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9:00 a.m.–12:30 p.m.

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Rules and Regulations

Federal Register
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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.

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1201 and 1210

MSPB Practices and Procedures; Department of Homeland Security Human Resources Management System

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (''MSPB'') has decided to remove its DHS-specific regulations that concern the processing and adjudication of appeals filed under the DHS Human Resources Management System to conform with Department of Homeland Security regulations.

DATES: This rule is effective on March 4, 2009.

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200, fax: (202) 653–7130 or e-mail: *mspb@mspb.gov*.

SUPPLEMENTARY INFORMATION: On February 1, 2005, the Department of Homeland Security (DHS) and the Office of Personnel Management (OPM) jointly issued final regulations at 5 CFR Part 9701 establishing the DHS Human Resources Management System. 70 FR 5272. Thereafter, pursuant to 5 CFR 9701.102(b)(2), DHS phased in coverage to certain employees under Subpart F (Adverse Actions) and G (Appeals).

On October 5, 2007, MSPB published an interim rule revising its regulations to clarify the procedures applicable to MSPB processing and adjudication of cases arising under Subparts F and G of the DHS Human Resources Management System. 72 FR 56883. Thereafter, on April 18, 2008, the MSPB published a final rule further revising its regulations applicable to the processing and adjudication of such cases. 73 FR 21019.

Effective October 1, 2008, the DHS rescinded application of 5 CFR 9701, Subparts A–G, of the DHS Human Resources Management System. 73 FR 58435. DHS took this action pursuant to the Consolidated Security, Disaster Assistance and Continuing Appropriations Act, 2009, Public Law 110–329 (2008) (the ''FY 09 DHS Appropriations Act''), which barred DHS from using funds appropriated in this act or any other appropriations act for the development, testing, deployment, or operation of any portion of the DHS personnel system.

As a result of DHS's rescission of the application of Subparts F and G, the MSPB has decided to amend its regulations by removing all regulations that are specific to Subparts F and G of the DHS Human Resources Management System. The Board considered staying these regulations, but determined that removing the regulations is appropriate in order to ensure that DHS employees are not confused concerning which regulations apply. In addition, staying the DHS-specific regulations was problematic because DHS-specific rules are contained in numerous places within 5 CFR 1201, the Board's generally applicable practices and procedures. As a result, the Board is removing all DHS-specific rules from its regulations pending future developments with regard to the DHS Human Resources Management System.

List of Subjects in 5 CFR Parts 1201 and 1210

Administrative practice and procedure, Government employees.

■ Accordingly, under the authority at 5 U.S.C. 1204(h), the Board amends 5 CFR Chapter II as follows:

PART 1201—[AMENDED]

■ 1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted.

■ 2. Section 1201.3 is amended by removing paragraphs (a)(21) and (b)(3) and revising paragraphs (a)(19) and (a)(20) as follows:

§ 1201.3 Appellate jurisdiction.

* * * * *

(a) * * *

(19) Employment practices administered by the Office of Personnel Management to examine and evaluate the qualifications of applicants for appointment in the competitive service (5 CFR 300.104); and

(20) Reduction-in-force action affecting a career or career candidate appointee in the Foreign Service (22 U.S.C. 4011).

* * * * *

■ 3. Section 1201.11 is revised to read as follows:

§ 1201.11 Scope and policy.

The regulations in this subpart apply to Board appellate proceedings except as otherwise provided in § 1201.13. The regulations in this subpart apply also to appellate proceedings and stay requests covered by part 1209 unless other specific provisions are made in that part. These regulations also apply to original jurisdiction proceedings of the Board except as otherwise provided in subpart D. It is the Board's policy that these rules will be applied in a manner that expedites the processing of each case. It is the Board's policy that these rules will be applied in a manner that ensures the fair and efficient processing of each case.

■ 4. Section 1201.21 is revised to read as follows:

§ 1201.21 Notice of appeal rights.

When an agency issues a decision notice to an employee on a matter that is appealable to the Board, the agency must provide the employee with the following:

(a) Notice of the time limits for appealing to the Board, the requirements of § 1201.22(c), and the address of the appropriate Board office for filing the appeal;

(b) A copy, or access to a copy, of the Board's regulations;

(c) A copy of the MSPB appeal form available at the Board's Web site (*http://www.mspb.gov*), and

(d) Notice of any right the employee has to file a grievance, including:

(1) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;

(2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with

the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board; and

(3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.154(d).

■ 5. Section 1201.22 is amended by revising paragraph (b)(2) to read as follows:

§ 1201.22 Filing an appeal and responses to appeals.

(b) * * *

(2) The time limit prescribed by paragraph (b)(1) of this section for filing an appeal does not apply where a law or regulation establishes a different time limit or where there is no applicable time limit. No time limit applies to appeals under the Uniformed Services Employment and Reemployment Rights Act (Pub. L. 103–353), as amended; see part 1208 of this title. See part 1208 of this title for the statutory filing time limits applicable to appeals under the Veterans Employment Opportunities Act (Pub. L. 105–339). See part 1209 of this title for the statutory filing time limits applicable to whistleblower appeals and stay requests.

* * * * *

PART 1210—[REMOVED AND RESERVED]

■ 6. Part 1210 is removed and reserved.

William D. Spencer,

Clerk of the Board.

[FR Doc. E9–4290 Filed 3–3–09; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS–FV–08–0093; FV09–984–2 FIR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the California Walnut Board (Board) for the 2008–09 and subsequent marketing years from $0.0158 to $0.0131 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year began September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* April 3, 2009.

FOR FURTHER INFORMATION CONTACT: Debbie Wray, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or e-mail: *Debbie.Wray@ams.usda.gov*, or *Kurt.Kimmel@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning September 1, 2008, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that decreased the assessment rate established for the Board for the 2008–09 and subsequent marketing years from $0.0158 to $0.0131 per kernelweight pound of assessable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2008–09 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0158 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to the USDA. The Board recommended this rate in May 2008 along with expenditures of $4,594,300 for 2008–09.

The Board met on September 12, 2008, and unanimously recommended reducing its 2008–09 expenditures to $3,809,000 and reducing the assessment rate to $0.0131 per kernelweight pound of assessable walnuts. The assessment rate of $0.0131 per kernelweight pound of assessable walnuts is $0.0027 per kernelweight pound lower than the rate previously in effect. The decreased assessment rate is primarily due to an $800,000 decrease in domestic market development expenditures previously recommended for the 2008–09 marketing year.

The following table compares major budget expenditures recommended by the Board in May 2008 and September 2008 for the 2008–09 marketing year:

Budget expense categories	Original 2008–09	Revised 2008–09
Employee Expenses	$410,500	$410,500
Travel/Board Expenses	100,000	100,000
Office Costs/Annual Audit	142,500	142,500
Program Expenses Including Research:		
Controlled Purchases	5,000	5,000
Crop Acreage Survey	.....	.....
Crop Estimate	110,000	110,000
Production Research *	835,000	835,000
Domestic Market Development	2,935,000	2,135,000
Reserve for Contingency	56,300	71,000

* Includes Research Director's compensation and a contingency for production research issues.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 290,773,800 kernelweight pounds which should provide slightly over $3,809,000 in assessment income and allow the Board to cover its expenses. Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two years' budgeted expenses. If not retained in a financial reserve, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69 of the order.

The estimate for merchantable shipments is based on historical data, which is the prior year's production of 323,082 tons (inshell). Pursuant to § 984.51(b) of the order, this figure was converted to a merchantable kernelweight basis using a factor of 0.45 (323,082 tons × 2,000 pounds per ton × 0.45).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2008–09 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are currently 55 handlers of California walnuts subject to regulation under the marketing order, and there are approximately 4,000 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

USDA's National Agricultural Statistics Service (NASS) reports that California walnuts were harvested from a total of 218,000 bearing acres during 2007–08. The average yield for the 2007–08 crop was 1.49 tons per acre, which is slightly lower than the 1.53 tons per acre average for the previous five years. NASS reported the value of the 2007–08 crop at $2,320 per ton, which is considerably higher than the previous five-year average of $1,384 per ton.

At the time of the 2002 Census of Agriculture, which is the most recent information available, approximately 83 percent of California's walnut farms were smaller than 100 acres. Forty-seven percent were between 1 and 15 acres. A 100-acre farm with an average yield of 1.49 tons per acre would have been expected to produce about 149 tons of walnuts during 2007–08. At $2,320 per ton, that farm's production would have had an approximate value of $345,000. Assuming that the majority of California's walnut farms are still smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than $345,000 in 2007–08. This is well below the SBA threshold of $750,000; thus, the majority of California's walnut growers would be considered small growers according to SBA's definition.

According to information supplied by the industry, approximately two-thirds of California's walnut handlers shipped merchantable walnuts valued under $7,000,000 during the 2007–08 marketing year and would therefore be considered small handlers according to the SBA definition.

This rule continues in effect the action that decreased the assessment rate established for the Board and collected from handlers for the 2008–09 and subsequent marketing years from $0.0158 per kernelweight pound of assessable walnuts to $0.0131 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2008–09 expenditures of $3,809,000 and an assessment rate of $0.0131 per kernelweight pound of assessable walnuts. The assessment rate of $0.0131 is $0.0027 lower than the rate previously in effect. The quantity of assessable walnuts for the 2008–09 marketing year is estimated at 323,082 tons. Thus, the $0.0131 rate should provide slightly over $3,809,000 in

assessment income and be adequate to meet the year's expenses. The decreased assessment rate is primarily due to an $800,000 decrease in domestic market development expenditures.

The following table compares major budget expenditures recommended by the Board in May 2008 and September 2008 for the 2008–09 marketing year:

Budget expense categories	Original 2008–09	Revised 2008–09
Employee Expenses	$410,500	$410,500
Travel/Board Expenses	100,000	100,000
Office Costs/Annual Audit	142,500	142,500
Program Expenses Including Research:		
Controlled Purchases	5,000	5,000
Crop Acreage Survey	.....	.....
Crop Estimate	110,000	110,000
Production Research *	835,000	835,000
Domestic Market Development	2,935,000	2,135,000
Reserve for Contingency	56,300	71,000

* Includes Research Director's compensation and a contingency for production research issues.

The Board reviewed and unanimously recommended 2008–09 expenditures of $3,809,000. Prior to arriving at this budget, the Board considered alternative expenditure levels but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 290,773,800 kernelweight pounds which should provide $3,809,000 in assessment income and allow the Board to cover its expenses. Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two years' budgeted expenses. If not retained in a financial reserve, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69 of the order.

According to NASS, the season average grower price for years 2006 and 2007 were $1,630 and $2,320 per ton, respectively. These prices provide a range within which the 2008–09 season average price could fall. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of $0.815 to $1.16. Dividing these inshell prices per pound by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a 2008–09 price range estimate of $1.81 to $2.58 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of $0.0131 per kernelweight pound is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2008–09 marketing year as a percentage of total grower revenue would thus likely range between 0.508 and 0.724 percent.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the California walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 12, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

An interim final rule concerning this action was published in the **Federal Register** on December 4, 2008 (73 FR 73761). Copies of that rule were also mailed or sent via facsimile to all walnut handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on February 2, 2009, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 984—WALNUTS GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 984, which was published at 73 FR 73761 on December 4, 2008, is adopted as a final rule without change.

Dated: February 26, 2009.

Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

[FR Doc. E9–4591 Filed 3–3–09; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

RIN 3133–AD52

Accuracy of Advertising and Notice of Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Section 740.4 of NCUA's rules requires that a federally insured credit union continuously display the official NCUA sign at every teller station or window where insured funds or deposits are normally received. Section 740.4(c) requires that tellers accepting share deposits for both federally insured credit unions and nonfederally insured credit unions also post a second sign adjacent to the official NCUA sign. The current rule requires this second sign to list each federally insured credit union served by the teller along with a statement that only these credit unions are federally insured. Due to the evolution of shared branch networks it is now difficult for some tellers to comply with this second signage requirement and, accordingly, NCUA is revising the rule to replace the required listing of credit unions with a statement that not all of the credit unions served by the teller are federally insured and that members should contact their credit union if they need more information.

DATES: This rule is effective April 3, 2009.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA proposed revisions to part 740 of its regulations, addressing the notice and advertising requirements applicable to credit unions insured by the National Credit Union Share Insurance Fund (NCUSIF) administered by NCUA, in October 2008. 73 FR 2935 (Oct. 22, 2008). Section 740.4(a) requires federally insured credit unions to post a sign at all teller stations that normally receive deposits. This official NCUA sign reads: ''Your savings federally insured to at least $100,000 and backed by the full faith and credit of the United States Government'' accompanied by the acronym ''NCUA'' and the words ''National Credit Union Administration, a U.S. Government Agency.'' 12 CFR 740.4(a). The official NCUA sign informs and reassures members that their share deposits are guaranteed, to certain limits, by the U.S. Government in the event the credit union fails.

Section 740.4(c) imposes additional requirements on federally insured credit unions participating in shared branch networks. Generally, federally insured credit unions are prohibited from accepting funds at teller stations or windows where nonfederally insured credit unions also receive deposits. 12 CFR 740.4(c). Tellers in ''credit union centers, service centers, or branches servicing more than one credit union'' (i.e., shared branching networks) are currently exempted from this prohibition, but only if they display a specific sign at each station or window above or beside the official NCUA sign. *Id.* This second sign must state that ''[o]nly the following credit unions serviced by this facility are federally insured by the NCUA,'' followed by the full name of each federally insured credit union displayed in lettering ''of such size and print to be clearly legible to all members conducting share or share deposit transactions.'' *Id.*

As discussed in the proposal, the present rule has several shortcomings. For example, the current size of shared branching networks makes compliance with this section nearly impossible as an extremely large sign would be required to list the hundreds of federally insured credit unions participating in the largest shared branching networks, and it is difficult to keep the sign up-to-date as federally insured credit unions frequently join or leave these networks. 73 FR 62935, 62936 (Oct. 22, 2008). Additionally, shared branching activities increasingly take place in the branches of particular credit unions rather than at stand-alone sites operated by third parties such as credit union service organizations. *Id.* The current rule prescribes the same sign for shared branch locations that are credit union facilities as for locations operated by third parties. Finally, the current rule does not address signage requirements for branches of nonfederally insured credit unions participating in shared branching networks and accepting deposits for federally insured credit unions. *Id.*

The proposed revisions to § 740.4(c) retained the general prohibition on federally insured credit unions receiving funds at any teller station or window where any nonfederally insured credit union also receives account funds, but set forth three exceptions to this prohibition. The first two exceptions permit tellers at federally insured credit unions and shared branches operated by non-credit union entities to receive deposits for nonfederally insured credit unions if these tellers post a second sign adjacent to the official NCUA sign. Under the proposal, the language for the second sign for tellers at federally insured credit unions reads as follows:

> This credit union participates in a shared branch network with other credit unions and accepts share deposits for members of those other credit unions. Not all of these other credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly.

The second sign for tellers at shared branches operated by non-credit union entities is as follows:

> This facility accepts share deposits for multiple credit unions. Not all of these credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly.

The third exception to the general prohibition addresses signage requirements at nonfederally insured credit unions. The proposal clarified that tellers in nonfederally insured credit unions may accept deposits for federally insured credit unions as part of a shared branch network. The proposal, however, prohibited a nonfederally insured credit union from displaying the official NCUA sign, as this could be very confusing to the members of the nonfederally insured credit union. Also, since the credit union will not display the official sign, there is no need for it to display the second sign.

As discussed below, NCUA is adopting the rule as proposed with a slight revision to the second sign for shared branch locations at federally insured credit unions.

B. Comments and Final Rule

NCUA received sixteen comments on the proposal. All commenters generally agreed the current rule is difficult to comply with and not particularly useful to credit union members. Most commenters supported the revisions as proposed by NCUA or with minor changes. A few commenters opposed any requirement for a second sign and recommended NCUA repeal the requirement.

Three commenters who generally supported the proposal suggested the second sign should only be required at one, central location instead of next to every official insurance sign. NCUA has not adopted this suggestion in the final rule because members could be misled about the insurance status of their credit union if the second sign required by

§ 740.4(c) is not adjacent to every official insurance sign. Similarly, NCUA did not adopt the suggestion of another commenter who requested that federally insured credit unions have the option to distribute a paper notice to ''guest'' members using the federally insured credit union as a shared branch instead of posting the second signs. One problem with this suggestion is that members are more likely to miss this notice if it is presented on a separate flyer at the entrance or accompanies the member's transaction information distributed by a teller. Another problem with this suggestion is that tellers may fail to distribute the notice to all guests, and it would be difficult for NCUA to assess compliance with this requirement. In contrast, the short, clear second sign gives members the information they need in a format they are most likely to notice and absorb. The straightforward requirement for a second sign also makes compliance with the regulation and assessing compliance with the regulation easier than would allowing a separate disclosure to guest members.

Another commenter suggested that it would be more useful for the second sign to list the nonfederally insured credit unions participating in the shared branching network. This commenter stated that since the vast majority of credit unions are federally insured, a second sign listing the names of the nonfederally insured credit unions would be much shorter and give members exactly the information they need without the extra step of contacting their credit union. NCUA agrees this option would reduce the regulatory burden on credit unions and in theory could provide more complete information for credit union members. NCUA has not adopted this suggestion, however, because of concern that members of nonfederally insured credit unions would see the name of their nonfederally insured credit union on a sign immediately adjacent to the official NCUA insurance sign and could, if they did not read the sign very carefully, erroneously conclude their credit union was federally insured.

Two commenters requested NCUA add a phrase to the second sign required by § 740.4(c) for tellers at federally insured credit unions reiterating the credit union is federally insured, and NCUA has adopted this change in the final rule. The second sign for tellers in federally insured credit unions is amended to read as follows:

This credit union participates in a shared branch network with other credit unions and accepts share deposits for members of those other credit unions. While this credit union is federally insured, not all of these other credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly.

Like the commenters requesting this change, NCUA has observed an increasing focus on deposit insurance coverage among credit union members as turbulence in the financial marketplace continues. Although NCUA believes very few members would be confused by the second sign as proposed since it would be posted adjacent to the official insurance sign, NCUA agrees the suggested clarification is useful and adopts it in the final rule.

Finally, one commenter opined that the proposal would permit federally insured credit unions flexibility to draft slightly differing language for the second sign required by § 704.4(c). This is not true. While the design, color, and font of the second sign may depart from NCUA's template, the language must conform to the regulation exactly.

As discussed in the proposal, the second sign required by § 740.4(c) must be conspicuous and be similar to the official NCUA sign in terms of design, color, and font. NCUA will produce signs that meet this requirement and make the signs available for purchase at a reasonable cost. Credit unions may either use the NCUA-produced sign or produce their own sign, as long as the sign meets the requirements of the rule.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule will not impose any regulatory burden and in fact will ease existing compliance burdens on federally insured credit unions participating in shared branch networks and accepting deposits for both federally insured and nonfederally insured credit unions. The Board certifies that this rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104–121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. NCUA does not believe this rule is a major rule for purposes of SBREFA.

Paperwork Reduction Act

NCUA has determined that the rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 *et seq.*; 5 CFR part 1320.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The rule will not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 740

Advertisements, Credit unions, Signs and symbols.

By the National Credit Union Administration Board on February 26, 2009.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons set forth above, NCUA amends 12 CFR part 740 as follows.

PART 740—ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

■ 1. The authority citation for part 740 continues to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1785, and 1789.

■ 2. Amend § 740.1 by revising paragraph (b), and adding paragraph (c), to read as follows:

§ 740.1 Definitions.

* * * * *

(b) *Insured credit union and federally insured credit union* as used in this part mean a credit union with National Credit Union Administration share insurance.

(c) *Nonfederally insured credit union* as used in this part means a credit union with either no account insurance or with primary account insurance provided by some entity other than the National Credit Union Administration.

■ 3. Amend § 740.4 by revising paragraph (c) to read as follows:

§ 740.4 Requirements for the official sign.

* * * * *

(c) To avoid any member confusion from the use of the official NCUA sign, federally insured credit unions are prohibited from receiving account funds at any teller station or window where any nonfederally insured credit union also receives account funds. As exceptions to this prohibition:

(1) A teller in a branch of a federally insured credit union may accept account funds for nonfederally insured credit unions, but only if the teller displays a conspicuous sign next to the official sign that states ''This credit union participates in a shared branch network with other credit unions and accepts share deposits for members of those other credit unions. While this credit union is federally insured, not all of these other credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly.'' This sign must be similar to the official sign in terms of design, color, and font.

(2) A teller in a facility operated by a non-credit union entity may accept account funds for both federally insured credit unions and nonfederally insured credit unions, but only if the teller displays a conspicuous sign next to the official sign stating ''This facility accepts share deposits for multiple credit unions. Not all of these credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly.'' This sign must be similar to the official sign in terms of design, color, and font.

(3) A teller in a branch of a nonfederally insured credit union may accept account funds for federally insured credit unions. No teller in a nonfederally insured credit union may display the official NCUA sign.

* * * * *

[FR Doc. E9–4600 Filed 3–3–09; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

Civil Monetary Penalty Inflation Adjustment

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) is amending its rules of practice and procedure to adjust the maximum amount of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action, including the amount of the adjustment, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

DATES: *Effective Date:* March 4, 2009.

FOR FURTHER INFORMATION CONTACT: John K. Ianno, Associate General Counsel, or Jon Canerday, Trial Attorney, Office of General Counsel, NCUA, 1775 Duke Street, Alexandria, Virginia 22314, or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Debt Collection Improvement Act of 1996 [1] (DCIA) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 [2] (FCPIA Act) to require every Federal agency to enact regulations that adjust each civil monetary penalty (CMP) provided by law under its jurisdiction by the rate of inflation at least once every 4 years. These periodic adjustments are to be calculated pursuant to the inflation adjustment formula in section 5(b) of the FCPIA Act. Section 6 of the FCPIA Act specifies that inflation-adjusted CMPs will only apply to violations that occur after the effective date of the adjustment.

The inflation adjustment is based on the percentage increase in the Consumer Price Index for all urban consumers (CPI–U) published by the Department of Labor.[3] Specifically, section 5(b) of the FCPIA Act defines the term ''cost-of-living adjustment'' as ''the percentage (if any) for each civil monetary penalty by which—(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.'' The amount of each inflation adjustment must then be rounded to a number prescribed by section 5(a) of the FCPIA Act.

