties, and shall be included in the public record of the proceeding.

(g) *Provisional in camera rulings.* The Administrative Law Judge may make a provisional grant of *in camera* status to materials if the showing required in § 3.45(b) cannot be made at the time the material is offered into evidence but the Administrative Law Judge determines that the interests of justice would be served by such a ruling. Within 20 days of such a provisional grant of *in camera* status, the party offering the evidence or an interested third party must present a motion to the Administrative Law Judge for a final ruling on whether *in camera* treatment of the material is appropriate pursuant to § 3.45(b). If no such motion is filed, the Administrative Law Judge may either exclude the evidence, deny *in camera* status, or take such other action as is appropriate.

■ 26. Revise § 3.46 to read as follows:

**§ 3.46 Proposed findings, conclusions, and order.**

(a) *General.* Within 21 days of the closing of the hearing record, each party may file with the Secretary for consideration of the Administrative Law Judge proposed findings of fact, conclusions of law, and rule or order, together with reasons therefor and briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. If a party includes in the proposals information that has been granted *in camera* status pursuant to § 3.45(b), the party shall file 2 versions of the proposals in accordance with the procedures set forth in § 3.45(e). Reply findings of fact, conclusions of law, and briefs may be filed by each party within 10 days of service of the initial proposed findings.

(b) *Exhibit index.* The first statement of proposed findings of fact and conclusions of law filed by a party shall include an index listing for each exhibit offered by the party and received in evidence:

(1) The exhibit number, followed by

(2) The exhibit's title or a brief description if the exhibit is untitled;

(3) The transcript page at which the Administrative Law Judge ruled on the exhibit's admissibility or a citation to any written order in which such ruling was made;

(4) The transcript pages at which the exhibit is discussed;

(5) An identification of any other exhibit which summarizes the contents of the listed exhibit, or of any other exhibit of which the listed exhibit is a summary;

(6) A cross-reference, by exhibit number, to any other portions of that document admitted as a separate exhibit on motion by any other party; and

(7) A statement whether the exhibit has been accorded *in camera* treatment, and a citation to the *in camera* ruling.

(c) *Witness index.* The first statement of proposed findings of fact and conclusions of law filed by a party shall also include an index to the witnesses called by that party, to include for each witness:

(1) The name of the witness;

(2) A brief identification of the witness;

(3) The transcript pages at which any testimony of the witness appears; and

(4) A statement whether the exhibit has been accorded *in camera* treatment, and a citation to the *in camera* ruling.

(d) *Stipulated indices.* As an alternative to the filing of separate indices, the parties are encouraged to stipulate to joint exhibit and witness indices at the time the first statement of proposed findings of fact and conclusions of law is due to be filed.

(e) *Rulings.* The record shall show the Administrative Law Judge's ruling on each proposed finding and conclusion, except when the order disposing of the

proceeding otherwise informs the parties of the action taken.

■ 27. Revise § 3.51 to read as follows:

**§ 3.51 Initial decision.**

(a) *When filed and when effective.* The Administrative Law Judge shall file an initial decision within 70 days after the filing of the last filed initial or reply proposed findings of fact, conclusions of law and order pursuant to § 3.46, within 85 days of the closing the hearing record pursuant to § 3.44(c) where the parties have waived the filing of proposed findings, or within 14 days after the granting of a motion for summary decision following a referral of such motion from the Commission. The Administrative Law Judge may extend any of these time periods by up to 30 days for good cause. The Commission may further extend any of these time periods for good cause. Except in cases subject to § 3.52(a), once issued, the initial decision shall become the decision of the Commission 30 days after service thereof upon the parties or 30 days after the filing of a timely notice of appeal, whichever shall be later, unless a party filing such a notice shall have perfected an appeal by the timely filing of an appeal brief or the Commission shall have issued an order placing the case on its own docket for review or staying the effective date of the decision.

(b) *Exhaustion of administrative remedies.* An initial decision shall not be considered final agency action subject to judicial review under 5 U.S.C. 704. Any objection to a ruling by the Administrative Law Judge, or to a finding, conclusion or a provision of the order in the initial decision, which is not made a part of an appeal to the Commission shall be deemed to have been waived.

(c) *Content, format for filing.* (1) An initial decision shall be based on a consideration of the whole record relevant to the issues decided, and shall be supported by reliable and probative evidence. The initial decision shall include a statement of findings of fact (with specific page references to principal supporting items of evidence in the record) and conclusions of law, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record (or those designated under paragraph (c)(2) of this section) and an appropriate rule or order. Rulings containing information granted *in camera* status pursuant to § 3.45 shall be filed in accordance with § 3.45(f).

(2) The initial decision shall be prepared in a common word processing format, such as WordPerfect or Microsoft Word, and shall be filed by the Administrative Law Judge with the Office of the Secretary in both electronic and paper versions.

(3) When more than one claim for relief is presented in an action, or when multiple parties are involved, the Administrative Law Judge may direct the entry of an initial decision as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of initial decision.

(d) *By whom made.* The initial decision shall be made and filed by the Administrative Law Judge who presided over the hearings, except when he or she shall have become unavailable to the Commission.

(e) *Reopening of proceeding by Administrative Law Judge; termination of jurisdiction.* (1) At any time from the close of the hearing record pursuant to § 3.44(c) until the filing of his or her initial decision, an Administrative Law Judge may reopen the proceeding for the reception of further evidence for good cause shown.

(2) Except for the correction of clerical errors or pursuant to an order of remand from the Commission, the jurisdiction of the Administrative Law Judge is terminated upon the filing of his or her initial decision with respect to those issues decided pursuant to paragraph (c)(1) of this section.

■ 28. Revise § 3.52 to read as follows:

**§ 3.52 Appeal from initial decision.**

(a) *Automatic review of cases in which the Commission sought preliminary relief in federal court; timing.* For proceedings with respect to which the Commission has sought preliminary relief in federal court under 15 U.S.C. 53(b), the Commission will review the initial decision without the filing of a notice of appeal.

(1) In such cases, any party may file objections to the initial decision or order of the Administrative Law Judge by filing its opening appeal brief, subject to the requirements in paragraph (c), within 20 days of the issuance of the initial decision. Any party may respond to any objections filed by another party by filing an answering brief, subject to the requirements of paragraph (d), within 20 days of service of the opening brief. Any party may file a reply to an answering brief, subject to the requirements of paragraph (e), within 5 days of service of the answering brief. Unless the Commission determines there shall be no oral argument, it will schedule oral argument within 10 days after the deadline for the filing of any reply briefs. The Commission will issue its final decision pursuant to § 3.54 within 45 days after oral argument. If no oral argument is scheduled, the Commission will issue its final decision pursuant to § 3.54 within 45 days after the deadline for the filing of any reply briefs.

(2) If no objections to the initial decision are filed, the Commission may in its discretion schedule oral argument within 10 days after the deadline for the filing of objections, and will issue its final decision pursuant to § 3.54 within 45 days after oral argument. If no oral argument is scheduled, the Commission will issue its final decision pursuant to § 3.54 within 45 days after the deadline for the filing of objections.

(b) *Review in all other cases; timing.* (1) In all cases other than those subject to paragraph (a), any party may file objections to the initial decision or order of the Administrative Law Judge by filing a notice of appeal with the Secretary within 10 days after service of the initial decision. The notice shall specify the party or parties against whom the appeal is taken and shall designate the initial decision and order or part thereof appealed from. If a timely notice of appeal is filed by a party, any other party may thereafter file a notice of appeal within 5 days after service of the first notice, or within 10 days after service of the initial decision, whichever period expires last.

(2) In such cases, any party filing a notice of appeal must perfect its appeal by filing its opening appeal brief, subject to the requirements in paragraph (c), within 30 days of the issuance of the initial decision. Any party may respond to the opening appeal brief by filing an answering brief, subject to the requirements of paragraph (d), within 30 days of service of the opening brief. Any party may file a reply to an answering brief, subject to the requirements of paragraph (e), within 7 days of service of the answering brief. Unless the Commission determines there shall be no oral argument, it will schedule oral argument within 15 days after the deadline for the filing of any reply briefs. The Commission will issue its final decision pursuant to § 3.54 within 100 days after oral argument. If no oral argument is scheduled, the Commission will issue its final decision pursuant to § 3.54 within 100 days after the deadline for the filing of any reply briefs.

(c) *Appeal brief.* (1) The opening appeal brief shall contain, in the order indicated, the following:

(i) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged),

textbooks, statutes, and other material cited, with page references thereto;

(ii) A concise statement of the case, which includes a statement of facts relevant to the issues submitted for review, and a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(iii) A specification of the questions intended to be urged;

(iv) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific page references to the record and the legal or other material relied upon; and

(v) A proposed form of order for the Commission's consideration instead of the order contained in the initial decision.

(2) The brief shall not, without leave of the Commission, exceed 14,000 words.

(d) *Answering brief.* The answering brief shall contain a subject index, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto, as well as arguments in response to the appellant's appeal brief. The answering brief shall not, without leave of the Commission, exceed 14,000 words.

(e) *Reply brief.* The reply brief shall be limited to rebuttal of matters in the answering brief and shall not, without leave of the Commission, exceed 7,000 words. The Commission will not consider new arguments or matters raised in reply briefs that could have been raised earlier in the principal briefs. No further briefs may be filed except by leave of the Commission.

(f) *In camera information.* If a party includes in any brief to be filed under this section information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality provisions pursuant to a protective order, the party shall file 2 versions of the brief in accordance with the procedures set forth in § 3.45(e). The time period specified by this section within which a party may file an answering or reply brief will begin to run upon service on the party of the *in camera* or confidential version of a brief.

(g) *Signature.* (1) The original of each brief filed shall have a hand-signed signature by an attorney of record for the party, or in the case of parties not represented by counsel, by the party itself, or by a partner if a partnership, or by an officer of the party if it is a corporation or an unincorporated association.

(2) Signing a brief constitutes a representation by the signer that he or she has read it; that to the best of his or her knowledge, information, and belief, the statements made in it are true; that it is not interposed for delay; that it complies with the applicable word count limitation; and that to the best of his or her knowledge, information, and belief, it complies with all the other rules in this part. If a brief is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may go forward as though the brief has not been filed.

(h) *Oral argument.* All oral arguments shall be public unless otherwise ordered by the Commission. Oral arguments will be held in all cases on appeal or review to the Commission, unless the Commission otherwise orders upon its own initiative or upon request of any party made at the time of filing his or her brief. Oral arguments before the Commission shall be reported stenographically, unless otherwise ordered, and a member of the Commission absent from an oral argument may participate in the consideration and decision of the appeal in any case in which the oral argument is stenographically reported.

(i) *Corrections in transcript of oral argument.* The Commission will entertain only joint motions of the parties requesting corrections in the transcript of oral argument, except that the Commission will receive a unilateral motion which recites that the parties have made a good faith effort to stipulate to the desired corrections but have been unable to do so. If the parties agree in part and disagree in part, they should file a joint motion incorporating the extent of their agreement, and, if desired, separate motions requesting those corrections to which they have been unable to agree. The Secretary, pursuant to delegation of authority by the Commission, is authorized to prepare and issue in the name of the Commission a brief ''Order Correcting Transcript'' whenever a joint motion to correct transcript is received.

(j) *Briefs of amicus curiae.* A brief of an amicus curiae may be filed by leave of the Commission granted on motion with notice to the parties or at the request of the Commission, except that such leave shall not be required when the brief is presented by an agency or officer of the United States; or by a State, territory, commonwealth, or the District of Columbia, or by an agency or officer of any of them. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and state how a Commission decision in the matter would affect the applicant or persons it represents. The motion shall also state the reasons why a brief of an amicus curiae is desirable. Except as otherwise permitted by the Commission, an amicus curiae shall file its brief within the time allowed the parties whose position as to affirmance or reversal the amicus brief will support. The Commission shall grant leave for a later filing only for cause shown, in which event it shall specify within what period such brief must be filed. A motion for an amicus curiae to participate in oral argument will be granted only for extraordinary reasons. An amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief.

(k) *Word count limitation.* The word count limitations in this section include headings, footnotes and quotations, but do not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, proposed form of order, and any attachment required by § 3.45(e). Extensions of word count limitations are disfavored, and will only be granted where a party can make a strong showing that undue prejudice would result from complying with the existing limit.

## PART 4—MISCELLANEOUS RULES

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

**Authority:** 15 U.S.C. 46, unless otherwise noted.

■ 2. Revise § 4.2 to read as follows:

### § 4.2 Requirements as to form, and filing of documents other than correspondence.

(a) *Filing.* (1) Except as otherwise provided, all documents submitted to the Commission, including those addressed to the Administrative Law Judge, shall be filed with the Secretary of the Commission; *Provided, however*, That informal applications or requests may be submitted directly to the official in charge of any Bureau, Division, or Office of the Commission, or to the Administrative Law Judge.

(2) Documents submitted to the Commission in response to a Civil Investigative Demand under section 20 of the FTC Act shall be filed with the custodian or deputy custodian named in the demand.

(b) *Title.* Documents shall clearly show the file or docket number and title of the action in connection with which they are filed.

(c) *Paper and electronic copies of and service of filings before the Commission, and of filings before an ALJ in adjudicative proceedings.* (1) Except as otherwise provided, each document filed before the Commission, whether in an adjudicative or a nonadjudicative proceeding, shall be filed with Secretary of the Commission, and shall include a paper original, 12 paper copies, and an electronic copy (in ASCII format, WordPerfect, or Microsoft Word). Except as otherwise provided, each document filed by a party in an adjudicative proceeding before an ALJ shall be filed with the Secretary of the Commission, and shall include a paper original, 1 paper copy and an electronic copy (in ASCII format, WordPerfect, or Microsoft Word).

(2) The first page of the paper original of each such document shall be clearly labeled either public, or *in camera* or confidential. If the document is labeled *in camera* or confidential, it must include as an attachment either a motion requesting *in camera* or otherwise confidential treatment, in the form prescribed by § 3.45(b), or a copy of a Commission, ALJ, or federal court order granting such treatment. The document must also include as a separate attachment a set of only those pages of the document on which the in camera or otherwise confidential material appears.

(3) The electronic copy of each such public document shall be filed by e-mail, as the Secretary shall direct, in a manner that is consistent with technical standards, if any, that the Judicial Conference of the United States establishes, except that the electronic copy of each such document containing *in camera* or otherwise confidential material shall be placed on a diskette so labeled, which shall be physically attached to the paper original, and not transmitted by e-mail. The electronic copy of all documents shall include a certification by the filing party that the copy is a true and correct copy of the paper original, and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.

(4) Sensitive personal information, as defined in § 3.45(b), shall not be included in, and must be redacted or omitted from, filings where the filing party determines that such information is not relevant or otherwise necessary for the conduct of the proceeding.

(5) A paper copy of each such document in an adjudicative proceeding shall be served by the party filing the document or person acting for that party on all other parties pursuant to § 4.4, at or before the time the paper original is filed.

(d) *Paper and electronic copies of all other documents filed with the Commission.* Except as otherwise provided, each document to which paragraph (c) of this section does not apply, such as public comments in Commission proceedings, may be filed with the Commission in either paper or electronic form. If such a document contains nonpublic information, it must be filed in paper form with the Secretary of the Commission, and the first page of the document must be clearly labeled confidential. If the document does not contain any nonpublic information, it may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) by e-mail, as the Commission or the Secretary may direct.

(e) *Form.* (1) Documents filed with the Secretary of the Commission, other than briefs in support of appeals from initial decisions, shall be printed, typewritten, or otherwise processed in permanent form and on good unglazed paper. A motion or other paper filed in an adjudicative proceeding shall contain a caption setting forth the title of the case, the docket number, and a brief descriptive title indicating the purpose of the paper.

(2) Briefs filed on an appeal from an initial decision shall be in the form prescribed by § 3.52(e).

(f) *Signature.* (1) The original of each document filed shall have a hand signed signature by an attorney of record for the party, or in the case of parties not represented by counsel, by the party itself, or by a partner if a partnership, or by an officer of the party if it is a corporation or an unincorporated association.

(2) Signing a document constitutes a representation by the signer that he or she has read it; that to the best of his or her knowledge, information, and belief, the statements made in it are true; that it is not interposed for delay; and that to the best of his or her knowledge, information, and belief, it complies with the rules in this part. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may go forward as though the document had not been filed.

(g) *Authority to reject documents for filing.* The Secretary of the Commission may reject a document for filing that fails to comply with the Commission's rules. In cases of extreme hardship, the Secretary may excuse compliance with a rule regarding the filing of documents if the Secretary determines that the non-compliance would not interfere with the functions of the Commission.

■ 3. Amend § 4.3 by revising paragraph (b) as follows:

**§ 4.3 Time.**

* * * * *

(b) Extensions. For good cause shown, the Administrative Law Judge may, in any proceeding before him or her: (1) Extend any time limit prescribed or allowed by order of the Administrative Law Judge or the Commission (if the Commission order expressly authorizes the Administrative Law Judge to extend time periods); or (2) extend any time limit prescribed by the rules in this chapter, except those governing motions directed to the Commission, interlocutory appeals and initial decisions and deadlines that the rules expressly authorize only the Commission to extend. Except as otherwise provided by law, the Commission, for good cause shown, may extend any time limit prescribed by the rules in this chapter or by order of the Commission or an Administrative Law Judge, provided, however, that in a proceeding pending before an Administrative Law Judge, any motion on which he or she may properly rule shall be made to the Administrative Law Judge. Notwithstanding the above, where a motion to extend is made after the expiration of the specified period, the motion may be considered where the untimely filing was the result of excusable neglect.

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By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. E9–296 Filed 1–12–09: 8:45 am]

BILLING CODE 6750–01–S

Federal Register

Tuesday,
January 13, 2009

# Part IV

# Department of the Interior

## Fish and Wildlife Service

**50 CFR Part 32**

**2008–2009 Refuge-Specific Hunting and Sport Fishing Regulations – Modifications; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 32**

**[FWS-R9-NSR-2008-0042; 93270-1265-0000-4A]**

**RIN 1018-AV80**

## 2008–2009 Refuge-Specific Hunting and Sport Fishing Regulations – Modifications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service proposes to implement pertinent refuge-specific regulations and amend other existing refuge-specific regulations that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2008–2009 season.

**DATES:** We will accept comments received or postmarked on before February 12, 2009.

**ADDRESSES:** You may submit comments by one of the following methods:

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

• U.S. mail or hand delivery: Public Comments Processing, Attn: RIN 1018-AV20; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all 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). For information on specific refuges' public use programs and the conditions that apply to them or for copies of compatibility determinations for any refuge(s), contact individual programs at the addresses/phone numbers given in ''Available Information for Specific Refuges'' under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Leslie A. Marler, (703) 358-2397; Fax (703) 358-2248.

**SUPPLEMENTARY INFORMATION:** The National Wildlife Refuge System Administration Act of 1966 closes national wildlife refuges in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System or our/we) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review refuge hunting and sport fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of refuge purposes or the Refuge System's mission.

Provisions governing hunting and sport fishing on refuges are in Title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and sport fishing on refuges to:

• Ensure compatibility with refuge purpose(s);

• Properly manage the fish and wildlife resource(s);

• Protect other refuge values;

• Ensure refuge visitor safety; and

• Provide opportunities for quality fish- and wildlife-dependent recreation.

On many refuges where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the ''Statutory Authority'' section. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, seasons, bag or creel (container for carrying fish) limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and sport fishing in 50 CFR part 32. In this rulemaking, we are also proposing to standardize and clarify the language of existing regulations.

### Plain Language Mandate

In this proposed rule we made some of the revisions to the individual refuge units to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using ''you'' to refer to the reader and ''we'' to refer to the Refuge System, using the word ''allow'' instead of ''permit'' when we do not require the use of a permit for an activity, and using active voice (i.e., ''We restrict entry into the refuge'' vs. ''Entry into the refuge is restricted''.)

### Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1977 [Improvement Act]) (Administration Act) and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k-4) (Recreation Act) govern the administration and public use of refuges.

Amendments enacted by the Improvement Act built upon the Administration Act in a manner that provides an ''organic act'' for the Refuge System similar to those that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the purpose for which the refuge was established and the mission of the Refuge System. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses as the priority general public uses of the

Refuge System. These uses are: hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the Refuge System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive conservation plans, specific plans, and by annual review of hunting and sport fishing programs and regulations.

**Amendments to Existing Regulations**

This document proposes to codify in the Code of Federal Regulations all of the Service's hunting and/or sport fishing regulations that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We are doing this to better inform the general public of the regulations at each refuge, to increase understanding and compliance with these regulations, and to make enforcement of these regulations more efficient. In addition to now finding these regulations in 50 CFR part 32, visitors to our refuges will usually find them reiterated in literature distributed by each refuge or posted on signs.