B. Mathematical Calculations of the Adjustments

NCUA last adjusted the CMPs it is authorized to impose in 2004. 69 FR 60080. Accordingly, the current adjustment of these CMPs will be the percentage by which the CPI–U for the month of June 2007 exceeds the CPI–U for the month of June 2004. According to the Bureau of Labor Statistics, the CPI–U for the month of June 2004 was 189.7 and the CPI–U for the month of June 2007 was 208.352. The percentage by which the 2007 figure exceeds the 2004 figure is 9.8 percent. Thus, the CMPs should be multiplied by 9.8 percent, the resulting dollar amount rounded up or down according to the rounding requirements of the FCPIA Act, and then that amount added to the current penalty. In some cases, the rounding rules resulted in no adjustment to the amount of the CMP.

In previous years, the Board has explained in detail the adjustment procedure for each of the CMPs under its jurisdiction. Detailed explanations were provided because some CMPs were adjusted for the first time, requiring the use of different formulas. In view of the fact that all of the CMPs were last adjusted in 2004, such detailed explanations are no longer necessary. For that reason, and to be consistent with the other banking agencies, the Board will show the adjustments in table format. The following table shows both the present CMPs, the adjustment methodology, and the CMPs after being adjusted for inflation. The table published in 12 CFR 747.1001 shows only the adjusted CMPs, not the calculations.

[1] Public Law 104–134, 31001(s), 110 Stat. 1321–373, (Apr. 26, 1996). The provision is codified at 28 U.S.C. 2461 note.

[2] Public Law 101–410, 104 Stat. 890, (Oct. 5, 1990), also codified at 28 U.S.C. 2461 note.

[3] The CPI–U is published by the Department of Labor, Bureau of Labor Statistics, and is available at its Web site: *http://www.bls.gov/cpi/.*

U.S. code citation	Tier or description (if applicable)	Current maximum penalty (in dollars)	Percentage increase	Amount of increase (in dollars)	Amount of increase—after rounding [4] (in dollars)	Adjusted maximum penalty (in dollars)
12 U.S.C. 1782(a)(3)	Inadvertent	$2,200 [5]	9.8	$216	$0	No Change.
	Non-inadvertent	22,000	9.8	2,156	0	No Change.
	Intentional or reckless.	1,175,000 (or 1% of total assets).	9.8	115,150	125,000	$1,300,000 (or 1% of total assets).
12 U.S.C. 1782(d)(2)	Tier 1	2,200	9.8	216	0	No Change.
	Tier 2	22,000	9.8	2,156	0	No Change.
	Tier 3	1,175,000 (or 1% of total assets).	9.8	115,150	125,000	1,300,000 (or 1% of total assets).
12 U.S.C. 1785(e)(3)		110	9.8	11	0	No Change.
12 U.S.C. 1786(k)(2)	Tier 1	6,500	9.8	637	1,000	7,500.
	Tier 2	32,500	9.8	3,185	5,000	37,500.
	Tier 3	1,250,000 (for natural person) 1,250,000 (or 1% of total assets) (for CU).	9.8	122,500	125,000	1,375,000 (for natural person) 1,375,000 (or 1% of total assets) (for CU).
42 U.S.C. 4012a(f)	Per violation	385	9.8	38	0	No Change.
	Per year	120,000	9.8	11,760	10,000	130,000.

The NCUA Board now adopts this final rule to adjust the forgoing CMPs for the rate of inflation, as required by the FCPIA Act. As provided in the final rule, the revised CMP amounts will only apply to violations that occur after the effective date of the final rule.

C. Regulatory Procedures

Final Rule Under the Administrative Procedures Act

The FCPIA Act requires adjustments of CMPs for inflation to occur at least every four years. The FCPIA Act provides federal agencies with no discretion in the adjustment of CMPs for inflation. Thus, NCUA is unable to vary the amount of the adjustments to reflect any views or suggestions provided by commenters. Further, the regulation is ministerial and technical. For all of these reasons, the NCUA Board finds good cause to determine that public notice and comment for this new regulation is unnecessary, impractical and contrary to the public interest, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B). These same reasons also provide the Board with good cause to adopt an effective date for this regulation that is less than 30 days after the date of publication in the **Federal Register**, pursuant to the APA, 5 U.S.C. 553(d).

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions (those under ten million dollars in assets). This final rule would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that this final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive Order. This final rule will apply to all federally-insured credit unions, but it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined the final rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law No. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that for purposes of SBREFA, it is not a major rule.

List of Subjects in 12 CFR Part 747

Credit unions, Civil monetary penalties.

By the National Credit Union Administration Board on January 5, 2009.

Mary Rupp,

Secretary of the Board.

■ Accordingly, the NCUA amends 12 CFR part 747 as follows:

[4] The FCPIA Act's rounding rules require that an increase of a CMP be rounded to the nearest multiple of: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1,000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and $25,000 in the case of penalties greater than $200,000. Section 5(a) of the FCPIA Act, 28 U.S.C. 2461 note.

[5] Erroneously published in the **Federal Register** as $22,000.

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

■ 1. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787; 42 U.S.C. 4012a; Public Law 101–410; Public Law 104–134.

■ 2. Subpart K is revised to read as follows:

Subpart K—Inflation Adjustment of Civil Monetary Penalties

§ 747.1001 Adjustment of civil money penalties by the rate of inflation.

(a) NCUA is required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note)) to adjust the maximum amount of each civil money penalty within its jurisdiction by the rate of inflation. The following chart displays those adjustments, as calculated pursuant to the statute:

U.S. code citation	CMP description	New maximum amount
(1) 12 U.S.C. 1782(a)(3)	Inadvertent failure to submit a report or the inadvertent submission of a false or misleading report.	$2,200.
(2) 12 U.S.C. 1782(a)(3)	Non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report.	$22,000.
(3) 12 U.S.C. 1782(a)(3)	Failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard.	$1,300,000 or 1 percent of the total assets of the credit union, whichever is less.
(4) 12 U.S.C. 1782(d)(2)(A)	First tier	$2,200.
(5) 12 U.S.C. 1782(d)(2)(B)	Second tier	$22,000.
(6) 12 U.S.C. 1782(d)(2)(C)	Third tier	$1,300,000 or 1 percent of the total assets of the credit union, whichever is less.
(7) 12 U.S.C. 1785(e)(3)	Non-compliance with NCUA security regulations.	$110.
(8) 12 U.S.C. 1786(k)(2)(A)	First tier	$7,500.
(9) 12 U.S.C. 1786(k)(2)(B)	Second tier	$37,500.
(10) 12 U.S.C. 1786(k)(2)(C)	Third tier	For a person other than an insured credit union: $1,375,000; For an insured credit union: $1,375,000 or 1 percent of the total assets of the credit union, whichever is less.
(11) 42 U.S.C. 4012a(f)	Per violation	$385.
	Per calendar year	$130,000.

(b) The adjustments displayed in paragraph (a) of this section apply to acts occurring after the date of publication in the **Federal Register**.

[FR Doc. E9–4608 Filed 3–3–09; 8:45 am]

BILLING CODE 7535–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0258; FRL–8401–6]

Dimethomorph; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of dimethomorph in or on ginseng and turnip, greens. Additionally, it establishes tolerances with regional registrations in or on beans, lima, succulent and grape. This regulation also deletes the existing grape import tolerance, as a regional tolerance supersedes it. Finally, it increases the existing tolerance level for potato, wet peel and re-establishes the tolerance for potato. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 4, 2009. Objections and requests for hearings must be received on or before May 4, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0258. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; e-mail address: *nollen.laura@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

• Pesticide manufacturing (NAICS code 32532).

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

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

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0258 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before May 4, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0258, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of May 16, 2008 (73 FR 28461) (FRL–8361–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7314) by Interregional Research Project (IR-4), 500 College Rd. East, Suite 201 W., Princeton, NJ 08540. The petition requested that 40 CFR 180.493 be amended by establishing tolerances for residues of the fungicide dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on beans, lima at 0.60 parts per million (ppm); ginseng at 0.85 ppm; grape at 3.5 ppm; grape, raisin at 6.0 ppm; and turnip, greens at 20.0 ppm. In the **Federal Register** of October 8, 2008 (73 FR 58962) (FRL–8383–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of an amendment to the pesticide petition (PP 8E7314) by IR-4, which requested that 40 CFR 180.493 be amended for residues of the fungicide dimethomorph by increasing the tolerance in or on potato, wet peel from 0.15 ppm to 0.20 ppm, and re-establishing the tolerance in or on potato at 0.05 ppm. These notices referenced a summary of the petition prepared on behalf of IR-4 by BASF Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notices of filing.

Based upon review of the data supporting the petition, EPA has determined that the proposed tolerance level for ginseng should be increased. EPA has additionally determined that the proposed tolerances for beans, lima and grape should be established as regional tolerances, and that the import tolerance for grape, raisin should remain. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of dimethomorph on beans, lima at 0.60 ppm; ginseng at 0.90 ppm; grape at 3.5 ppm; grape, raisin at 6.0 ppm; potato at 0.05 ppm; potato, wet peel at 0.20 ppm; and turnip, greens at 20 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The existing dimethomorph data indicate that it possesses relatively low toxicity. No appropriate toxicological endpoints attributable to a single exposure were identified in oral studies. Consequently, it was determined that there was no basis for selecting a dose

and endpoint for an acute reference dose (aRfD).

In the dimethomorph rat chronic dietary feeding study, there were significant body weight decrements, and liver effects in female rats. Available data for dimethomorph do not show potential for immunotoxic nor neurotoxic effects. Neither the subchronic nor chronic toxicity studies in rats or dogs, nor the developmental toxicity studies indicated that the nervous system was affected by treatment with dimethomorph.

Based on the toxicity profile for dimethomorph, a developmental neurotoxicity (DNT) study in rats is not required. In a carcinogenicity study in rat, there was no evidence of increased incidence of any neopolasms at any doses. In a carcinogenicity study in mice, there was no dose-related decrease in survival, or in any parameter examined on necropsy. At the maximum dose required by the test guidelines for a dietary oncogenicity study, there was no evidence of carcinogenicity. Therefore, the EPA classified dimethomorph as ''not likely to be carcinogenic to humans.''

The toxicology data on dimethomorph provides no indication of enhanced sensitivity of infants and children, based on the results from developmental studies conducted with rats and rabbits, as well as a 2-generation reproduction study conducted with rats. There were no toxic effects observed in either the rat developmental toxicity, or the rat 2-generation reproductive toxicity studies, that were observed at lower doses than those which produced toxic effects in the parents. No developmental toxicity was demonstrated in the rabbit developmental toxicity study.

Specific information on the studies received and the nature of the adverse effects caused by dimethomorph as well as the no-observed-adverse-effect-level and the lowest-observed-adverse-effect-level from the toxicity studies can be found at *http://www.regulations.gov* in document ''Dimethomorph. Human Health Risk Assessment for the Proposed Food/Feed Use of the Fungicide (Associated with Section 3 Registration) on Succulent Lima Beans, Ginseng, Grapes and Turnip Tops'' at pages 46–49 in docket ID number EPA–HQ–OPP–2008–0258.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for dimethomorph used for human risk assessment can be found at *http://www.regulations.gov* in document ''Dimethomorph. Human Health Risk Assessment for the Proposed Food/Feed Use of the Fungicide (Associated with Section 3 Registration) on Succulent Lima Beans, Ginseng, Grapes and Turnip Tops'' at pages 17–18 in docket ID number EPA–HQ–OPP–2008–0258.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to dimethomorph, EPA considered exposure under the petitioned-for tolerances as well as all existing dimethomorph tolerances in (40 CFR 180.493). EPA assessed dietary exposures from dimethomorph in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure.

No such effects were identified in the toxicological studies for dimethomorph; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used tolerance-level residues, the Dietary Exposure Evaluation Model (DEEM) default processing factors, and assumed 100 percent crop treated (PCT) for all proposed commodities.

iii. *Cancer*. Based on the results of the carcinogenicity studies in rats and mice, dimethomorph has been classified as ''not likely to be carcinogenic to humans;'' therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and PCT information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for dimethomorph. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for dimethomorph in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of dimethomorph. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

The First Index Reservoir Screening Tool (FIRST) Tier 1 model was used to estimate concentrations for dimethomorph in surface water. The Tier 1 Screening Concentration in Ground Water (SCI-GROW) model was utilized to predict concentrations in ground water. The Tier 1 Generic Estimated Environmental Concentration (GENEEC) model, from a previous drinking water assessment, calculated another estimated drinking water concentration (EDWC) for dimethomorph in surface water. The EDWCs of dimethomorph for acute exposures are estimated to be 81.1 parts per billion (ppb) for surface water and 0.264 ppb for ground water. For chronic exposures, the non-cancer assessments are estimated to be 24.7 ppb for surface water, 28.5 ppb for a previously

determined surface water assessment, and 0.264 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the most conservative water concentration of value 28.5 ppb, from GENEEC modeling, was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Dimethomorph is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found dimethomorph to share a common mechanism of toxicity with any other substances, and dimethomorph does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that dimethomorph does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The toxicology data on dimethomorph provides no indication of enhanced sensitivity of infants and children, based on the results from developmental studies conducted with rats and rabbits, as well as a 2–generation reproduction study conducted with rats. There were no toxic effects observed in either the rat developmental toxicity, or the rat 2–generation reproductive toxicity studies, that were observed at lower doses than those which produced toxic effects in the parents. Further, clear NOAELs were observed for all effects observed in fetuses. These NOAELs are well above the NOAEL used as a point of departure in assessing the safety of dimethomorph. No developmental toxicity was demonstrated in the rabbit developmental toxicity study. Additionally, there is no evidence of neurotoxicity.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for dimethomorph is complete except for the immunotoxicity, acute neurotoxicity, and subchronic neurotoxicity studies. Recent changes to 40 CFR part 158 make acute and subchronic neurotoxicity testing (OPPTS Guideline 870.6200), and immunotoxicity testing (OPPTS Guideline 870.7800) required for pesticide registration. The available data for dimethomorph do not show potential for immunotoxic or neurotoxic effects. Therefore, EPA does not believe that conducting OPPTS Guideline 870.6200 neurotoxicity and OPPTS Guideline 870.7800 immunotoxicity studies will result in a NOAEL lower than the NOAEL of 11 milligram/kilogram/day (mg/kg/day) already set for dimethomorph. Consequently, an additional database uncertainty factor (UF) does not need to be applied.

ii. There is no indication that dimethomorph is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. The developmental and reproductive toxicity data did not indicate increased quantitative or qualitative susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to dimethomorph. There are no residual concerns regarding developmental effects in the young.

iv. There are no residual uncertainties identified in the exposure databases. Dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to dimethomorph in drinking water. These assessments will not underestimate the exposure and risks posed by dimethomorph.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No acute dietary endpoint was identified for any segment of the U.S. population. Therefore, dimethomorph is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to dimethomorph from food and water will utilize 20% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for dimethomorph to consider.

3. *Short-term and intermediate-term risk*. Short-term and intermediate-term aggregate exposure takes into account short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Dimethomorph is not registered for any use patterns that would result in residential exposure. Therefore, the short-term and intermediate-term aggregate risk is the sum of the risk from exposure to dimethomorph through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. Based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic potential, dimethomorph was classified

as ''not likely to be carcinogenic to humans.'' Therefore, dimethomorph is not expected to pose a cancer risk to humans.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to dimethomorph residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (High-Performance Liquid Chromatography using Ultraviolet detection (HPLC/UV) Method, (FAMS) 002–04) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Canadian or Mexican maximum residue limits (MRLs) established for residues of dimethomorph in crops associated with this review. Codex MRLs have been finalized in grapes and grape, raisins at 2 and 5 ppm, respectively. However, the proposed tolerances in grape and grape, raisin (3.5 and 6.0 ppm, respectively) cannot be harmonized with the Codex MRLs on these commodities because field trial data shows residue levels for grape that are higher than 2 ppm.

C. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, EPA revised the proposed tolerance for ginseng, from 0.85 ppm to 0.90 ppm. EPA revised the proposed tolerance based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data*. EPA also changed the commodity term from ''bean, lima'' to ''bean, lima, succulent'' because field trial data for dry lima beans was not submitted. Use on lima beans is restricted to those varieties intended for harvest as succulent seed. Use on lima beans is also restricted to areas east of the Rocky Mountains, and will therefore be established as a regional tolerance under paragraph (c) *Tolerances with regional registrations* in §180.493. The proposed tolerance for grape will also be restricted to a regional tolerance under §180.493(c), since data were submitted to support use of dimethomorph on grapes grown east of the Rocky Mountains. Since grapes processed for raisin production are only grown west of the Rock Mountains, the import tolerance for raisins will remain, and a tolerance for raisin under § 180.493(c) will not be established.

V. Conclusion

Therefore, tolerances are established for residues of dimethomorph (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on ginseng at 0.90 ppm and turnip, greens at 20.0 ppm. Tolerances with regional registrations are established in or on bean, lima, succulent at 0.6 ppm and grape at 3.5 ppm. This regulation also deletes the existing tolerance for use in or on grape, as the regional tolerance supersedes it. Finally, it increases the existing import tolerance level for potato, wet peel from 0.15 to 0.20 ppm and re-establishes the tolerance for potato at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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

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

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 12, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.493 is amended as follows:

■ i. In paragraph (a), by revising the introductory text; in the table by removing the entry ''Grape,'' by revising the entry ''Potato, wet peel'' and Footnote 1, and by alphabetically adding the following commodities to the table to read as follows:

■ ii. By revising paragraph (c) to read as follows:

§ 180.493 Dimethomorph; tolerances for residues.

(a) *General*. Tolerances are established for the residues of the fungicide dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on the following commodities:

Commodity	Parts per million
* * * *	*
Ginseng	0.90
Grape, raisin[1]	6.0
* * * *	*
Potato	0.05
Potato, wet peel	0.20
* * * *	*
Turnip, greens	20.0
* * * * *	*

[1] There are no U.S. registrations as of March 4, 2009, for the use of dimethomorph on grapes grown for raisin production.

* * * * *

(c) *Tolerances with regional registrations*. Tolerances with regional registrations are established for residues of the fungicide dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on the following commodities:

Commodity	Parts per million
Bean, lima, succulent	0.60
Grape	3.5

* * * * *

[FR Doc. E9–4370 Filed 3–3–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0097; FRL–8399–3]

Tebuconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation revises the existing tolerance for residues of tebuconazole in or on cherry, pre- and post-harvest. Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 4, 2009. Objections and requests for hearings must be received on or before May 4, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0097. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; e-mail address: *nollen.laura@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0097 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before May 4, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2

may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2005–0097, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of December 3, 2008 (73 FR 73640) (FRL–8390–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7428) by Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.474 be amended by raising the existing tolerance for residues of the fungicide tebuconazole, alpha-[2-(4-Chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, in or on the raw agricultural commodity cherry from 4.0 parts per million (ppm) to 5.0 ppm. That notice referenced a summary of the petition prepared on behalf of IR–4 by Bayer CropScience LP, the registrant, which is available to the public in the docket, *http://www.regulations.gov*.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of tebuconazole in or on the raw agricultural commodity cherry, sweet, pre- and post-harvest, and cherry, tart, pre- and post-harvest, at 5.0 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

In the **Federal Register** of August 13, 2008 (73 FR 47065) (FRL–8376–2), the Agency published a Final Rule establishing tolerances for residues of the fungicide tebuconazole in or on apple, wet pomace at 0.1 ppm; asparagus at 0.05 ppm; bean, succulent at 0.1 ppm; bean, dry seed at 0.1 ppm; beet, garden, tops at 7.0 ppm; beet, garden, roots at 0.70 ppm; *Brassica*, leafy greens, subgroup 5B at 2.5 ppm; coffee, green bean at 0.15 ppm; coffee, roasted bean at 0.3 ppm; corn, field, grain at 0.05 ppm; corn, field, forage at 4.0 ppm; corn, field, stover at 3.5 ppm; corn, pop, grain at 0.05 ppm; corn, pop, stover at 3.5 ppm; corn, sweet, kernel plus cob with husks removed at 0.5 ppm; corn, sweet, forage at 7.0 ppm; corn, sweet, stover at 6.0 ppm; cotton, undelinted seed at 2.0 ppm; cotton, gin byproducts at 25.0 ppm; Fruit, pome, group 11 at 0.05 ppm; fruit, stone, group 12, except cherry at 1.0 ppm; grain, aspirated fractions at 16.0 ppm; hop, dried cones at 35.0 ppm; lychee at 1.6 ppm; mango, postharvest at 0.15 ppm; okra at 1.2 ppm; onion, bulb, subgroup 3–07A at 0.2 ppm; onion, green, subgroup 3–07B at 1.3 ppm; plum, pre- and post-harvest at 1.0 ppm; soybean, forage at 25 ppm; soybean, hay at 50 ppm; soybean, seed at 0.08 ppm; sunflower, seed at 0.05 ppm; sunflower, meal at 0.2 ppm; sunflower, refined oil at 0.2 ppm; vegetable, cucurbit, group 9 at 0.09 ppm; turnip, roots at 0.5 ppm; and turnip, tops at 7.0 ppm. When the Agency conducted the risk assessment in support of the August, 2008 tolerance action, it considered the proposed use of tebuconazole on cherry, pre- and post-harvest. Since EPA considered the cherry use in its most recent risk assessments, establishing the tolerance on cherry, pre- and post-harvest will not change the estimated aggregate risks resulting from use of tebuconazole, as discussed in the August 13, 2008 **Federal Register**. Refer to this **Federal Register** document, available at *http://www.regulations.gov*, for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of August 13, 2008, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to tebuconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/nitrogen phosphorus detection and liquid chromatography/mass spectrometry/mass spectrometry (GC/NPD and LC/MS/MS)) is available for enforcing tolerances for tebuconazole and its metabolites in plant commodities, livestock matrices and processing studies. The methods have been adequately validated by an independent laboratory in conjunction with a previous petition. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

Codex maximum residue limits (MRLs) have been established for residues of tebuconazole in or on cherry at 5.0 ppm. Establishing a permanent U.S. tolerance for tebuconazole in or on cherry, pre- and post-harvest at 5.0 ppm results in MRL harmonization between Codex and the United States.

V. Conclusion

Therefore, a tolerance is established for residues of tebuconazole, alpha-[2-(4-Chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, in or on cherry, sweet, pre- and post-harvest, cherry, tart, pre- and post-harvest at 5.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in

response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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

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

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 12, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.474 is amended by revising the entry for the commodity ''Cherry'' in the table in paragraph (a)(1) to read as follows:

§ 180.474 Tebuconazole; tolerances for residues.