We have cross-referenced a number of existing regulations in 50 CFR parts 26, 27, and 32 to assist hunting and sport fishing visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our hunting and sport fishing programs.

We are revising 50 CFR 32.8, ''Areas closed to hunting,'' by removing the entry dated October 2, 1958, under the States of Iowa, Minnesota, and Wisconsin. On October 24, 2006, we published a comprehensive conservation plan describing habitat and waterfowl use changes in those closed areas and outlined needed location and boundary changes. We further published a final regulation on September 7, 2007 (72 FR 51534), amending hunting and fishing regulations for the Upper Mississippi River National Wildlife and Fish Refuge in the States of Illinois, Iowa, Minnesota, and Wisconsin, which included changes to the system of closed areas, thus making the 1958 entries moot. A copy of the refuge comprehensive conservation plan can be found at *www.fws.gov/midwest/planning/uppermiss*.

**Fish Advisory**

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the internet at: *http://www.epa.gov/ost/fish/*.

**Request for Comments**

You may submit comment and materials on this proposed rule by any one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will not accept anonymous comments; your comment must include your first and last name, city, State, country, and postal (zip) code. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the DATES section.

We will post your entire comment – including your personal identifying information – on *http://www.regulations.gov*. If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

**Public Comment**

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. The process of opening refuges is done in stages, with the fundamental work being performed on the ground at the refuge and in the community where the program is administered. In these stages, the public is given other opportunities to comment, for example, on the comprehensive conservation plans and the compatibility determinations. The second stage is this document, when we publish the proposed rule in the **Federal Register** for additional comment, commonly for a 30–day comment period.

There is nothing contained in this annual regulation outside the scope of the annual review process where we determine whether individual refuges need modifications, deletions, or additions made to them. We make every attempt to collect all of the proposals from the refuges nationwide and process them expeditiously to maximize the time available for public review. We believe that a 30–day comment period, through the broader publication following the earlier public involvement, gives the public sufficient time to comment and allows us to establish hunting and fishing programs in time for the upcoming seasons. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, in order to continue to provide for previously authorized hunting opportunities while at the same time providing for adequate resource protection, we must be timely in providing modifications to certain hunting programs on some refuges.

We considered providing a 60–day, rather than a 30–day, comment period. However, we determined that an additional 30–day delay in processing these refuge-specific hunting and sport fishing regulations would hinder the effective planning and administration of our hunting and sport fishing programs. Such a delay would jeopardize enacting amendments to hunting and sport fishing programs in time for implementation this year and/or early next year, or shorten their duration.

Even after issuance of a final rule, we accept comments, suggestions, and concerns for consideration for any appropriate subsequent rulemaking.

When finalized, we will incorporate these regulations into 50 CFR part 32. Part 32 contains general provisions and

refuge-specific regulations for hunting and sport fishing on refuges.

**Clarity of This Rule**

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ADDRESES section. To better help us revise the rule, your comments should be a specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Regulatory Planning and Review**

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination on the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, use fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

**Regulatory Flexibility Act**

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601, *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule does not increase the number of recreation types allowed on the System nor does it establish new hunting or fishing programs on national wildlife refuges. Instead, this proposed rule makes administrative changes, provides clarification, and makes minor changes to recreational opportunities on a number of national wildlife refuges. As a result, visitor use for wildlife-dependent recreation on national wildlife refuges may change. The changes are likely to minimally impact visitor activity on these national wildlife refuges. We do not expect an impact to overall visitor use days due to changes on individual refuges such as requiring the dismantling of all firearms when transporting, the use of safety belts in tree stands, or reporting accidents involving property damage. There may be minor decreases in visitor use due to modifications such as individual refuges prohibiting the use of permanent structures, prohibiting marking of trees, or prohibiting hunting with bait. We would expect only a minor change, if any, in visitor use. If visitor use does decrease marginally, we would expect these visitors to go to a substitute site for the activity and not necessarily result in an overall decrease in participation rates for the activity.

Small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops, etc.) may be impacted from some decreased refuge visitation. A large percentage of these retail trade establishments in the local communities around national wildlife refuges qualify as small businesses. We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule will have a significant economic effect on a substantial number of small entities in any region or nationally.

With the small change in overall spending anticipated from this proposed rule, it is unlikely that a substantial number of small entities will have more than a small impact from the spending change near the affected refuges. Therefore, we certify that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

**Small Business Regulatory Enforcement Fairness Act**

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Would not have an annual effect on the economy of $100 million or more. The minimal impact would be scattered across the country and would most likely not be significant in any local area.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This proposed rule would have only a slight effect on the costs of hunting and fishing opportunities for Americans. If the substitute sites are farther from the participants' residences, then an increase in travel costs would occur. The Service does not have information to quantify this change in travel cost but assumes that, since most people travel less than 100 miles to hunt and fish, the increased travel cost would be small. We do not expect this proposed rule to affect the supply or demand for fishing and hunting opportunities in the United States and, therefore, it should not affect prices for fishing and hunting equipment and supplies, or the retailers that sell equipment.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States–based enterprises to compete with foreign-based enterprises. This proposed rule represents only a small proportion of recreational spending at national wildlife refuges. Therefore, this rule would have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide.

**Unfunded Mandates Reform Act**

Since this proposed rule would apply to public use of federally owned and managed refuges, it would not impose an unfunded mandate on State, local, or Tribal governments or the private sector

of more than $100 million per year. The rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

**Takings (E.O. 12630)**

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. This regulation would affect only visitors at national wildlife refuges and describe what they can do while they are on a refuge.

**Federalism (E.O. 13132)**

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this proposed rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under E.O. 13132. In preparing this proposed rule, we worked with State governments.

**Civil Justice Reform (E.O. 12988)**

In accordance with E.O. 12988, the Office of the Solicitor has determined that the proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation would clarify established regulations and result in better understanding of the regulations by refuge visitors.

**Energy Supply, Distribution or Use (E.O. 13211)**

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule would make only minor changes to refuges open to hunting and fishing, it is not a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

**Consultation and Coordination with Indian Tribal Governments (E.O. 13175)**

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations.

**Paperwork Reduction Act**

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Number is 1018-0102). See 50 CFR 25.23 for information concerning that approval. 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. We are seeking further OMB approval for other necessary information collection.

**Endangered Species Act Section 7 Consultation**

We comply with Section 7 of the ESA when developing Comprehensive Conservation Plans (CCPs) and step-down management plans (which would include hunting and/or fishing plans) for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32.

**National Environmental Policy Act**

We analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and 516 Departmental Manual (DM) 6, Appendix 1. This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required.

A categorical exclusion from NEPA documentation applies to publication of proposed amendments to refuge-specific hunting and fishing regulations since it is technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (516 DM 2, Appendix 1.10). Concerning the actions that are the subject of this proposed rulemaking, NEPA has been complied with at the project level where each proposal was developed. This is consistent with the Department of the Interior instructions for compliance with NEPA where actions are covered sufficiently by an earlier environmental document (516 DM 3.2A).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the refuges at the addresses provided below.

**Available Information for Specific Refuges**

Individual refuge headquarters retain information regarding public use programs and conditions that apply to their specific programs and maps of their respective areas. If the specific refuge you are interested in is not mentioned below, then contact the appropriate Regional offices listed below:

Region 1—Hawaii, Idaho, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181; Telephone (503) 231-6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, New Mexico 87103; Telephone (505) 248-7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713-5401.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345; Telephone (404) 679-7166.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035-9589; Telephone (413) 253-8306.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236-8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786-3545.

Region 8—California and Nevada. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W-2606, Sacramento, California 95825; Telephone (916) 414-6464.

**Primary Author**

Leslie A. Marler, Management Analyst, Division of Conservation Planning and Policy, National Wildlife Refuge System is the primary author of this rulemaking document.

**List of Subjects in 50 CFR Part 32**

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

## PART 32–[AMENDED]

1. The authority citation for part 32 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd-668ee, and 715i.

2. Amend §32.8, ''Areas closed to hunting.'', by removing the entries dated ''October 2, 1958,'' under the States of Iowa, Minnesota, and Wisconsin.

3. Amend §32.20 Alabama by:

a. Adding paragraphs B.6., B.7., and B.8., removing paragraph C.3., redesignating paragraphs C.4. through C.7. as paragraphs C.3. through C.6., revising newly redesignated paragraph C.6, and adding paragraphs C.7. and C.8. of Cahaba River National Wildlife Refuge;

b. Adding paragraph B.11., revising paragraph C.1., removing paragraphs C.4., C.6., and C.7., and redesignating paragraph C.5. as paragraph C.4. of Choctaw National Wildlife Refuge;

c. Revising paragraph A.3., adding paragraph B.6., and revising paragraph C.6. of Eufaula National Wildlife Refuge; and

d. Revising paragraphs A., B.1., and C.1. and adding paragraphs C.4. and C.5. of Mountain Longleaf National Wildlife Refuge to read as follows:

### § 32.20 Alabama.

* * * * *

**Cahaba River National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

6. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a valid hunting license. Youth hunters must have passed a State-approved hunter education course. One adult may supervise no more than two youths.

7. Hunters must unload and dismantle or encase all firearms before placing them in a vehicle (see §27.42(b) of this chapter).

8. We prohibit marking trees and the use of flagging tape, reflective tacks, and other similar marking devices (see §32.2(i)).

*C. Big Game Hunting.* * * *

6. Conditions B2, B3, and B8 apply.

7. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a valid hunting license. Youth hunters must have passed a State-approved hunter education course. One adult may supervise no more than one youth.

8. We prohibit participation in organized drives.

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**Choctaw National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

11. We prohibit the use of mules, horses, and ATVs on all refuge hunts.

*C. Big Game Hunting.* * * *

1. Conditions B1 through B8 and B11 apply.

* * * * *

**Eufaula National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

* * * * *

3. We allow goose and duck hunting by permit only in the Kennedy and Bradley Units on selected days until 12 p.m. (noon) during State waterfowl seasons. We close all other areas within the refuge to waterfowl hunting.

* * * * *

*B. Upland Game Hunting.* * * *

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6. You may possess only approved nontoxic shotshells while in the field (see §32.2(k)).

*C. Big Game Hunting.* * * *

* * * * *

6. We prohibit damaging trees or hunting from a tree that contains an inserted metal object (see §32.2(i)). Hunters must remove tree stands from the refuge each day (see §27.93 of this chapter).

* * * * *

**Mountain Longleaf National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

We allow hunting of woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge hunt permit while hunting.

2. Hunters must unload and dismantle or encase all firearms before placing them in a vehicle (see §27.42(b) of this chapter).

3. We prohibit marking trees and the use of flagging tape, reflective tacks, and other similar marking devices (see §27.61 of this chapter).

4. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a valid hunting license. Youth hunters must have passed a State-approved hunter education course. One adult may supervise no more than two youths.

5. We prohibit the use of horses, mules, and ATVs on all refuge hunts.

*B. Upland Game Hunting.* * * *

1. Conditions A1 through A5 apply.

* * * * *

*C. Big Game Hunting.* * * *

1. Conditions A1 through A3 and A5 apply.

* * * * *

4. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a valid State hunting license. Youth hunters must have passed a State-approved hunter education course. One adult may supervise no more than one youth.

5. We require tree stand users to use a safety belt or harness.

* * * * *

4. Amend §32.22 Arizona by revising paragraph A.1., adding paragraphs A.8 through A.11., revising paragraphs B.1., C.1., and C.2., and adding paragraph D.5. of Bill Williams National Wildlife Refuge to read as follows:

### § 32.22 Arizona.

* * * * *

**Bill Williams National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. We allow only shotguns for hunting. We limit all shotguns to a maximum three-shell capacity, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells (see §20.21(b) of this chapter).

* * * * *

8. Anyone for hire to assist or guide a hunter or angler must first obtain, possess, and carry a valid Special Use Permit issued by the refuge manager.

9. We prohibit the construction or use of any pits, permanent blinds, or other structures (see §27.92 of this chapter).

10. Hunters must remove all personal items from the refuge at the end of each day's activity, i.e., boats, equipment, cameras, temporary blinds, stands, etc. (see §27.93 of this chapter).

11. Hunters must report accidents involving property damage or personal injury to the refuge manager or authorized Service personnel (see §25.72 of this chapter).

*B. Upland Game Hunting.* * * *

1. Conditions A1 through A11 apply.

* * * * *

*C. Big Game Hunting.* * * *

1. Conditions A3 and A5 through A11 apply.

2. We only allow hunting on the refuge in those areas south of the Bill Williams River Road and east of Arizona State Rt. 95 plus the south half of Section 35, T.11N, R 17W as posted. Exceptions: Arizona Wildlife Management Areas 16A and 44A.

*D. Sport Fishing.* * * *

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5. Conditions A3 and A7 through A11 apply.

* * * * *

5. Revising §32.23 Arkansas by:

a. Revising paragraphs B.3. and B.4. of Bald Knob National Wildlife Refuge;

b. Revising paragraphs B.2. and B.3. of Cache River National Wildlife Refuge;

c. Revising paragraphs A.1. and A.11. and adding paragraphs A.22. through A.25. of Felsenthal National Wildlife Refuge;

d. Revising paragraphs A.1. and A.11. and adding paragraphs A.21. through A.24. of Overflow National Wildlife Refuge;

e. Revising paragraphs A.1., A.3., A.7., A.10., A.12., A.14., A.16., and A.17., adding paragraphs A.20. through A.24., revising paragraphs B.2., B.3., B.5., C.2., C.4., C.8., C.12., C.15., adding paragraphs C.17. and C.18., and revising paragraph D.2. of Pond Creek National Wildlife Refuge; and

f. Revising paragraphs A.8. through A.10., A.14., adding paragraph A.17., and revising paragraphs B.8., C.2. through C.4., C.6., C.8., C.17., C.22., removing paragraph D.8., redesignating paragraphs D.9. through D.11. as paragraphs D.8. through D.10., and revising newly redesignated paragraphs D.8. and D.10. of White River National Wildlife Refuge to read as follows:

**§ 32.23 Arkansas.**

* * * * *

**Bald Knob National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

3. We allow fall squirrel hunting in accordance with the State season on the Mingo Creek Unit and on the Farm Unit, except for season closure on the Farm Unit during the Gun Deer Hunt. We prohibit dogs, except for the period of December 15 through February 28. We do not open for the spring squirrel season.

4. We allow rabbit hunting in accordance with the State season on the Mingo Creek Unit and on the Farm Unit, except for season closure on the Farm Unit during the Gun Deer Hunt. We prohibit dogs, except for the period of December 15 through February 28.

* * * * *

**Cache River National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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2. Fall squirrel season corresponds with the State season on all refuge hunt units except for refugewide season closure during the Gun Deer Hunt. We prohibit dogs, except for the period of December 15 through February 28. We do not open for the spring squirrel season.

3. Rabbit season corresponds with the State season on all refuge hunt units except for refugewide season closure during the Gun Deer Hunt. We prohibit dogs, exept for the period of December 15 through February 28.

* * * * *

**Felsenthal National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. We allow hunting of duck, goose, and coot during the State duck season except during scheduled quota refuge Gun Deer Hunts. We allow hunting of woodcock during the State season. Dates for quota deer hunts are typically in November, and we publish them annually in the refuge hunt brochure. We are open for the September teal season.

* * * * *

11. Hunters under age 16 do not need to have a hunter education card if they are under the direct supervision (within arm's reach) of a holder of a valid hunting license at least age 21.

* * * * *

22. We prohibit hunting with the aid of bait, salt, or any ingestible attractant (see §32.2(h)).

23. We prohibit hunting from a tree in which a metal object has been driven to support a hunter (see §32.2(i)).

24. If you harvest a deer or turkey on the refuge, you must immediately record the zone 220 on your deer/turkey tag as the zone of kill.

25. We prohibit the taking of wildlife or plants (including cutting trees or brush) other than specified in the hunt brochure (see §27.61 of this chapter).

* * * * *

**Overflow National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. We allow hunting of duck, goose, and coot during the State duck season. We allow hunting of woodcock during the State season. The September teal season is closed.

* * * * *

11. Hunters under age 16 do not need to have a hunter education card if they are under the direct supervision (within arm's reach) of a holder of a valid hunting license who is at least age 21.

* * * * *

21. We prohibit hunting with the aid of bait, salt, or any ingestible attractant (see §32.2(h)).

22. We prohibit hunting from a tree in which a metal object has been driven to support a hunter (see §32.2(i)).

23. If you harvest a deer or turkey on the refuge, you must immediately record the zone 490 on your deer/turkey tag as the zone of kill.

24. We prohibit the taking of wildlife or plants (including cutting trees or brush) other than specified in this brochure (see §27.51 of this chapter).

* * * * *

**Pond Creek National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. We allow hunting of migratory game birds during the State duck seasons, except we close during scheduled quota refuge Gun Deer Hunts. Dates for quota deer hunts are typically in November, and we publish them annually in the refuge hunt brochure. We are open for the September teal season.

* * * * *

3. We only allow portable blinds. Hunters must remove from the hunt area each day all duck hunting equipment,

including blinds, decoys, and boats (see §27.93 of this chapter).

* * * * *

7. We prohibit marking trails with material other than biodegradable paper, flagging, or reflective tape/tacks.

* * * * *

10. Hunters under age 16 do not need to have a hunter education card if they are under the direct supervision (within arm's reach) of a holder of a valid hunting license who is at least age 21. An adult age 21 or older must supervise youth hunters under age 16 who have a valid Hunter Education Card, and youth hunters must remain in sight and normal voice contact with the adult. One adult may supervise no more than two youth hunters for any hunting season.

* * * * *

12. We prohibit hunting within 150 feet (45 m) of roads and trails (see §27.31 of this chapter) open to motor vehicle use (including ATV and designated hiking trails).

* * * * *

14. We allow only camping at designated primitive campground sites identified in the refuge hunt brochure. We restrict camping to the individuals involved in refuge wildlife-dependent activities. Campers may stay no more than 14 days during any consecutive 30–day period in a campground and must occupy the camps daily. We prohibit all disturbances, including use of generators, after 10 p.m. You must unload all weapons (see §27.42(b) of this chapter) within 100 yards (90 m) of a campground. We allow no more than three portable stands per person.

* * * * *

16. We prohibit blocking of gates, boat ramps, or roadways (see §27.31(h) of this chapter).

17. We allow the use of retriever dogs during State waterfowl seasons.

* * * * *

20. We prohibit possession, placement, or hunting over bait, salt, or any other ingestible attractant (see §32.2(h)).

21. We prohibit the use of an artificial light to locate wildlife (exception: raccoon/opossum hunting with dogs).

22. We prohibit taking of wildlife or plants (including cutting trees or brush) other than what we allow in the refuge brochure (see §27.61 of this chapter).

23. We prohibit placement of metal objects (screw, nail, spike, etc.) into a tree to support a hunter or hunting from a tree with such metal objects placed (see §32.2(i)).

24. We prohibit possessing, using, or leaving any tree stand, game camera, or boat on the refuge without the owner's name and address affixed in a conspicuous manner.

*B. Upland Game Hunting.* * * *

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2. We do not open to spring squirrel season and summer/fall raccoon season.

3. Conditions A4 through A16 and A18 through A24 apply.

* * * * *

5. We allow use of dogs for squirrel, rabbit, raccoon, and opossum hunting during the State raccoon/opossum hunting season. At other times you must keep dogs and other pets on a leash or confined (see §26.21(b) of this chapter).

*C. Big Game Hunting.* * * *

* * * * *

2. Conditions A4 through A16 and A18 through A24 apply.

* * * * *

4. We allow muzzleloader deer hunting during the October State muzzleloader season for this deer management zone. The bag limit is one buck and one doe. Hunters must take and check-in a doe before taking a buck.

* * * * *

8. You must check all deer taken during the quota gun deer and muzzleloader hunts at the refuge deer check station on the same day of kill. You must keep carcasses of deer taken intact (you may remove entrails) until checked.

* * * * *

12. The refuge will conduct one 2–day, youth-only (age 15 and younger at the beginning of the spring turkey season) quota spring turkey hunt and one 3–day quota spring turkey hunt (typically in April). Specific hunt dates and application procedures will be available in January. We restrict hunt participants on these hunts to those drawn for a quota permit, except that during the youth hunt, a nonhunting adult age 21 or older must accompany the youth hunter. The limit is one bearded turkey.

* * * * *

15. One adult may supervise no more than one youth during big game hunts.

* * * * *

17. We prohibit deer drives.

18. We prohibit all public use, except fishing and access for fishing, during quota hunts.

*D. Sport Fishing.* * * *

* * * * *

2. Conditions A4 through A16 and A18 through A24 apply.

* * * * *

**White River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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8. Waterfowl hunters may enter and access the refuge no earlier than 4 a.m.

9. The following refuge users (age 16 or older) must sign and possess and carry a refuge general user permit: hunters, anglers, campers, and ATV users.