(a) *General.* * * *

(1) * * *

Commodity	Parts per million
* * *	* *
Cherry, sweet, pre- and post-harvest	5.0
Cherry, tart, pre- and post-harvest	5.0
* * *	* *

* * * * *

[FR Doc. E9–4373 Filed 3–3–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–1192; FRL–8400–9]

Famoxadone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of famoxadone in or on caneberry subgroup 13–07A; cilantro, leaves; onion, bulb, subgroup 3–07A; onion, green, subgroup 3–07B; spinach; and vegetable, leafy, except *Brassica*, group 4, except spinach. It also removes existing tolerances on lettuce, head; and caneberry, subgroup 13A that are superseded by the new tolerances on vegetable, leafy, except *Brassica*, group 4, except spinach; and caneberry subgroup 13–07A. Interregional Research Project Number 4 (IR-4) requested these amendments under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 4, 2009. Objections and requests for hearings must be received on or before May 4, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1192. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–1192 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before May 4, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–1192, by one of the following methods:

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

II. Petition for Tolerance

In the **Federal Register** of March 12, 2008 (73 FR 13225) (FRL–8354–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 7E7280 and 7E7281) by Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petitions requested that 40 CFR 180.587 be amended by establishing tolerances for residues of the fungicide, famoxadone, 3-anilino-5-methyl-5-(4-phenoxyphenyl)-1,3-oxazolidine-2,4-dione, in or on leaf petioles, subgroup 4B at 25 parts per million (ppm) (PP 7E7280); leafy greens, subgroup 4A and cilantro at 50 ppm; bulb vegetables, group 3–07 at 40 ppm; and caneberry, subgroup 13–07A at 10 ppm (all in PP 7E7281). IR-4 also proposed in petition 7E7281 to remove the existing tolerances in 40 CFR 180.587 for residues of the fungicide famoxadone in or on the food commodities lettuce, head; and caneberry, subgroup 13A, which would be superseded by the tolerances on leafy, greens, subgroup 4A; and caneberry, subgroup 13–07A. That notice referenced a summary of the petition prepared on behalf of IR-4 by E.I. du Pont de Nemours and Company, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has determined that separate tolerances at different levels are needed for the bulb and green onion subgroups of bulb vegetables group 3–07. EPA has also determined that tolerances should be established on ''vegetable, leafy, except *Brassica*, group 4, except spinach'' at 25 ppm with a separate tolerance of 50 ppm on spinach, rather than the proposed tolerances on subgroups 4A at 50 ppm and 4B at 25 ppm. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of famoxadone on caneberry subgroup 13–07A at 10 ppm; cilantro, leaves at 25.0 ppm; onion, bulb, subgroup 3–07A at 0.45 ppm; onion, green, subgroup 3–07B at 40 ppm; spinach at 50 ppm; and vegetable, leafy, except *Brassica*, group 4, except spinach at 25 ppm. EPA's

assessment of exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Famoxadone has low acute toxicity by the oral, dermal and inhalation routes of exposure. It is a moderate eye and skin irritant but is not a dermal sensitizer. In subchronic and chronic feeding studies in rats, mice, dogs and cynomolgus monkeys, famoxadone generally caused decreased body weights and body weight gains, often accompanied by decreased food consumption and food efficiency. A mild regenerative hemolytic anemia was also regularly observed in these animals as evidenced by decreased erythrocyte counts, hemoglobin and/or hematocrit, increased reticulocytes, and other related changes in hematologic parameters. Famoxadone also induced a mild hepatotoxicity in treated animals characterized by elevated levels of clinical chemistry enzymes indicative of liver damage (increased alkaline phosphatase, alanine aminotransferase, aspartate aminotransferase, and/or sorbitol dehydrogenase) and by histopathological lesions in the liver (single cell or focal necrosis, hepatocellular degeneration, diffuse fatty change, foci of eosinophilic cellular alteration, apoptosis and increased mitotic figures). Both the anemia and the hepatotoxicity were mild and did not significantly compromise the overall health status of the treated animals. In repeated dose studies the anemia, which occurred early in the studies, often appeared to be fully compensated for in the latter stages of the studies. Although the hepatotoxicity persisted throughout the duration of the studies, it was mild or moderate in intensity and not severe or life-threatening.

Additional treatment-related effects were observed in dogs that were not observed in other species. In a 13-week feeding study, clinical signs of neurotoxicity (myotonic twitches) were observed in male and female dogs at the highest dose tested throughout the duration of the study. These twitches were not observed, however, at lower doses in the same study or in a 1-year feeding study in dogs. Also, in both male and female dogs, famoxadone induced treatment-related cataracts in the lens of the eye in the 13-week feeding study and in the 1-year feeding study. The eye effects were observed at dose levels below those at which any other effects were observed in any other species and served as the basis for many of the risk assessments in humans.

There was no indication of increased quantitative or qualitative susceptibility of fetuses or offspring to famoxadone exposure in the developmental toxicity studies in rats and rabbits or the 2-generation reproduction toxicity study in rats. In a developmental toxicity study in rats, no developmental toxicity was observed in the fetuses at the highest dose tested. Transient decreases in body weight gain and food consumption were noted in the dams in this study. In a developmental toxicity study in rabbits, an increased incidence of abortions was observed. The does which aborted had markedly decreased body weight, body weight gain and food consumption. There was also an equivocal increase in percent postimplantation loss and mean number of resorptions per doe in this study. In the reproduction toxicity study in rats, offspring toxicity (decreased body weights for F1 and F2 pups throughout lactation) was noted at a dose that also resulted in parental toxicity (decreased body weight, body weight gain, and food consumption; and hepatotoxicity). No reproductive toxicity was observed in this study at the highest dose tested.

In an acute neurotoxicity study in rats, there was equivocal evidence of a possible slight neurotoxic effect at the limit dose. In this study, an increased incidence of palpebral (eyelid) closure was observed, but only in males and only on day one. Other than this equivocal evidence and the clinical observations in the 13-week feeding study in dogs of myotonic twitching in the high dose male and female animals, there was no evidence of treatment-related neurotoxicity in the toxicity studies on famoxadone, including a subchronic neurotoxicity study in rats.

In 28-day immunotoxicity studies in rats and mice, there was no evidence of immunotoxicity following exposure to famoxadone.

In carcinogenicity studies in male and female rats and mice, famoxadone did not demonstrate any biologically significant evidence of carcinogenic potential. Famoxadone is classified as ''not likely to be carcinogenic to humans.''

Specific information on the studies received and the nature of the adverse effects caused by famoxadone as well as the no-observed-adverse-effect-level and the lowest-observed-adverse-effect-level from the toxicity studies can be found at *http://www.regulations.gov* in the document *Famoxadone. Human Health Risk Assessment for the Proposed Food Use of Famoxadone on Bulb Vegetables, Crop Group 3; Leafy Greens, Subgroup 4A; Leaf Petioles, Subgroup 4B; and Cilantro* at page 54 in docket ID number EPA–HQ–OPP–2007–1192.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for famoxadone used for human risk assessment can be found at *http://www.regulations.gov* in the document *Famoxadone. Human Health Risk Assessment for the Proposed Food*

Use of Famoxadone on Bulb Vegetables, Crop Group 3; Leafy Greens, Subgroup 4A; Leaf Petioles, Subgroup 4B; and Cilantro at page 31 in docket ID number EPA–HQ–OPP–2007–1192.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to famoxadone, EPA considered exposure under the petitioned-for tolerances as well as all existing famoxadone tolerances in 40 CFR 180.587. EPA assessed dietary exposures from famoxadone in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for famoxadone; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the U.S. Department of Agriculture (USDA) 1994–1996, and 1998 Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA used average residues from field trials for most plant commodities and anticipated residues based on the anticipated dietary burdens of livestock for animal commodities. Empirical processing factors were used to refine the residue estimates of processed tomato, pepper, potato and grape commodities. For leafy vegetables, empirically-derived reduction factors were applied to account for reduction of residues from washing and removal of outer leaves. Percent crop treated (PCT) and projected PCT estimates were used to further refine exposure estimates for many of the existing and new uses of famoxadone.

iii. *Cancer*. Based on the results of carcinogenicity studies in rats and mice, EPA classified famoxadone as ''not likely to be carcinogenic to humans;'' therefore, an exposure assessment for evaluating cancer risk is not needed for this chemical.

iv. *Anticipated residue and percent crop treated (PCT) information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Cucumbers 5%, peppers 5%, potatoes 5%, pumpkins 5%, squash 1%, tomatoes 10% and watermelons 1%.

In most cases, EPA uses available data from U.S. Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency used projected percent crop treated (PPCT) information for certain new crops (celery, lettuce, and spinach) as well as the currently registered crop, grapes. Since famoxadone has only been registered on grapes for 1 year, PCT estimates based on actual usage data were not deemed sufficient indicators of potential usage on grapes. The following PPCT estimates were used in the chronic dietary exposure assessment: Celery 39%, grapes (wine and table) 5%, grape (juice) 50%, lettuce (head) 67%, lettuce (other) 62%, and spinach 39%.

EPA estimates PPCT for a new pesticide use by assuming that the percent crop treated (PCT) during the pesticide's initial 5 years of use on a specific use site will not exceed the average PCT of the dominant pesticide (i.e., the one with the greatest PCT) on that site over the three most recent surveys. Comparisons are only made among pesticides of the same pesticide type (i.e., the dominant fungicide on the use site is selected for comparison with a new fungicide). The PCTs included in the average may be each for the same pesticide or for different pesticides since the same or different pesticides may dominate for each year selected. Typically, EPA uses USDA/NASS data as the source for raw PCT data because it is publicly available and does not have to be calculated from other available data. When a specific use site is not surveyed by USDA/NASS, EPA uses proprietary data and calculates the estimated PCT.

This estimated PPCT, based on the average PCT of the market leader, is appropriate for use in the chronic dietary risk assessment. This method of estimating a PPCT for a new use of a registered pesticide or a new pesticide produces a high-end estimate that is unlikely, in most cases, to be exceeded during the initial 5 years of actual use.

The predominant factors that bear on whether the estimated PPCT could be exceeded are whether the new pesticide use is more efficacious or controls a broader spectrum of pests than the dominant pesticide(s), whether there are concerns with pest pressures as indicated in emergency exemption requests (http://www.epa.gov/opprd001/section18/) or other readily available information, and/or other factors based on analysis of additional information. All information readily available has been considered for famoxadone on celery, lettuce and spinach, and it is the opinion of EPA that it is unlikely that actual PCTs for famoxadone on these sites will exceed the corresponding estimated PPCTs during the next 5 years.

A discussion of the factors considered in making this determination can be found in the document *PPCT for the Use of Fungicide Famoxadone (PC 113202)*

on celery (DP 357845), lettuce and spinach (DP 357847), and grapes (no BEAN). Additional Factors Revised in this Memorandum. The referenced document is available at *www.regulations.gov* in docket ID number EPA–HQ–OPP–2007–1192.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which famoxadone may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for famoxadone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of famoxadone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of famoxadone for acute exposures are estimated to be 6.2 parts per billion (ppb) for surface water and 0.01 ppb for ground water. EDWCs of famoxadone for chronic exposures for non-cancer assessments are estimated to be 0.189 ppb for surface water and 0.01 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 0.189 ppb was used to assess the contribution to drinking water. As explained in Unit III.C.1.i. an acute dietary risk assessment for famoxadone is unnecessary.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Famoxadone is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found famoxadone to share a common mechanism of toxicity with any other substances, and famoxadone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that famoxadone does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines, based on reliable data, that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicity database for famoxadone includes rat and rabbit developmental toxicity studies and a 2-generation reproduction toxicity study in rats. There was no evidence of increased quantitative or qualitative susceptibility of *in utero* rats or rabbits in the developmental toxicity studies or of offspring in the rat reproduction study.

3. *Conclusion.* EPA has determined that the FQPA safety factor of 10X must be retained as a database uncertainty factor for the chronic dietary exposure assessment. That decision is based on the following findings:

i. Although the toxicity database for famoxadone is complete, there is uncertainty related to the 13-week feeding study in dogs that was selected to assess chronic dietary exposures to famoxadone. EPA has determined that the 10X FQPA safety factor must be retained to account for the uncertainty arising due to the lack of a NOAEL in this study and extrapolation from a subchronic to chronic exposure duration. A 10X uncertainty factor is considered to provide an adequate margin of safety during development, based on several considerations. First, the LOAEL appeared to be a threshold effect level based on the minimal findings observed. The endpoint (microscopic lens lesions, cataracts, in the eyes of female dogs) was of minimal severity at the lowest dose tested (1.4 milligrams/kilogram/day (mg/kg/day)). This finding would probably have very little effect on vision, and no evidence of cataracts was observed in the ophthalmologic examination. Second, although the microscopic data in the chronic dog study were not considered acceptable due to fixation artifact, there was no evidence of cataracts in the ophthalmologic examination at a similar dose (1.2 mg/kg/day), suggesting that progression with time was minimal at that dose. Finally, there was no evidence of cataracts in monkeys administered famoxadone for 1-year at doses up to 1,000 mg/kg/day. The lack of cataracts in a primate species provides suggestive evidence that humans may be less sensitive than dogs for this effect.

ii. There was equivocal evidence of a slight neurotoxic effect (eyelid closure) at the limit dose in the acute neurotoxicity study in rats, and myotonic twitching was noted at the high dose in male and female dogs in the 13-week feeding study. In this same study, one female dog in the high dose group also had convulsions and ataxia on day 34. Since there was no evidence of treatment-related neurotoxicity at lower doses in these studies or in any other famoxadone toxicity studies, including a subchronic neurotoxicity study in rats and the 1-year feeding study in dogs, EPA has concluded that

there is not a concern for neurotoxicity from exposure to famoxadone, and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that famoxadone results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were refined for most commodities using reliable PCT/PPCT information and anticipated residue values calculated from valid field trial data. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to famoxadone in drinking water. Residential exposure to famoxadone is not expected. These assessments will not underestimate the exposure and risks posed by famoxadone.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, famoxadone is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to famoxadone from food and water will utilize 65% of the cPAD for adult males, 20 years and older, the population group receiving the greatest exposure. There are no residential uses for famoxadone.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Famoxadone is not registered for any use patterns that would result in residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to famoxadone through food and water and will not be greater than the chronic aggregate risk.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Famoxadone is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to famoxadone through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. Famoxadone is classified as ''not likely to be carcinogenic to humans'' and is, therefore, not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to famoxadone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Gas Chromatography with Nitrogen Phosphorus Detection (GC/NPD)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no CODEX maximum residue limits (MRLS) established for famoxadone on the commodities associated with these petitions.

C. Response to Comments

Comments were received from a private citizen objecting to EPA's reliance on animal toxicity testing on the basis that it is inhumane and not indicative of the potential for pesticides to cause toxicity in humans. The Agency disagrees with the commenter's claims regarding animal testing. Since humans and animals have complex organ systems and mechanisms for the distribution of chemicals in the body, as well as processes for eliminating toxic substances from their systems, EPA relies on laboratory animals such as rats and mice to mimic the complexity of human and higher-order animal physiological responses when exposed to a pesticide. EPA is committed, however, to reducing the use of animals whenever possible. EPA-required studies include animals only when the requirements of sound toxicological science make the use of an animal absolutely necessary. The Agency's goal is to be able to predict the potential of pesticides to cause harmful effects to humans and wildlife by using fewer laboratory animals as models and EPA has been accepting data from alternative (to animals) test methods for several years. As progress is made on finding or developing non-animal test models that reliably predict the potential for harm to humans or the environment, EPA expects that it will need fewer animal studies to make safety determinations. Finally, because the commenter has not provided the Agency with a specific rationale (including supporting information) as to why the Agency's action is inconsistent with the legal standards in section 408 of FFDCA, EPA can not provide any more detailed response to the commenter's disagreement with the Agency's decision.

D. Revisions to Petitioned-For Tolerances

IR-4 proposed a tolerance of 40 ppm on the crop group ''vegetable, bulb, group 3.'' Based on the results of field trials showing a greater than 5-fold difference in residues on bulb and green onions, EPA determined that separate tolerances are required for these subgroups. Therefore, EPA is establishing tolerances of 0.45 ppm on onion, bulb, subgroup 3–07A and 40 ppm on onion, green, subgroup 3–07B. EPA determined the appropriate tolerance levels for bulb and green onions based on analyses of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the *Agency's Guidance for Setting Pesticide Tolerances Based on Field Trial Data*.

IR-4 proposed tolerances on leaf petioles, subgroup 4B at 25 ppm and on leafy greens, subgroup 4A and cilantro, leaves at 50 ppm. Based on the results of field trial data indicating higher residues in spinach than the other members of subgroup 4A, EPA determined that a tolerance of 25 ppm would be adequate for members of the entire crop group 4 (including

subgroups 4A and 4B), except spinach, and cilantro leaves. Therefore, EPA is establishing tolerances of 25 ppm on vegetable, leafy, except *Brassica*, group 4, except spinach; 25 ppm on cilantro, leaves; and 50 ppm on spinach.

V. Conclusion

Therefore, tolerances are established for residues of famoxadone, 3-anilino-5-methyl-5-(4-phenoxyphenyl)-1,3-oxazolidine-2,4-dione, in or on caneberry subgroup 13–07A at 10 ppm; cilantro, leaves at 25.0 ppm; onion, bulb, subgroup 3–07A at 0.45 ppm; onion, green, subgroup 3–07B at 40 ppm; spinach at 50 ppm; and vegetable, leafy, except *Brassica*, group 4, except spinach at 25 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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

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

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 12, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.587 is amended by removing the tolerances for Caneberry, Subgroup 13A and Lettuce, head; and alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.587 Famoxadone; tolerances for residues.

(a) * * *

Commodity	Parts per million
Caneberry subgroup 13–07A	10
* * * * *	
Cilantro, leaves	25
* * * * *	
Onion, bulb, subgroup 3–07A	0.45
Onion, green, subgroup 3–07B	40
* * * * *	
Spinach	50
* * * * *	
Vegetable, leafy, except Brassica, group 4, except spinach	25

* * * * *

[FR Doc. E9–4357 Filed 3–3–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–1106; FRL–8402–7]

Chlorothalonil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of chlorothalonil and its 4-hydroxy metabolite in or on lychee and starfruit. The United States Department of Agriculture (USDA) requested that EPA establish these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 4, 2009. Objections and requests for hearings must be received on or before May 4, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1106. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–1106 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before May 4, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–1106, by one of the following methods:

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

II. Background

In the **Federal Register** of December 3, 2008 (73 FR 73632) (FRL–8390–1), EPA issued a proposed rule pursuant to sections 408(e) of FFDCA, 21 U.S.C. 346a(d)(3). The rule proposed that 40 CFR 180.275 be amended by establishing tolerances for combined residues of chlorothalonil and its 4-hydroxy metabolite in or on lychee at 15 parts per million (ppm) and starfruit at 3.0 ppm. The USDA requested that EPA establish these tolerances. Because USDA did not submit a petition in support of establishing these tolerances, EPA did not publish a Notice of Filing of a petition for these tolerances. Rather, EPA issued a proposed rule that included a summary of the exposure assessment prepared by the Agency and explained the basis for EPA's conclusion that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to chlorothalonil. The proposal established a 60–day public comment period. Comments were received in response to the proposed rule. EPA's response to these comments is discussed in Unit III.

III. Response to Comments

Comments were received in response to the proposed rule from two United States citizens. The comments and EPA's response are presented below:

An anonymous citizen objected to the presence of any pesticide residues on crops and stated that EPA should set no pesticide tolerance greater than zero. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, the existing legal framework provided by section 408 of FFDCA contemplates that tolerances greater than zero may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

A second citizen indicated her support for the tolerances on lychee and starfruit based on EPA's determination that the proposed tolerance levels are safe, but, at the same time, expressed hope that all pesticide residues will eventually be removed from food. The commenter also expressed ''great'' concern about the carcinogenicity of chlorothalonil, notwithstanding EPA's determination that the cancer risk is below the level of concern; and voiced concerns that EPA's risk assessment for chlorothalonil did not adequately address the risks of cancer from ''aggregate'' residues of multiple pesticides on food.

The Agency understands the commenter's concerns about establishing food tolerances for pesticides that have the potential to cause cancer. Prior to establishing such tolerances, EPA conducts an aggregate exposure assessment to evaluate cancer risk to ensure that the tolerance meets the safety standard of a ''reasonable certainty of no harm'' established by FFDCA. The cancer effect observed in chlorothalonil animal studies is believed to be a threshold effect resulting from a non-linear mode of action. In the case of a threshold effect for a pesticide, EPA considers that a tolerance will provide a ''reasonable certainty of no harm'' if the aggregate exposure to the pesticide residue is lower by an ample margin of safety than the level at which the pesticide will not cause or contribute to any known or anticipated harm to human health. Aggregate exposures that are at least 100–fold lower than the no observable adverse effect level (NOAEL) are considered to provide an ample margin of safety when data are extrapolated from animals. The aggregate exposure assessment conducted to evaluate cancer risk for chlorothalonil indicates that aggregate exposures are more than 100–fold lower than the NOAEL for chlorothalonil; therefore, EPA has concluded that the proposed tolerances are acceptable.

EPA disagrees with the comment that the chlorothalonil risk assessment did not adequately address cancer risk from residues of multiple pesticides on food. The Agency is required by section 408 of FFDCA to consider available information concerning the cumulative toxicological effects of the residues of a pesticide and of other substances having a common mechanism of toxicity with it. This requirement applies to all types of toxicological effects, including cancer. At this time, EPA has not identified any other substances having a common mechanism of carcinogenicity with chlorothalonil. Therefore, EPA did evaluate potential cancer risk from exposure to chlorothalonil and other pesticides.

IV. Conclusion

Based on the information, analysis, and conclusions in the December 3, 2008 proposal (73 FR 73632) (FRL–8390–1), tolerances are established for residues of chlorothalonil, tetrachloroisophthalonitrile, and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile, in or on lychee at 15 ppm and starfruit at 3.0 ppm.

V. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA on EPA's own initiaive. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this rule will not have significant negative economic impact on a substantial number of small entities. Establishing a pesticide tolerance or an exemption from the requirement of a pesticide tolerance is, in effect, the removal of a regulatory restriction on pesticide residues in food, and thus such an action will not have any negative economic impact on any entities, including small entities.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications''

as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (59 FR 22951, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 12, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.275 is amended by alphabetically adding the following commodities to the table in paragraph (a)(1) to read as follows:

§ 180.275 Chlorothalonil; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * *	*
Lychee	15
* * * *	*
Starfruit	3.0
* * * *	*

* * * * *

[FR Doc. E9–4364 Filed 3–3–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0066; FRL–8401–1]

Fluazifop-P-butyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluazifop-P-butyl in or on beans, dry, seed; peanut; peanut, meal and soybean, seed. Syngenta Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 4, 2009. Objections and requests for hearings must be received on or before May 4, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0066. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne @epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0066 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before May 4, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0066, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of February 6, 2008 (73 FR 6964) (FRL–8350–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F7289) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.411 be amended by establishing tolerances for residues of the herbicide fluazifop-P-butyl, butyl(R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate, in or on dry beans at 25 parts per million (ppm); peanuts at 1.5 ppm; soybean at 2.5 ppm; soybean meal at 2.5 ppm; and soybean refined oil at 0.01 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available to the public in the docket, *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the field trial data supporting the petition and to harmonize with the Food and Feed Commodity Vocabulary at *http://www.epa.gov/opphed01/foodfeed/index.htm*. EPA has amended the commodity listing to read: Beans, dry, seed at 50 ppm; peanut at 1.5 ppm; peanut, meal at 2.2 ppm; and soybean, seed at 2.5 ppm. EPA is also editorially combining the tolerance sections and correcting the tolerance expressions to delete references to the unresolved isomer fluazifop-butyl that is no longer a registered pesticide under FIFRA. Background information is provided in the docket associated fluazifop-P-butyl; Tolerance Reassessment Decision. The Notice of Availability was published in the **Federal Register** of October 21, 2005 (70 FR 61287) (FRL–7726–2).

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of fluazifop-P-butyl on beans, dry, seed; peanut; peanut, meal; and soybean, seed at 50 ppm, 1.5 ppm, 2.2 ppm, 2.5 ppm, respectively. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

In characterizing the toxicity of fluazifop-P-butyl, EPA considered data on both fluazifop-P-butyl and fluazifop-butyl. Fluazifop-P-butyl is the purified (R) enantiomer of the mixed isomeric (RS) fluazifop-butyl product and the data show them to be toxicological equivalent. Fluazifop-P-butyl has shows no indication of being an eye or skin irritant in acute or 21–day dermal studies, and is not a skin sensitizer. Fluazifop-P-butyl does show similar toxicity by both the inhalation and oral routes because of its metabolization by blood into the acid form and excretion in this manner. The liver and kidney have demonstrated to be its target organs expressed for the most part as liver toxicity in the presence of peroxasome proliferation and exacerbation of age related kidney toxicity. In general, there were no carcinogenicity concerns in any acceptable studies in the rat with fluazifop-butyl or in the hamster for fluazifop-P-butyl. The hamster was selected for cancer study because liver

peroxasome proliferation more closely resembled what was found for human liver cells. There were no mutagenicity concerns evident for fluazifop-butyl or fluazifop-P-butyl. There were no concerns for neurotoxicity resulting from fluazifop-P-butyl which were evident at relevant exposure levels. There was also no evidence of clinical signs which would indicate neurotoxicity or neuropathology in the available studies as well. Marginal increases in brain weights at termination were observed in a sub-chronic toxicity study in rats, and in a carcinogenicity study performed on hamsters, but only at higher doses. In all, it was concluded that there is no concern for developmental neurotoxicity resulting from exposure to fluazifop-butyl or fluazifop-P-butyl.

Specific information on the studies received and the nature of the adverse effects caused by fluazifop-p-butyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document *Fluazifop-P-Butyl. Amended Human Health Risk Assessment to Support Use on Dry Beans, Peanuts, and the Post-Bloom Application to Soybeans*, page 11 in docket ID number EPA–HQ–OPP–2008–0066.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for fluazifop-P-butyl used for human risk assessment is discussed at *http://www.regulations.gov* in the document *Fluazifop-P-Butyl. Amended Human Health Risk Assessment to Support Use on Dry Beans, Peanuts, and the Post-Bloom Application to Soybeans*, page 11 in docket ID number EPA–HQ–OPP–2008–0066..

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to fluazifop-P-butyl, EPA considered exposure under the petitioned-for tolerances as well as all existing fluazifop-P-butyl tolerances in (40 CFR 180.411). EPA assessed dietary exposures from fluazifop-P-butyl in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed all foods for which there are tolerances (current and proposed) were treated (100% crop treated (PCT) assumption)) and contain tolerance-level residues with ratio adjustments to account for additional metabolites of concern. PCT and/or anticipated residues were not used in the acute risk assessment.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed average residue levels observed in applicable field trials and PCT were used.

iii. *Cancer*. The Agency has determined that fluazifop-P-butyl is ''not likely to be a human carcinogen'' based on the lack of evidence of carcinogenicity in rats and hamsters and no mutagenicity concerns. Therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: Almonds 100%, asparagus 1%, carrots 10%, nectarines 1%, onions 15%, peaches 1%, pistachios 100%, pomegranates 100%, soybeans 100%, and watermelons 100%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which fluazifop-P-butyl may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluazifop-P-butyl in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluazifop-P-butyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model /Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of fluazifop-P-butyl for acute exposures are estimated to be 23.9 parts per billion (ppb) for surface water and 0.59 ppb for ground water. For chronic exposures assessments are estimated to be 5.1 ppb for surface water and 0.59 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 23.9 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 5.1 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fluazifop-P-butyl is currently registered for the following uses that could result in residential exposures: Lawns, walks, driveways, and ornamental planting beds. EPA assessed residential exposure using the following assumptions: Homeowners that apply fluazifop-P-butyl products may become exposed for short-term durations via the dermal and inhalation routes. Fluazifop-P-butyl can be used in a number of residential areas which may be frequented by the general population such as on home lawns. This provides the potential for short-term dermal (adults and children) and incidental oral exposure (children) following residential applications of fluazifop-P-butyl.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found fluazifop-P-butyl to share a common mechanism of toxicity with any other substances, and fluazifop-P-butyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluazifop-P-butyl does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicity database for fluazifop-P-butyl includes the rat and rabbit developmental toxicity studies and the 2–generation reproduction toxicity study in rats. There is some evidence of quantitative susceptibility following oral and dermal exposures to rats. Following *in-utero* exposures, developmental effects (characterized as delayed ossification) were seen in the absence of maternal toxicity in two strains of rats. There is no evidence (quantitative or qualitative) of susceptibility following *in-utero* oral exposure in rabbits or in the 2–generation reproduction toxicity study in rats. No evidence of neurotoxicity was seen.

Although increased prenatal and postnatal quantitative susceptibility was seen in rats, the Agency concluded that there is a low degree of concern and no residual uncertainties for prenatal and/or postnatal toxicity effects of fluazifop-P-butyl because:

i. The short-term dermal and inhalation endpoint of concern (delayed ossification) is considered to be a developmental delay rather than a malformation or variation.

ii. The developmental endpoint of concern (diaphragmatic hernia) used for assessing acute dietary risk was only found in one of the five developmental rat toxicity studies conducted.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluazifop-P-butyl is complete except for a confirmatory immunotoxicity study. EPA began requiring functional immunotoxicity testing of all food and non-food use pesticides on December 26, 2007. Since this requirement went into effect well after the tolerance petition was submitted, these studies are not yet available for fluazifop-P-butyl. In the absence of specific immunotoxicity studies, EPA has evaluated the available fluazifop-P-butyl toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. The slight immunotoxicity findings in the chronic dog study are unreliable due to the fact the dogs were unhealthy and no immunotoxic effects were noted in the subchronic dog study where the dogs

were healthy. No other potential immunotoxicity effects were evident in the toxicity database for fluazifop-P-butyl. The liver and kidney are the primary target organs and the most sensitive species is the rat (due to longer retention time of the major metabolite in this species). Based on these considerations, EPA does not believe that conducting a special series 870.7800 immunotoxicity study will result in a point of departure less than the NOAEL of 0.74 milligram/kilogram/day used in calculating the cPAD for fluazifop-P-butyl; therefore, an additional database uncertainty factor is not needed to account for potential immunotoxicity.

ii. There is no indication that fluazifop-P-butyl is a neurotoxic chemical at relevant exposure levels and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There are no residual uncertainties for prenatal and/or postnatal toxicity.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessments were performed based on reliable data on average residue levels observed in applicable field trials and PCT. Chronic exposure will not be underestimated. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluazifop-P-butyl in drinking water. EPA used similarly conservative assumptions to assess post application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fluazifop-P-butyl.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fluazifop-P-butyl will occupy 12.1% of the aPAD for (females 13-49 years old) the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluazifop-P-butyl from food and water will utilize 74.9% of the cPAD for (children 1-2 years old) the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluazifop-P-butyl is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fluazifop-P-butyl is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluazifop-P-butyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in aggregate margins of exposure (MOEs) of 150 for the general U.S. population, 150 for adult females and 240 for children; all below EPA's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fluazifop-P-butyl is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to fluazifop-P-butyl through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to fluazifop-P-butyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography-mass spectrometry) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex Maximum Residue Limits (MRLs) established for fluazifop residues. Canada has established a 1 ppm tolerance for fluazifop-butyl calculated as the acid in soybeans, and a Mexico MRL is established for fluazifop-p-butyl in soya at 1 ppm. The proposed U.S. tolerances cannot be harmonized with the Canadian or Mexican MRLs for soybean, because higher residues were observed in the U.S. crop field trials.

C. Response to Comments

Public comments were received from B. Sachau who objected to the proposed tolerances because of the amounts of pesticides already consumed and carried by the American population. She further indicated that testing conducted on animals have absolutely no validity and are cruel to the test animals. B. Sachau's comments contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to fluazifop-P-butyl, including all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has responded to B. Sachau's generalized comments on numerous previous occasions, 70 FR 1349-1354 (January 7, 2005); 69 FR 63083- 63096 (October 29, 2004).

V. Conclusion

Therefore, tolerances are established for residues of fluazifop-P-butyl, butyl(R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate, and the free and conjugated forms of the resolved isomer of fluazifop, (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid, expressed as fluazifop, in or on beans, dry, seed; peanut; peanut, meal; and soybean, seed at 50 ppm, 1.5 ppm, 2.2 ppm, and 2.5 ppm, respectively.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory*

Planning and Review (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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

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

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 12, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.411 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 180.411 Fluazifop-P-butyl; tolerances for residues.

(a) *General*. Tolerances are established for residues of the herbicide, fluazifop-P-butyl, butyl(R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate, and the free and conjugated forms of the resolved isomer of fluazifop, (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid, expressed as fluazifop, in or on the following commodities:

Commodity	Parts per million
Beans, dry, seed	50
Carrot, roots	2.0
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, meat byproducts	0.05
Cotton, oil	0.2
Cotton, undelinted seed	0.1
Egg	0.05
Endive	6.0
Fruit, stone	0.05
Goat, fat	0.05
Goat, meat	0.05
Goat, meat byproducts	0.05
Hog, fat	0.05
Hog, meat	0.05
Hog, meat byproducts	0.05
Horse, fat	0.05
Horse, meat	0.05
Horse, meat byproducts	0.05
Milk	0.05
Nut, macadamia	0.1
Onion, bulb	0.5
Peanut	1.5
Peanut, meal	2.2
Pecans	0.05
Poultry, fat	0.05
Poultry, meat	0.05

Commodity	Parts per million
Poultry, meat byproducts	0.05
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, meat byproducts	0.05
Soybean, seed	2.5
Spinach	6.0
Sweet Potato, roots	0.05

* * * * *

(c) *Tolerances with regional registrations*. Tolerances with regional registrations are established for residues of the herbicide, fluazifop-P-butyl, butyl(R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate, and the free and conjugated forms of the resolved isomer of fluazifop, (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid, expressed as fluazifop, in or on the following commodities:

Commodity	Parts per million
Asparagus	3.0
Coffee, bean	0.1
Pepper, tabasco	1.0
Rhubarb	0.5

* * * * *

[FR Doc. E9–4368 Filed 3–3–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0065; FRL–8400–4]

Propoxycarbazone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of propoxycarbazone and its Pr-2-OH metabolite in or on grass, forage and grass, hay. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 4, 2009. Objections and requests for hearings must be received on or May 4, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0065. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm.*

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must

identify docket ID number EPA–HQ–OPP–2008–0065 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before May 4, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0065, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of February 6, 2008 (73 FR 6964) (FRL–8350–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F7304) by Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.600 be amended by establishing tolerances for combined residues of the herbicide propoxycarbazone, 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl] benzoate in or on grass, forage and grass, hay at 20 parts per million (ppm) and 25 ppm and to amend the tolerances in 40 CFR 180.600 by increasing the established tolerances for residues of the herbicide propoxycarbazone, methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate (Pr-2-OH MKH-6561) in or on the food commodities cattle, goat, horse, sheep meat from 0.05 ppm to 0.1 ppm; meat byproducts from 0.3 ppm to 1.0 ppm; and milk from 0.03 ppm to 0.05 ppm. That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available to the public in the docket, *http://www.regulations.gov*.

Based upon review of the data supporting the petition, EPA recalculated a maximum reasonable dietary burden (MRDB) for cattle that is lower than used previously. No changes are required in the established tolerances for milk or livestock commodities for this petition.

Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of propoxycarbazone and its Pr-2-OH metabolite on grass, forage and grass, hay at 20 ppm and 25 ppm, respectively. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Propoxycarbazone has low acute toxicity via the oral, dermal, and inhalation routes. It is not an eye or dermal irritant or a dermal sensitizer. No toxicity was seen at the limit dose in a 28–day dermal toxicity study in rats. The main target organ appears to be the gastrointestinal (GI) tract (gastric irritation), with irritation observed in the 2-generation reproduction toxicity study in rats, developmental toxicity study in rabbits, and the 90–day feeding study in rats. In the 64–day and 1–year toxicity studies in dogs, no toxicity was observed at doses ≥1,181 milligram/kilogram/day (mg/kg/day) and, ≥605 mg/kg/day, respectively. Increased incidence of gastric irritation was observed at a very high-dose (limit dose) in a 90–day feeding study in rats. In a combined chronic toxicity/carcinogenicity study in rats, decreased body weight, increased urinary pH and histopathological changes in the kidney, indicate the kidney as the target organ. An effect on body weight was evident in both subchronic and chronic toxicity studies in mice.

There was no evidence of neurotoxicity in any study. No quantitative or qualitative evidence of increased susceptibility was seen following *in utero* exposure to rats or rabbits in developmental toxicity studies. No quantitative or qualitative evidence of increased susceptibility was seen following the prenatal or postnatal exposure to rats in a 2-generation reproduction toxicity study in rats. No evidence of carcinogenicity was observed in a carcinogenicity study in mice at doses up to the limit dose. In a chronic toxicity/carcinogenicity study in rats, there was an increase in the incidence of mononuclear cell leukemia (MNCL) in mid- and high-dose males; however, EPA concluded that MNCL was not treatment-related. Propoxycarbazone has been classified as ''not likely to be carcinogenic to human'' based on lack of carcinogenicity in mice and rats and negative findings in various mutagenicity assays.

Specific information on the studies received and the nature of the adverse effects caused by propoxycarbazone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document *Propoxycarbazone-sodium; Human-*

Health Risk Assessment for Proposed Section 3 New Use on Pasture and Rangeland Grasses at page 12 in docket ID number EPA–HQ–OPP–2008–0065 and in the **Federal Register** of July 7, 2004 (69 FR 40774) (FRL–7365–7).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effect of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for propoxycarbazone used for human risk assessment can be found at *http://www.regulations.gov* in document *Propoxycarbazone-sodium; Human-Health Risk Assessment* for Proposed Section 3 New Use on Pasture and Rangeland Grasses at page 12 in docket ID number EPA–HQ–OPP–2008–0065 and in the **Federal Register** of July 7, 2004 (69 FR 40774) (FRL–7365–7).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to propoxycarbazone, EPA considered exposure under the petitioned-for tolerances as well as all existing propoxycarbazone tolerances in (40 CFR 180.600). EPA assessed dietary exposures from propoxycarbazone in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for propoxycarbazone; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed that tolerance-level residues were for all food commodities at current or proposed propoxycarbazone tolerances, and that 100% of the crops included in the analysis were treated.

iii. *Cancer*. The Agency has determined that propoxycarbazone is ''not likely to be a carcinogenic to humans'' based on the lack of evidence of carcinogenicity in mice and rats and no mutagenicity concerns. Therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for propoxycarbazone. Tolerance level residues and/or 100% crop treated (CT) were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for propoxycarbazone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of propoxycarbazone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of propoxycarbazone for chronic exposures for non-cancer assessments are estimated to be 1.79 parts per billion (ppb) for surface water and 0.36 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 1.79 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Propoxycarbazone is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found propoxycarbazone to share a common mechanism of toxicity with any other substances, and propoxycarbazone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that propoxycarbazone does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. There is no evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure to propoxycarbazone. In the rat developmental toxicity study, no developmental or maternal toxicity was observed at doses up to 1,000 mg/kg/day (limit dose). In the developmental toxicity study in rabbits, developmental effects (abortion, post-implantation loss) were seen at a higher dose (limit dose) than the maternally toxic dose. There is no qualitative and/or quantitative evidence of increased susceptibility to propoxycarbazone following prenatal or postnatal exposure in a 2-generation reproduction study in rats. Although propoxycarbazone caused increased post implantation loss and decreased live litter size in the F2 litters at a dose level of 1,230.7–1,605.3 mg/kg/day, EPA did not consider this as evidence for increased susceptibility since it occurred in the presence of severe maternal toxicity (histopathological lesions in the stomach) and only at doses above the limit dose.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for propoxycarbazone is complete, except for immunotoxicity testing. EPA began requiring functional immunotoxicity testing of all food and non-food use pesticides on December 26, 2007. Since this requirement went into effect well after the tolerance petition was submitted, these studies are not yet available for propoxycarbazone. In the absence of specific immunotoxicity studies, EPA has evaluated the available propoxycarbazone toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. There was no evidence of adverse effects on the organs of the immune system in any study with propoxycarbazone. In addition, propoxycarbazone does not belong to a class of chemicals (e.g., the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be immunotoxic. Based on these considerations, EPA does not believe that conducting a special series (Harmonized Guideline 870.7800) immunotoxicity study will result in a point of departure less than the NOAEL of 74.8 mg/kg/day used in calculating the cPAD for propoxycarbazone; therefore, an additional database uncertainty factor is not needed to account for potential immunotoxicity.

ii. There is no indication that propoxycarbazone is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that propoxycarbazone results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to propoxycarbazone in drinking water. These assessments will not underestimate the exposure and risks posed by propoxycarbazone.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, propoxycarbazone is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to propoxycarbazone from food and water will utilize less than 1% of the cPAD for (children 1 to 2 years old) the population group receiving the greatest exposure. There are no residential uses for propoxycarbazone.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Propoxycarbazone is not registered for any use patterns that would result in residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to propoxycarbazone through food and water and will not be greater than the chronic aggregate risk.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Propoxycarbazone is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to propoxycarbazone through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. Propoxycarbazone is classified as ''not likely to be a carcinogenic to humans'' based on the lack of evidence of carcinogenicity in mice and rats and no mutagenicity concerns. Therefore, propoxycarbazone is not expected to pose a cancer risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to Propoxycarbazone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology—liquid chromatography with tandem mass spectrometry detection (LC/MS/MS), is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits established for propoxycarbazone.

C. Response to Comments

Public comments were received from B. Sachau who objected to the proposed tolerances because of the amounts of pesticides already consumed and carried by the American population. She further indicated that testing

conducted on animals have absolutely no validity and are cruel to the test animals. B. Sachau's comments contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to propoxycarbazone, including all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has responded to B. Sachau's generalized comments on numerous previous occasions. January 7, 2005, (70 FR 1349)(FRL–7691–4); October 29, 2004, (69 FR 63083) (FRL–7681–9).

V. Conclusion

Therefore, tolerances are established for combined residues of propoxycarbazone, methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl] benzoate and its Pr-2-OH metabolite, methyl 2-[[[(4,5-dihydro-3-(2-hydroxypropoxy)-4-methyl-5- oxo-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl] benzoate in or on grass, forage and grass, hay at 20 ppm and 25 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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

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

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

February 12, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.600 is amended by adding alphabetically the following commodities to the table in paragraph (a)(1) to read as follows:

§ 180.600 Propoxycarbazone: tolerance for residue.

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

Commodity	Parts per million
Grass, forage	20
Grass, hay	25
* * * *	*

* * * * *

[FR Doc. E9–4352 Filed 3–3–09; 8:45 am]

BILLING9 CODE 6560–50–S

Proposed Rules

Federal Register
Vol. 74, No. 41
Wednesday, March 4, 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 COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 090122043–9066–01]

RIN 0648–AX37

Gray's Reef National Marine Sanctuary Regulations on the Use of Spearfishing Gear

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing to prohibit the use of spearfishing gear in Gray's Reef National Marine Sanctuary. Spearfishing is often used to selectively target larger fish, and can significantly reduce abundance and alter the relative size structure of target species toward smaller fish. Therefore, the proposed prohibition would provide protection to the fishes and natural live-bottom community for which the sanctuary was designated. The proposal also would facilitate enforcement of an existing prohibition against the use of powerheads within the sanctuary. A draft environmental assessment has been prepared for this proposed action. NOAA is soliciting public comment on the proposed rule and draft environmental assessment.

DATES: Comments will be considered if received by May 4, 2009. A Public hearing will be held as detailed below: (1) March 19, 2009, 6–9 p.m., Stevens Wetlands Education Center, J.F. Gregory Park, Richmond Hill, Georgia.

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

- *Electronic submission (preferred method): www.regulations.gov* (search for docket # NOAA–NOS–2009–0002)
- *Mail:* Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411, Attn: Dr. George Sedberry, Superintendent.

Instructions: All comments received are a part of the public record and will be generally posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Becky Shortland at (912) 598–2381. Copies of the draft environmental assessment and proposed rule can be downloaded or viewed on the Internet at *http://www.regulations.gov* (search for docket # NOAA–NOS–2009–0002) or at *http://graysreef.noaa.gov.* Copies can also be obtained by contacting Stewardship Coordinator Becky Shortland, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, Georgia.