10. We prohibit boating December 1 through January 31 in the South Unit Waterfowl Hunt Area, except from 4 a.m. to 1 p.m. on designated hunt days.

* * * * *

14. We prohibit waterfowl hunting on Kansas Lake Area (indicated in user permit).

* * * * *

17. We allow the use of ATVs only on yellow-marked trails throughout the refuge, unless marked otherwise. We prohibit the use of ATVs after December 15 each year in designated South Unit areas (see user permit for areas).

*B. Upland Game Hunting.* * * *

* * * * *

8. We allow spring squirrel hunting on the North Unit with the concurrent State spring season dates.

*C. Big Game Hunting.* * * *

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2. Archery deer and turkey seasons on the North Unit will begin with the concurrent State archery season and end January 31. (Kansas Lake Area Closed after November 30)

3. Archery deer and turkey seasons on the South Unit will begin with the concurrent State archery season and end December 31.

4. The user permit dictates the modern gun quota deer season dates each year for the North and South Units. We require a quota permit. You may take one deer of either sex.

* * * * *

6. We allow modern guns on the North Unit as per dates indicted in the general user brochure. We allow take of only one buck.

* * * * *

8. We allow muzzleloader hunting on the North Unit for 4 consecutive days following the 3–day muzzleloader quota hunt. We allow take of only one buck.

* * * * *

17. We prohibit distribution of bait or hunting with the aid of bait, salt, or ingestible attractant (see §32.2(h)).

* * * * *

22. We prohibit leaving a hunt stand after February 7 (one week after the end of the season).

* * * * *

*D. Sport Fishing.* * * *

* * * * *

8. We allow commercial fishing on all refuge waters from 12:00 pm (noon) September 30 through 12:00 p.m. (noon) November 30. However, when the White River exceeds 23.5 feet (7 m) at the St. Charles, Arkansas gauge or 146 msl at the tailwater gauge at Lock and Dam #1 on the Arkansas Post Canal, we allow commercial fishing on all refuge waters from 12:00 p.m. (noon) March 1 through 12:00 p.m. (noon) September 30.

* * * * *

10. Anglers must reset trotlines when receding water levels expose them. Anglers must display their name and address on a tag on each line.

6. Amend §32.24 California by:

a. Revising paragraphs A.1., A.6. through A.8., and A.10. of Humboldt Bay National Wildlife Refuge; and

b. Revising paragraphs A.2., A.6., A9., A.11., B.2., C.1., C.3., and D.2., and adding paragraph C.4. of Sacramento River National Wildlife Refuge to read as follows:

**§ 32.24 California.**

* * * * *

**Humboldt Bay National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. We require adults age 18 or older to accompany youth hunters under age 16. No more than three youth hunters may accompany one adult hunter.

* * * * *

6. We require hunters to keep dogs inside vehicles, or on a leash, except when using them for authorized hunting purposes (see §26.21(b) of this chapter.

7. On the Salmon Creek Unit, we allow hunting on Tuesdays and Saturdays (except Federal holidays), and hunters must possess and carry a valid daily refuge permit. We issue refuge permits prior to each hunt by random drawing conducted at the check station 1½ hours before legal shooting time. Shooting time ends at 3 p.m. Hunters drawn for a blind must completely fill out a Refuge Hunt Permit, which includes a ''Record of Harvest'' section. Each hunter must possess and carry the Refuge Hunt Permit/Record of Harvest document while on the refuge and turn in a complete Record of Harvest at the check station before leaving the hunt area.

8. On the Salmon Creek Unit, you may possess only approved nontoxic shotshells (see §32.2(k)) in quantities of 25 or less per hunter, per day.

* * * * *

10. We open the waters of Hookton Slough (including Teal Island, but excluding saltmarsh islands and exposed mudflat) and White Slough (including Egret Island) to hunting on Saturdays, Sundays, Wednesdays, Federal holidays, and the opening and closing day of the State waterfowl hunting season. We have not opened the portion of the Hookton Slough unit between the dike and Hookton Road to hunting and firearms. We have not opened the boat dock on the Hookton Slough Unit to hunting and firearms and restrict use to nonmotorized boats only.

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**Sacramento River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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2. On Sul Norte Unit, you must unload firearms (see §27.42(b) of this chapter) before transporting them between parking areas and hunting areas. ''Unloaded'' means that no ammunition is in the chamber or magazine or the firearm.

* * * * *

6. Access to the hunt area on all units open to public hunting is by boat only, except on Sul Norte Unit, which is accessible by foot traffic or boat. We prohibit bicycles or other conveyances. Mobility-impaired hunters should consult with the refuge manager for allowed conveyances.

* * * * *

9. We open the refuge for day-use access from 1½ hours before legal sunrise until 1½ hours after legal sunset. We allow access during other hours on gravel bars only (see condition A8).

* * * * *

11. We prohibit permanent blinds. You must remove all personal property, including decoys and boats, by 1½ hours after legal sunset (see §§27.93 and 27.94 of this chapter).

* * * * *

B. Upland Game Hunting. * * *

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2. Conditions A2 through A12 apply.

*C. Big Game Hunting.* * * *

1. Conditions A2, A4 through A12, and B1 apply.

* * * * *

3. You must remove all personal property, including stands, from the refuge by 1½ hours after legal sunset (see §§27.93 and 27.94 of this chapter).

4. We allow shotgun, firing single shotgun slugs, and archery hunting only. We prohibit possession or use of rifles and pistols on the refuge.

*D. Sport Fishing.* * * *

* * * * *

2. On Packer Lake, due to primitive access, we allow only boats up to 14 feet (4.2 m) and canoes. We allow electric motors only.

* * * * *

7. Amend §32.27 Delaware by revising Prime Hook National Wildlife Refuge to read as follows:

**§ 32.27 Delaware.**

* * * * *

**Prime Hook National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

We allow hunting of waterfowl, coot, mourning dove, snipe, and woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require daily permits and fees. The permits are nontransferable. Consult with the refuge manager for details on permit conditions.

2. For all refuge hunts, a hunting or nonhunting adult age 18 or older must accompany a permitted juvenile age 17 or under.

3. Hunters may take waterfowl and coot on the Waterfowl Hunting Area only as designated on brochures available from the refuge manager.

4. The refuge is open to hunting of waterfowl and coot on Mondays, Wednesdays, Fridays, and Saturdays throughout the State waterfowl hunting seasons from ½ hour before legal sunrise until 3 p.m. Consult the refuge manager for dates when we close to hunting or have limited hunts.

5. Access to the Waterfowl Hunting Area is by boat only and hunters must use designated launching sites to launch their boats.

6. We prohibit the use of air-thrust and inboard water-thrust boats on all waters within the refuge boundaries. We allow a maximum horsepower of 30 HP.

7. We allow waterfowl hunting from designated blind sites only. We allow a maximum of three people per blind.

8. Hunters may take mourning dove, snipe, and woodcock only on the upland game hunting areas as shown on brochures available from the refuge manager.

*B. Upland Game Hunting.*

We allow hunting of pheasant, rabbit, and quail on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A2 apply.

2. Hunters may take pheasant, rabbit, and quail only on designated upland game hunting areas as shown on brochures available from the refuge manager.

*C. Big Game Hunting.*

We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A2 apply.

2. We prohibit the use or possession of handguns.

3. Hunters may take white-tailed deer only on designated deer hunting areas as shown on brochures available from the refuge manager.

4. Deer hunting during firearms seasons must be from designated stands only, unless actively tracking or retrieving wounded deer. We allow hunters to hunt from portable stands during archery hunts in all designated areas and during firearms hunts in the Slaughter Canal Area only. Tree stands must be portable, temporary in design, and completely removed at the end of each day. The Service is not responsible for any stands left overnight.

5. All persons in firearms hunting areas must display a minimum of 400 total square inches (2,600 cm2) of solid-blaze-orange material on their head, chest, and back. Blaze-orange camouflage is not acceptable. This includes hunters who are archery hunting on the refuge during days that coincide with State firearms hunt dates for deer.

6. Hunters may use or possess slugs only during designated shotgun seasons.

7. Each permitted hunter has a season limit of only one antlered deer on the refuge.

*D. Sport Fishing.*

We allow fishing and crabbing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing and launching of boats on designated areas as shown on brochures available from the refuge manager.

2. The refuge is open from ½ hour before legal sunrise to ½ hour after legal sunset. All boats must be off the water at legal sunset.

3. Anglers using boats on Turkle and Fleetwood Ponds may propel them manually or with electric motors only.

4. We prohibit the use of air-thrust and inboard water-thrust boats on all waters within the refuge boundaries. We allow a maximum of 30HP on Prime Hook Creek.

8. Amend §32.28 Florida by:

a. Revising paragraphs A.2., A.3., A.5., A.6., A.13., and revising paragraph D.8. of Arthur R. Marshall Loxahatchee National Wildlife Refuge;

b. Revising paragraph D.5. of Hobe Sound National Wildlife Refuge;

c. Revising paragraphs B.2. and B.3. of Lower Suwannee National Wildlife Refuge;

d. Adding paragraph A.14. of Merritt Island National Wildlife Refuge;

e. Adding paragraph A.5. and revising paragraphs D.5. and D.7. of St. Marks National Wildlife Refuge; and

f. Revising paragraphs C.2., C.9., and C.19.iii. of St. Vincent National Wildlife Refuge to read as follows:

**§ 32.28 Florida.**

* * * * *

**Arthur R. Marshall Loxahatchee National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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2. We allow hunting in the interior of the refuge south of latitude line 26.27.130 and north of mile markers 12 and 14. We prohibit hunting from canals or levees and those areas posted as closed.

3. Consult the refuge manager for current waterfowl season dates and times.

* * * * *

5. We allow hunting on the refuge from ½ hour before legal sunrise to 1 p.m. Hunters may enter the refuge no earlier than 4 a.m. and must be off the refuge by 3 p.m.

6. Hunters may enter and leave the refuge at the Headquarters Area (Boynton Beach), the Hillsboro Area (Boca Raton), and the 20 Mile Bend Area (West Palm Beach).

* * * * *

13. We only allow boats equipped with outboards or electric motors and nonmotorized boats. We prohibit airboats, hovercraft, and personal watercraft (Go Devils, Jet Skis, jet boats, and Wave Runners). All boats operating within the hunt area must fly a 12 inch by 12 inch (30 cm x 30 cm) orange flag, 10 feet (3 m) above the vessel's waterline.

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*D. Sport Fishing.* * * *

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8. Conditions A13, A14, A15, and A17 apply.

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**Hobe Sound National Wildlife Refuge**

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*D. Sport Fishing.* * * *

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5. We allow only two poles per angler, and anglers must attend those poles at all times in conjunction with the Martin County, Florida two-pole ordinance.

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**Lower Suwannee National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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2. The refuge upland game hunting season opens on the Monday after the refuge limited hog hunt closes and ends on February 28.

3. You may only possess .22 caliber rimfire rifle (.22 magnum prohibited) firearms (see §27.42 of this chapter), shotguns with shot no larger than 4 common, and bows with arrows that have judo or blunt tips. We prohibit possession of arrows capable of taking big game during the upland game hunting season.

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**Merritt Island National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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14. Hunters may not use or possess more than 25 shells per day.

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**St. Marks National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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5. We prohibit migratory game bird hunting in the Executive Closure area on the refuge.

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*D. Sport Fishing.* * * *

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5. We allow use of hand-launched boats on impoundments on the St. Marks Unit from March 15 through October 15 each year. We prohibit launching of boats from trailers in the impoundments in the St. Marks Unit.

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7. We prohibit use of cast nets and traps to take fish from any lake, pond, or impoundment on the refuge.

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**St. Vincent National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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2. We restrict hunting to three hunt periods: Sambar deer, raccoon, and feral hog – November 17-19; and white-tailed deer, raccoon, and feral hog – December 15-17 and January 5-7. Hunters may check-in and set up camp sites and stands on November 16, December 14, and January 4. Hunters must leave the island and remove all equipment by 4 p.m. on the last day of the hunt.

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9. You may retrieve game from the closed areas only if accompanied by a refuge staff member.

* * * * *

19. * * *

iii. Primitive weapons hunt – one white-tailed deer buck having one or more forked antlers at least 5 inches (12.5 cm) in length visible above the hairline with points greater than 1 inch (12.5 cm) in length; we issue a limited number of either-sex permits. If you have an either-sex permit, the bag limit is one deer that may be antlerless or a buck with legal antler configuration. There is no limit on feral hog or raccoon.

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9. Amend §32.29 Georgia by:

a. Removing paragraph C.5. and redesignating paragraphs C.6. through C.19. as paragraphs C.5. through C.18. of Blackbeard Island National Wildlife Refuge;

b. Revising paragraph C.2., removing paragraph C.3., redesignating paragraphs C.4. through C.22. as paragraphs C.3. through C.21., revising newly redesignated paragraph C. 18., and adding new paragraph C.22. of Bond Swamp National Wildlife Refuge;

c. Revising paragraphs C.9. and C.12. of Harris Neck National Wildlife Refuge;

d. Revising paragraph D.4. of Piedmont National Wildlife Refuge;

e. Revising paragraphs A.1., C.3., C.5., C.10., and adding paragraph C.11. of Savannah National Wildlife Refuge; and

f. Revising paragraphs C.8. and C.9. of Wassaw National Wildlife Refuge to read as follows:

**§ 32.29 Georgia.**

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**Bond Swamp National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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2. We require you to possess and carry a signed refuge hunt permit while hunting. You may obtain this permit from the refuge office.

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18. We prohibit ATVs on the refuge except by disabled hunters with a refuge Special Use Permit.

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22. Firearm hunting for feral hogs follows State of Georgia deer firearms restrictions except we prohibit buckshot. Legal firearms include center-fire rifles, shotgun with slugs, muzzleloader, and archery equipment.

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**Harris Neck National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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9. During the archery hunt, we only allow bows. We prohibit crossbows (see §27.43 of this chapter).

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12. During the gun hunt, we only allow shotguns with slugs 20 gauge or larger and bows. We prohibit crossbows (see §27.43 of this chapter).

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**Piedmont National Wildlife Refuge**

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*D. Sport Fishing.* * * *

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4. We allow nonmotorized boats on all ponds designated as open to fishing. We allow boats with electric motors only in Pond 2A and Allison Lake.

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**Savannah National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. You must possess and carry a signed refuge permit at all times while hunting on the refuge. We require a fee only for the quota youth waterfowl hunt on the Solomon Tract.

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*C. Big Game Hunting.* * * *

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3. We only allow bows for deer and hog hunting during the archery hunt. We prohibit crossbows (see §27.43 of this chapter).

* * * * *

5. We only allow shotguns with slugs, muzzleloaders, and bows for deer and hog hunting throughout the designated hunt area during the November gun hunt and the March hog hunt. However, we allow centerfire rifles of .22 caliber or larger north of Interstate Highway 95 only. We prohibit handguns and crossbows (see §§27.42 and 27.43 of this chapter).

* * * * *

10. We only allow shotguns with #2 shot or smaller and bows for turkey hunting in accordance with State regulations. We prohibit possession of slugs or buckshot during turkey hunts. We prohibit crossbows (see §27.43 of this chapter).

11. You must remove hunt stands daily (see §27.93 of this chapter).

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**Wassaw National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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8. We only allow bows and muzzleloading rifles during the primitive weapons hunt. We prohibit crossbows (see §27.43 of this chapter).

9. We only allow shotguns of 20-gauge or larger (slugs only), centerfire rifles of .22 caliber or larger, bows, and primitive weapons during the gun hunt. We prohibit crossbows (see §27.43 of this chapter).

* * * * *

10. Amend §32.31 Idaho by:

a. Revising paragraph A.2. of Bear Lake National Wildlife Refuge;

b. Removing paragraph A.3., redesignating paragraph A.4. as paragraph A.3., and removing paragraph B.2. of Camas National Wildlife Refuge;

c. Revising Kootenai National Wildlife Refuge; and

d. Revising the introductory text of paragraph D., revising paragraph D.3., and removing paragraph D.4. of Minidoka National Wildlife Refuge to read as follows:

**§ 32.31 Idaho.**

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**Bear Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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2. We allow nonmotorized and motorized boats after September 20 within the designated refuge hunting areas.

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**Kootenai National Wildlife Refuge**

*A. Migratory Game Bird Hunting.:*

We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions

1. We allow hunting only on Tuesdays, Thursdays, Saturdays, and Sundays.

2. You may possess only approved nontoxic shotshells (see §32.2(k)) in quantities of 25 or less per day.

3. You must unload all firearms when in the posted retrieving zone for purposes of retrieving downed birds or when traveling to and from the hunting area.

4. On waterfowl hunt days, we allow public entry onto the refuge from 3:00 a.m. until 1 hour after legal sunset.

5. We prohibit overnight vehicle parking on the refuge.

*B. Upland Game Hunting.*

We allow hunting of forest grouse on that portion of the refuge which lies west of Westside Road and west of Lion's Den Road in accordance with State regulations subject to the following condition: You may possess only approved nontoxic shotshells (see §32.2(k)) while in the field.

*C. Big Game Hunting.*

We allow hunting of deer, elk, black bear, moose, and mountain lion on that

portion of the refuge which lies west of Westside Road and west of Lion's Den Road in accordance with State regulations.

*D. Sport Fishing.*

We allow sport fishing on Myrtle Creek in accordance with State regulations subject to the following conditions:

1. We allow bank fishing only.

2. We prohibit fishing from boats, float tubes, or other personal flotation devices.

**Minidoka National Wildlife Refuge**

* * * * *

*D. Sport Fishing.*

We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

3. We allow bank and float-tube fishing year-round, throughout all of Lake Walcott.

11. Amend §32.35 Kansas by revising paragraph A.9., adding paragraphs A.11. and A.12., revising the introductory text of paragraph B., revising paragraphs B.2. and B.5., adding paragraph B.6., revising paragraphs C.2., C.7., and C.9., adding paragraph C.10., and revising paragraphs D.4., D.7. and D.9. of Kirwin National Wildlife Refuge to read as follows:

**§ 32.35 Kansas.**

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**Kirwin National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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9. We prohibit the use of ATVs (all-terrain vehicle), OHVs (off-highway vehicle), NHVs (nonhighway vehicle), or snowmobiles on the refuge (see §27.31(f) of this chapter).

* * * * *

11. We prohibit overnight camping on the refuge.

12. We prohibit open fires on the refuge.

*B. Upland Game Hunting.*

We allow hunting of pheasant, quail, prairie chicken, fox squirrel, cottontail rabbit, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

2. In addition to pheasant, we allow hunting of fox squirrel and cottontail rabbit only during pheasant season.

* * * * *

5. We prohibit retrieval of turkey from an area closed to turkey hunting.

6. Conditions A8 through A12 apply.

*C. Big Game Hunting.* * * *

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2. You must obtain a refuge-issued permit to hunt deer on the refuge. You must sign and carry the permit in the field while hunting.

* * * * *

7. We prohibit retrieving deer from an area closed to deer hunting.

* * * * *

9. We prohibit the use of nails, wires, screws, or bolts to attach a stand to a tree or hunting from a tree into which a metal object has been driven (see §32.2(i)).

10. Conditions A8 through A12 apply.

*D. Sport Fishing.* * * *

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4. We allow motorless boats in the Solomon Arm of Kirwin Reservoir from August 1 through September 30.

* * * * *

7. We prohibit fishing tournaments on the refuge.

* * * * *

9. Conditions A8 through A12 apply.

* * * * *

12. Amend §32.36 Kentucky by revising paragraphs A.2. and A.6., removing paragraph A.10., redesignating paragraphs A.11. through A.18. as paragraphs A.10. through A.17., revising newly redesignated paragraphs A.10., A.14., A.15., A.17., A.17.v., and adding paragraph D.2. of Clarks River National Wildlife Refuge to read as follows:

**§ 32.36 Kentucky.**

* * * * *

**Clarks River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

* * * * *

2. We prohibit the use of motorized off-road vehicles (e.g., ATVs) and any unlicensed vehicles on the refuge (see §27.31(f) of this chapter).

* * * * *

6. To retrieve or track game from a posted closed area of the refuge, the hunter must first receive authorization from the refuge manager at 270-527-5770 or the law enforcement officer at 270-702-2836.

* * * * *

10. We prohibit possession or use of alcoholic beverages while on the refuge (see §32.2(j)).

* * * * *

14. Waterfowl hunters must unload firearms and cease hunting ducks, geese, and coot at 12 p.m. (noon) daily during the State waterfowl season.

15. Waterfowl hunters must remove decoys, blinds, boats, and all other equipment (see §27.93 of this chapter) and be out of the field daily by 2 p.m.

* * * * *

17. We only allow waterfowl hunting on the Sharpe-Elva Water Management Units on specified Saturdays and Sundays during the State waterfowl season. We only allow hunting by individuals in possession of a refuge draw permit and their guests. State regulations and the following conditions apply:

* * * * *

v. We prohibit watercraft on the Sharpe-Elva Water Management Units, except for drawn permit holders to access their blinds and retrieve downed birds as needed.

* * * * *

*D. Sport Fishing.* * * *

* * * * *

2. The following apply to the Environmental Education and Recreation Area (EERA).

i. The EERA is a day-use area only.

ii. We only allow one rod and reel or pole and line for fishing per person.

iii. We prohibit the use of any type of watercraft.

iv. We prohibit the introduction or stocking of any species (see §27.52 of this chapter).

v. We prohibit the use of live fish for bait.

vi. We close designated portions of the EERA to all entry from November 1 to March 15.

vii. We allow the taking of largemouth bass, channel catfish, and bluegill in accordance with posted limits.

* * * * *

13. Amend §32.37 Louisiana by:

a. Revising paragraphs A.6., A.9., A.10., removing paragraph A.14., redesignating paragraphs A.15. and A.16. as paragraphs A.13. and A.14., revising newly redesignated paragraph A.13., adding paragraph A.15., revising paragraphs B.2., B.5., C.1., C.6., C.12., and adding paragraph D.6. of Bayou Cocodrie National Wildlife Refuge;

b. Revising paragraphs A.9., A.10, B.2., B.3., and C.8. of Big Branch Marsh National Wildlife Refuge;

c. Revising paragraph B.4., the introductory text of paragraph C., revising paragraph C.1., removing paragraph C.2., and redesignating paragraphs C.3. through C.8. as paragraphs C.2. through C.7. of Black Bayou Lake National Wildlife Refuge;

d. Revising paragraph A.1., adding paragraph C.3., revising paragraph D.11., and adding paragraph D.18. of Cameron Prairie National Wildlife Refuge;

e. Revising paragraphs A.1., A.2., A.3., A.8., A.10., A.19., A.26., A.27., A.28., B.1., B.2., and C.1., adding paragraphs C.11. and C.12., revising paragraph D.2., and removing paragraph D.11. of Cat Island National Wildlife Refuge;

f. Revising paragraphs A.4., A.10., A.13., A.15., adding paragraphs A.18., A.19., revising paragraph B.1., removing paragraph B.5., redesignating paragraphs B.6. through B.11. as paragraphs B.5. through B.10., revising newly redesignated paragraphs B.7. and B.8., and revising paragraphs C.1. and D.1. of Catahoula National Wildlife Refuge;

g. Revising paragraphs A.2., A.4., A.11., A.19., A.21., A.23., removing paragraphs A.24., A.25., A.27. and redesignating paragraph A.26. as paragraph A.24., paragraph A.28. as paragraph A.25., and paragraph A.29. as paragraph A.26., and adding paragraphs A.27. and A.28., revising paragraphs B.1. and B.2., removing paragraph B.3., redesignating paragraphs B.4. through B.8. as paragraphs B.3. through B.7., revising newly redesignated paragraph B.6., adding paragraph B.8., revising paragraphs C.1., C.2., C.3., C.6., removing paragraphs C.7. and C.8., revising paragraphs D.1., D.2., D.6., D.13., removing paragraph D.14., and redesignating paragraph D.15. as paragraph D.14. of Grand Cote National Wildlife Refuge;

h. Revising paragraphs A.3. and A.10. of Lacassine National Wildlife Refuge;

i. Revising paragraphs A.2., A.4., A.10., A.13., A.15., A.24., adding paragraphs A.25. and A.26., revising paragraphs B.1., B.2., B.6., adding paragraph B.8., revising paragraphs C., D.1., and D.9. of Lake Ophelia National Wildlife Refuge; and

j. Revising paragraphs A.2. and D.6. through D.9., and adding paragraph D.10. of Sabine National Wildlife Refuge;

k. Revising paragraphs A.3., A.5., A.6., A.9., A.11., A.12., B.2., B.6., B.7., adding paragraphs B.8. through B.10., and revising paragraphs C. and D.4. of Tensas River National Wildlife Refuge to read as follows:

**§ 32.37 Louisiana.**

* * * * *

**Bayou Cocodrie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

* * * * *

6. Any hunter under age 16 must possess and carry proof of completion of an approved Hunter Safety Course and be accompanied by an adult age 21 or older. Each adult may supervise (within sight of and in normal voice contact with) only one youth for all youth hunts except migratory birds. One adult may supervise no more than two youths while hunting migratory game birds.

* * * * *

9. Coyote, beaver, feral hog, and raccoon are incidental take species and, as such, you may take them during any open hunting season only with the weapon allowed for that season if you are a hunter having the required licenses and permits. There is no bag limit on coyote, feral hog, and beaver. State regulations apply on other incidental species.

10. You must check all game taken on the refuge before leaving the refuge at one of the self-clearing check stations indicated on the map in the refuge hunting and fishing regulations brochure. Each hunter is responsible for reporting harvest information on a hunter information report card located at the self-clearing check station.

* * * * *

13. Special access ATV trails are available for mobility-impaired hunters and hunters age 60 and older with proper State permits. Hunters with mobility impairments must possess and carry a valid Disabled Hunter Permit/Card from the State to use special access ATV trails. Hunters must equip their ATVs with a red flag at least 6 inches (15 cm) wide and 12 inches (30 cm) long on a pole or staff extending at least 36 inches (90 cm) above the level of the seat. State requirements for ''Mobility-Impaired'' classification apply.

* * * * *

15. Hunters must unload and encase firearms carried in vehicles or boats and on ATVs. We define loaded as shells in the gun's magazine or chamber, or percussion caps/primers on or in muzzleloaders. We define encased as fully enclosed in a covering designed for carrying a firearm. We allow firearms on the refuge only during the applicable gun hunts. We prohibit possession of any firearm while engaged in archery hunting.

*B. Upland Game Hunting.* * * *

* * * * *

2. Conditions A1, A3, and A7 through A15 apply.

* * * * *

5. Refuge users may enter the refuge no earlier than 4 a.m. and must exit the refuge by 2 hours after legal sunset except that raccoon and opossum hunters during the month of February may use the refuge at night.

* * * * *

*C. Big Game Hunting.* * * *

1. Conditions A1, A3, A7 through A15, and B5 apply.

* * * * *

6. We prohibit hunters leaving stands on the refuge until the opening day of archery season, and they must remove them by the end of the last day of the archery season. Hunters must clearly mark stands used on the refuge with the name and address of the owner of the stand. Hunters must remove portable stands from trees daily and must place free-standing stands in a nonhunting position daily (see §§27.93 and 27.94 of this chapter).

* * * * *

12. We prohibit baiting or hunting over bait and the possession of bait or any nonnaturally occurring attractant on the refuge (see §32.2(h)).

* * * * *

*D. Sport Fishing.* * * *

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6. The refuge boat ramp is open from 4 a.m. until 2 hours after legal sunset.

* * * * *

**Big Branch Marsh National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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9. We prohibit possession of buckshot, slugs, rifles, rifle ammunition, and lead shot.

10. We prohibit hunting within 150 feet (45 m) of any road open to vehicle travel, residence, or Boy Scout Road. We prohibit hunting in refuge-designated closed areas, which are posted on the refuge and identified in the refuge hunt permits (see §27.31 of this chapter).

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

2. You may only use dogs for squirrel and rabbit after the close of the State archery deer season.

3. We only allow dogs to locate, point, and retrieve when hunting for quail.

* * * * *

*C. Big Game Hunting.* * * *

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8. Conditions A5 through A13 apply, except in condition A7, one adult may supervise only one youth while hunting big game.

* * * * *

**Black Bayou Lake National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

* * * * *

4. We allow the use of dogs to hunt squirrel and rabbit during that part of the State season that occurs in January and February.

* * * * *

*C. Big Game Hunting.*

We allow archery hunting of white-tailed deer on designated areas of the refuge during the State season in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A4, A6, A10, A11, and B7 apply.

* * * * *

**Cameron Prairie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. The waterfowl hunt consists of a youth (age 15 and younger) limited permit hunt only. We provide hunt dates and application requirements to the public through the media early each fall. We notify successful applicants prior to the applicable hunt season. The permitted youth must be present in the blind for his/her guest to hunt.

* * * * *

*C. Big Game Hunting.* * * *

* * * * *

3. We prohibit entrance to the hunting area earlier than 4 a.m. Hunters must leave no later than 1 hour after legal sunset.

*D. Sport Fishing.* * * *

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11. Allowed cast net size is in accordance with State regulations.

* * * * *

18. We allow cast netting for bait on both the East Cove Unit and the Gibbstown Unit in accordance with State regulations when the unit is open for public fishing only.

**Cat Island National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. Hunters or anglers age 16 or older must possess and carry a valid, signed refuge Public Use Permit certifying that they understand and will comply with all regulations.

2. All users must obtain a daily use reporting card and place it in plain view on the dashboard of their vehicle so that the personal information is readable. Users must return cards to the refuge kiosk upon departure from the refuge.

3. Hunters may enter the refuge 2 hours before legal sunrise and must exit the refuge no later than 2 hours after legal sunset. We prohibit entering or remaining on the refuge before or after hours.

* * * * *

8. Hunters must report all harvested game on the back of the daily use reporting card prior to leaving the refuge.

* * * * *

10. Hunters must unload and encase firearms, including muzzleloaders, transported on roads, ATV trails, or waterways within the refuge boundary (see §27.42(b) of this chapter).

* * * * *

19. Waterfowl hunters must remove boats, blinds, and decoys by 1 p.m. daily.

* * * * *

26. We prohibit possession of alcohol (see §32.2(j)).

27. We prohibit possession of handguns.

28. We prohibit all commercial activities (including, but not limited to, guiding).

*B. Upland Game Hunting.* * * *

1. Conditions A1 through A17, A19, A21, A22, and A26 through A28 apply.

2. We allow the use of .22 caliber long rifles and shotguns to hunt upland game.

* * * * *

*C. Big Game Hunting.* * * *

1. Conditions A1 through A17, A19, A21, A22, and A26 through A28 apply.

* * * * *

11. We allow ''still hunting'' only. We prohibit man drives or use of dogs.

12. We prohibit use or possession of climbing spurs.

*D. Sport Fishing.* * * *

* * * * *

2. Conditions A1 through A4, A8, A9 (on the open portions of Wood Duck ATV trail for wildlife-dependent activities throughout the year), A13 through A16, A19, A21 through A23 and A26 through A28 apply.

* * * * *

**Catahoula National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

* * * * *

4. We allow use of ATVs on designated trails (see §27.31 of this chapter) subject to refuge-specific dates and terms (see refuge hunting brochure for details). We prohibit the use of an ATV on graveled roads designated for motor vehicle traffic unless otherwise posted. We only allow ATVs for wildlife-dependent activities. We define an ATV as an off-road vehicle (not legal for highway use) with factory specifications not to exceed the following: weight 750 pounds (337.5 kg), length 85 inches (212.5 cm), and width 48 inches (120 cm). We restrict ATV tires to those no larger than 25 x 12 with a maximum 1 inch (2.5 cm) lug height and a maximum allowable tire pressure of 7 psi as indicated on the tire by the manufacturer.

* * * * *

10. Youth hunters under age 18 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult must possess and carry a refuge permit and may supervise no more than two youth hunters.

* * * * *

13. We prohibit any person or group to act as a hunting or fishing guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting or fishing on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

* * * * *

15. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds. We only allow dogs after the last refuge deer muzzleloader hunt, except when we allow them for waterfowl hunting throughout the entire refuge waterfowl season.

* * * * *

18. We prohibit vehicles having wheels with a wheel-tire combination having a radius of 17 inches (42.5 cm) or more from the center of the hub (measured horizontal to ground).

19. Refuge hunting seasons apply to all navigable waterways that are wholly within the refuge boundaries.

*B. Upland Game Hunting.* * * *

1. Conditions A1, A4, A7 through A11, A13, A14, and A16 through A19 apply.

* * * * *

7. At the Headquarters Unit, we close upland and big game hunting during high water conditions with an elevation of 42 feet (12.6 m) or above as measured at the Corps of Engineers center of the lake gauge on Catahoula Lake. At the Bushley Bayou Unit, we close upland and big game hunting during high water conditions with an elevation of 44 feet (13.2 m) or above as measured at the Corps of Engineers center of the lake gauge on Catahoula Lake.

8. On the Bushley Bayou Unit, we allow the use of dogs to hunt squirrel, rabbit, and raccoon only after the last refuge deer-muzzleloader hunt. We

allow no more than two dogs per hunting party for squirrel hunting. Hunters may use only beagles that do not exceed 15 inches (37.5 cm) at front shoulders for rabbit hunting.

* * * * *

*C. Big Game Hunting.* * * *

1. Conditions A1, A4, A7 through A9, A11, A13, A14, A16 through A19, B4 through B7, and B10 apply.

* * * * *

*D. Sport Fishing.* * * *

1. Conditions A4, A7, A9, A13, A14, A16, A17, and B6 apply.

* * * * *

**Grand Cote National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

* * * * *

2. Hunters must check-in and check out subject to refuge-specific terms (see refuge hunting brochure for details).

* * * * *

4. Youth hunters under age 18 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two youth hunters during waterfowl hunts.

* * * * *

11. We prohibit hunting within 150 feet (45 m) of any public road, refuge road, trail or ATV trail, building, residence, or designated public facility.

* * * * *

19. We prohibit handguns (see §27.42 of this chapter).

* * * * *

21. We allow only incidental take of mourning dove, rail, or snipe while migratory bird hunting on days open to waterfowl hunting.

* * * * *

23. There will be lottery space blind waterfowl hunts on designated sections of the refuge during the regular State waterfowl season subject to refuge-specific dates, terms, and selection process (see refuge hunting brochure for details). Youth ages 10 to 17 and their adult co-applicant supervisors are given preference in the lottery space blind waterfowl hunt. Once selected for a lottery space blind waterfowl hunt, the youth co-applicant must be present on the day of the hunt for the permit to be valid. In the event that we receive no youth applications for a given hunting date, we will fill blinds with adult applicants for that date. All hunts are subject to water availability.

* * * * *

27. Hunting is subject to closure due to high water conditions.

28. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

*B. Upland Game Hunting.* * * *

1. Conditions A1 through A16, A20, and A24 through A28 apply.

2. We allow rabbit hunting during the State season.

* * * * *

6. We allow the use of .22 caliber or less rimfire rifles or shotguns to hunt upland game.

* * * * *

8. We require hunters participating in special dog seasons for rabbit to wear a minimum of an unbroken hunter orange cap. All other hunters and archers (while on the ground), except waterfowl hunters, also must wear an unbroken hunter orange cap during the special dog seasons for rabbit.

*C. Big Game Hunting.* * * *

1. Conditions A1 through A16, A20, A24 through A28, B6, and B7 apply.

2. We allow archery hunting in designated units subject to refuge-specific dates and harvest restrictions (see refuge hunting brochure for details).

3. We allow only portable deer stands (see §§27.93 and 27.94 of this chapter). Deer stands must have the owner's name, address, and phone number clearly printed on the stand. Hunters may erect stands 2 days before hunting season; however, they must place stands in a nonhunting position at the conclusion of each hunt and remove them on the last day of the State archery deer season.

* * * * *

6. Archery hunters must complete, possess, and carry proof of completion of the International Bowhunters' Safety Course.

*D. Sport Fishing.* * * *

1. Conditions A1, B5, A6, A10, A11, A13 through A15, A19, A20, and A26 apply.

2. We only allow bank fishing in Coulee Des Grues along Little California Road.

* * * * *

6. We allow recreational crawfishing subject to refuge-specific dates and terms (see refuge hunting brochure for details).

* * * * *

13. We prohibit the harvest of frog, turtle, snake, or mollusk (see §27.21 of this chapter).

* * * * *

**Lacassine National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

* * * * *

3. We allow hunting Wednesdays, Thursdays, Saturdays, and Sundays of the State teal and duck seasons (western zone). We close the refuge to hunting during the ''goose only'' waterfowl season. State daily and season harvest limits apply.

* * * * *

10. Limited permit waterfowl hunting consists of youth (age 15 and younger) and senior (age 55 and older) lottery hunts. We provide hunt dates and application information to the public through the media early each fall. We notify successful applicants prior to the applicable hunt season. The permitted youth and/or senior must be present in the blind for his/her guest to hunt. We allow only successful applicants and their guests within Unit B.

* * * * *

**Lake Ophelia National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

* * * * *

2. Hunters must check-in and check out subject to refuge-specific terms (see refuge hunting brochure for details).

* * * * *

4. Youth hunters under age 18 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two youth hunters during waterfowl hunts.

* * * * *

10. We prohibit hunting or shooting within 150 feet (45 m) of any public road, refuge road, ATV trail, hiking trail, building, residence, designated public facility, or active oil well site, production facility, or equipment.

* * * * *

13. We prohibit all other hunting during refuge lottery muzzleloader deer hunts.

* * * * *

15. We allow motors up to 25 hp in Possum Bayou (north of Boat Ramp), Palmetto Bayou, Duck Lake, Westcut Lake, Pt. Basse, and Nicholas Lake.

* * * * *

24. We prohibit handguns (see §27.42 of this chapter).

25. We prohibit vehicles having wheels with a wheel-tire combination having a radius of 17 inches (42.5 cm) or more from the center of the hub (measured horizontal to ground).

26. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging or club membership.

*B. Upland Game Hunting.* * * *

1. Conditions A1 through A16, A19, and A22 through A26 apply.

2. We allow squirrel and rabbit hunting in Hunt Unit 2B subject to refuge-specific dates and terms (see refuge hunting brochure for details).

* * * * *

6. We allow the use of .22 caliber or less rimfire rifles or shotguns to hunt upland game.

* * * * *

8. We require hunters participating in special dog seasons for rabbit and squirrel to wear a minimum of an unbroken hunter-orange cap. All other hunters and archers (while on the ground), except waterfowl hunters, also must wear an unbroken hunter-orange cap during the special dog seasons for rabbit and squirrel.

*C. Big Game Hunting.*

We allow hunting of white-tailed deer and turkey on designated areas of the refuge as shown on the refuge hunting brochure map in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A3, A5 through A16, A19, A22 through A26, B7, and B8 apply.

2. We only allow portable deer stands (see §§27.93 and 27.94 of this chapter). We require hunters to permanently attach their name, address, and phone number to the deer stand. Hunters may erect stands 2 days before hunting season; however, they must place stands in a nonhunting position at the conclusion of each hunt and remove them on the last day of the State archery deer season.

3. We allow archery hunting in Units 1A, 1B, 2A, and 2B subject to refuge-specific date and harvest restrictions (see refuge hunting brochure for dates).

4. We allow youth deer hunting in the closed area during the lottery youth deer season. Lottery youth deer gun hunts are subject to the refuge-specific dates, terms, and selection process (see refuge hunting brochure for details). Youth selected in prior years' youth hunts may not apply.

5. We prohibit the use of organized drives for taking or attempting to take game or using pursuit dogs.

6. We allow archery equipment only during designated seasons.

7. Archery hunters must complete, possess, and carry proof of completion of the International Bowhunters' Safety Course.

8. We prohibit the use of dogs to trail wounded deer.

9. We allow electric-powered or nonmotorized boats in Lake Ophelia from November 1 through December 15 (see refuge hunting brochure for details).

10. You may kill one deer of either sex per day during the refuge archery season. Deer killed on the refuge count towards the State bag limit.

11. We require a minimum of 400 square inches (2,600 cm2) of unbroken hunter orange as the outermost layer of clothing on the chest and back, and in addition we require a hat or cap of unbroken hunter orange during all deer lottery youth gun hunts and quota muzzleloader hunts. Deer hunters hunting from concealed ground blinds must display a minimum of 400 square inches of hunter orange above or around their blinds which is visible from 360o.

12. Youth hunters under age 18 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise only one youth hunter during big game hunts.

13. There will be lottery deer muzzleloader hunts subject to refuge-specific dates, terms, and selection process (see refuge hunting brochure for details). Applicants may not apply for more than one hunt. There is a $5 nonrefundable application fee per person for each hunt application.

14. We prohibit driving or screwing nails, spikes, or other metal objects into trees or hunting from any tree in which such an object has been driven (see §32.2(i)).

15. We only allow turkey hunting during the first 14 days of the State season until 12 p.m. (noon).

16. We allow the use and possession of lead shot for turkey hunting (see §32.2(k)).

17. We prohibit the possession of saws, saw blades, or machetes.

*D. Sport Fishing.* * * *

1. Conditions A1, A5 through A9, A19 (see §27.93 of this chapter), and A22 through A25 apply.

* * * * *

9. We prohibit the harvest of frog, turtle, snake, or mollusk (see §27.21 of this chapter).

* * * * *

**Sabine National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

* * * * *

2. We allow waterfowl hunting only on Wednesdays, Thursdays, Saturdays, and Sundays during the State teal season and during the regular State waterfowl season for the west zone.