SUPPLEMENTARY INFORMATION:

I. Background

A. Gray's Reef National Marine Sanctuary

GRNMS was designated as the nation's fourth national marine sanctuary in 1981 for the purposes of: Protecting the quality of this unique and fragile ecological community; promoting scientific understanding of this live bottom ecosystem; and enhancing public awareness and wise use of this significant regional resource. GRNMS protects 16.68 square nautical miles of open ocean and submerged lands of particularly dense and nearshore patches of productive live bottom habitat. The sanctuary is influenced by complex ocean currents and serves as a mixing zone for temperate (colder water) and sub-tropical species. The series of rock ledges and sand expanses has produced a complex habitat of caves, burrows, troughs, and overhangs that provide a solid base upon which a rich carpet of temperate and tropical marine flora and fauna attach and grow.

This flourishing ecosystem attracts mackerel, grouper, black sea bass, angelfish, and a host of other fishes. An estimated 180 species of fish, encompassing a wide variety of sizes, forms, and ecological roles, have been recorded at GRNMS. Loggerhead sea turtles, a threatened species, use GRNMS year-round for foraging and resting, and the highly endangered northern right whale is occasionally seen in Gray's Reef. GRNMS is one of the most popular sportfishing areas along the Georgia coast.

B. Need for Action

This action is being proposed for two reasons. First, the proposed action would provide greater protection to sanctuary resources by removing a gear type that selectively targets larger fish, negatively altering the size structure of remaining populations. While the number of recreational divers spearfishing at GRNMS appears to be small, spearfishing is a highly efficient harvesting gear that is often used to selectively target larger fish relative to other fishing gears. Such fishing can significantly reduce abundance and alter the relative size structure of target species toward smaller fish. Some fish populations that are present in GRNMS are regionally overfished or approaching overfished status and researchers have commented on the lack of large snapper-grouper individuals at GRNMS.

Second, the proposed action would facilitate improved enforcement of an existing prohibition against the use of powerheads within the sanctuary. Powerheads, also sometimes referred to as bang sticks or shark sticks, are a specialized type of firearm intended for use underwater, that fire upon direct contact with the target. They are often used for spear fishing, or may be used to kill for sport or self defense. Under existing sanctuary regulations, it is unlawful to injure, catch or harvest any marine resource within the sanctuary, except by rod and reel, handline, or ''spearfishing gear without powerheads.'' 50 CFR 922.02(a)(5)(i).

Law enforcement officials have repeatedly expressed the need to prohibit all spearfishing to enable them to more effectively enforce the existing powerhead prohibition. Although NOAA has prohibited the use and possession of powerheads since the

1981 GRNMS designation, powerhead spear tips and spent shells are still found in the GRNMS. Spearguns with a powerhead and without a powerhead are similar in appearance, which can raise significant issues in proving a violation of the powerhead prohibition.

C. Previous Action on the Use of Spearfishing Gear

NOAA considered regulating spearfishing during the original management plan of 1981, but only spearfishing with powerheads was prohibited at the time. A complete spearfishing prohibition was again considered during the review and revision of the GRNMS Management Plan beginning in 1999. Along with the fact that visitor use (primarily recreational fishing; Ehler and Leeworthy 2002) had increased, evidence of powerhead use (despite the 1981 ban) created a growing concern. NOAA proposed to prohibit all spearfishing activities with the 2003 Draft Environmental Impact Statement/Draft Management Plan (DEIS/DMP) and associated proposed rule (68 FR 62033, October 31, 2003).

However, after consideration of public comments on the DEIS/DMP, NOAA concluded that additional socioeconomic information was needed and thus deferred any regulatory action on spearfishing. The 2006 Final EIS/MP instead included a commitment to gather additional socioeconomic information on spearfishing in GRNMS and review the issue again in two years.

The additional socioeconomic information was collected, analyzed and presented to the Sanctuary Advisory Council in September 2007. That information indicates no charter spearfishing activity and only a very small amount of private spearfishing activity within the GRNMS. Moreover, abundant opportunities to conduct spearfishing in nearby locations outside the sanctuary already exist. Copies of this report are available in the location mentioned in the **FOR FURTHER INFORMATION CONTACT** section.

D. Interactions With the South Atlantic Fishery Management Council (SAFMC)

Section 304(a)(5) of the NMSA states that:

> The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations. The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.

In 2003, the SAFMC prepared draft regulations, including a prohibition on spearfishing, for the proposed rule associated with the GRNMS Draft Environmental Impact Statement/Draft Management Plan (DEIS/DMP). However, after consideration of public comments on the DEIS/DMP, NOAA concluded that additional socioeconomic information was needed and thus deferred any regulatory action on spearfishing. The 2006 Final EIS/MP instead included a commitment to gather additional socioeconomic information on spearfishing in GRNMS and consider proposing a prohibition on spearfishing again two years later, with more extensive socioeconomic information on the impacts of the proposed rule.

NOAA presented an update of this issue at the October 2007 meeting of the Joint Habitat/Ecosystem Based Management Advisory Panel of the SAFMC and again at the December 2007 and March 2008 SAFMC meetings.

In June 2008, NOAA provided the SAFMC with the opportunity to prepare draft sanctuary fishing regulations concerning spearfishing activities for GRNMS. The SAFMC concurred with the proposed ban on spearfishing, but requested that NOAA prepare the draft regulations.

II. Summary of the Proposed Regulations

The proposed regulatory action would prohibit the use of all spearfishing gear in Gray's Reef National Marine Sanctuary. Existing regulations would be amended to eliminate ''spearfishing gear without powerheads'' from the list of allowable gear in 15 CFR 922.92(a)(5)(i). The proposed action also would prohibit the possession of spearfishing gear in GRNMS, except when stowed on board vessels transiting the sanctuary.

III. Classification

A. National Environmental Policy Act

NOAA has prepared a draft environmental assessment to evaluate the impacts of the proposed rulemaking. Copies are available at the address and Web site listed in the **ADDRESSES** section of this proposed rule.

B. Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant within the meaning of Executive Order 12866.

C. Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

D. 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) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This conclusion is based primarily on recent socioeconomic studies and on-site surveys of visitor use conducted by NOAA subsequent to the last proposed rulemaking. These studies and surveys revealed the following information.

First, there would be no economic impact upon consumptive recreational charter fishing businesses. These are the only small businesses known to operate within the sanctuary (businesses of this type are considered a ''small'' business if they have annual receipts not in excess of $7 million (13 CFR 121.201)). More than 10 such fishing businesses are active in the GRNMS. Socioeconomic survey results, however, indicate that none of these businesses made spearfishing trips to GRNMS in recent years and none plan to in the future.

Second, there would be no economic impact upon recreational charter diving businesses, as none currently operate within the sanctuary. In September 2007, in-person interviews were conducted with all businesses and organizations offering scuba diving trips along the Georgia coast. Four charter scuba diving operations and one scuba diving club were identified and

interviewed. The interviews gathered information that included operating profiles, preferred diving locations and methods, detailed business data (revenue and costs), and general opinions of the current state of scuba diving and spearfishing off the Georgia coast. None of these businesses offer scuba diving trips to GRNMS.

Moreover, abundant commercial spearfishing opportunities currently exist outside of the sanctuary. Dive charters reported a total of 1,747 person-days of scuba diving off the Georgia coast in 2007. Approximately 55 percent of these person-days were non-consumptive (no spearfishing) person-days, 44 percent were consumptive (spearfishing) person-days, and the remaining 1 percent was sightseeing/sportfishing.

Because the impacts of this rule on the recreational charter fishing businesses and the recreational charter diving business would be minimal or would have no impact, the Chief Counsel for Regulation certified to the Chief Counsel for Advocacy at SBA that this rule would not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

This proposed rule would not require any additional collection of information, and therefore no paperwork reduction act action is required. Notwithstanding any other provision 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 PRA, unless that collection of information displays a currently valid OMB Control Number.

IV. Request for Comments

NOAA requests comments on this proposed rule for 60 days after publication of this notice.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fishing gear, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Wildlife.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: February 26, 2009.

John H. Dunnigan,

Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

Accordingly, for the reasons set forth above, NOAA proposes amending part 922, title 15 of the Code of Federal Regulations as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 et seq.

2. Revise paragraphs (a)(5)(i) and (a)(6) of § 922.92 to read as follows:

§ 922.92 Prohibited or otherwise regulated activities.

(a) * * *

(5)(i) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead, within the Sanctuary by any means except by use of rod and reel, and handline gear.

(6) Except for possessing fishing gear or means for fishing stowed and not available for immediate use while passing through the Sanctuary without interruption or for valid law enforcement purposes, possessing, carrying, or using within the Sanctuary any fishing gear or means for fishing except rod and reel, and handline gear.

* * * * *

[FR Doc. E9–4567 Filed 3–3–09; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 84

[Docket Number NIOSH–005]

RIN 0920–AA10

Approval Tests and Standards for Closed-Circuit Escape Respirators

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice of proposed rulemaking; Reopening of comment period and notice of public meetings.

SUMMARY: The Department of Health and Human Services (DHHS) is reopening the comment period until April 10, 2009 and will hold public meetings concerning the proposed rule for Approval Tests and Standards for Closed-Circuit Escape Respirators that was published in the **Federal Register** on Wednesday, December 10, 2008.

DATES: The comment period for the proposed rule published December 10, 2008 (73 FR 75027), is reopened. All written comments on the proposed rule must be received on or before April 10, 2009. Public meetings on this proposed rule will be held on March 16 and March 23, 2009. Details concerning those meetings are in the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: You may submit comments, identified by RIN: 0920–AA10, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: niocindocket@cdc.gov.* Include ''RIN: 0920–AA10'' and ''42 CFR pt. 84'' in the subject line of the message.
- *Mail:* NIOSH Docket Office, Docket #005, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking, RIN: 0920–AA10. All comments received will be posted without change to *http://www.cdc.gov/niosh/docket,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.cdc.gov/niosh/docket.*

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services published a proposed rule on the Approval Tests and Standards for Closed-Circuit Escape Respirators on December 10, 2008. The Department requested comments on or before February 9, 2009. The Department planned to hold public meetings before that date but these meetings could not be scheduled.

The Department will hold two public meetings on the proposed rule at the following times and locations: March 16, 2009, beginning at 9 a.m., MST, and expected to end at 12:30 MST at the Marriot Denver Tech Center, 4900 S. Syracuse Street, Denver, CO 80237; and March 23, 2009, beginning at 1 p.m. *est,* and expected to end at 5 p.m. EST, at the Marriot Inn and Conference Center UMUC, 3501 University Boulevard E., Adelphi, MD 20783. As a result, the Department is also reopening the comment period until April 10, 2009 to permit additional time for interested parties to submit comments.

FOR FURTHER INFORMATION CONTACT: Jonathan V. Szalajda, NIOSH, National Personal Protective Technology Laboratory (NPPTL), Post Office Box 18070, 626 Cochrans Mill Road, Pittsburgh, Pennsylvania 15236, telephone (412) 386–5200, facsimile (412) 386–4089, e-mail *zfx1@cdc.gov.*

Dated: February 26, 2009.

Charles E. Johnson,

Acting Secretary.

[FR Doc. E9–4620 Filed 3–3–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 84

[Docket Number NIOSH–109]

RIN 0920–AA04

Quality Assurance Requirements for Respirators

AGENCY: Department of Health and Human Services.

ACTION: Notice of proposed rulemaking; Reopening of comment period and notice of public meetings.

SUMMARY: The Department of Health and Human Services (HHS) is reopening the comment period until April 10, 2009 and will hold public meetings concerning the proposed rule for Quality Assurance Requirements for Respirators that was published in the **Federal Register** on Wednesday, December 10, 2008.

DATES: The comment period for the proposed rule published December 10, 2008 (73 FR 75045), is reopened. All written comments on the proposed rule must be received on or before April 10, 2009. Public meetings on this proposed rule will be held on March 23 and March 30, 2009. Details concerning those meetings are in the **SUPPLEMENTAL INFORMATION** section below.

ADDRESSES: You may submit comments, identified by RIN: 0920–AA04, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: niocindocket@cdc.gov.* Include ''RIN: 0920–AA04'' and ''42 CFR pt. 84'' in the subject line of the message.
- *Mail:* NIOSH Docket Office, Docket #109, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking, RIN: 0920–AA04. All comments received will be posted without change to *http://www.cdc.gov/niosh/docket,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.cdc.gov/niosh/docket.*

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services published a proposed rule on the Quality Assurance Requirements for Respirators on December 10, 2008. The Department requested comments on or before February 9, 2009. The Department planned to hold public meetings before that date but these meetings could not be scheduled during the comment period.

The Department will hold two public meetings on the proposed rule at the following times and locations: March 23, 2009, beginning at 8:30 a.m. EST and expected to end at 12:30 p.m. EST, at the Marriot Inn and Conference Center UMUC, 3501 University Boulevard E., Adelphi, MD 20783; and March 30, 2009, beginning at 9 a.m. PST, and expected to end by 12:30 PST, at the Marriot Los Angeles Airport, 5855 West Century Boulevard, Los Angeles, CA 90045. As a result, the Department is also reopening the comment period until April 10, 2009 to permit additional time for interested parties to submit comments.

FOR FURTHER INFORMATION CONTACT: Jonathan V. Szalajda, NIOSH, National Personal Protective Technology Laboratory (NPPTL), Post Office Box 18070, 626 Cochrans Mill Road, Pittsburgh, Pennsylvania 15236, telephone (412) 386–5200, facsimile (412) 386–4089, e-mail *zfx1@cdc.gov.*

Dated: February 26, 2009.

Charles E. Johnson,

Acting Secretary.

[FR Doc. E9–4621 Filed 3–3–09; 8:45 am]

BILLING CODE 4163–18–P

Notices

Federal Register

Vol. 74, No. 41

Wednesday, March 4, 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

Agricultural Marketing Service

[Doc. No. AMS–LS–09–0008]

Soybean Promotion, Research, and Information Program: Opportunity To Request a Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) announces that soybean producers may request a referendum to determine if producers want a referendum on the Soybean Promotion and Research Order (Order), as authorized under the Soybean Promotion, Research, and Consumer Information Act (Act). If at least 10 percent (not in excess of one-fifth of which may be producers in any one State) of the 589,182 eligible producers, as determined by the Department of Agriculture (USDA), participate in the Request for Referendum, a referendum will be held within 1 year from that determination. If results of the Request for Referendum indicate that a referendum is not supported, a referendum would not be conducted. The results of the Request for Referendum will be published in a Notice in the **Federal Register**.

DATES: Soybean producers may request a referendum during a 4-week period beginning on May 4, 2009, and ending May 29, 2009. To be eligible to participate in the Request for Referendum, producers must certify that they or the producer entity they are authorized to represent paid an assessment at any time between January 1, 2007, and December 31, 2008.

Form LS–51–1, Soybean Promotion and Research Order Request for Referendum, may be obtained by mail, fax, or in person from the Farm Service Agency (FSA) county offices from May 4, 2009 to May 29, 2009. Form LS–51–1 may also be obtained via the Internet at *http://www.ams.usda.gov/lsmarketingprograms* during the same time period. Completed forms and supporting documentation must be returned to the appropriate county FSA office by fax or in person no later than close of business May 29, 2009; or if returned by mail, must be postmarked by midnight May 29, 2009, and received in the county FSA office by close of business on June 5, 2009.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; Telephone 202/720–1115; Fax 202/720–1125; or e-mail to *Kenneth.Payne@ams.usda.gov* or Rick Pinkston, Field Operations Staff, FSA, USDA, at Telephone 202/720–1857, Fax 202/720–1096, or by e-mail at *Rick.Pinkston@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Act (7 U.S.C. 6301–6311), this Notice announces the dates when the Request for Referendum will be conducted and the place where soybean producers may request a referendum on the Order. The Act provides that the Secretary, 5 years after the conduct of the initial referendum and every 5 years thereafter, shall give soybean producers an opportunity to request a referendum on the Order. The initial referendum was held in February 1994 and the results were announced on April 1, 1994. During the initial referendum, 85,606 valid ballots were cast, with 46,060 (53.8 percent) in favor of continuing the Order and the remaining 39,546 votes (46.2 percent) were against continuing the Order. The Act required approval by a simple majority for the Order to continue.

The most recent opportunity for producers to request a referendum on the Order was in May 2004. During that period, 3,206 producers completed valid requests—short of the 66,388 required to trigger a referendum. On July 13, 2004, the USDA announced the results of the Request for Referendum and that the requisite number of producers had not requested that a referendum be conducted.

On March 23, 2004, USDA published in the **Federal Register** a final rule (69 FR 13458) that set forth procedures for conducting a Request for Referendum. This rule amended the procedures for soybean producers to request a referendum on the Order, including definitions, provisions for supervising the process for requesting a referendum, eligibility, certification procedures for requesting the required form, where the Request for Referendum will be conducted, counting and reporting results, and disposition of the forms and records. These procedures will apply to this Request for Referendum period and can be found in the regulations, available at *http://www.ams.usda.gov/lsmarketingprograms* or by contacting our office at the address listed above. Since the Request for Referendum will be conducted at the county FSA offices, FSA employees will assist AMS by confirming eligibility, counting requests, and reporting results.

Individual producers and other producer entities will be provided the opportunity to request a referendum at the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum will be provided at the county FSA officer serving the county where the producer owns or rents land.

Eligibility

To be eligible to participate, producers must certify that they or the entity they are authorized to represent paid an assessment at some time between January 1, 2007, and December 31, 2008. They must complete form LS 51–1, Soybean Promotion and Research Order Request for Referendum, in person, by mail, or by facsimile from May 4, 2009, through May 29, 2009. Individual producers and other producer entities would request a referendum at the county FSA office where FSA maintains and processes the producer's, corporation's, or other entity's administrative farm records. For the producer, corporation, or other entity not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other entity owns or rents land. Form LS 51–1 may also be obtained via the Internet at *http://www.ams.usda.gov/lsmarketingprograms.* If obtained by the Internet, Form LS 51–1 must be completed and returned with the

supporting documentation to the county FSA office where FSA maintains and processes the producer's, corporation's, or other entity's administrative farm records. For the producer, corporation, or other entity not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other entity owns or rents land.

Form LS 51–1 and accompanying documentation may be returned in person, by mail, or facsimile to the appropriate county FSA office. Forms returned in person or by facsimile must be received in the appropriate county office prior to the close of business on May 29, 2009. If returned by mail, Form LS 51–1 and accompanying documentation must be postmarked no later than midnight of May 29, 2009, and received in the county FSA office by close of business on June 5, 2009.

The purpose of the Request for Referendum is to determine whether eligible producers favor the conduct of a referendum on the Order. Participation in the Request for Referendum is not mandatory. Producers should participate only if they wish to request a referendum on the program.

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], the information collection requirements made in connection with the Request for Referendum have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581–0093.

Authority: 7 U.S.C. 6301–6311.

Dated: February 26, 2009.

Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

[FR Doc. E9–4592 Filed 3–3–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Recreation Fee Permit Envelope

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension, with revision, of a currently approved information collection, 0596–0106 Recreation Fee Permit Envelope.

DATES: Comments must be received in writing on or before May 4, 2009 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Katie Donahue, Recreation, Heritage, and Volunteer Resources Staff, Mail Stop 1125, USDA Forest Service, 1400 Independence Ave. SW., Washington, DC 20250.

Comments also may be submitted via facsimile to Katie Donahue at 202–205–1145 or by e-mail to: *recreation2300@fs.fed.us.*

The public may inspect comments received at the Office of the Director, Recreation, Heritage and Volunteer Resources Staff, 4th Floor South, Sidney R. Yates Federal Building, 14th and Independence Avenue, SW., Washington, DC 20024 on business days between the hours of 8:30 a.m. and 4 p.m. Visitors are encouraged to call ahead to (202) 205–1169 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Katie Donahue, Recreation, Heritage, and Volunteer Resources Staff, at 202–205–1169 or *recreation2300@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Recreation Fee Permit Envelope.

OMB Number: 0596–0106.

Expiration Date of Approval: September 1, 2009.

Type of Request: Extension with Revision.

Abstract: The Federal Lands Recreation and Enhancement Act (16 U.S.C. 6801–6814) authorizes the Forest Service to collect recreation fees for use of government facilities and services.

The FS–2300–26, Recreation Fee Envelope, is a form used to document when visitors pay a required recreation fee. Currently, information collected for FS–2300–26 includes the amount enclosed in the envelope, number of days paid, time and date of purchase, visitor's vehicle license number and registered state, visitor's home ZIP-code, number in party, other charges (if applicable), visitor's Golden Passport or Interagency Pass Number (if applicable) and planned departure date, if applicable. The Forest Service is not proposing to change this information.

Also collected for FS–2300–26 is selected camp unit number (if applicable). The Forest Service proposes changing this collection to specify the type of camp unit in addition to the number (single campsite selected, or group campsite selected, and number in group campsite.)

The Forest Service proposes adding optional site- and activity-specific information to this collection, including a selection of the visitor's activity (site name, general recreation use, swim site, off highway vehicle, river use, trailhead, concessionaire-operated site, other).

This information is used to ensure that visitors have paid a required recreation fee. The information will be collected by federal employees and agents who are authorized to collect the recreation fees or rent government facilities. A national forest may use ZIP codes to help determine where the national forest's visitor base originates. Activity information may be used to improve services. Personal information such as names, addresses, and vehicle registration will not be maintained. Collecting this information is important to ensure that the national forests are able to evaluate whether a visitor has paid a required recreation fee.

If unable to collect this information, national forests would not be able to verify who has paid a recreation fee. National forests would not be able to schedule and rent government-owned facilities to the public successfully.

Estimate of Annual Burden: 3 minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 2 million.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,666 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the

request for Office of Management and Budget approval.

Dated: February 26, 2009.

Richard W. Sowa,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. E9–4516 Filed 3–3–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas National Forest; Beckwourth Ranger District, California; Beckwourth Ranger District Tall Whitetop Project

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: On May 9, 2006, **Federal Register** (Volume 71, Number 89, [Page 26921–26923]), the USDA Forest Service, Plumas National Forest announced its intent to prepare an Environmental Impact Statement (EIS) to eradicate populations of the noxious weed tall whitetop (Lepidium Iatifoliuin), along the Middle Fork of the Feather River. The proposed Federal action in this EIS was to use a three-step process to ensure the successful eradication of tallwhite top. One of the steps involved the use of herbicides. The EIS would have evaluated the environmental effects associated with these actions and any reasonable alternatives.