* * * * *

*D. Sport Fishing.* * * *

* * * * *

6. Conditions A7, A9, A13 (fishing guide), and A15 apply.

7. We allow anglers to enter the refuge by boat from 1 hour before legal sunrise to 1 hour after legal sunset in order to access fishing areas. We prohibit fishing activities, however, before legal sunrise and after legal sunset.

8. Crabbing: We allow recreational crabbing in designated areas of the refuge subject to the following conditions:

i. You must take crabs only with cotton hand lines or drop nets up to 24 inches (60 cm) outside diameter. We prohibit use of floats on crab lines.

ii. You must remove all hand lines, drop nets, and bait (see §27.93 of this chapter) from the refuge upon leaving.

iii. We allow a daily limit on crabs of 5 dozen (60) per vehicle or boat.

9. Cast Netting: We allow cast netting in designated areas of the refuge only during the Louisiana Inland Shrimp Season subject to the following conditions:

i. We allow cast netting only from 12 p.m. (noon) to legal sunset.

ii. We only allow recreational cast netting for shrimp. You must immediately return all fish, crabs, or other incidental take (by catch) to the water before continuing to cast net.

iii. We allow a daily shrimp limit of 5 gallons (19 L) of heads-on shrimp per day, per vehicle, or per boat.

iv. Shrimp must remain in your actual custody while on the refuge.

v. You may cast net only from the bank and wharves at Northline, Hog Island Gully, and 1A-1B Public Use Areas or at sites along Hwy. 27 that provide developed safe access and that we do not post and sign as closed areas.

vi. We prohibit cast netting at or around the West Cove Public Use Area or on or around any boat launch.

vii. You may cast net from a boat throughout the refuge except where posted and signed as closed.

viii. We prohibit reserving a place or saving a space for yourself or others by any means to include placing unattended equipment in designated cast-netting areas.

ix. We prohibit swimming and/or wading in the refuge canals or wading in the canals and waterways.

10. We prohibit the taking of turtle (see §27.21 of this chapter).

**Tensas River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

* * * * *

3. We allow refuge hunters to enter the refuge no earlier than 4 a.m., and they must leave no later than 2 hours after legal sunset unless they are participating in the refuge raccoon hunt.

* * * * *

5. We allow shotguns equipped with a single-piece magazine plug that allows the gun to hold no more than two shells in the magazine and one in the chamber. We prohibit target practicing or shooting to unload modern firearms on the refuge at any time. Shotgun hunters must possess only an approved nontoxic shot when hunting migratory birds (see §32.2(k)). Hunters must unload and encase all guns transported in automobiles and boats or on all-terrain vehicles. We define loaded as shells in gun, magazine, or chamber or caps on muzzleloader. We allow firearms on the refuge only during the refuge hunting season.

6. We prohibit permanent or pit blinds on the refuge. You must remove all blind materials and decoys following each day's hunt.

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9. We prohibit baiting or the possession of bait while on the refuge at any time (see §32.2(h)).

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11. While visiting the refuge, we prohibit: spotlighting (see §27.73 of this chapter), littering (see §27.95 of this chapter), fires (see §27.95(a) of this chapter), trapping, man-drives for game, possession of alcoholic beverages in hunting areas (see §§32.2(j)) and 27.81 of this chapter), possession of open alcoholic beverage containers, flagging, engineers tape, paint, unleashed pets (see §26.21(b) of this chapter), and parking/blocking trail and gate entrances (see §27.31(h) of this chapter). We also prohibit hunting or shooting within 150 feet (45 m) of a designated public road, maintained road, trail, fire breaks, dwellings, and above-ground oil and gas production facilities.

We define a maintained road or trail as one which has been mowed, disked, or plowed.

12. We require a Tensas River National Wildlife Refuge Access Permit for all migratory bird hunts. You may find the permit on the front of the Public Use Regulations brochure.

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*B. Upland Game Hunting.* * * *

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2. We allow squirrel and rabbit hunting with and without dogs. We will allow hunting without dogs from the beginning of the State season and typically ending the day before the refuge deer muzzleloader hunt. We do not require you to wear hunter orange during the squirrel and rabbit hunt without dogs. Squirrel and rabbit hunting with or without dogs will begin the day after the refuge deer muzzleloader hunt and will end the last day of the refuge squirrel season, which typically ends on February 15.

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6. We allow .22 caliber rimfire weapons and shotguns equipped with a single-piece magazine plug that allows the gun to hold no more than two shells in the magazine and one in the chamber. We prohibit target practicing or shooting to unload modern firearms on the refuge at any time. Shotgun hunters must possess only an approved nontoxic shot when hunting upland game (see §32.2(k)). Hunters must unload and encase all guns transported in automobiles and boats or on all-terrain vehicles. We define loaded as shells in gun or caps on muzzleloaders. We allow firearms on the refuge only during the refuge hunting season.

7. We require all upland game hunters to report their game immediately after each hunt at the check station nearest to the point of take.

8. Conditions A7, A10, A11, and A13 apply.

9. We prohibit field dressing of game within 150 feet (45 m) of parking areas, maintained roads, and trails.

*C. Big Game Hunting.*

We allow hunting of white-tailed deer and turkey on designated areas of refuges in accordance with State regulations subject to the following conditions:

1. Deer archery season will begin the first Saturday in November and will conclude on the last day of the State archery season (typically January 31). We require that archery hunters, including crossbow hunters, possess proof of completion of the International Bowhunters Safety course. We prohibit archery hunting during the following refuge-wide deer hunts: youth gun hunt and modern firearms hunts. We prohibit possession of pods, drug-tipped arrows, or other chemical substances.

2. The deer muzzleloader season will last 3 days and occur on a Monday, Tuesday, and Wednesday in January. We will allow in-line muzzleloaders and magnified scopes.

3. We will conduct two 2–day quota modern firearms hunts for deer typically in the month of December. Hunt dates and permit application procedures will be available at refuge headquarters in July. We restrict hunters using a muzzleloader during this hunt to areas where we allow modern firearms.

4. We will conduct guided quota youth deer hunts and guided quota physically challenged deer hunts in the Greenlea Bend area typically in December and January. Hunt dates and permit application procedures will be available at the refuge headquarters in July.

5. We will conduct a refuge-wide youth deer hunt during the Statewide youth hunt weekend typically in November. Hunt dates will be available at refuge headquarters in July. Each participating youth must be ages 8 to 15, must possess proof of completion of an approved Hunter Safety Course, and must be accompanied at all times by an adult age 21 or older. Each hunting adult can supervise only one youth.

6. Hunters may take only one deer (one buck or one doe) per day during refuge deer hunts except during guided youth and physically challenged hunts where the limit will be one antlerless and one antlered deer per day.

7. We allow turkey hunting the first 16 days of the State turkey season. We will conduct a youth turkey hunt the Saturday and Sunday before the regular State turkey season. Hunters may harvest two bearded turkeys per season. We allow the use and possession of lead shot while turkey hunting on the refuge. We allow use of nonmotorized bicycles on designated all-terrain vehicle trails. Although you may hunt turkey without displaying a solid hunter-orange cap or vest during your turkey hunt, we do recommend its use.

8. We allow refuge hunters to enter the refuge no earlier than 4 a.m., and they must depart no later than 2 hours after legal sunset unless they are participating in the refuge raccoon hunt.

9. In areas posted ''Area Closed,'' we prohibit big game hunting at any time. We close ''Closed Areas'' (designated on the Public Use Regulations brochure map) to all hunts. We prohibit shooting into or across any closed area with a gun or archery equipment.

10. We allow shotguns equipped with a single-piece magazine plug that allows the gun to hold no more than two shells in the magazine and one in the chamber. We allow shotgun hunters to use rifled slugs only when hunting deer. We prohibit hunters to use or possess buckshot while on the refuge. We prohibit target practicing or shooting to unload modern firearms on the refuge at any time. We require hunters to unload and encase all guns transported in automobiles and boats or on all-terrain vehicles. We define loaded as shells in gun or caps on muzzleloader. We allow firearms on the refuge only during the refuge hunting season.

11. We allow muzzleloader hunters to discharge their muzzleloaders at the end of each hunt safely into the ground at least 150 feet (135 m) from any designated public road, maintained road, trail, fire break, dwelling, or above-ground oil and gas production facility. We define a maintained road or trail as one that has been mowed, disked, or plowed, or one that is free of trees.

12. We allow all-terrain vehicle travel on designated trails for access typically from September 15 to the last day of the refuge squirrel season. Designated trails are open from 4 a.m. to no later than 2 hours after legal sunset unless otherwise specified. We define an ATV as an off-road vehicle (not legal for highway use) with factory specifications not to exceed the following: weight 750 pounds (338 kg), length 85 inches (213 cm), and width 48 inches (120 cm). We restrict ATV tires to those no larger than 25x12 with a 1 inch (2.5 cm) lug height and maximum allowable tire pressure of 7psi. We require an affixed refuge all-terrain vehicle permit that hunters may obtain from the refuge headquarters typically in July. Hunters using the refuge physically challenged all-terrain trails must possess the State's Physically Challenged Program Hunter Permit. Additional physically challenged access information will be available at the refuge headquarters.

13. We allow nonmotorized boats, electric motors, and boats with motors 10 horsepower or less in refuge lakes, streams, and bayous. We require that boat passengers wear personal flotation devices when using a boat to access the refuge. Hunters must equip all motorized boats with navigation lights and utilize them according to State regulations. We prohibit storage of boats on the refuge. Hunters must remove them daily.

14. We prohibit deer hunters leaving deer stands unattended before the opening day of the refuge archery season. They must remove stands by the end of the last day of the refuge archery season. Hunters must clearly mark stands left unattended on the refuge with the name and address of the stand owner. Hunters must remove portable stands from trees daily and place freestanding stands in a nonhunting position when unattended.

15. We require deer hunters using muzzleloaders or modern firearms to display a solid hunter-orange cap on their head and a solid hunter-orange vest over their outermost garment covering their chest and back. Hunters must display the solid hunter-orange items the entire time while in the field.

16. We require muzzleloader and modern firearms hunters using ground blinds to display outside of the blind 400 square inches (2,600 cm2) of hunter orange, which is visible from all sides of the blind. Hunters must wear orange vests and hats as their outermost garments while inside the blind.

17. We require all deer and turkey hunters to report their game immediately after each hunt at the check station nearest to the point of take.

18. We prohibit baiting or the possession of bait while on the refuge at any time (see §32.2(h)). We prohibit possession of chemical baits or attractants used as bait.

19. We prohibit any hunter to use climbing spikes or hunt from a tree that contains screw-in steps, nails, screw-in umbrellas, or any metal objects that could damage trees or to possess any such items (see §32.2(i)).

20. While visiting the refuge, we prohibit: spotlighting (see §27.73 of this chapter), littering (see §27.94 of this chapter), fires (see §27.95 of this chapter), trapping, man-drives for game, possession of alcoholic beverages in hunting areas, possession of open alcoholic beverages (see §§32.2(j) and 27.81 of this chapter), flagging, engineer's tape, paint, unleashed pets (see §26.21(b) of this chapter), parking/blocking trail and gate entrances (see §27.31(h) of this chapter). We also prohibit hunting within 150 feet (45 m) of a designated public road, maintained road, trail, fire break, dwelling, and above-ground oil and gas production facility. We define a maintained road or trail as one that has been mowed, disked, or plowed.

21. We require a Tensas River National Wildlife Refuge Access Permit for all big game hunts. Hunters may find the permit on the front of the Public Use Regulations brochure.

22. We prohibit field dressing of game within 150 feet (45 m) of parking areas, maintained roads, and trails.

*D. Sport Fishing.* * * *

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4. We allow anglers to operate nonmotorized boats, electric motors, and boats with motors 10 horsepower or less in refuge lakes, streams, and bayous. We require that boat passengers wear personal floatation devices when using a boat under power to access the refuge. Anglers must equip all motorized boats with navigation lights and use them according to State regulations. We prohibit boat storage on the refuge, and anglers must remove them daily.

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14. Amend §32.39 Maryland by revising Patuxent Research Refuge to read as follows:

**§ 32.39 Maryland.**

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**Patuxent Research Refuge**

*A. Migratory Game Bird Hunting.*

We allow hunting of goose, duck, and dove on the North Tract in accordance with State regulations subject to the following conditions:

1. We require a hunting permit. We issue permits through our Cooperating Association Meade Natural Heritage Association (MNHA) at the refuge Hunting Control Station (HCS). MNHA charges a fee for each permit. Contact refuge headquarters for more information.

2. We publish the Refuge Hunting Regulations, which includes the daily and yearly bag limits and hunting dates, in late summer. We provide you with a copy of the regulations with your fee permit, and we require you to know the specific hunt seasons and regulations.

3. We require hunters, age 17 or younger, to have a parent or guardian cosign to receive a hunting permit.

4. We require hunters, age 17 or younger, to be accompanied in the field by an adult possessing a refuge hunting permit, age 21 or older.

5. You must check-in and out at the HCS and exchange your hunting permit for a daily hunting pass and a vehicle pass every time you enter or exit the refuge. This includes breakfast, lunch, dinner and other breaks if you leave your designated hunting area.

6. You must use designated and maintained roads for vehicular traffic.

7. You must park within the selected area specified and not block traffic or gates (see §27.31(h) of this chapter).

8. We restrict you to the selected area and activity until you check out at the HCS.

9. We prohibit hunting on or across any road (paved, gravel, opened, and/or

closed), within 50 yards (45 m) of a road (paved, gravel, dirt, opened and/or closed), within 150 yards (135 m) of any building or shed, and within 25 yards (22.5 m) from any designated ''No Hunting'' or ''Safety Zone'' areas. Hunters must unload all weapons in the described areas except:

i. You may hunt from the road, 50 yards (135 m) beyond the gate at Blue Heron Pond;

ii. You may hunt from the road, 50 yards (135 m) beyond the barricade at Wood Duck Pond;

iii. You may hunt from any refuge permanent photo/hunt blind.

iv. You may hunt from the roadside, at designated areas, if you possess a Maryland State ''Hunt from a Vehicle Permit''

10. You may carry only one shotgun, 20 gauge or larger, in the field. We prohibit additional firearms.

11. You must wear, in a visible manner and at all times, a minimum of 400 square inches (2,600 cm2) of solid-colored, fluorescent hunter orange on your head, chest and back except noted otherwise. Your solid-colored, fluorescent hunter orange must be visible 360o while carrying-in and carrying-out equipment (e.g., portable blinds). ''Jump shooters'' must wear at least a solid-colored, fluorescent hunter orange hat or cap while hunting. If you stop and stand, you may remove it.

12. We allow the taking of only Canada goose during the early and late resident Canada goose seasons.

13. We prohibit hunting of goose, duck, and dove during the early deer muzzleloader seasons that occur in October and all deer firearms seasons including the Junior Deer Hunt.

14. We require waterfowl hunters to use retrieving dogs while hunting duck and goose within 50 yards (45 m) of the following impounded waters: Bailey Bridge Marsh, Blue Heron Pond, Lake Allen, New Marsh, and Wood Duck Pond.

15. We require dogs to be under the immediate control of their owner at all times (see §26.21(b) of this chapter). Law enforcement officers may seize or dispatch dogs running loose or unattended (see §28.43 of this chapter).

*B. Upland Game Hunting.*

We allow hunting of turkey, gray squirrel, eastern cottontail rabbit, and woodchuck on the North Tract and turkey on the Central Tract in accordance with State regulations subject to the following conditions:

1. Conditions A1 through and A10 apply.

2. Hunters may only possess approved nontoxic shot while in the field (see §32.2(k)).

3. We prohibit hunting of upland game during the deer muzzleloader and firearms seasons, including the Junior Deer Hunt.

4. You must wear, in a visible manner and at all times, a minimum of 400 square inches (2,600 cm2) of solid-colored, fluorescent hunter orange on your head, chest, and back. Spring turkey hunters are exempt from wearing the hunter orange.

5. We allow the use of a bow and arrow for turkey hunting.

6. We require turkey hunters to use #4, #5, or #6 nontoxic shot or vertical bows.

7. We select turkey hunters by a computerized lottery for youth, disabled, mobility impaired, and general public hunts. We require documentation for disabled and mobility-impaired hunters.

8. We require each turkey hunter show proof they have attended a turkey clinic sponsored by the National Turkey Federation.

9. We require turkey hunters to pattern their weapons prior to hunting. Contact refuge headquarters for more information.

*C. Big Game Hunting.*

We allow hunting of white-tailed deer on the North, Central, and South Tracts in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A10 apply.

2. Prior to issuing a hunting permit, we require you to pass a yearly proficiency test with each weapon used.

3. We only allow the use of a shotgun, muzzleloader, or bow and arrow according to Refuge Hunting Regulations.

i. We require muzzleloaders to be .40 caliber or larger with not less than 60 grains of black powder or a black powder equivalent.

ii. We prohibit the discharging of weapons after legal shooting hours, including the unloading of muzzleloaders.

4. Hunters must unload all weapons while on any roadway except areas identified in A9.

5. We require (when transporting or storing) longbows and recurve bows to be unstrung; and compound and crossbows must be locked in such a way to render them inoperable and/or cased, with no arrows nocked.

6. We prohibit possession of buckshot.

7. You must wear, in a visible manner and at all times, a minimum of 400 square inches (2,600 cm2) of solid-colored, fluorescent hunter orange on your head, chest, and back except noted otherwise. Your solid-colored, fluorescent hunter orange must be visible 360 degrees while carrying-in and carrying-out equipment (e.g., portable tree stands). Bow hunters must follow this requirement when walking from their vehicle to their hunting location and while tracking. We do not require bow hunters to wear the solid-colored, fluorescent hunter orange when positioned to hunt except during the North Tract Junior Deer Hunt and the late deer Muzzleloader Season when they must wear it at all times.

8. All bucks harvested must have a 15 inch (37.5 cm) minimum outside antler spread.

9. All deer harvested will have a jaw extracted at the HCS before leaving the refuge.

10. We allow the use of portable tree stands equipped with a full-body safety harness. You must wear the full-body safety harness while in the tree stand. The stand must be at least 10 feet (3 m) off the ground. You must remove tree stands from the refuge. You must use tree stands when hunting South and Central Tracts. We will make limited accommodations for disabled hunters for Central Tract lottery hunts.

11. We prohibit the use of dogs to hunt or track wounded deer.

12. If you wish to track wounded deer, beyond 1½ hours after legal sunset, you must gain consent from a refuge law enforcement officer. We prohibit tracking 2½ hours after legal sunset. You must make a reasonable effort to retrieve the wounded deer. This may include next-day tracking except Sundays and Federal holidays.

13. We prohibit deer drives or anyone taking part in any deer drive. We define a ''deer drive'' as an organized or planned effort to pursue, drive, chase or otherwise frighten or cause deer to move in the direction of any person or persons who are part of the organized or planned hunt and known to be waiting for the deer. We also prohibit organized deer drives without a standing hunter.

14. **North Tract**: We allow shotgun, muzzleloader, and bow hunting in accordance with the following regulations: Conditions C1 through C13 apply.

15. **Central Tract**:

i. **Headquarters/MR Lottery Hunt**: We only allow shotgun and bow hunting in accordance with the following regulations:

a. Conditions C1, C2, and C4 through C13 apply.

b. We select Central Tract shotgun and bow hunters by a computerized

lottery. We will assign you a specific hunting location.

ii. **Schafer Farm Hunt**: We only allow bow hunting in accordance with the following regulations: Conditions C1, C2, and C4 through C13 apply.

18. **South Tract**: We allow shotgun, muzzleloader, and bow hunting in accordance with the following regulations:

i. Conditions C1 through C13 apply.

ii. You must access South Tract hunting areas A, B, and C off Springfield Road through the Old Beltsville Airport; and South Tract hunting area D from MD Rt. 197 through Gate #4. You must park in designated parking areas.

iii. We prohibit driving or parking along the entrance and exit roads, to and from the National Wildlife Visitor Center, and parking in the visitor center parking lot when checked in to hunt any area.

*D. Sport Fishing.*

We allow sport fishing in accordance with Maryland State hook and line fishing regulations subject to the following conditions:

1. We require all anglers, age 16 and older, to obtain a free refuge fishing permit as well as a Maryland State fishing license, which must be carried with them at all times while fishing. Organized groups may request a group permit. The group leader must carry a copy of the permit and stay with the group at all times while fishing.

2. We publish the Refuge Fishing Regulations, which includes the daily and yearly creel limits and fishing dates, in early January. We provide a copy of the regulations with your free refuge fishing permit, and we require you to know the specific fishing regulations.

3. Anglers must carry a copy of the refuge fishing permit and their Maryland State fishing license in the field.

4. Anglers must display a copy of the refuge fishing permit in the vehicle windshield.

5. We require anglers, age 17 or younger, to have a parent or guardian cosign to receive a fishing permit.

6. We require anglers, age 17 or younger, to be accompanied in the field by an adult possessing a fishing permit, age 21 or older, and they must maintain visual contact with each other within a 50 yard (45m) distance.

7. We prohibit the use or possession of lead sinkers.

8. We prohibit the use or possession of alcoholic beverages (see §27.81 of this chapter and §32.2(j)).

9. Anglers may take three youths, age 15 or younger, to fish under their permit and in their presence and control.

10. We allow the use of earthworms as the only source of live bait. We prohibit bloodworms, fish, or other animals or parts of animals to be used as bait.

11. We prohibit harvesting bait on the refuge.

12. Anglers must attend all fishing lines.

13. Anglers may take the following species: chain pickerel, catfish, golden shiner, eel, and sunfish (includes bluegill, black crappie, warmouth and pumpkinseed). Maryland State daily harvest limits apply unless otherwise noted.

14. We require all bluegill to be 6 inches (15 cm) or larger.

15. We allow take of one chain pickerel per day.

16. Anglers must catch and release all bass.

17. We prohibit fishing from all bridges except the downstream side of Bailey Bridge.

18. **North Tract**: We allow sport fishing in accordance with the following regulations:

i. Conditions D1 through D17 apply.

ii. We allow sport fishing at Lake Allen, Blue Heron Pond, Rieve's Pond, New Marsh, Cattail Pond, Bailey Bridge (downstream side) and Little Patuxent River (downstream only from Bailey's Bridge).

iii. We require a free North Tract refuge access permit that anglers must carry and possess at all times and must return to the North Tract Visitor Contact Station (VCS) at the end of each visit. If you are age 17 or younger, you must have a parent or guardian countersign to receive an access permit.

iv. Anglers may fish year-round at Lake Allen, Blue Heron Pond, Rieve's Pond, New Marsh, Cattail Pond, Bailey Bridge (downstream side) and the Little Patuxent River (downstream only from Bailey Bridge) except Monday through Saturday from September 1 through January 31 during the hunting season. We also reserve the right to close Lake Allen at any time.

v. We allow wading, for fishing purposes only, downstream from Bailey Bridge on the Little Patuxent River. We prohibit wading in all other bodies of water.

vi. We prohibit the use of any type of watercraft.08SER2

19. **South Tract**: We allow sport fishing in accordance with the following regulations:

i. Conditions D1 through D16 apply.

ii. Anglers must park their vehicles in the parking lot located behind Refuge Gate #8 off MD Rt. 197. Anglers may not access Cash Lake from the National Wildlife Visitor Center (NWVC).

iii. We allow sport fishing at the pier and designated shorelines at Cash Lake. See Refuge Fishing Regulations for areas opened to fishing. We post other areas with ''No fishing beyond this point'' signs.

iv. Anglers may fish from mid-June until mid-October, as posted.

v. We allow fishing between the hours of 6:00 a.m. and 8:00 p.m. June through August and between the hours of 7:00 a.m. and 6:30 p.m. September and October.

vi. Anglers may use watercraft for fishing in accordance with the Maryland State boating laws subject to the additional following conditions:

a. You may use car-top boats 14 feet (4.2 m) or less, and canoes.

b. You may only use electric motors, 4 HP or less.

c. We prohibit sailboats, kayaks, and inflatable boats.

d. Maryland State law requires personal floatation devices (PFDs).

vii. We prohibit boat trailers except by individuals possessing a refuge handicapped permit.

15. Amend §32.43 Mississippi by:

a. Adding paragraph A.12., revising paragraphs B.1. and C.1., and adding paragraph C.6. of Grand Bay National Wildlife Refuge;

b. Revising paragraph A.15. of Hillside National Wildlife Refuge;

c. Revising paragraphs A.15., C.5., and D.9. of Morgan Brake National Wildlife Refuge; and

d. Revising paragraphs A.17. and D.6. of Panther Swamp National Wildlife Refuge to read as follows:

**§ 32.43 Mississippi.**

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**Grand Bay National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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12. We prohibit the use of airboats, mudboats, motorized pirogues, and air-cooled propulsion engines on the refuge.

*B. Upland Game Hunting.* * * *

1. Conditions A4 through A7 and A9 through A12 apply.

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*C. Big Game Hunting.* * * *

1. Conditions A4 through A7 and A9 through A12 apply.

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6. We prohibit the use of dogs to hunt deer and feral hog.

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**Hillside National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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15. We allow ATVs only on designated trails (see §27.31 of this chapter) (see refuge brochure map).

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**Morgan Brake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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15. We allow ATVs only on designated trails (see §27.31 of this chapter) (see refuge brochure map).

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*C. Big Game Hunting.* * * *

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5. Conditions A5 through A7, A14, and B6 apply.

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*D. Sport Fishing.* * * *

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9. Condition A14 applies.

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**Panther Swamp National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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17. We allow ATVs, beginning on the third Saturday in September through February 28, only on designated trails (see §27.31 of this chapter) (see refuge brochure map).

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*D. Sport Fishing.* * * *

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6. We allow ATVs for fishing access on designated gravel roads when we close such roads to vehicular traffic.

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16. Amend §32.45 Montana by revising paragraphs A.1., A.10., adding paragraphs A.17. and A.18., and revising paragraph C.2. of Lee Metcalf National Wildlife Refuge to read as follows:

**§ 32.45 Montana.**

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**Lee Metcalf National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. Hunting Access: Hunters must enter and exit the hunt area through the access parking lot. Hunters must park at this access point and at the numbered parking space corresponding to a blind. Hunters must walk to the blind along mowed trails designated in the hunting leaflet. We open the access parking lot at 3:30 a.m. to hunters who intend to immediately hunt on the refuge. We prohibit wildlife observation, scouting, and loitering at the access point.

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10. You must conduct all hunting from within the hunting blind.

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17. Hunting blinds require the use of a minimum of six decoys with the exception of blinds #1, 2, 7, 14, and 15.

18. We will allow the use of a removable personal blind within the immediate mowed area around field blind #13.

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*C. Big Game Hunting.* * * *

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2. We will allow archery hunting in the Waterfowl Hunt Area in September except during the youth waterfowl hunt weekend. We will allow archery hunting on Mondays and Thursdays in the Waterfowl Hunting Area during waterfowl hunting season.

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17. Amend §32.47 Nevada by:

a. Removing Stillwater Wildlife Management Area; and

b. Revising paragraph A.5. and adding paragraphs B.3. and B.4. of Stillwater National Wildlife Refuge to read as follows:

**§ 32.47 Nevada.**

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**Stillwater National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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5. We prohibit boating outside of the waterfowl and youth waterfowl hunting season except in Willow Lake where we allow nonmotorized boating all year.

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*B. Upland Game Hunting.* * * *

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3. We prohibit the use or possession of lead shot (see §32.2(k)).

4. We prohibit hunting after legal sunset.

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18. Amend §32.48 New Hampshire by revising the introductory text of paragraph A. and revising paragraph A.5. of Silvio O. Conte National Fish and Wildlife Refuge to read as follows:

**§ 32.48 New Hampshire.**

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**Silvio O. Conte National Fish and Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

We allow hunting of duck, goose, common snipe, and American woodcock on the Pondicherry Division of the refuge in accordance with State regulations subject to the following conditions:

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5. Conditions A4 and A5 apply.

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19. Amend §32.49 New Jersey by revising the introductory text of paragraph C., revising paragraphs C.1. and C.2., and removing paragraphs C.3. through C.5. of Supawna Meadows National Wildlife Refuge to read as follows:

**§ 32.49 New Jersey.**

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**Supawna Meadows National Wildlife Refuge**

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*C. Big Game Hunting.*

We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow only bow hunting on the refuge.

2. We require a State permit for the appropriate State Deer Management Zone.

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20. Amend §32.50 New Mexico by revising paragraphs A.1., A.4., and A.5., adding paragraphs A.6. and A.7., and revising paragraphs B.2., B.3., C.1., and C.2. of Bitter Lake National Wildlife Refuge to read as follows:

**§ 32.50 New Mexico.**

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**Bitter Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. On the North Tract (including Salt Creek Wilderness Area and the portion of the refuge located north of U.S. Highway 70) all hunting must be in accordance with State seasons and regulations. On the Middle Tract (the portion of the refuge located between U.S. Highway 70 and U.S. Highway 380), we restrict hunting to goose, duck, sandhill crane, and American coot (no dove):

i. In the designated public hunting area;

ii. In the southern portion of the Tract that never approaches closer than 100 yards (90 m) to the public auto tour route;

iii. In the southern portion of the Tract only, we limit hunting to Tuesdays, Thursdays, and Saturdays during the period when the State seasons for that area are open simultaneously for most of these species;

iv. All hunting must cease at 1 p.m. (local time) on each hunt day; and

v. On the South Tract (the portion of the refuge located south of U.S. Highway 380), we allow hunting only during Special hunts (youth hunters age

17 and younger and/or physically impaired) as per State seasons and regulations.

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4. Hunters must directly attend all personal property at all times (see §27.93 of this chapter).

5. We allow unleashed hunting/retrieving dogs on the refuge when hunters are legally present in areas where we allow hunters, only if the dogs are under the immediate control of hunters at all times (see §26.21(b) of this chapter), and only to pursue species legally in season at that time.

6. We prohibit hunters and their dogs from entering closed areas for retrieval of game.

7. We do not require refuge or other special hunt permits other than those required by the State (e.g., sandhill crane permits).

*B. Upland Game Hunting.* * * *

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2. Conditions A2 and A4 through A7 apply.

3. We prohibit the use of rifles, handguns, and archery equipment at any time on the refuge except when hunting deer and hogs.

*C. Big Game Hunting.* * * *

1. We restrict all hunting to the North Tract (including Salt Creek Wilderness Area and the portion of the refuge located north of U.S. highway 70) in accordance with State seasons and regulations with the specification that we only allow the take of feral hog (no bag limit) while legally hunting deer and only with the weapon legal for taking deer on that day.

2. Conditions A4 and A7 apply.

* * * * *

21. Amend §32.51 New York by:

a. Revising paragraphs A., C., and D. of Montezuma National Wildlife Refuge; and

b. Revising paragraph C. of Wertheim National Wildlife Refuge to read as follows:

**§ 32.51 New York.**

* * * * *

**Montezuma National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

We allow waterfowl hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require daily refuge permits and reservations. You must possess and carry refuge permits while in the field and present them upon request to any law enforcement officer.

2. We allow hunting only on Tuesdays, Thursdays, and Saturdays during the established refuge season set within the State western zone season.

3. Except for opening day, we take telephone reservations from 8:30 a.m. to 9:00 a.m. on Tuesdays, Thursdays, and Saturdays for the next hunt day.

4. We take opening day reservations between 8:30 a.m. and 9:00 a.m. on a day set by the refuge manager or designee at least 1 week before the season opener.

5. The reservation telephone number is 315-568-4136.

6. All telephone reservations are on a first-come, first-served basis.

7. If you have a reservation for Tschache Pool, you may bring one companion; we will determine party limits for other areas annually.

8. You may request the parking area of your choice when making reservations.

9. Parking signs and blinds should not be moved except by refuge personnel.

10. All hunters with reservations and their hunting companions must check-in at the Route 89 Hunter Creek Station area at least 1 hour before legal shooting time or forfeit their reservation.

11. Hunters must set up in their chosen hunting spot before legal shooting time.

12. Forfeited reservations become available on a first-come, first-served basis to standby hunters at the Route 89 Hunter Check Station.

13. We require a fee of $10 per reservation. If you have a Golden Age or Access Passport, the fee is $5 per reservation.

14. In Tschache Pool, hunters must use motorless boats to hunt, and we limit hunters to one boat per reservation.

15. In Tschache Pool, you must not shoot from the dike or within 50 feet (15 m) of the dike or road, or from within 500 feet (150 m) of the observation tower. We do not limit hunting to specific blind sites.

16. We will announce selection procedures for hunting sites on other areas annually.

17. You may possess a maximum of 15 nontoxic shot shells while in the field (see §32.2(k)).

18. You must stop hunting at 12 p.m. (noon), and you must check out by 1 p.m.

19. We require proof of successful completion of the New York State Waterfowl Identification Course, the Montezuma Nonresident Waterfowl Identification Course, or a suitable nonresident State Waterfowl Identification Course to hunt the refuge; all hunters must show proof each time they hunt.

* * * * *

*C. Big Game Hunting.*

We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting of white-tailed deer only on designated areas of the refuge using archery, firearms (see §27.42 of this chapter), or muzzleloaders during established refuge seasons set within the general State white-tailed deer season.

2. We prohibit hunting on Sunday.

3. You must possess, carry, and present upon request to any law enforcement officer a valid daily hunt permit card. We will also require you to return the daily hunt permit card at the end of hunting or at the end of the day.

4. Daily hunt permits are available at the Route 89 Hunter Check Station on a first-come, first-served basis, issued by refuge personnel or available on a self-service basis; hunters must come to the Route 89 Hunter Check Station to obtain a permit each day they hunt.

5. We issue a maximum of 300 archery and 150 firearms hunt permit cards each day on a first-come, first-served basis.

6. Hunters must fill out Part A of the daily hunt permit card at check-in and leave it with refuge personnel or deposit it in the Part A box at the Route 89 Hunter Check Station.

7. Hunters must carry Part B of the daily hunt permit card while hunting the refuge.

8. Hunters must complete Part B and deposit it in the Part B box at the Route 89 Hunter Check Station by the end of the hunt day.

9. Successful hunters must bring their deer to the Route 89 Hunter Check Station on days designated by the refuge manager.

10. Firearms hunters must wear in a visible manner on the head, chest, and back a minimum of 400 square inches (2,600 cm2) of solid, blaze orange.

11. We only allow shotguns, muzzleloaders, and bows during the firearms season (see §27.42 of this chapter); successful harvest with a bow during firearms season requires use of a firearms season tag. We prohibit handguns.

12. You must have all guns unloaded (see §27.42 of this chapter) between legal sunset and legal sunrise.

13. You must disassemble, lock, or encase all bows after legal sunset and before legal sunrise.

14. We prohibit advance scouting of the refuge prior to hunting season.

15. We prohibit boats and canoes on refuge pools and hunting on the open-water portions of the refuge pools.

16. We prohibit ATVs (see §27.31(f) of this chapter).

17. Hunters may only use portable tree stands and must remove them (see §27.93 of this chapter) from the refuge each day.

18. We prohibit screw-in tree steps, nails, and any object used to puncture the bark of a tree; we do allow climbing tree stands that grip the tree (see §32.2(i)).

19. We allow firearms hunters to be on the refuge during the period that begins 1 hour before legal sunrise and ends 1 hour after legal sunset.

20. We allow archery hunters to be on the refuge during the period that begins 1 hour before legal sunrise (except for opening day) and ends 1 hour after legal sunset.

21. On opening day of both archery and firearms seasons, we allow hunters on the refuge during the period that begins 2 hours before legal sunrise and ends 1 hour after legal sunset.

22. We prohibit parking along the Wildlife Drive unless otherwise posted by refuge personnel.

*D. Sport Fishing.*

Anglers may access the New York State Barge Canal System Waters at only two sites on the refuge: The Seneca River Fishing Access Site and the May's Point Fishing Area. You may either bank fish or boat fish in accordance with State regulations.

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**Wertheim National Wildlife Refuge**

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*C. Big Game Hunting.*

We allow hunting of white-tailed deer within designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow archery and shotgun hunting of white-tailed deer within portions of the refuge during specific days between October 1 and January 31.

2. We require refuge permits. We limit the number of deer hunters permitted to hunt on the refuge. We will issue permits by random selection.

3. You must take the specified number of antlerless deer as noted in the refuge hunting regulations before taking an antlered deer.

4. You must have all applicable and valid hunting licenses, permits, stamps, and a photographic identification in your possession while hunting on the refuge.

5. You must limit driving to designated access roads and park only in designated areas. We prohibit use of motorized vehicles on the refuge to retrieve white-tailed deer.

6. You must display refuge parking permits face up on the vehicle dashboard while hunting.

7. We allow hunters to enter the refuge 1 hour before legal hunting hours, and they must leave the refuge no later than 1 hour after legal hunting hours.

8. We prohibit the use of dogs to hunt or pursue game. We prohibit driving deer by any means.

9. We prohibit the carrying of a loaded weapon or discharging of a firearm within the designated 500-foot (150 m) ''No Hunt Buffer,'' in vehicles, or in parking areas (see §27.42(b) of this chapter).

10. We prohibit shooting directly into the 500-foot (150 m) ''No Hunt Buffer.''

11. We prohibit the killing or crippling of any deer without the hunter making reasonable effort to retrieve the deer and retain it in his or her custody.

12. If assigned to Unit 5, hunters must hunt from portable tree stands and must direct aim away from public roads and private dwellings.

13. We allow only shotgun shells loaded with slugs during the firearms season.

14. Hunters must wear a minimum of 400 square inches (2,600 cm2) of solid-orange clothing, visible on head, chest, and back during the firearms season. Camouflage orange does not qualify because it is not solid.

15. We prohibit construction or use of any type of structure while hunting. We prohibit driving nails, spikes, screws, or other metal objects into any tree or hunting from any tree into which a nail, spike, screw, or other object has been driven (see §32.2(i)).

16. We allow use of temporary or portable tree stands while hunting deer. You must clearly print your name and address on the stand. You must remove all stands or any blinds at the end of each hunt session (see §27.93 of this chapter).

17. You must report all serious accidents and injuries to refuge personnel as soon as possible and before leaving the refuge.

18. Failure to comply with Federal, State, or refuge regulations may lead to dismissal from the refuge and elimination of participation in future hunts.

19. Hunters must abide by all rules and regulations listed on the hunting permit.

20. We prohibit the use of any bait, salt, or enticement (see §32.2(h)).

21. A nonhunting adult possessing a valid New York State hunting license must accompany junior hunters (ages 14 and 15).

22. We prohibit the marking of any tree, trail, or other refuge feature with flagging, paint, reflective material, or any other substance.

23. You must use a safety harness and belt while hunting from a tree stand.

24. We allow scouting of hunting areas on the refuge only during designated times and days. We allow only permitted hunters to scout. We prohibit the use of dogs during scouting.

25. We prohibit the use of electronic calls during any hunting season.

26. We prohibit the trimming or cutting of branches larger than the diameter of a quarter.

* * * * *

22. Amend §32.53 North Dakota by:

a. Revising paragraphs B. and C. of Lostwood National Wildlife Refuge; and

b. Revising paragraph D.3. and adding paragraph D.14. of Upper Souris National Wildlife Refuge to read as follows:

**§ 32.53 North Dakota.**

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**Lostwood National Wildlife Refuge**

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*B. Upland Game Hunting.*

We allow hunting of sharp-tailed grouse and grey partridge on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit hunting on the portion of the refuge south of Highway 50 during the State gun season.

2. We allow hunting only on the portion of the refuge north of Highway 50 beginning the day following the close of the State deer gun season through the end of the State season.

3. You may possess only approved nontoxic shot while in the field (see §32.2(k)).

4. We prohibit the use of horses during all hunting seasons.

*C. Big Game Hunting.*

We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge gun, muzzleloader, and bow deer hunting seasons open and close according to State regulations.

2. We prohibit entry to the refuge before 12 p.m. (noon) on the first day of the archery, gun, or muzzleloader deer hunting season.

3. We will allow only preseason scouting in public use areas and hiking trails.

4. We allow only portable tree stands. You must remove all tree stands at the end of each day (see §§27.93 and 27.94 of this chapter).

5. Hunters may enter the refuge only on foot.

6. Condition B4 applies.

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**Upper Souris National Wildlife Refuge**

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*D. Sport Fishing.* * * *

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3. We prohibit the use of bow, spear, or underwater spearing equipment to take fish during open-water periods.

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14. We allow dark-house spear fishing from December 1 through the last day of February of each fishing year in conjunction with North Dakota Game and Fish Department regulations.

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23. Amend §32.55 Oklahoma by revising paragraph A.1., adding paragraph A.10., and revising paragraphs B.1. and C.4. of Sequoyah National Wildlife Refuge to read as follows:

**§ 32.55 Oklahoma.**

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**Sequoyah National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. We require an annual refuge permit for all hunting. The hunter must possess and carry the signed permit while hunting. We require hunters to abide by all terms and conditions listed on the permit (see §26.43 of this chapter).

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10. We prohibit hunters from using refuge boat ramps to access hunting areas outside the refuge boundary on days when we close the refuge for hunting certain species or for any species not hunted on the refuge.

*B. Upland Game Hunting.* * * *

1. Conditions A1 and A7 through A10 apply.

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*C. Big Game Hunting.* * * *

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4. Conditions A9 and A11 apply.