The notice of intent to prepare an EIS is withdrawn. The Plumas National Forest will continue the NEPA process by preparing an Environmental Assessment to evaluate the environmental effects of a new proposed action.

FOR FURTHER INFORMATION CONTACT: Michael Friend, P.O. Box 7, Blairsden, CA 96103; 530–836–7161; *rnjfriend@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Project Location

The project area is one-mile southwest of the town of Beckwourth, T23N, RI4E Sec. 26, 27, 28, and 29. It is comprised of the river corridor on either side of the junction of county road A–23 and highway 70.

Lead Agency: The USDA Forest Service is the lead agency for this proposal. Responsible Official: Beckwourth Ranger District Acting District Ranger, George C Garcia is the responsible official. Beckwourth Ranger District, P.O. Box 7, Blairsden, CA 96103.

Dated: February 23, 2009.

George C Garcia,

Acting District Ranger.

[FR Doc. E9–4445 Filed 3–3–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration.

Title: Message Testing Focus Groups and Interviews for the Digital-to-Analog Converter Box Program.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Emergency submission.

Number of Respondents: 328.

Average Hours per Response: 90 minutes.

Burden Hours: 492.

Needs and Uses: Congress directed the National Telecommunications and Information Administration (NTIA) to create and implement a program to provide coupons for consumers to purchase digital-to-analog converter boxes. These converter boxes are necessary for consumers who wish to continue receiving broadcast programming over the air using analog-only television sets after February 17, 2009—the date that television stations are required by law to cease analog broadcasting. Since September 2007, NTIA has been conducting a consumer education campaign to educate U.S. residents who receive over-the-air broadcasts on analog television sets about the digital television transition and the TV Converter Box Coupon Program. While awareness of the coupon program has been nationally reported, more than five million households were completely unprepared as of February 2009. On February 11, 2009, the President signed the DTV Delay Act into law changing the date by which all full-power television stations must cease analog broadcasts to June 12, 2009.

In an effort to help further determine who the unprepared households are, if the households have taken any steps to prepare for the transition, if not why, and the optimal messages and methods to communicate with the consumers who are not ready in the final months leading up to the transition, NTIA, will conduct 32 focus groups in ten cities and a limited number of individual interviews. This effort would lead in the development of new messages and materials to reach these consumers. The targeted audiences, identified as the more reliant on over-the-air television, include the following: (1) Economically disadvantaged households; (2) rural residents; (3) minorities; (4) people with disabilities; and (5) seniors.

Affected Public: Individuals or households.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas Fraser, (202) 395–5887.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by March 6, 2009 to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–5806, or *Nicholas_A._Fraser@omb.eop.gov*.

Dated: February 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–4513 Filed 3–3–09; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1606

Reorganization and Expansion of Foreign–Trade Zone 30, Salt Lake City, Utah

Pursuant to its authority under the Foreign–Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Salt Lake City Corporation, grantee of Foreign–Trade Zone No. 30, submitted an application to the Board for authority to expand and reorganize FTZ 30 in Salt Lake City,

Utah, within the Salt Lake City Customs and Border Protection port of entry (FTZ Docket 30–2008, filed 5/8/2008);

Whereas, notice inviting public comment was given in the **Federal Register** (73 FR 28430, 5/16/2008) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 30 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 13th day of February 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–4614 Filed 3–3–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–898

Chlorinated Isocyanurates from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 4, 2009.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5047 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 2008, the Department of Commerce (''the Department'') published the initiation of the administrative review of the antidumping duty order on chlorinated isocyanurates from the People's Republic of China (''PRC''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 44220 (July 30, 2008). This review covers the period June 1, 2007, through May 31, 2008. The preliminary results of review are currently due no later than March 2, 2009.

Extension of Time Limit for Preliminary Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary results of the administrative review of chlorinated isocyanurates from the PRC within this time limit. Specifically, due to complex issues, *e.g.* factors of production, and verification requirements, we find that additional time is needed to complete these preliminary results. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review by 90 days until June 1, 2009.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: February 26, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–4632 Filed 3–3–09; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–868

Folding Metal Tables and Chairs from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 4, 2009.

FOR FURTHER INFORMATION CONTACT: Giselle Cubillos or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1778 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 2008, the Department of Commerce (''the Department'') published the initiation of the administrative review of the antidumping duty order on folding metal tables and chairs from the People's Republic of China (''PRC''). See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review, 73 FR 44220 (July 30, 2008). This review covers the period June 1, 2007, through May 31, 2008. The preliminary results of review are currently due no later than March 2, 2009.

Extension of Time Limit for Preliminary Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary results of the administrative review of folding metal tables and chairs from the PRC within this time limit. Specifically, additional time is needed to analyze information pertaining to factors of

production, market economy purchases, and to determine the appropriate surrogate financial statements to use in establishing financial ratios. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review by 60 days until May 1, 2009.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: February 26, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–4631 Filed 3–3–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–890

Wooden Bedroom Furniture from the People's Republic of China: Amended Final Results of the January 1, 2007, through July 31, 2007, New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 31, 2008, the Department of Commerce (''Department'') published in the **Federal Register** the final results of the fourth new shipper reviews of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (''PRC''). *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Fourth New Shipper Reviews*, 73 FR 64916 (October 31, 2008) (''*Final Results*'') and accompanying Issues and Decision Memorandum. The period of review is January 1, 2007, through July 31, 2007. We are amending our *Final Results* to correct ministerial errors made in the calculation of the antidumping duty margin for Dongguan Mu Si Furniture Co., Ltd. (''Mu Si''), pursuant to section 751(h) of the Tariff Act of 1930, as amended (''the Act'').

EFFECTIVE DATE: March 4, 2009.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4474.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 2008, American Furniture Manufacturers Committee for Legal Trade and Vaughan–Basset Furniture Company, Inc. (collectively ''Petitioners''), and Mu Si submitted ministerial error allegations with respect to the final results of the fourth new shipper reviews of wooden bedroom furniture from the PRC. Petitioners and Mu Si made ministerial error allegations only with respect to Mu Si's margin calculations. No interested party submitted rebuttal comments.

Ministerial Errors

A ministerial error is defined in section 751(h) of the Act and further clarified in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.''

After analyzing all interested parties' comments, we have determined, in accordance with 19 CFR 351.224(e), that ministerial errors existed in certain calculations for Mu Si in the *Final Results*. Correction of these errors results in a change to Mu Si's final antidumping duty margin. The dumping margins for Donguan Bon Ten Furniture Co., Ltd. and the PRC–wide entity remain unchanged. For a detailed discussion of these ministerial errors, as well as the Department's analysis, *see* the Memorandum entitled: Ministerial Error Memorandum for the Amended Final Results of 2007 New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China, dated February 19, 2009, (''Ministerial Error Allegation Memorandum''). The Ministerial Error Allegation Memorandum is on file in the Central Records Unit, room 1117 in the main Department building.

Therefore, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* of the new shipper reviews of wooden bedroom furniture from the PRC. The revised weighted–average dumping margin is detailed below. For Mu Si–specific calculations, see ''Analysis Memorandum for the Amended Final Results for Mu Si,'' dated February 19, 2009. Listed below is the revised weighted average dumping margin resulting from these amended final results:

WOODEN BEDROOM FURNITURE FROM THE PRC

Exporter/Producer	Weighted–Average Margin (Percent)
Dongguan Mu Si Furniture Co., Ltd. / Dongguan Mu Si Furniture Co., Ltd.	8.30

Disclosure

We will disclose the calculations performed for these amended final results within five days of the date of publication of this notice to interested parties in accordance with 19 CFR 351.224(b).

Assessment Rate

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries based on the amended final results. For details on the assessment of antidumping duties on all appropriate entries, *see Final Results*.

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of these amended final results of the new shipper review.

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively on any entries made on or after October 31, 2008, the date of publication of the Final Results, for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be the rate shown for this company (except if the rate is *de minimis, i.e.*, less than 0.5 percent, a zero cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 216.01 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements shall remain in effect until further notice.

These amended final results are published in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: February 23, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–4626 Filed 3–3–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Allocation of Resources for Fire Service and Emergency Medical Service

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 4, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jason D. Averill, Fire Protection Engineer, 100 Bureau Drive, Gaithersburg, MD 20899–8664, (301) 975–2585; or *jason.averill@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection will be conducted by the Building and Fire Research Laboratory, a part of the National Institute of Standards and Technology, to establish a technical basis for optimal allocation of fire service and emergency medical service (EMS) resources. Presently, no scientifically-based method exists with which a fire chief or local administrator may evaluate the capacity of the fire and emergency medical services to respond to risks which are or may be present within the community served. Additionally, there is no validated capability to quantitatively evaluate alternative levels of hazard mitigation or services. This project will provide the technical foundation to model the existing community hazards and response capacity, as well as explore the impact of changes to the service capacity.

II. Method of Collection

Respondents from fire and emergency service districts throughout the U.S. will record event-specific fire and emergency medical response data through a secure, web-based database program. Respondents are authorized representatives of a fire or EMS district trained in the data entry format required in this data collection. The data will be collected in a statistically representative manner in order to support generalization of the findings to a wide array of communities in the U.S.

III. Data

OMB Number: 0693–0047.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, Local, or Tribal Government.

Estimated Number of Respondents: 400.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 4,267.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 27, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–4554 Filed 3–3–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Observer Programs' Information That Can Be Gathered Only Through Questions

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 4, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Joe Terry, (858) 546–7197, (*Joe.Terry@noaa.gov*) or Samantha Brooke, (301) 713–2367, *Samantha.Brooke@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) deploys fishery observers on United States commercial fishing vessels and to fish processing plants in order to collect biological and economic data. NMFS has at least one observer program in each of its six Regions. These observer programs provide the only reliable or most effective method for obtaining information that is critical for the conservation and management of living marine resources. Observer programs primarily obtain information through direct observations by employees or agents of NMFS; and such observations are not subject to the Paperwork Reduction Act (PRA). However, observer programs also collect the following information that requires clearance under the PRA: (1) Standardized questions of fishing vessel captains/crew or fish processing plant managers/staff, which include gear and

performance questions, safety questions, and trip costs, crew size and other economic questions; (2) questions asked by observer program staff/contractors to plan observer deployments; (3) forms that are completed by observers and that fishing vessel captains are asked to review and sign; (4) questionnaires to evaluate observer performance; and (5) a form to certify that a fisherman is the permit holder when requesting observer data from the observer on the vessel. NMFS has received PRA clearances for the second and fourth types of collections for some observer programs (OMB Control Numbers 0648–0423 and 0648–0202 for deployment questions and 0648–0550 and 0648–0536 for observer evaluations); those burden hours are now included in this national, comprehensive PRA submission.

The information collected will be used to: (1) Monitor catch and bycatch in federally-managed commercial fisheries; (2) understand the population status and trends of fish stocks and protected species, as well as the interactions between them; (3) determine the quantity and distribution of net benefits derived from living marine resources; (4) predict the biological, ecological, and economic impacts of existing management action and proposed management options; and (5) ensure that the observer programs can safely and efficiently collect the information required for the previous four uses. In particular, these biological and economic data collection programs contribute to legally mandated analyses required under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act (RFA), Executive Order 12866 (EO 12866), as well as a variety of state statutes. The confidentiality of the data will be protected as required by law.

II. Method of Collection

The surveys conducted by NMFS observers while they are deployed to a vessel to observe a particular fishing trip will be asked in-person to the captain, crew and/or owner (if onboard the vessel) during the course of the observed trip. Economic information not available during the trip may be requested via a mail follow-up survey. The questions asked by the observer program staff or contractor to plan observer deployments are typically asked via telephone or mailed survey. The feedback questionnaires to evaluate observer performance will be mailed to the vessel owners or captains.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,900.

Estimated Time per Response: 51 minutes. Information will be collected for observed fishing trips and deployments to fish processing plants; therefore, there will be multiple responses for some respondents.

Estimated Total Annual Burden Hours: 12,800.

Estimated Total Annual Cost to Public: $1,500.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–4522 Filed 3–3–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Monitor National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Monitor National Marine Sanctuary Advisory Council: North Carolina Maritime Museums. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the council's Charter.

DATES: Applications are due by May 29, 2009.

ADDRESSES: Application kits may be obtained from Shannon Rides, 100 Museum Drive, Newport News, VA 23606. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Shannon Ricles, 100 Museum Drive, Newport News, VA 23606; 757–591–7328; *Shannon.ricles@noaa.*

SUPPLEMENTARY INFORMATION: Established in 1975 as the Nation's first marine sanctuary, the Monitor National Marine Sanctuary is managed by NOAA's Office of National Marine Sanctuaries. It is one of 13 sanctuaries and protects the wreck of the famed Civil War ironclad, USS Monitor, best known for its battle with the Confederate ironclad, CSS Virginia in Hampton Roads, Va., on March 9, 1862.

The advisory council consists of 13 members and 3 alternates: 9 non-governmental voting members and 4 governmental voting members. The council seats represent a variety of regional interests and stakeholders, including: Recreational Diving, Heritage Tourism, Education, Maritime Museums, Conservation, the U.S. Navy, Virginia and North Carolina Department of Historic Resources, the National Park Service, Recreational/Commercial Fishing and the public at-large. It is the combined expertise and experience of these individuals that creates an advisory council that is a valuable and effective resource for the sanctuary manager.

The council's objectives are to provide the sanctuary manager with advice on: (1) Protecting natural and cultural resources, and identifying and evaluating emergent or critical issues involving sanctuary use or resources; (2) identifying and realizing the sanctuary's research objectives; (3) identifying and realizing educational opportunities to increase public knowledge and stewardship of the sanctuary

environment; and (4) developing an informed constituency to increase awareness and understanding of the purpose and value of the sanctuary and the National Marine Sanctuary System.

The council may serve as a forum for consultation and deliberation among its members and as a source of advice to the sanctuary manager regarding the management of the Monitor National Marine Sanctuary. The sanctuary advisory council holds open meetings to ensure continued public input on management issues and to increase public awareness and knowledge of the sanctuary environment. Public participation at these meetings is welcomed and encouraged.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: February 20, 2009.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9–4568 Filed 3–3–09; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

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), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, March 25, 2009, 2 p.m.–8 p.m.

ADDRESSES: Holiday Inn Santa Fe, 4048 Cerrillos Road, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov.*

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

2 p.m. Call to Order by Deputy Designated Federal Officer, Jeff Casalina.
Establishment of a Quorum, Lorelei Novak.
A. Roll Call.
B. Excused Absences.
Welcome and Introductions, J.D. Campbell.
Approval of Agenda.
Approval of January 28, 2009, Board Meeting Minutes.
2:15 p.m. Old Business.
A. Written Reports.
B. Open Discussion.
2:30 p.m. New Business.
A. Open Discussion.
2:45 p.m. Introduction of Recommendations to DOE.
3 p.m. Committee Reports.
A. Waste Management Committee, Gerry Maestas.
B. Environmental Monitoring and Surveillance Committee, Mike Loya.
3:15 p.m. Ad Hoc Committee Reports.
A. Fiscal Year 2011 DOE-EM Budget, Kathleen Hall.
B. Public Participation, Peter Baston.
3:30 p.m. Break.
3:45 p.m. Liaison Reports.
A. Department of Energy, George Rael.
B. Los Alamos National Security, Michael Graham.
C. Environmental Protection Agency, Richard Mayer.
4:30 p.m. New Mexico Environment Department Report: Schedule of Corrective Measures Evaluations, James Bearzi.
4:45 p.m. Los Alamos Site Office Presentation on DOE Los Alamos National Laboratory Implementation of NNMCAB Recommendations, Jeff Casalina.
5 p.m. Dinner Break.
6 p.m. Public Comment Period.
6:15 p.m. Consideration and Action on Draft Recommendation(s).
6:30 p.m. Presentation on Buckman Direct Diversion Project, Rick Carpenter.
7:30 p.m. Open Discussion.
A. Press Releases, Editorials, etc.
B. Future Presentation Topics.
C. Other Items.
8 p.m. Adjourn, Jeff Casalina.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The EM SSAB, Northern New Mexico, 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 Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests 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.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org/minutes/board-minutes.htm.*

Issued at Washington, DC, on February 25, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–4572 Filed 3–3–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

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), Savannah River Site. 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: Monday, March 23, 2009, 1 p.m.–5 p.m., Tuesday, March 24, 2009, 8:30 a.m.–4 p.m.

ADDRESSES: The Aiken Conference Center, 215 The Alley, Aiken, South Carolina 29801.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

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

Monday, March 23, 2009

1 p.m. Combined Committee Session.

5 p.m. Adjourn.

Tuesday, March 24, 2009

8:30 a.m. Approval of Minutes, Agency Updates, Public Comment Session, Chair and Facilitator Updates, Savannah River Nuclear Solutions Presentation: The First Six Months, Strategic and Legacy Management Committee Report, Public Comment Session.

12 p.m. Lunch Break.

1 p.m. Nuclear Materials Committee Report, Facility Disposition and Site Remediation Committee Report, Administrative Committee Report, Waste Management Committee Report, Public Comment Session.

4 p.m. Adjourn.

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, March 23, 2009.

Public Participation: The EM SSAB, Savannah River Site, 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 Gerri Flemming at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests 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.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.srs.gov/general/outreach/srs-cab/srs-cab.html.*

Issued at Washington, DC, on February 24, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–4573 Filed 3–3–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 24, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–56–000.

Applicants: Wolverine Creek Goshen Interconnection LLC.

Description: Joint Application of Wolverine Creek Goshen Interconnection, LLC, *et al.* for Authorization of Disposition of Facilities under Section 203 of the FPA and Request for Confidential Treatment, Expedited Consideration and Waivers.

Filed Date: 02/23/2009.

Accession Number: 20090223–5130.

Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–316–031.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits its Index of Customers for the fourth quarter of 2008 under their FERC Tariff for Transmission Dispatch and Power Administration Services.

Filed Date: 02/02/2009.

Accession Number: 20090203–0171.

Comment Date: 5 p.m. Eastern Time on Monday, March 2, 2009.

Docket Numbers: ER09–666–000; ER09–667–000; ER09–668–000; ER09–669–000; ER09–670–000; ER09–671–000.

Applicants: EDFD-Handsome Lake; EDFD-Perryman; EDFD-Keystone; EDFD-Conemaugh; EDFD-C.P. Crane; EDFD-West Valley.

Description: EDF Development, Inc submits application on behalf of each of several EDFD subsidiaries, for acceptance of market-based tariffs and granting of waivers and blanket authorizations; request that shortened comment period, etc.

Filed Date: 02/20/2009.

Accession Number: 20090223–0025.

Comment Date: 5 p.m. Eastern Time on Friday, March 13, 2009.

Docket Numbers: ER09–726–000.

Applicants: Vision Power, LLC.

Description: Vision Power, LLC requests acceptance of FERC Electric Tariff, Original Volume 1 under which it will engage in whole sales of electric energy transactions at market-based rates, etc.

Filed Date: 02/20/2009.

Accession Number: 20090223–0024.

Comment Date: 5 p.m. Eastern Time on Friday, March 13, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–21–000.

Applicants: Northern Maine Independent System Administrator, Inc.

Description: Application of Northern Maine Independent System Administrator, Inc. for Authorization to Issue Securities Pursuant to Section 204 of the Federal Power Act in ES09–21.

Filed Date: 02/23/2009.

Accession Number: 20090223–5068.

Comment Date: 5 p.m. Eastern Time on Monday, March 16, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the

appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–4579 Filed 3–3–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Availability of Request for Interest

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of Availability of Request for Interest.

SUMMARY: The Western Area Power Administration (Western), a power marketing administration within the U.S. Department of Energy, announces the availability of a Request for Interest (RFI). Western is seeking interest from any entity or entities interested in identifying a proposed transmission project, primarily in Western's service area, and/or desiring to participate with Western and possibly others by constructing, financing, owning, operating or maintaining transmission facilities or acquiring transmission rights or entering into long-term transmission service agreements on that project.

DATES: To be assured consideration, all Statements of Interest should be received by Western April 3, 2009.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this RFI, please contact Transmission Infrastructure Program, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, e-mail *txrfi@wapa.gov*. The RFI is also available on Western's Web site at *http://www.wapa.gov*.

SUPPLEMENTARY INFORMATION: Western markets and transmits wholesale hydroelectric power, generated at Federal dams across the western United States. This power is sold to customers in accordance with Federal Law. Western's transmission system was developed to deliver the Federal hydropower to those customers. Western owns and operates an integrated 17,000 circuit mile, high-voltage transmission system across 15 western states and a 1.3 million square-mile service area. Western's service area encompasses all of the following states: Arizona, California, Colorado, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming: as well as parts of Iowa, Kansas, Montana, Minnesota, and Texas. Today, Western makes capacity on its transmission system, excess to that needed to serve its preference customers, available through the policies and procedures outlined in its Open Access Transmission Tariff.

This RFI is being issued under authority granted to Western in the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 402 of the Recovery Act gives Western authority to construct, finance, facilitate, plan, operate, maintain or study construction of new or upgraded electric power transmission lines and related facilities with at least one terminus within the area served by Western and for delivering or facilitating the delivery of power generated by renewable energy resources constructed or reasonably expected to be constructed. The law provides borrowing authority to facilitate Western's participation, and further specifies that Western, in the course of selecting potential projects to be funded under this section, shall seek requests for interest from entities interested in identifying potential projects. This FRN fulfills that requirement.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508) and the DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined that this action is categorically excluded from further NEPA analysis. Future actions under this authority will undergo appropriate NEPA analysis.

Dated: February 20, 2009.

Timothy J. Meeks,

Administrator.

[FR Doc. E9–4610 Filed 3–3–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Proposed Program and Request for Public Comments

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Program and Request for Public Comments.

SUMMARY: The Western Area Power Administration (Western) proposes to adopt a Transmission Infrastructure Program. The Program is being proposed to implement section 402 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) for the purpose of constructing, financing, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines and related facilities with at least one terminus within the area served by Western and for delivering or facilitating the delivery of power generated by renewable energy resources constructed or reasonably expected to be constructed. The proposed Program would use authority granted under this section to borrow funds from the U.S. Treasury to accomplish these purposes. The Recovery Act also calls for Western to use a public process to develop practices and policies that implement the authority granted by this section. To expedite the development process, Western is offering this initial proposal. This **Federal Register** notice (FRN) seeks public comment on these proposed principles, policies and practices.