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24. Amend §32.60 South Carolina by:

a. Revising Cape Romain National Wildlife Refuge;

b. Revising Santee National Wildlife Refuge; and

c. Revising paragraphs C.3. through C.6. of Savannah National Wildlife Refuge to read as follows:

**§ 32.60 South Carolina.**

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**Cape Romain National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

We allow hunting of marsh hen/rail only on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require each hunter to carry at all times while hunting a signed, current refuge hunt permit and a government-issued picture ID. The hunt permit is invalid until signed by the hunter.

2. We prohibit hunting on Sundays.

3. You may possess only approved nontoxic shot while hunting on the refuge (see §32.2(k)).

4. We prohibit discharge of weapons for any purpose other than to take or attempt to take legal game during the established hunting season.

5. We allow firearms intended to take legal game only in the areas designated for hunting.

6. Each hunter under age 16 must remain within sight and normal voice contact of an adult age 21 or older. Youth hunters must have successfully completed a State-approved hunter education course.

7. We allow use of retrieving dogs only while hunting in designated hunting areas for marsh hen/rail. Otherwise we prohibit dogs on the refuge.

8. Hunters must unload and encase weapons while transporting them on the refuge (see §27.42 of this chapter).

9. We prohibit taking or attempting to take any wildlife from an area unless that area is officially opened for hunting/fishing.

*B. Upland Game Hunting.*

We allow hunting of raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A4, A6, and A9 apply.

2. We allow hunting only on days designated annually by the refuge within the State season.

3. Hunters must enter and exit through the designated camping area to access any hunting areas on the refuge.

4. We prohibit crossbows, muzzleloaders, shotguns, rifles, pistols, and any other firearms or illegal means designed by the State to take while-tail deer during the designated refuge archery hunt.

5. The refuge designates daily limits for raccoon.

6. For all raccoons harvested, hunters must check-in the raccoon tail at the refuge check station.

7. We prohibit hunting within 100 feet (30 m) of the Walking Trail (interpretive foot trail) and Beach Road.

8. Each archery hunter must check-in at the camping site on Bulls Island before setting up camp or before starting to hunt. We require each hunter to record his or her name and address in the available register.

9. Hunters may camp in the designated camping areas on Bulls Island during the archery white-tailed deer hunts from 9 a.m. on the day preceding the hunt until 12 p.m. (noon) on the day following the hunt.

10. We restrict hunters to the camping area from 7 p.m. until 4:30 a.m.

11. We prohibit camping on the refuge except for designated archery hunters on Bulls Island and individuals obtaining a special use permit from the refuge manager.

12. We prohibit fires except designated campfires in designated areas during the archery hunt (see §27.95(a) of this chapter).

13. Except for boat motors being operated in salt water, we prohibit motorized equipment on the refuge islands or in refuge inholdings.

14. We prohibit private boats in the refuge boat basins at Garris Landing and Bulls Island. We clearly mark these areas with Closed Area signs.

15. We prohibit overnight parking at Garris Landing except for archery hunters during the designated refuge archery white-tailed deer season and individuals obtaining a special use permit from the refuge manager.

16. Hunters must hunt from a tree stand or the ground. We prohibit stalking, driving, corralling, or any other cooperative form of hunting.

*C. Big Game Hunting.*

We allow the hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A4, A6, A9, B2 through B4, and B7 through B16 apply.

2. The refuge designates daily limits for white-tail deer.

3. Hunters much check all white-tailed deer at the refuge check station prior to removal from Bulls Island.

*D. Sport Fishing.*

We allow the possession, taking, and transportation of: fish, crabs, shellfish, shrimp, and other saltwater species on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A9 and B10 through B14 apply.

2. We prohibit fishing inside the refuge boat basins at Garris Landing and Bulls Island.

3. We prohibit cast nets on the pier at Garris Landing.

4. We prohibit fishing, crabbing, shell fishing, and the taking of other saltwater

species on Bulls Island ponds and managed wetlands (Jacks Creek, Lower and Upper Summerhouse Ponds).

5. We close Marsh Island, White Banks, and Sandy Point to public entry from February 15 through September 15 to protect nesting birds. This closed area extends from the low mean water mark to the highest elevation on these islands.

6. We prohibit entering into any area ''Closed to Public Entry'' due to turtle/bird nesting areas.

7. All refuge islands are ''Closed to Public Entry'' or occupancy from 1 hour after legal sunset to 1 hour before legal sunrise, except during a scheduled refuge big game hunt.

8. We prohibit anglers or visitors taking, possessing, or transporting more than one 3-quart plastic bag of sea shells per person per day from the refuge.

9. We prohibit anglers or visitors taking, possessing, or transporting any sea shells containing living organisms from the refuge, except those shellfish allowed by the State according to a recreational or commercial saltwater fishing license and permit.

10. We prohibit the taking of sea shells from the refuge for commercial purposes or monetary gain.

11. We prohibit the commercial transport of passengers to any refuge island for any purpose without a Special Use Permit from the refuge manager.

12. We prohibit feeding or harassing porpoises in any manner.

13. We prohibit mooring or anchoring of boats more than 72 hours within the refuge boundary.

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**Santee National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

We allow hunting of mourning dove on designated areas of the Cuddo Unit of the refuge in accordance with State regulations subject to the following conditions:

1. All hunters must possess and carry a signed refuge hunting permit and a government-issued picture ID. The hunt permit is invalid until signed by the hunter.

2. We require all hunters to sign in and out at the check station located at the Cuddo entrance gate and report all game taken.

3. We prohibit discharge of weapons (see §27.42 of this chapter) within, into, or across a ''No Hunting Zone'' or ''Closed Area.'' We prohibit entering or crossing a ''No Hunting Zone'' or ''Closed Area'' to access areas open to hunting. We require consent from refuge personnel to enter a ''No Hunting Zone'' or ''Closed Area'' for the purpose of tracking and/or retrieving legally taken game animals.

4. Each youth hunter (age 16 or younger) must remain within sight and normal voice contact and under the direct supervision of an adult age 21 or older with a valid license and applicable permit. Each adult may supervise no more than two youth hunters. Each youth hunter must possess and carry evidence of successful completion of a State-approved hunter education course.

5. We prohibit loaded firearms (see §27.42 of this chapter) within 100 feet (30 m) of maintained refuge roads or designated refuge foot trails that we indicate within the refuge hunt brochure. We prohibit discharge of any weapon on or across any part of the refuge road system or designated refuge foot trail system. We define a ''loaded firearm'' as a firearm with shells in the magazine or chamber, and for muzzleloaders, a firearm with the percussion cap seated in the chamber. We prohibit handguns on all refuge hunts.

6. Legal shooting hours for designated refuge dove hunts are in accordance with State law and the times the refuge is open for general public access.

7. We allow scouting for dove 1 week prior to the designated refuge hunting season. Anyone scouting may not have a firearm in their possession and may be on the refuge only during the times the refuge is open for general public access.

8. You may possess only approved nontoxic shot (see §32.2(k) while in the field if hunting with a shotgun or muzzleloader using shot as a delivery device to take mourning doves.

9. Hunters must possess shotguns with shot no larger than No. 5.

10. We allow use of dogs for the retrieving of mourning doves while hunting. The dog must wear a collar displaying the owner's name, address, and phone number.

11. We prohibit discharge of weapons for any purpose other than to take or attempt to take legal game animals during established hunting seasons.

12. We prohibit entering any area posted as ''Closed'' or ''No Hunting Zone.'' We prohibit hunting any species not listed in the introductory paragraphs A, B, or C on any unit.

*B. Upland Game Hunting.*

We allow hunting of raccoon and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A5, A11, and A12 apply.

2. We allow hunting only on areas, days, and times designated annually by the refuge within the State season.

3. We require dogs for hunting raccoon and opossum. All dogs must wear a collar displaying the owner's name, address, and phone number.

4. You may possess only approved nontoxic shot (see §32.2(k)) while in the field if hunting with a shotgun using shot as a delivery device to take game.

5. Hunters may possess shotguns with shot no larger than No. 4 or .22 caliber rimfire rifles. We prohibit possession of buckshot or slugs. We prohibit handguns on all refuge hunts.

6. We prohibit crossbows.

*C. Big Game Hunting.*

We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A5, A11, and A12 apply.

2. We allow hunting for white-tailed deer only as described in the refuge hunt brochure.

*D. Sport Fishing.*

We allow fishing on the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing year-round, 24 hours a day, except in areas posted as ''Closed Areas'' or in areas seasonally closed for migratory bird management in Cantey Bay, Black Bottom, Savannah Branch, and refuge ponds and impoundments.

2. We allow fishing only in Cantey Bay, Black Bottom, Savannah Branch, and refuge ponds and impoundments from March 1 through October 31.

3. We prohibit fishing or boating within 100 feet (30 m) of any nesting birds or bird rookeries within the refuge boundaries.

4. We allow fishing on the inland ponds only during the times the refuge units are open for general public access or as posted.

5. You must possess and carry a signed refuge fishing permit at all times while fishing on the refuge.

6. We prohibit the use of air-thrust boats, hovercraft, airboats, and personal watercraft.

**Savannah National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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3. We authorize bows only for deer/hog hunting during the archery hunt. We prohibit crossbows (see §27.43 of this chapter).

4. We allow only shotguns with slugs, muzzleloaders, and bows for deer and hog hunting throughout the designated hunt area. However, we allow centerfire rifles of .22 caliber or larger north of

Interstate Highway 95 only. We prohibit handguns and crossbows (see §§27.42 and 27.43 of this chapter).

5. You may take five deer, no more than three antlerless and two antlered. There is no bag limit on feral hogs.

6. You must remove hunt stands daily (see §27.93 of this chapter).

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25. Amend §32.62 Tennessee by:

a. Revising paragraphs A.1., B.1., removing paragraph B.2. and redesignating paragraphs B.3. through B.9. as paragraphs B.2. through B.8., and revising paragraph D.1. of Cross Creeks National Wildlife Refuge; and

b. Revising paragraph A.1., adding paragraph A.12., and revising paragraphs B.1., C.2., and D.4. of Tennessee National Wildlife Refuge to read as follows:

**§ 32.62 Tennessee.**

* * * * *

**Cross Creeks National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. The refuge is open daily from ½ hour before legal sunrise to ½ hour after legal sunset, with the exception of legal hunting and/or fishing activities.

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*B. Upland Game Hunting.* * * *

1. Conditions A1 and A2 apply.

* * * * *

*D. Sport Fishing.* * * *

1. We allow fishing on refuge pools and reservoirs from March 16 through November 14 from ½ hour before legal sunrise to ½ hour after legal sunset.

* * * * *

**Tennessee National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. The refuge is open daily from ½ hour before legal sunrise to ½ hour after legal sunset, with the exception of legal hunting/fishing activities.

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12. We restrict the Duck River Bottoms unit to a quota goose hunt only. You may only participate in the quota hunt with a special quota permit issued through random drawing. Information for permit application is available at the refuge headquarters.

*B. Upland Game Hunting.* * * *

1. Condition A1 applies.

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*C. Big Game Hunting.* * * *

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2. You may only participate in the refuge quota deer hunts with a special quota permit issued through random drawing. Information for permit applications is available at the refuge headquarters. You must possess and carry a valid refuge permit while hunting on the refuge.

*D. Sport Fishing.* * * *

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4. We allow fishing on interior refuge impoundments from ½ hour before legal sunrise to ½ hour after legal sunset.

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26. Amend §32.63 Texas by:

a. Revising paragraphs C.6. and C.7. of Aransas National Wildlife Refuge;

b. Revising the introductory text of paragraph A., revising paragraphs A.1., A.4., and A.6., revising the introductory text of paragraph B., revising paragraphs B.1., B.6., and B.8., and adding paragraphs B.9. and B.10. of Balcones Canyonlands National Wildlife Refuge;

c. Redesignating paragraphs A.1. through A.5. as paragraphs A.2. through A.6. and adding a new paragraph A.1. of Brazoria National Wildlife Refuge; and

d. Revising paragraph A.3. of San Bernard National Wildlife Refuge to read as follows:

**§ 32.63 Texas.**

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**Aransas National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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6. We allow archery hunting within the deer season for the county on specified days listed in the refuge hunt brochure.

7. We allow firearm hunting within the deer season for the county on specified days listed in the refuge hunt brochure.

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**Balcones Canyonlands National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

We allow hunting of mourning, white-wing, rock, and Eurasian-collared doves on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting on the refuge during limited periods of the State-designated hunting season. We publish these dates in the annual refuge hunting brochure.

* * * * *

4. We require all hunters to obtain and possess a refuge permit and pay a hunt fee.

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6. All hunters must be age 12 or older. An adult age 21 or older must supervise hunters ages 12-17 (inclusive).

* * * * *

*B. Upland Game Hunting.*

We allow hunting of turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A3, A4, A7, and A8 apply.

* * * * *

6. We annually establish bag limits for turkey and publish these bag limits in the annual hunt brochure.

* * * * *

8. We require that hunters check-in all harvested game at the refuge check station on the day of the hunt.

9. We allow use of portable hunting stands. They may be set up during scouting week, but must be removed when a hunter's permit expires (see §27.93 of this chapter). We prohibit hunters from driving nails, spikes, or other objects into trees or hunting from stands secured with objects driven into trees (see §27.61 of this chapter).

10. We prohibit hunting within 50 yards (45 m) of adjoining private property lines or from a road open to vehicular traffic and/or within 200 yards (180 m) of a building.

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**Brazoria National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. We require permits and payment of fees for the Otter Slough Permit Waterfowl Hunt. Hunters must abide by all terms and conditions set forth by the permit.

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**San Bernard National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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3. We require permits and payment of fees for the Sargent Permit Waterfowl Hunt and Light Goose Conservation Order Season Permit Hunt Area. Hunters must abide by all terms and conditions set by the permits.

* * * * *

27. Amend §32.66 Virginia by:

a. Revising paragraphs C. and D.1., D.5., D.6., D.7.iv., and D.7.v. of Back Bay National Wildlife Refuge;

b. Revising paragraph C.1.i. of Chincoteague National Wildlife Refuge;

c. Revising paragraph C. of Great Dismal Swamp National Wildlife Refuge;

d. Revising paragraph C. of James River National Wildlife Refuge;

e. Revising paragraph A. of Plum Tree Island National Wildlife Refuge;

f. Revising paragraph C. of Presquile National Wildlife Refuge; and

g. Revising paragraphs C. and D. of Rappahannock River Valley National Wildlife Refuge to read as follows:

**§ 32.66 Virginia.**

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**Back Bay National Wildlife Refuge**

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*C. Big Game Hunting.*

We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The State determines hunting seasons annually, usually beginning October 1 and ending in early January. We conduct the deer and hog hunt on the barrier spit of the refuge for a minimum of 7 days in October. We will close the refuge for all other public uses on those days.

2. Hunters must present their Hunter Safety Education Certification and required licenses at check-in.

3. Hunters must register on each hunt day. We will issue a Special Use Hunting Permit, which hunters must sign and carry on their person while hunting.

4. The hunt lottery system (run through a contractor) may be accessed through Back Bay National Wildlife Refuge, Virginia Department of Conservation & Recreation and The Virginia Game and Inland Fisheries website. Selected hunters will receive a ''Successful Hunter Selection Packet'' from the contractor by mail.

5. All selected and standby applicants must enter the refuge between 4 a.m. and 5 a.m. on each hunt day. We may issue standby hunters permits to fill vacant slots by lottery. All hunters must check out at the Check Station no later than 6 p.m.

6. Hunters must sign in and out on each hunt day.

7. We allow only shotguns, 20-gauge or larger, loaded with buckshot (see §27.42 of this chapter). We prohibit possession of a loaded firearm on refuge roads and refuge Proclamation Waters. We prohibit possession of bows or crossbows.

8. We prohibit use of dogs.

9. We prohibit possession of alcoholic beverages (see §32.2(j)).

10. You must be at least age 18 to hunt without an accompanying, qualified adult. Youths between ages 12 and 18 may hunt only when accompanied by a licensed hunter who is age 21 or older.

11. Each hunter must visibly wear a minimum of 400 square inches (2,600 cm2) of solid-colored, blaze-orange material on his or her head, chest, and back. This is the equivalent of a hat and vest for each hunter.

12. Hunting Zone 5 is for use by nonambulatory hunters. A nonambulatory hunter is someone who can provide medical documentation from a doctor that he or she is unable to walk.

13. We allow scouting one week prior to the first day of the refuge hunt. Hunters may enter the hunt zones by foot or bicycle only. Scouts must wear 400 square inches (2,600 cm2) of visible blaze orange. We prohibit hunters carrying weapons while scouting (see §27.42(a) of this chapter). We require hunters to sign in and out on each day of scouting.

14. Hunters may go to Hunt Zone 1 (Long Island) only by hand-launched watercraft (canoe, punt, rowboat, etc.) from the canoe launch at refuge headquarters. Your boat must meet Coast Guard safety requirements. We prohibit use of boats on trailers.

15. A Safety Zone runs from the Check Station to north of the headquarters parking lot. We prohibit hunting or discharging of firearms within the Safety Zone. We prohibit retrieval of crippled game from a ''No Hunting Area'' or ''Safety Zone'' without the consent of the refuge employee on duty at the Check Station.

16. We prohibit use of tree stands.

17. We prohibit use of the ''Hacking Tower'' in Hunt Zone 4.

*D. Sport Fishing.* * * *

1. We close all areas within the hunting zones, as well as the oceanfront, to fishing, crabbing, and clamming during the annual refuge white-tailed deer and feral hog hunt.

* * * * *

5. Anglers may access the refuge for sport fishing, crabbing, and clamming from the refuge headquarters parking lot only by foot, bicycle, and nontrailered boats.

6. Anglers may surf fish, crab, and clam south of the refuge's beach access ramp.

7. * * *

iv. Anglers must catch and release smallmouth bass, largemouth bass, and pickerel. The daily creel limit for D Pool for other species is a maximum combination of any 10 fish.

v. Parking for nonambulatory visitors is available adjacent to the dock at D Pool. All other visitors must hike in or bicycle in.

**Chincoteague National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.* * * *

1. General hunt information:

i. You must possess and carry a refuge permit. Hunting brochures containing hunting application procedures, seasons, bag limits, methods of hunting, maps depicting areas open to hunting, and the terms and conditions under which we issue hunting permits are available from the refuge administration office.

* * * * *

**Great Dismal Swamp National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.*

We allow hunting of white-tailed deer and bear on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit and compass.

2. We allow shotguns, 20 gauge or larger, loaded with buckshot or rifled slugs, and bows and arrows. For the bear hunt in Virginia, we allow only shotguns, 20 gauge or larger, with slugs.

3. We prohibit dogs.

4. You must wear 400 square inches (2,600 cm2) of solid-colored, hunter-orange clothing or material in a visible manner during firearms big game season.

5. You must sign in and out each hunt day.

6. We prohibit loaded firearms (see §27.42 of this chapter) (ammunition in the chamber, magazine, or clip), or nocked bow and arrow within 50 feet (15 m) of a refuge road, including roads closed to vehicles.

7. You must dismantle or encase your guns, bows and arrows, and crossbows when transporting them in a vehicle.

8. We prohibit shooting from, onto, or across refuge roads, including roads closed to vehicles.

9. You must check-in all harvested bears at the refuge official check station.

10. We prohibit baiting or hunting over bait (see §32.2(h)).

11. We prohibit possession of alcoholic beverages (see §32.2(j)).

* * * * *

**James River National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.*

We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require firearm hunters to purchase a refuge hunt permit at the Refuge Hunter Check Station on the morning of each hunt on a first-come,

first-served basis. The permit must be in the possession of the hunter while on refuge property.

2. We require archery hunters to purchase a refuge hunt permit by mail, by the designated application deadline. Archery hunters must contact the Charles City Office at (804) 829-9020 to apply for a permit. You must possess the permit while on refuge property.

3. You must follow all conditions of the hunting permit.

4. We allow the use of shotguns (20-gauge or larger, loaded with buckshot only), muzzleloaders, archery, and crossbows on designated refuge hunt days.

5. We allow the take of two deer of either sex per day.

6. We prohibit dogs.

7. We allow only portable tree stands that hunters must remove at the end of each hunt day.

8. During firearm seasons, hunters must wear in a visible manner on head, chest, and back a minimum of 400 square inches (2,600 cm2) of solid-colored, hunter-orange clothing or material.

9. During archery only season, hunters must wear in a visible manner a solid-colored, hunter-orange hat or cap while moving to and from their stand.

10. We require that firearm hunters remain within 25 feet (7.5 m) of their assigned stand unless tracking or retrieving a wounded deer.

11. Hunters may retrieve wounded deer from closed areas with prior consent from a refuge employee.

12. Each hunters must unload all weapons while on the refuge, except when at his or her assigned stand (see §27.42(b) of this chapter).