DATES: The consultation and comment period begins today and ends April 3, 2009. Western will present an explanation of the proposed program and accept oral and written comments at a public meeting on March 23, 2009, beginning at 1 p.m. MDT, in Lakewood, Colorado. The meeting will also be Webcast. Western will accept written comments any time during the consultation and comment period. Written comments on the proposed Program should be submitted to Western by April 3, 2009.

ADDRESSES: The public meeting will be held at Western's Corporate Services Office, 12155 West Alameda Parkway, Lakewood, CO 80228 on the date listed above. Send written comments to: Transmission Infrastructure Program, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, e-mail *txprogram@wapa.gov.* Western will post information about the program development on its Web site at

http://www.wapa.gov, including written comments received in response to this notice after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

As access to Western facilities is controlled, any U.S. citizen wishing to attend any meetings at Western must present a government-issued form of picture identification, such as a U.S. driver's license, U.S. passport, U.S. government ID, or U.S. military ID, at the time of the meeting. Foreign nationals should contact Western at least 15 days in advance of this meeting to obtain the necessary form for admittance to the meeting.

FOR FURTHER INFORMATION CONTACT: Please contact Transmission Infrastructure Program, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, e-mail *txprogram@wapa.gov.* This proposal is also available on Western's Web site at *http://www.wapa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Western markets and transmits wholesale hydroelectric power, generated at Federal dams across the western United States. This power is sold to customers in accordance with Federal Law. Western's transmission system was developed to deliver the Federal hydropower to those customers. Western owns and operates an integrated 17,000 circuit mile, high-voltage transmission system across 15 western states and a 1.3 million square-mile service area. Western's service area encompasses all of the following states: Arizona, California, Colorado, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming; as well as parts of Iowa, Kansas, Montana, Minnesota, and Texas. Today, Western makes capacity on its transmission system, excess to that needed to serve its preference customers, available through the policies and procedures outlined in its Open Access Transmission Tariff (OATT). Western offers nondiscriminatory access to its transmission system, including requests to interconnect new generating resources to that transmission system under its Safe Harbor OATT on file with the Federal Energy Regulatory Commission (FERC).

Western is seeking public comment on the proposed principles, policies and practices it will use to implement the authority provided in section 402 of the Recovery Act. A 30-day consultation and comment period starts with the publication of this notice in the **Federal Register**.

In defining the proposed Program, Western has identified a series of principles that will provide overarching guidance. It has further identified a series of policies and practices it will follow in implementing the proposed Program. These principles, policies and practices are described in this notice.

Proposed Action

The proposed action is to implement the Program authorized in section 402 of the Recovery Act. The Program goal is to identify, prioritize and participate in the study, facilitation, financing, planning, operating, maintaining, and construction of new or upgraded transmission facilities and additions that will help bring renewable energy resources to market across the West. One objective is to encourage non-Federal participation so as to leverage Western's borrowing authority. The Program consists of several major components: (1) Project Funding, (2) Project Evaluation, (3) Project Development, (4) Project Operation and Maintenance, and (5) Project Rates and Repayment.

Principles

In implementing the authority granted to Western in section 402, Western identified the following principles which provide overarching guidance. Western will ensure each project approved for funding using Treasury borrowing authority:

1. Is in the public interest.
2. Will not adversely impact system reliability or operations, or other statutory obligations.
3. Offers a reasonable expectation that the proceeds from such project shall be adequate to meet Western's financial repayment obligations.
4. Uses a public process to set rates for Western-owned transmission capacity resulting from any new facilities developed as a result of Western's participation in such project.
5. Has the necessary capabilities to provide generation-related ancillary services.
6. Uses the proceeds from the sale of the transmission capacity from such project for the repayment of the principal and interest of the loan from the Treasury attributable to that project, after reserving such funds as Western determines are necessary—
   a. to pay for the ancillary services that are provided.
   b. to meet the costs of operating and maintaining the new project.

Western will ensure the Program:

1. Provides an opportunity for participation of other entities in constructing, financing, owning, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines under this authority by seeking requests from entities interested in identifying potential projects through one or more notices published in the **Federal Register**.
2. Uses revenues from projects developed under this authority as the only source of revenue for—
   a. Repayment of the associated loan for the project and
   b. Payment of expenses for ancillary services, and operation and maintenance.
   c. Payments for ancillary services that will be credited to the existing power system providing these services, when the existing Federal power system is the source of the ancillary services.
3. Maintains appropriate controls to ensure, for accounting and repayment purposes, each transmission line and related facility project in which Western participates under this authority is treated as separate and distinct from—
   a. each other such project and
   b. all other Western power and transmission facilities.

Proposed Program

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II. Definitions
III. Project Funding
  A. Applicability
  B. Criteria
  C. Policies and Practices
IV. Project Evaluation
  A. Applicability
  B. Criteria
  C. Policies and Practices
V. Project Development and Operations and Maintenance
  A. Applicability
  B. Policies and Practices
VI. Project Rates and Repayment
  A. Applicability
  B. Criteria
  C. Policies and Practices
VII. Effective Date

II. Definitions

A. The term ''Administrator'' means the Administrator of Western.

B. The term ''entity'' means the firm or business concern that seeks to participate with Western under this authority.

III. Project Funding

A. *Applicability:* All Projects selected for funding under this authority are proposed to be governed by the principles, policies, and practices outlined in this notice.

B. *Criteria:* All projects selected for funding under this authority would be

evaluated based on the reasonable likelihood that the project will generate enough transmission service revenue to repay the principal investment, all operating costs and the accrued interest.

C. *Policies and Practices:*

1. Western will use generally accepted accounting principles and practices in recording and tracking all expenses and revenue transactions for each Project selected.

2. Western will isolate these financial accounting transactions in its existing financial management system.

IV. Project Evaluation

A. *Applicability:* All Projects to be considered for funding under this authority would be evaluated against the criteria outlined below.

B. *Criteria:* Project evaluation includes feasibility of developing a project that meets the following minimum criteria:

1. Facilitates the delivery of energy from renewable resources to market,

2. Is in the public interest,

3. Will not adversely impact system reliability or operations, or other statutory obligations,

4. Is reasonable to expect that the proceeds from such project shall be adequate to meet Western's financial repayment obligations, and

5. At least one terminus must be located within Western's service territory.

C. *Policies and Practices:*

1. Western will establish additional evaluation factors to evaluate proposed Projects as necessary.

2. Western may, at its discretion, use outside expertise to assist in evaluating proposed Projects seeking funding under this authority.

3. Western will treat data submitted by Project participants related to this authority, including project descriptions, participation and financing arrangements by other parties, as available to the public through the FOIA. However, participants may request confidential treatment of all or part of a submitted document under FOIA's exemption for ''Confidential Business Information.'' Materials so designated and which meet the criteria stipulated in the FOIA will be treated as exempt from FOIA inquiries.

V. Project Development and Operations and Maintenance

A. *Applicability:* All Projects to be considered for funding under this authority.

B. *Policies and Practices:*

1. For study, facility development, construction and any other related purposes, where applicable, Western will consider projects that may be constructed pursuant to its authority under section 402 of the Recovery Act separately from procedures and requirements for arranging for transmission service or interconnection under its OATT, or related interconnection agreements. To the extent projects considered under this authority might satisfy OATT or related requests, Western will attempt to develop the project to satisfy those requests, however project development under section 402 of the Recovery Act will take priority. Western will use the appropriate project management methods to initiate, plan, execute, monitor, control and close all transmission projects approved for funding under this authority.

2. Available transfer capability surplus to Western's need will be made available in a nondiscriminatory manner consistent with FERC open access transmission rules, Federal statute, and Western policies.

3. Western will comply with all other applicable Federal laws, regulations and policies.

VI. Project Rates and Repayment

A. *Applicability:* All Projects funded under this authority.

B. *Criteria:* The repayment requirements and applicable transmission rates will be designed so that proceeds from the project can reasonably be expected to be adequate to meet the repayment obligation.

C. *Policies and Practices:*

1. Before project development, Western will confirm the reasonable likelihood that the project will generate enough transmission service revenue to meet Western's financial repayment obligations including principal investment, operating costs, accrued interest, and other appropriate costs.

2. Transmission rates for transmission capacity Western owns or controls will be developed in a public process following the applicable requirements outlined in 10 CFR 903 and set by the Administrator as specified in relevant DOE orders.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508) and the DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined that this action is categorically excluded from further NEPA analysis. Future actions under this authority will undergo appropriate NEPA analysis.

Dated: February 20, 2009.

Timothy J. Meeks,

Administrator.

[FR Doc. E9–4609 Filed 3–3–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0107; FRL–8403-3]

Notice of Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of an initial filing of a pesticide petition proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before April 3, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0107 and the pesticide petition number (PP 8E7446), by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0107 and the pesticide petition number (PP). EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT:

Leonard Cole, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703.305.5412; e-mail address: *cole.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petition described in this notice contains data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

Amended Tolerance Exemption

PP 8E7446. Organic Works/BioNet International Corp. c/o Interregional Research Project Number 4, 500 College Road East, Princeton, NJ 08540, proposes to amend an exemption from the requirement of a tolerance in 40 CFR 180.1258 for residues of the biochemical pesticide, acetic acid, in or on all food commodities. The petitioner believes no analytical method is needed because there are no known analytical studies which have determined residue magnitudes on plant tissues following the herbicidal application of acetic acid. At the upper application rate of 55 pounds of active ingredient per acre the resulting concentrations should be well below the 1 to 1.5% levels predicted when acetic acid is applied to hay or grain, a use for which acetic acid has gained an exemption from the requirements of a tolerance in 40 CFR 180.1258. Since this product is a non-selective herbicide the product will be applied either when the crop is not present or the application will be directed away from the crop. The product is not intended for any direct application to the crop therefore only a minor amount of inadvertent residues could occur. Acetic acid is a naturally occurring substance found in all plants therefore inadvertent residues would be indistinguishable from acetic acid already in the crop.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 12, 2009.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E9–4133 Filed 3–3–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0101; FRL–8403–5]

Notice of Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of an initial filing of a pesticide petition proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before April 3, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0101 and the pesticide petition number (PP), by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0101 and the PP number. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8263; e-mail address: *greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

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

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

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

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

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

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

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

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

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

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

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

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petition described in this notice contains data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

PP 9F7521. Monsanto Company, 800 North Lindbergh Blvd., St. Louis, MO 63167, proposes to establish an 18–month time-limited exemption from the requirement of a tolerance for residues of the plant-incorporated protectant (PIP), *Bacillus thuringiensis* Cry1A.105 protein, in or on the food and feed commodities cotton seed, cotton seed oil, cotton seed meal, cotton hay, cotton hulls, cotton forage and cotton gin byproducts. The petitioner believes no analytical method is needed because a time-limited exemption from the requirement of a tolerance is being sought.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 13, 2009.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E9–4141 Filed 3–3–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0061; FRL–8401–7]

Pesticide Products; Registration Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any currently registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before April 3, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0061, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0061. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Raderrio Wilkins, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–1259; e-mail address: *wilkins.raderrio@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Registration Application

EPA received an application as follows to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

File Symbol: 52991–EG. Applicant: Bedoukian Research, Inc., 21 Finance Dr., Danbury, CT 06810–4192. Product name: Bedoukian L-Carvone. Active ingredient: L-Carvone at 99.5%. Proposal classification/Use: Biochemical technical grade ingredient (TGAI) that will be used in end-use products that repel mosquitoes and other biting insects.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: February 5, 2009.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E9–4224 Filed 3–3–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0045; FRL–8401–8]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before April 3, 2009.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the pesticide petition

number (PP) for the petition of interest as shown in the body of this document, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

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

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

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

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

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

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

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

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have a typical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that is the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

Time-Limited Tolerance

PP 9E7517 (EPA–HQ–OPP–2005–0477). DowAgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268 proposes to establish time-limited tolerances in 40 CFR 180.469 with an expiration date of December 31, 2010, for residues of dichlormid in or on field corn (forage, grain, stover) at 0.05 part per million (ppm); pop corn (grain, stover) at 0.05 ppm; and sweet corn (forage, kernel plus cob with husks removed, stover) at 0.05 ppm. An adequate enforcement method for residues of dichlormid in corn has been developed and validated by the Analytical Chemical Laboratory (ACL) of EPA. Analysis is carried out using gas chromatography with nitrogen selective thermionic detection. The limit of determination is 0.01 ppm. Contact: Keri Grinstead, (703) 308–8373, *grinstead.keri@epa.gov.*

New Tolerance Exemptions

1. *PP 9E7518*. (EPA–HQ–OPP–2009–0042). The Joint Inerts Task Force, Cluster Support Team 7, EPA Company Number 84881, c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005, proposes to establish an exemption from the requirement of a tolerance under 40 CFR 180.920 for residues of methyl poly(oxyethylene) C_8-C_{18} alkylammonium chlorides where the poly(oxyethylene) content is n=2-15 and where C_8-C_{18} alkyl is linear and may be saturated or unsaturated. Concentration in formulated end-use products is not to exceed 10% by weight in herbicide products and 5% by weight in all other pesticide products when used as pesticide inert ingredients in pesticide formulations, including CAS Reg. Nos. 3010–24–0, 18448–65–2, 70750–47–9, 22340–01–8, 67784–77–4, 64755–05–1, 61791–10–4, 28724–32–5, 28880–55–9, 68187–69–9, 68607–27–2, 60687–90–3. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Kerry Leifer, (703) 308–8811, *leifer.kerry@epa.gov*.

2. *PP 9E7516*. (EPA–HQ–OPP–2009–0043). The Joint Inerts Task Force, Cluster Support Team 11, EPA Company Number 84944, c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005, proposes to establish an exemption from the requirement of a tolerance under 40 CFR 180.920 for residues of sodium and ammonium naphthalenesulfonate formaldehyde condensates when used as pesticide inert ingredients in pesticide formulations, including CAS Reg. Nos. 68425–94–5, 9069–80–1, 9084–06–4, 36290–04–7, 91078–68–1, 141959–43–5, 9008–63–3. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Kerry Leifer, (703) 308–8811, *leifer.kerry@epa.gov*.

3. *PP 9E7519*. (EPA–HQ–OPP–2009–0046). The Joint Inerts Task Force, Cluster Support Team 25, EPA Company Number 84866, c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005, proposes to establish an exemption from the requirement of a tolerance under 40 CFR 180.920 for residues of N-alkyl (C_8-C_{18}) primary amines and acetate salts, where the alkyl group is linear and may be saturated and/or unsaturated. Concentration in formulated end-use products is not to exceed 8% by weight in herbicide products, 5% by weight in insecticide products, and 30% by weight in fungicide products when used as pesticide inert ingredients in pesticide formulations, including N-alkyl (C_8-C_{18}) primary amine acetate salts: CAS Reg. Nos. 61790–57–6, 61790–60–1, 61790–59–8, 61790–58–7 and N-alkyl (C_8-C_{18}) primary amines: CAS Reg. Nos. 61788–46–3, 61790–33–8, 68155–38–4. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Kerry Leifer, (703) 308–8811, *leifer.kerry@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 19, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–4590 Filed 3–3–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: COLLEGE CREEK MEDIA, LLC, Station KDVC, Facility ID 164124, BPH–20090205ACK, From DOVE CREEK, CO, To LOMA, CO; EDB VV LICENSE LLC, Station KRSX–FM, Facility ID 2316, BPH–20090203ACE, From YERMO, CA, To TWENTYNINE PALMS, CA; GRAND CANYON GATEWAY BROADCASTING, LLC, Station KYET, Facility ID 64357, BP–20090202AVS, From WILLIAMS, AZ, To GOLDEN VALLEY, AZ; HODSON BROADCASTING, Station KHOD, Facility ID 165982, BMPH–20090209ABC, From DES MOINES, NM, To RATON, NM; MAGIC BROADCASTING ALABAMA LICENSING LLC, Station WJRL–FM, Facility ID 63945, BPH–20090128AEX, From OZARK, AL, To FORT RUCKER, AL; PROETTI, LORENZ E, Station KLEP, Facility ID 166043, BMPH–20080201BPB, From DUBOIS, WY, To MOOSE WILSON ROAD, WY; RADIO TRAINING NETWORK, INC., Station WRTP, Facility ID 5018, BPED–20090121ACK, From ROANOKE RAPIDS, NC, To FRANKLINTON, NC; SAGA COMMUNICATIONS OF SOUTH DAKOTA, LLC, Station KUQL, Facility ID 42113, BPH–20090116ABV, From WESSINGTON SPRINGS, SD, To

ETHAN, SD; SIGA BROADCASTING CORP., Station KAML, Facility ID 17322, BP–20090204ABW, From KENEDY-KARNES CITY, TX, To MATHIS, TX; SUNBURST MEDIA-LOUISIANA, LLC, Station KMYO–FM, Facility ID 67677, BPH–20090129AMR, From MORGAN CITY, LA, To GRAY, LA; WAITT OMAHA, LLC, Station KOOO, Facility ID 35067, BPH–20090121AAL, From LINCOLN, NE, To LA VISTA, NE; WILLIAM C. CARN, III TRUSTEE FOR STAGE DOOR DEV, Station WUSD, Facility ID 62206, BPH–20090121AIF, From GENEVA, AL, To HARTFORD, AL.

DATES: Comments may be filed through May 4, 2009.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm*. A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. E9–4580 Filed 3–3–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements 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.: 011834–005.

Title: Maersk Line/Hapag-Lloyd Mediterranean U.S. Slot Charter Agreement.

Parties: A.P. Moller Maersk A/S and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would delete the U.S. Gulf Coast and the Eastern Mediterranean from the geographic scope of the Agreement, adds Malta to the scope, adjusts the amount of space being chartered, revises the duration of the Agreement, and makes other miscellaneous changes in the Agreement.

Agreement No.: 012062.

Title: ''K'' Line, PIL and WHS Transpacific Charter Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd. (''K'' Line); Pacific International Lines (PTE) Ltd. (''PIL''); and Wan Hai Lines (Singapore) PTE. Ltd. (''WHS'').

Filing Party: John P. Meade; Vice President-Law; ''K'' Line America, Inc.; 8730 Stony Point Parkway, Suite 400; Richmond, VA 23235.

Synopsis: The agreement authorizes the parties to share vessel space on an ad hoc basis in the trade between the United States and ports in Japan, Korea, and People's Republic of China, Hong Kong, Taiwan, and Republic of Singapore.

Agreement No.: 012063.

Title: Grand Alliance/Zim Transpacific Vessel Sharing Agreement.

Parties: Hapag-Lloyd Aktiengesellschaft; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; and Zim Integrated Shipping Services Limited (ZIM).

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes the parties to share vessel in the trade between ports on the Pacific Coast of United States and ports in South Korea, People's Republic of China, Hong Kong, Taiwan, Thailand, Singapore, and Japan.

Agreement No.: 201143–009.

Title: West Coast MTO Agreement.

Parties: APM Terminals Pacific, Ltd.; California United Terminals, Inc.; Eagle Marine Services, Ltd.; International Transportation Service, Inc.; Long Beach Container Terminal, Inc.; Seaside Transportation Service LLC; Trans Pacific Container Service Corporation; Total Terminals LLC; West Basin Container Terminal LLC; Yusen Terminals, Inc.; Pacific Maritime Services, L.L.C.; and SSA Terminal (Long Beach), LLC.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add Husky Terminal and Stevedoring, Olympic Container Terminal, Pierce County Terminal, SSA Terminals (Oakland), LLC, SSA Terminals (Seattle), LLC, Transbay Container Terminal, Inc., and Washington United Terminals, as parties to the Agreement, and correct the names and addresses of some of the existing members.

By Order of the Federal Maritime Commission.

Dated: February 27, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–4589 Filed 3–3–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 08–07]

Petition of Olympus Growth Fund III, L.P. and Olympus Executive Fund, L.P. for Declaratory Order, Rulemaking or Other Relief; Erratum

February 26, 2009.

In the Request for Comments in Docket 08–07, served February 19, 2009 and appearing in the **Federal Register** on February 25, 2009 (74 FR 8541), the date in the first sentence is corrected to read ''March 13, 2009.''

Karen V. Gregory,

Secretary.

[FR Doc. E9–4598 Filed 3–3–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

UTC Overseas, Inc., 100 Lighting Way, #4000, Secaucus, NJ 07094, *Officer:* Robert Schumann, COO (Qualifying Individual).

Cargo Net International L.L.C., 10925 NW 27th Street, Miami, FL 33173,

Officer: Juan Monagas, Manager (Qualifying Individual).

NEC Logistics, Ltd., 1–403 Kosugi-cho, Nakahara-ku, Kawasaki-shi, Kanagawa 211–0063, Japan, *Officer:* Yasurou Matsuoka, Assoc. Sen. V, President (Qualifying Individual).

Bidux LLC, 5 Lister Ave., Newark, NJ 07105, *Officers:* Maria Ayr, Manager (Qualifying Individual), Andrei Krainik, Member/Manager.

Port-Air Express Corporation, 1154 54th Street, Brooklyn, NY 11219, *Officers:* Chain Weiss, Vice President (Qualifying Individual), Susan Weiss, Treasurer.

SAR Transport Systems, Inc., 38 West 32nd Street, Fl. 12A, New York, NY 10001, *Officer:* Harry Taurani, President (Qualifying Individual).

St. Blue & Co., Inc., 18120 S. Broadway, Suite A, Gardena, CA 90248, *Officer:* Sammy Son, President (Qualifying Individual).

Speedway Freight System, Inc., 144–26 156th Street, Jamaica, NY 11434, *Officer:* Woong C. Kang, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Baillie Moving Systems, Ltd., 600 Kingsland Drive, Batavoa, IL 60510, *Officers:* Herman Jensen, Vice President (Qualifying Individual), Chris Baillie, President.

STG Freight Services, Inc., 1111 Kane Concourse—Suite 518, Bay Harbor Islands, FL 33154, *Officer:* Arthur Moroz, Vice President (Qualifying Individual).

Japan Express America Inc., 2203 E. Carson Street, Long Beach, CA 90810, *Officer:* Hideo Kamimura, Secretary (Qualifying Individual).

NEC Logistics America, Inc., 18615 Ferris Place, Rancho Dominguez, CA 90220, *Officers:* Eric H. Sakurai, Asst. Secretary (Qualifying Individual), Hidehito Tachikawa, President.