13. We prohibit the discharge of firearm or archery equipment across or within refuge roads, including roads closed to vehicles.

14. You must be at least age 18 to hunt without an accompanying, qualified adult. Youth hunters between ages 12 and 17 may hunt only when accompanied by an adult age 21 or older who must also possess and carry a valid hunting license. The minimum age for hunters is 12.

* * * * *

**Plum Tree Island National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

We allow hunting of waterfowl, gallinule, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed Special Use Hunting Permit while hunting migratory game birds on the refuge. We open only the Cow Island area of the refuge to migratory game bird hunting. We close all other areas of the refuge to all public entry. You may obtain permit application information by contacting the Charles City Office at (804) 829-9020.

2. We will determine hunting locations, dates, and times by lottery. We will designate them on hunting permits.

3. We prohibit jump-shooting by foot or boat. We allow hunting from a blind only as determined by hunting permit.

4. You must follow all conditions of your hunt permit.

5. We prohibit any activity that disturbs the bottom, including landing boats, anchoring, driving posts, etc., within the refuge boundary and within the U.S. Army Corps of Engineers-designated Danger Zone around Plum Tree Island.

* * * * *

**Presquile National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.*

We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require you to purchase a refuge hunt permit. You may obtain permit information by contacting the Charles City Office at (804) 829-9020. You must possess the permit while on refuge property.

2. You must follow all conditions of the hunting permit.

3. We allow the use of shotguns (20-gauge or larger, loaded with buckshot or rifled slugs).

4. We allow the take of two deer of either sex per day.

5. We prohibit dogs.

6. We allow only portable tree stands that hunters must remove at the end of each hunt day.

7. We require hunters to wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 cm2) of solid-colored, hunter-orange clothing or material.

8. You must be at least age 18 to hunt without an accompanying, qualified adult. Youth hunters between ages 12 and 17 may hunt only when accompanied by an adult age 21 or older who must also possess and carry a valid hunting license. The minimum age for hunters is 12.

* * * * *

**Rappahannock River Valley National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.*

We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to purchase a refuge hunt permit. You may obtain permit application information by contacting Refuge Headquarters at (804) 333-1470. You must possess the permit while on refuge property.

2. You must follow all conditions of the hunting permit.

3. We allow shotgun, muzzleloader, and archery hunting on designated refuge hunt days.

4. We allow the take of two deer per day. We will determine the sex of the deer on the hunting permit.

5. We prohibit dogs.

6. We allow only portable tree stands that hunters must remove at the end of each hunt day.

7. We require firearm hunters to wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 cm2) of solid-colored, hunter-orange clothing or material.

8. During archery-only season, hunters must wear in a visible manner a solid-colored, hunter-orange hat or cap while moving to and from their stand.

9. We prohibit the possession of loaded firearms and nocked arrows while on refuge roads (see §27.42(b) of this chapter).

10. Hunters must unload all weapons while traveling between hunting sites (see §27.42(b) of this chapter).

11. We prohibit the discharge of firearm or archery equipment across or within refuge roads, including roads closed to vehicles.

12. Hunters may retrieve wounded deer from closed areas only with prior consent from a refuge employee.

13. You must be at least age 18 to hunt without an accompanying, qualified adult. Youth hunters between ages 12 and 17 may hunt only when accompanied by an adult age 21 or older who must also possess and carry a valid hunting license. The minimum age for hunters is 12.

*D. Sport Fishing.*

We allow fishing on designated areas of Wilna Pond in Richmond County in accordance with State regulations subject to the following conditions:

1. We allow fishing access from legal sunrise to legal sunset.

2. We allow fishing from the Wilna Pond pier, banks of the dam, and watercraft. We prohibit fishing from the aluminum catwalk.

3. All Virginia boating laws apply on Wilna Pond, including personal

floatation device (PFD) requirements and State motor boat registration for vessels under power.

4. During the period when we open the Wilna Tract for deer hunting, we will close it to all other uses, including fishing.

5. We prohibit fishing by any means other than by use of one or more attended poles with hook and line attached.

6. We prohibit the use of lead sinkers.

7. We require catch and release fishing only for largemouth bass. You may take other finfish species in accordance with State regulations.

8. We prohibit the take of any reptile, amphibian, or invertebrate species for use as bait or for any other purpose.

9. We prohibit the use of live minnows as bait.

10. We prohibit the use of boats propelled by gasoline motors, sail, or mechanically operated paddle wheel. We allow only car-top boats, and we prohibit trailers.

11. We will give prescheduled environmental education field trips priority over other uses, including sport fishing, on the Wilna Pond pier at all times.

* * * * *

28. Amend §32.67 Washington by adding paragraphs A.3. through A.17. of Ridgefield National Wildlife Refuge to read as follows:

**§ 32.67 Washington.**

* * * * *

**Ridgefield National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

* * * * *

3. We prohibit hunting of dusky Canada goose. The State defines dusky Canada goose as a dark goose, as determined by a Munsell color chart 10 YR, 5 or less, with a culmen length of 40 to 50 millimeters (1.6 to 2 inches). Hunting of dusky goose will result in invalidation of the refuge hunting permit and loss of refuge hunting privileges for the remainder of the waterfowl hunting season.

4. We allow hunting on designated portions of the River ''S'' Unit on Tuesdays, Thursdays, and Saturdays, excluding Federal holidays, during the regular State waterfowl hunting season.

5. Prior to entering the hunt area, you must pay a recreation user fee, obtain a blind assignment, and obtain a check-out card. You must carry the check-out card while hunting as proof of user fee payment.

6. We allow access to the refuge check station 2 hours before legal shooting time. We require hunters to depart the refuge no later than 1 hour after legal shooting time.

7. We allow entry to the hunt area during hunt days for the purpose of hunting only. We prohibit entry to the hunt area for scouting, sight-seeing, or other purposes.

8. We allow hunting only from designated permanent blinds. We prohibit all hunting outside the designated blinds, including hunting from temporary blinds or jump shooting.

9. We allow a maximum of three persons per hunting blind.

10. We prohibit additional hunters to join a hunt party after the party has checked in.

11. You may possess only approved nontoxic shotshells (see §32.2(k)) in quantities of 25 or less per day.

12. You must unload all firearms except when hunting at the designated blind or retrieving crippled birds.

13. Hunters must leash all dogs except when hunting at the designated blind (see §26.21(b) of this chapter).

14. Hunters must complete an accurate check-out card and submit it to the check station before leaving the refuge.

15. We require all hunters switching blinds to first report to the refuge check station, complete a check-out card for the blind being vacated, and obtain a new check-out card for the new blind.

16. We reserve Blind 1A for exclusive use by hunters with permanent disabilities who possess a valid State Disabled Hunter Permit and who qualify under WAC 232-12-282. Blind 1A may also be occupied by nonhunters who are assisting the disabled hunters.

17. We allow vehicles only on designated routes of travel and require hunters to park in designated parking areas (see §27.31 of this chapter). We prohibit off-road vehicle travel, and all use of ATVs (see §27.31(f) of this chapter).

* * * * *

29. Revise §32.68 West Virginia by revising paragraph A.1., revising the introductory text of paragraph C., revising paragraph C.2., and adding paragraph D.4. of Ohio River Islands National Wildlife Refuge to read as follows:

**§ 32.68 West Virginia.**

* * * * *

**Ohio River Islands National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. We require each hunter to possess and carry a refuge hunting permit, State hunting license, and valid driver's license (or other photo identification card) at all times when hunting on the refuge. The refuge hunting permit is free, and you may obtain it at the refuge headquarters.

* * * * *

*C. Big Game Hunting.*

We allow archery hunting of white-tailed deer on designated areas of the refuge (Pennsylvania: Phillis Island, Georgetown Island; West Virginia: Paden Island, Captina Island, Captina Mainland, Fish Creek Island, Williamson Island, Witten Towhead, Wells Island, Mill Creek Island, Grandview Island, Grape/Bat Island, zoned area of Middle Island, Broadback Island, Buckley Island, Buckley Mainland, Muskingum Island, Neal Island, Buffington Island, Letart Island; and Kentucky: Manchester 1 Island, Manchester 2 Island) in accordance with State regulations subject to the following conditions:

* * * * *

2. We prohibit the use or possession of rifles, pistols, or shotguns for the hunting of white-tailed deer, except during special management hunts where we allow firearms. Contact the refuge for special management hunt information.

* * * * *

*D. Sport Fishing.* * * *

* * * * *

4. We prohibit trotlines (setlines) and turtle lines.

Dated: December 18, 2008.

**Lyle Laverty**

*Assistant Secretary for Fish and Wildlife and Parks*

[FR Doc. E9–287 Filed 1–12–09; 8:45 am]

BILLING CODE 4310–55–S

Federal Register

Tuesday,
January 13, 2009

# Part V

# Department of Housing and Urban Development

## 24 CFR Part 1003

## Prohibition on Use of Indian Community Development Block Grant Assistance for Employment Relocation Activities; Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 1003**

**[Docket No. FR–5115–F–02]**

**RIN 2577–AC78**

## Prohibition on Use of Indian Community Development Block Grant Assistance for Employment Relocation Activities; Final Rule

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule amends HUD's regulations for the Indian Community Development Block Grant (ICDBG) program by prohibiting Indian tribes and Alaska Native villages from using ICDBG funds to facilitate the relocation of for-profit businesses from one labor market area to another, if the relocation is likely to result in significant job loss. More specifically, the rule prohibits Indian tribes and Alaska Native villages from using ICDBG funds for ''job pirating'' activities that are likely to result in significant job loss. ''Job pirating,'' in this context, refers to the use of ICDBG funds to lure or attract a business and its jobs from one community to another. To prevent the rule from having an effect in situations where the relocation of a business causes only an insignificant loss of jobs, the rule provides that a loss of 25 or fewer jobs from an area, as a result of an ICDBG-funded economic development project, would not constitute a significant loss of jobs. This rule follows a September 8, 2008, proposed rule, for which no public comments were received. This rule adopts the proposed rule without change.

**DATES:** *Effective Date:* February 12, 2009.

**FOR FURTHER INFORMATION CONTACT:** Deborah Lalancette, Director, Office of Grants Management, Office of Native American Programs, 1670 Broadway, 23rd Floor, Denver, CO 80202, telephone number 303–675–1600 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Information Relay Service toll-free at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Title I of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301–5320) (1974 HCD Act) establishes the statutory framework for the Community Development Block Grant (CDBG) program. Section 106(a)(1) of the 1974 HCD Act authorizes grants to Indian tribes for the ICDBG program. HUD's regulations implementing the ICDBG program are located at 24 CFR part 1003 (entitled ''Community Development Block Grants for Indian Tribes and Alaska Native Villages''). The purpose of the ICDBG program is the development of viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes. Grantees may use their ICDBG funds for activities authorized by section 105(a) of the 1974 HCD Act.

Section 588 of the Quality Housing and Work Responsibility Act of 1998 amended section 105 of the 1974 HCD Act (42 U.S.C. 5305). Specifically, section 588 added to section 105 a new subsection (h) entitled ''Prohibition on Use of Assistance for Employment Relocation Activities.'' This subsection prohibits the use of CDBG funds to facilitate the relocation of for-profit businesses from one labor market area to another, if the relocation is likely to result in significant job loss. Subsection (h) states:

> (h) Prohibition on Use of Assistance for Employment Relocation Activities—Notwithstanding any other provision of law, no amount from a grant under section 106 made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from 1 area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

Applicants for ICDBG grants have been notified of this statutory requirement in annual Notices of Funding Availability.

### II. The September 8, 2008, Proposed Rule

On September 8, 2008, at 73 FR 52166, HUD published a rule that proposed to implement subsection (h) of the 1974 HCD Act by revising HUD's ICDBG program regulations in 24 CFR part 1003. The rule proposed to establish a new § 1003.209 (entitled ''Prohibition on Use of Assistance for Employment Relocation Activities''), which would describe the ICDBG job-piracy provisions. The September 8, 2008, rule also proposed to amend § 1003.505 (entitled ''Records to be Maintained''), to ensure that appropriate recordkeeping requirements are met. The preamble to the September 8, 2008, proposed rule provides at 73 FR 52166 through 52168, a more detailed discussion of the specific regulatory amendments proposed to be made to 24 CFR part 1003.

The September 8, 2008, proposed rule provided a 60-day public comment period. HUD received no public comments by the date of the close of the public comment period on November 7, 2008.

### III. This Final Rule

At this final rule stage, HUD adopts the proposed rule without change.

### IV. Findings and Certifications

*Paperwork Reduction Act*

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0191.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. eastern time on weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are no unusual procedures that would need to be complied with by small entities. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from

publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance (CFDA) number for the ICDBG program is 14.862.

**List of Subjects in 24 CFR Part 1003**

Alaska; Community development block grants; Grant programs—housing and community development; Grant programs—Indians; Indians; Reporting and recordkeeping requirements.

■ Accordingly, for the reasons discussed in the preamble, HUD amends 24 CFR part 1003 to read as follows:

## PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

■ 1. The authority citation for part 1003 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 5301–5320.

■ 2. Add § 1003.209 to read as follows:

### § 1003.209 Prohibition on use of assistance for employment relocation activities.

(a) *Prohibition.* ICDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one Identified Service Area to another Identified Service Area, if the relocation is likely to result in a significant loss of jobs in the Identified Service Area from which the relocation occurs.

(b) *Definitions.* The following definitions apply to this section:

(1) *Directly assist.* Directly assist means the provision of ICDBG funds for activities pursuant to:

(i) § 1003.203(b); or

(ii) §§ 1003.201(a)–(d), 1003.201(k), 1003.203(a), or § 1003.204 when the grantee, subrecipient, or, in the case of an activity carried out pursuant to § 1003.204, a Community Based Development Organization (CBDO) enters into an agreement with a business to undertake one or more of these activities as a condition of the business relocating a facility, plant, or operation to the grantee's Identified Service Area. Provision of public facilities and indirect assistance that will provide benefit to multiple businesses does not fall under the definition of ''directly assist,'' unless it includes the provision of infrastructure to aid a specific business that is the subject of an agreement with the specific assisted business.

(2) *Area.* The relevant definition of ''area'' for a Native American economic development project is the ''Identified Service Area'' for the eligible applicant, as defined in § 1003.4.

(3) *Operation.* A business operation includes, but is not limited to, any equipment, employment opportunity, production capacity, or product line of the business.

(4) *Significant loss of jobs.* (i) A loss of jobs is significant if the number of jobs to be lost in the Identified Service Area in which the affected business is currently located is equal to or greater than one-tenth of one percent of the total number of persons in the labor force of that area; or, in all cases, a loss of 500 or more jobs. Notwithstanding the aforementioned, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.

(ii) A job is considered to be lost due to the provision of ICDBG assistance if the job is relocated within 3 years of the provision of assistance to the business; or the time period within which jobs are to be created, as specified by the agreement between the business and the recipient, is longer than 3 years.

(c) *Written agreement.* Before directly assisting a business with ICDBG funds, the recipient, subrecipient, or a CBDO (in the case of an activity carried out pursuant to § 1003.204) shall sign a written agreement with the assisted business. The written agreement shall include:

(1) *Statement.* A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one Identified Service Area to another, and, if so, the number of jobs that will be relocated from each Identified Service Area; and

(2) *Required certification.* If the assistance will not result in a relocation covered by this section, a certification from the assisted business that neither it, nor any of its subsidiaries, has plans to relocate jobs, at the time the agreement is signed, that would result in a significant job loss as defined in this rule.

(d) *Assistance not covered by this section.* This section does not apply to:

(1) *Relocation assistance.* Relocation assistance under § 1003.602(b), (c), or (d);

(2) *Microenterprises.* Assistance to microenterprises as defined by section 102(a)(22) of the Housing and Community Development Act of 1974; and

(3) *Arms-length transactions.* Assistance to a business that purchases business equipment, inventory, or other physical assets in an arms-length transaction, including the assets of an existing business, provided that the purchase does not result in the relocation of the sellers' business operation (including customer base or list, goodwill, product lines, or trade names) from one Identified Service Area to another Identified Service Area and does not produce a significant loss of jobs in the Identified Service Area from which the relocation occurs.

■ 3. Revise § 1003.505 to read as follows:

### § 1003.505 Records to be maintained.

Each grantee shall establish and maintain sufficient records to enable the Secretary to determine whether the grantee has met the requirements of this part. This includes establishing and maintaining records demonstrating that the recipient has made the determinations required as a condition of eligibility of certain activities, including as prescribed in § 1003.209.

Dated: January 5, 2009.

**Paula O. Blunt,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. E9–378 Filed 1–12–09; 8:45 am]

BILLING CODE 4210–67–P

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Vol. 74, No. 8

Tuesday, January 13, 2009

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## FEDERAL REGISTER PAGES AND DATE, JANUARY

1–200 ..... 2
201–392 ..... 5
393–608 ..... 6
609–768 ..... 7
769–854 ..... 8
855–1142 ..... 9
1143–1582 ..... 12
1583–1870 ..... 13

## CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
8333 ..... 609
8334 ..... 611
8335 ..... 1557
8336 ..... 1565
8337 ..... 1577

**Administrative Orders:**

**Memorandums:**
Memorandum of December 23, 2008 ..... 1585

**Presidential Determinations:**
No. 20009-10 of January 1, 2009 ..... 1583

**7 CFR**

246 ..... 544
662 ..... 1587
966 ..... 855
1780 ..... 393

**Proposed Rules:**
305 ..... 651
319 ..... 651
1780 ..... 411

**8 CFR**

103 ..... 395
212 ..... 395
214 ..... 395
245 ..... 395
299 ..... 395
1001 ..... 201
1003 ..... 201
1292 ..... 201

**9 CFR**

71 ..... 1
83 ..... 1
93 ..... 1

**Proposed Rules:**
71 ..... 1634
77 ..... 1634
78 ..... 1634
79 ..... 1634
80 ..... 1634

**10 CFR**

72 ..... 1143
431 ..... 1091

**Proposed Rules:**
430 ..... 1643
431 ..... 411

**13 CFR**

**Proposed Rules:**
121 ..... 1153
125 ..... 1153
127 ..... 1153
134 ..... 1153

**14 CFR**

11 ..... 201
25 ..... 1143
71 ..... 769
95 ..... 396
97 ..... 202, 205

**Proposed Rules:**
39 ..... 664, 1153, 1155, 1158, 1159, 1164, 1646, 1649
65 ..... 1280
71 ..... 1651, 1652
119 ..... 1280
121 ..... 1280
135 ..... 1280
142 ..... 1280

**15 CFR**

744 ..... 770
806 ..... 1590

**Proposed Rules:**
736 ..... 413

**16 CFR**

1 ..... 857
3 ..... 1804
4 ..... 1804

**21 CFR**

73 ..... 207
101 ..... 207
520 ..... 1146
558 ..... 6
866 ..... 6

**22 CFR**

215 ..... 9

**24 CFR**

1003 ..... 1868
4001 ..... 617

**26 CFR**

1 ..... 340
301 ..... 340
602 ..... 340

**Proposed Rules:**
1 ..... 236
31 ..... 789
301 ..... 236

**29 CFR**

1910 ..... 858
1915 ..... 858
1917 ..... 858
1918 ..... 858
1926 ..... 858
2560 ..... 17
4044 ..... 772

**30 CFR**

926 ..... 217

**Proposed Rules:**
936 ..... 868

**34 CFR**

99 ..... 400

**37 CFR**

**Proposed Rules:**
201 ....666

**39 CFR**

3020 ....219, 622, 858

**40 CFR**

19 ....626
52 ....1146, 1148, 1591
81 ....1148
82 ....21
180 ....629, 634, 637
**Proposed Rules:**
52 ....667
257 ....41

**41 CFR**

**Proposed Rules:**
102-192 ....870

**42 CFR**

422 ....1494
423 ....1494
424 ....166
**Proposed Rules:**
423 ....1550

**43 CFR**

3500 ....637

**44 CFR**

64 ....641, 773
65 ....775
67 ....401, 778
**Proposed Rules:**
67 ....238, 241, 244, 245, 246, 247, 789

**46 CFR**

401 ....220
**Proposed Rules:**
197 ....414

**47 CFR**

73 ....1593
79 ....1594
**Proposed Rules:**
73 ....1653
74 ....61
79 ....1654

**48 CFR**

542 ....863
543 ....864
552 ....863, 864
**Proposed Rules:**
22 ....872
52 ....872

**49 CFR**

171 ....1770
172 ....1770
173 ....1770
174 ....1770
179 ....1770
213 ....1605
580 ....643
**Proposed Rules:**
1201 ....248
1242 ....248
1301 ....416

**50 CFR**

216 ....1456, 1607
300 ....1607
622 ....1148, 1621
640 ....1148
648 ....233
679 ....233, 868, 1631
**Proposed Rules:**
17 ....419
32 ....1838
223 ....249
224 ....249
660 ....252
679 ....254