Unique Logistics International (ATL) Inc., 510 Plaza Drive, #2290, Atlanta, GA 30349, *Officers:* J.M. David Hickmott, Member/Manager (Qualifying Individual), Robert C. Shaver, Member/Manager.

Grimes Transportation Brokerage, Inc., 600 North Ellis Road, Jacksonville, FL 32254, *Officers:* Paul D. Dupre, Asst. Secretary (Qualifying Individual), Michael O'Leary, President.

CargoLogic USA LLC, 182–16 149th Road, Springfield Gardens, NY 11413, *Officers:* Melisa R. Sobalvarro, Vice President (Qualifying Individual), Alex Epshteyn, President.

Guam Freight Service, Inc., 2964 Alvarado St., Unit H, San Leandro, CA 94577, *Officer:* Michael Beidleman, President (Qualifying Individual).

Royal Pacific Shipping Co., 58 Leslie Street, Newark, NJ 07108, *Officer:* Roydel Rutty, Vice President (Qualifying Individual).

Transbulk Shipping Lines Inc., 5850 Coral Ridge Drive, Ste. 308, Coral Springs, FL 33076, *Officers:* Luis Burgos, Vice President (Qualifying Individual), Alexis Bocanegra, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Agility Project Logistics, Inc., 15600 Morales Road, Houston, TX 77032, *Officer:* Thomas J. Griffin, President (Qualifying Individual).

Gandhi International Shipping, Inc., 2358 W. Devon Ave., Chicago, IL 60659, *Officers:* Mohammed Ali Gandhi, President (Qualifying Individual), Safiya Gandhi, Secretary.

Blue Ocean Freight, Inc., 250 Valley Street, 2nd Front, Providence, RI 02909, *Officer:* Ali Karabashi, President (Qualifying Individual).

Freight Master Overseas Inc., 8177 N.W. 67th Street, Miami, FL 33166, *Officers:* Premchan Rampersad, President (Qualifying Individual), Shaffina Rampersad, Vice President.

Prolong Services Inc. dba PSI Ocean Freight Systems, 5803 Sovereign Dr., Houston, TX 77036, *Officers:* Stanley A. Egbo, President (Qualifying Individual), Ernest C. Agu, Vice President.

CML USA Inc., 184 Hebero Ave., Paramus, NJ 07652, *Officers:* Rita Dabragh, Vice President (Qualifying Individual), Elie M. Ibraahim, President.

Dated: February 27, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–4596 Filed 3–3–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve 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.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before May 4, 2009.

ADDRESSES: You may submit comments, identified by *FR H–4, FR 2064, RFP/RFPQ, or Reg W–IC* by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at

http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

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

• *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• *FAX:* 202/452–3819 or 202/452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission including, the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposals To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Recordkeeping Requirements Associated with Real Estate Appraisal Standards for Federally Related Transactions Pursuant to Regulations H and Y.

Agency form number: FR H–4.

OMB control number: 7100–0250.

Frequency: Event-generated.

Reporters: State Member Banks (SMBs) and nonbank subsidiaries of Bank Holding Companies (BHCs).

Annual reporting hours: SMBs, 35,120 hours; nonbank subsidiaries of BHCs, 59,823 hours.

Estimated average hours per response: 0.25 hours.

Number of respondents: 1,490.

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 3339). Further, the Board has the authority to collect information, including appraisals, during the examination of a SMB (12 U.S.C. 248(a)) and a BHC (12 U.S.C. 1844(c)). Such documents would generally be exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C 552(b)(4) and (b)(8)). Since the Federal Reserve does not collect this information, no issue of confidentiality under FOIA arises.

Abstract: For federally related transactions, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 requires SMBs and BHCs with credit extending subsidiaries to use appraisals prepared in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation. Generally, these standards include the methods and techniques used to analyze a property as well as the requirements for reporting such analysis and a value conclusion in the appraisal. There is no formal reporting form.

2. *Report title:* Recordkeeping Requirements Associated with Changes in Foreign Investments (Made Pursuant to Regulation K).

Agency form number: FR 2064.

OMB control number: 7100–0109.

Frequency: On-occasion.

Reporters: State member banks (SMBs), Edge and agreement corporations, and bank holding companies (BHCs).

Annual reporting hours: 320 hours.

Estimated average hours per response: 2 hours.

Number of respondents: 40.

Small businesses are not affected.

General description of report: The recordkeeping requirements of this information collection are mandatory (Section 5(c) of the BHC Act (12 U.S.C. 1844(c)); Sections 7 and 13(a) of the International Banking Act of 1978 (12 U.S.C. 3106 and 3108(a)); Section 25 of the Federal Reserve Act (FRA) (12 U.S.C. 601–604a); Section 25A of the FRA (12 U.S.C. 611–631); and Regulation K (12 CFR 211.8(c)). Since the Federal Reserve does not collect any records, no issue of confidentiality under the Freedom of Information Act (FOIA) arises. FOIA will only be implicated if the Board's examiners retain a copy of the records in their examination or supervision of the institution, and would be exempt from disclosure pursuant to FOIA (5 U.S.C. 552(b)(4), (b)(6), and (b)(8)).

Abstract: Internationally active U.S. banking organizations are expected to maintain adequate internal records to allow examiners to review for compliance with the investment provisions of Regulation K. For each investment made under Subpart A of Regulation K, records should be maintained regarding the type of investment, for example, equity (voting shares, nonvoting shares, partnerships, interests conferring ownership rights, participating loans), binding commitments, capital contributions, and subordinated debt; the amount of the investment; the percentage ownership; activities conducted by the company and the legal authority for such activities; and whether the investment was made under general consent, prior notice, or specific consent authority. With respect to investments made under general consent authority, information also must be maintained that demonstrates compliance with the various limits set out in Section 211.9 of Regulation K.

3. *Report titles:* Request for Proposal (RFP) and Request for Price Quotations (RFPQ).

Agency form numbers: RFP/RFPQ.

OMB control number: 7100–0180.

Frequency: On-occasion.

Reporters: Vendors and suppliers.

Annual reporting hours: RFP, 7,500 hours; and RFPQ, 1,600 hours.

Estimated average hours per response: RFP, 50 hours; and RFPQ, 2 hours.

Number of respondents: RFP, 150; and RFPQ, 800.

Small businesses are affected.

General description of report: This information collection is required to obtain a benefit (12 U.S.C. 243, 244, and 248(l)). The information obtained in evaluating a contract bid or price quotation is not regarded as confidential unless offeror requests confidentiality. The Board staff must review each request received under the Freedom of Information Act (FOIA; 5 U.S.C. § 552(b)(4)) to determine if the information may be withheld pursuant to applicable FOIA exemptions.

Abstract: The Federal Reserve uses the RFP and the RFPQ as needed to

obtain competitive bids and contracts submitted by vendors (offerors). Depending upon the goods and services for which the Federal Reserve is seeking bids, the offeror is requested to provide either prices for providing the goods or services (RFPQ) or a document covering not only prices, but the means of performing a particular service and a description of the qualification of the staff of the offeror who will perform the service (RFP). This information is used to analyze the proposals and select the offer providing the best value.

4. *Report title:* Notice Requirements in Connection with Regulation W (12 CFR Part 223 Transactions Between Member Banks and Their Affiliates).

Agency form number: Reg W.

OMB control number: 7100–0304.

Frequency: Event-generated.

Reporters: Insured depository institutions and uninsured member banks.

Annual reporting hours: 220 hours.

Estimated average hours per response: Loan participation renewal notice, 2 hours; Acquisition notice, 6 hours; Internal corporate reorganization transactions notice, 6 hours; and Section 23A additional exemption notice, 10 hours.

Number of respondents: 28.

Small businesses are not affected.

General description of report: This information collection is required to evidence compliance with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c(f) and 371c–1(e)). Confidential and proprietary information collected for the purposes of the Loan Participation Renewal notice 12 CFR 223.15(b)(4) may be protected under the authority of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)). Section (b)(4) exempts information deemed competitively sensitive from disclosure and Section (b)(8) exempts information ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.''

Abstract: On December 12, 2002, the Federal Reserve published a **Federal Register** notice [1] adopting Reg W to implement sections 23A and 23B. The Regulation was effective April 1, 2003. The Board issued Reg W for several reasons. First, the regulatory framework established by the Gramm-Leach-Bliley Act [2] emphasizes the importance of sections 23A and 23B as a means to protect depository institutions from losses in transactions with affiliates. Second, adoption of a comprehensive rule simplified the interpretation and application of sections 23A and 23B, ensured that the statute is consistently interpreted and applied, and minimized burden on banking organizations to the extent consistent with the statute's goals. Third, issuing a comprehensive rule allowed the public an opportunity to comment on Federal Reserve interpretations of sections 23A and 23B.

Board of Governors of the Federal Reserve System, February 27, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–4555 Filed 3–3–09; 8:45 am]

BILLING CODE 6210–01–P

[1] (67 FR 76603).

[2] Public Law No. 106–102, 113 Stat. 1338 (1999).

FEDERAL RESERVE SYSTEM

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

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 30, 2009.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. RMB Holdings, LLC, and ATB Management, LLC, both of Birmingham, Alabama, to become bank holding companies by acquiring up to 30 percent of the voting shares of Americus Financial Services, Inc., and its subsidiary, Red Mountain Bank, N.A., both of Birmingham, Alabama.

Board of Governors of the Federal Reserve System, February 27, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–4588 Filed 3–3–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends To take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—01/26/2009			
20090260	Turin Networks, Inc	Force10 Networks, Inc	Force10 Networks, Inc.
20090261	Munchener Ruckversicherungs-Gesellschaft AG in.	American International Group, Inc	HSB Group, Inc.
20090262	Local TV Holdings Raycom Media, Inc.	LLC Community Television of Alabama License, LLC, Community Television of Alabama, LLC, FoxCo Acquisition, LLC.	
Transactions Granted Early Termination—01/27/2009			
20090241	Medtronic, Inc	Ablation Frontiers, Inc	Ablation Frontiers, Inc.
20090258	Warburg Pincus Private Equity X, L.P.	Nuance Communications, Inc	Nuance Communications, Inc.
Transactions Granted Early Termination—01/28/2009			
20090238	JP Morgan Chase & Co	DC Chemical Co., Ltd	Columbian Chemicals Holding LLC.
Transactions Granted Early Termination—01/29/2009			
20081828 Getinge AB	Datascope Corp	Datascope Corp.	
Transactions Granted Early Termination—02/02/2009			
20090271	Lions Gate Entertainment Corp	Macrovision Solutions Corporation	TV Guide Entertainment Group, Inc.
20090278	NPG Mistream & Resources, L.P	MarkWest Liberty Midstream & Resources, L.L.C.	MarkWest Liberty Midstream & Resources, L.L.C.
Transactions Granted Early Termination—02/04/2009			
20090243	Glen A. Taylor	Golden Oval Eggs, LLC	AEI, LLC, GOEMCA, Inc., Golden Oval Eggs, LLC, Midwest Investors of Iowa.
Transactions Granted Early Termination—02/05/2009			
20090264	Electricité de France S.A	Constellation Energy Group, Inc	ACE Cogeneration Company, CER Generation II, LLC, Constellation Power Source Generation, Inc., Handsome Lake Energy LLC, Inter-Power/Ahlcon Partners L.P., Panther Creek Partners, Safe Harbor Water Power Corporation, Sunnyside Cogeneration Associates.
Transactions Granted Early Termination—02/09/2009			
20090281	Autonomy Corporation PLC	Interwoven, Inc	Interwoven, Inc.
Transactions Granted Early Termination—02/10/2009			
20090277 Morgan Stanley	Morgan Stanley Smith Barney LLC	Morgan Stanley Smith Barney LLC.	
Transactions Granted Early Termination—02/12/2009			
20090272	Olympus Growth Fund V, LP	Kocher-Plastik H. Bohmer GmbH & Co. KG.	Holopack International Corp.
Transactions Granted Early Termination—02/13/2009			
20090284	Unilever N.V	Mascolo Brothers Limited Mascolo Brothers Limited.	
Transactions Granted Early Termination—02/17/2009			
20090286	JLL Partners Fund VI, L.P	PharmaNet Development Group, Inc	PharmaNet Development Group, Inc.

For Further Information Contact: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H-303, Washington, DC 20580. (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–4381 Filed 3–3–09; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Grant Application Data Summary (GADS).

OMB No.: 0970–0328.

Description: The purpose of this request is to obtain an emergency OMB clearance of the Grant Application Data Summary (GADS) form to ensure information collected from all FY09 ANA grant applicants (in March 2009) is accurate.

The GADS collects information from applicants seeking grants from the Administration for Native Americans (ANA). ANA awards annual grants in nine competitive areas. Previously, ANA collected information using the GADS form for 4 competitive areas, not 9. The GADS form, which is part of the ANA discretionary grant application package, has been revised to comply with required changes made to the ADA FY09 Program Announcements (PAs). The PA5 were changed to comply with a new policy established by ACF requiring that subcategories within a PA be broken down into a stand-alone PA. On 12/5/08, ANA published nine PAs to support this new requirement for separate PA5; it was necessary for ANA to change the GADS form to reflect the new PA5. Below are the changes to the GADS form: (please select relevant topic under ONE heading)

(1) Special Initiative: Family Preservation: Improving the Well-Being of Children Planning; Curriculum Development; Community Assessment; Develop a Family Preservation Strategic Plan. Please choose all relevant topics from the selection below: Relationship and Marriage Education for Adults; Relationship and Marriage Education for Youth; Marriage Enrichment activities and services; Pre-marital education and marriage skills; Relationships Skills; Responsible Fatherhood or Parenting; Family preservation activities offered in a culturally appropriate and traditional manner; Absentee parent services, education and activities; Reduce child/infant abuse and neglect and family domestic violence; Needs of grandparents raising grandchildren; Foster Parent Training Family strengthening services to individuals with substance abuse issues; Public Advertising Campaigns; Research.

(2) Special Initiative: Family Preservation: Improving the Well-Being of Children Implementation Relationship & Marriage Education for Adults; Relationship & Marriage Education for Youth; Marriage Enrichment activities & services; Pre-marital education & marriage skills; Relationships Skills; Responsible Fatherhood; Parenting; Family preservation activities in a culturally appropriate & traditional manner; Absentee parent services, education & activities; Family Domestic Violence; Grandparents raising grandchildren; Foster Parent Training; Family strengthening services to individuals with substance abuse issues; Public Advertising Campaigns; Research.

(3) Native Language Preservation & Maintenance Assessment Data Collection; Formal Language Assessment; Informal Language Assessment.

(4) Native Language Preservation & Maintenance Planning Plan & design Master/Apprentice programs; Plan & design comprehensive Native language immersion programs for a language nest or survival school; Plan, design & test curriculum for students, parents & language instructors; Plan & design teaching materials; Record, transcribe & archive oral testimony; Plan & design language resource materials using recorded oral testimony; Plan & design multi-media language learning tools; Plan & design teacher certification programs; Train teachers, interpreters or translators of Native languages.

(5) Native Language Preservation & Maintenance Implementation Produce/disseminate culturally relevant printed stories for children using the Native language of the community; Facilitate/encourage intergenerational teaching of Native American language skills; Disseminate culturally relevant materials to teach & enhance the use of Native American languages; Implement an immersion, mentor or distance learning model; produce, distribute or participate in various media forms to broadcast Native languages; Implement an educational site based immersion project.

(6) Native Language Preservation & Maintenance Immersion Language Net; Language Survival School.

Respondents: Federally Recognized Indian Tribes, Tribal Governments, Native American Non-profits, Tribal Colleges and Universities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Grant Application Data Summary	500	1	0.50	250

Estimated Total Annual Burden Hours: 250.

Additional Information:

ACF is requesting that OMB grant a 90 day approval for this information collection under procedures for emergency processing by March 12, 2009. A copy of this information collection, with applicable supporting documentation, may be obtained by calling The Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690–7275.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, (202) 395–4718.

Dated: February 23, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–4355 Filed 3–3–09; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–E–0166]

Determination of Regulatory Review Period for Purposes of Patent Extension; SOLIRIS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SOLIRIS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written or electronic comments and petitions 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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biologic product, SOLIRIS (eculizumab). SOLIRIS is indicated for the treatment of patients with paroxysmal nocturnal hemoglobinuria (PNH) to reduce hemolysis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for SOLIRIS (U.S. Patent No. 6,355,245) from Alexion Pharmaceuticals, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 6, 2008, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of SOLIRIS represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SOLIRIS is 1,360 days. Of this time, 1,177 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: June 27, 2003. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on June 27, 2003.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: September 15, 2006. FDA has verified the applicant's claim that the biologics license application (BLA) for SOLIRIS (BLA 125166/0) was initially submitted on September 15, 2006.

3. *The date the application was approved*: March 16, 2007. FDA has verified the applicant's claim that BLA 125166/0 was approved on March 16, 2007.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 735 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 4, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 31, 2009. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 17, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E9–4526 Filed 3–3–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 7 and 8, 2009, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd, Silver Spring, MD. The hotel phone number is 301–589–5200.

Contact Person: Yvette Waples, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, fax: 301–827–6776, e-mail: yvette.waples@fda.hhs.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512544. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hotline/phone line to learn about possible modifications before coming to the meeting.

Agenda: On April 7, 2009, the committee will discuss safety and efficacy issues of new drug application (NDA) 20–644, sertindole (Serdolect) tablets, Lundbeck USA, proposed for the treatment of schizophrenia. On April 8, 2009, the committee will discuss safety and efficacy issues of supplemental new drug applications (sNDAs) 22–047/S–010/S–011/S–012, quetiapine b6 maleate (Seroquel XR), Astra Zeneca Pharmaceuticals LP, proposed for the treatment of major depressive disorder and 22–047/S–014/S–015, Seroquel XR (quetiapine maleate), Astra Zeneca Pharmaceuticals LP, proposed for the treatment of generalized anxiety disorder. Particular safety issues for discussion on April 8, 2009, regarding the Seroquel XR applications are concerns regarding exposing a greatly expanded population to a drug with known metabolic side effects and a possible risk of tardive dyskinesia.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 27, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on both days. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 18, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 23, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact John Lauttman at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 26, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–4523 Filed 3–3–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Reimbursement of Travel and Subsistence Expenses Toward Living Organ Donation Eligibility Guidelines

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Request for comments on proposed change to the Reimbursement of Travel and Subsistence Expenses Program Eligibility criteria.

SUMMARY: HRSA published the final eligibility guidelines for the Reimbursement of Travel and Subsistence Expenses Program in the **Federal Register** on October 5, 2007 (72 FR 57049). A subsequent amendment to the Program guidelines was published in the **Federal Register** on June 20, 2008 (73 FR 35143). HRSA is requesting public comments concerning recommended changes to a specific section of the reimbursement program eligibility guidelines. On page 35145, under the *Qualifying Expenses* Section, the first paragraph states:

> For the purposes of the Reimbursement of Travel and Subsistence Expenses toward Living Organ Donation Program, *qualifying expenses* presently include only travel, lodging, and meals and incidental expenses incurred by the donor and/or his/her accompanying person(s) as part of:
>
> (1) Donor evaluation, clinic visit or hospitalization,
>
> (2) Hospitalization for the living donor surgical procedure, and/or
>
> (3) Medical or surgical follow-up clinic visit or hospitalization within 90 days following the living donation procedure.

HRSA wishes to amend the first item of this paragraph to read: ''(1) Donor evaluation (including, if applicable, clinic visits or hospitalization) and/or''. This is a technical change to clarify that the expenses referred to are all related to the donor evaluation. In addition, HRSA wishes to amend the third item of this paragraph to read: ''(3) Medical or surgical follow-up, clinic visits, or hospitalization within 2 calendar years following the living donation procedure (or beyond the 2-year period if exceptional circumstances exist).'' This change in the follow-up period would bring the National Living Donor Assistance Center follow-up period in line with the Organ Procurement and Transplantation Network policy requiring follow-up of living organ donors for a period of 2 years. Adding the exceptional circumstances language at the end of this item would allow reimbursement for post-surgical follow-

up beyond the anticipated 2-year period in unusual circumstances.

HRSA is requesting your comments on this specific section.

DATES: Written comments must be submitted to the office in the address section below by mail or e-mail on or before April 3, 2009.

ADDRESSES: Please send all written comments to Richard Durbin, Acting Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, Room 12C–06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–7577; fax (301) 594–6095; or e-mail: *rdurbin@hrsa.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Durbin, Acting Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–7577; fax (301) 594–6095; or e-mail: *rdurbin@hrsa.gov*.

Dated: February 12, 2009.

Elizabeth M. Duke,

Administrator.

[FR Doc. E9–4519 Filed 3–3–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special: Biomaterials and Biointerfaces.

Date: March 9, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ross D. Shonat, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7849, Bethesda, MD 20892, 301–435–2786, *shonatr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Growth Factors, Cell Migration and Mechanosensors.

Date: March 10, 2009.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph D. Mosca, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435–2344. *moscajos@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; DIG Member Conflicts.

Date: March 11, 2009.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 CB P 40 P: Program Project: WNT Signaling.

Date: March 16–17, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Elena Smirnova, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–435–1236, *smirnove@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of Fellowships for Training in HIV Research.

Date: March 18–19, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mary Clare Walker, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nature's Solutions.

Date: March 18, 2009.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA/PA # RMO8–019 Membrane Protein Production Centers.

Date: March 23–24, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nuria E. Assa-Munt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biobehavior and Addiction.

Date: March 24, 2009.

Time: 9 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Epidemiology and Genetics Member Conflict Reviews.

Date: March 31, 2009.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Sandra Melnick Seitz, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028D, MSC 7770, Bethesda, MD 20892, 301–435–1251, *melnicks@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–4416 Filed 3–3–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ''Aging in Down Syndrome Adults''.

Date: April 1, 2009.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b0, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ''Aging in Adults with Down Syndrome—R03''.

Date: April 1, 2009.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 26, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–4617 Filed 3–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual other conducted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.

Date: March 16–17, 2009.

Time: 5:30 p.m. to 6 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 31 Center Drive, Room 4C32, Bethesda, MD 20892.

Contact Person: John J. O'Shea, MD, PhD, Scientific Director, National Institute of Arthritis & Musculoskeletal and Skin Diseases, Building 10, Room 9N228, MSC 1820, Bethesda, MD 20892, (301) 496–2612, *osheaj@arb.niams.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: February 26, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–4615 Filed 3–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: April 29–30, 2009.

Time: April 29, 2009, 8:30 a.m. to 4:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Bunim Room, Bethesda, MD 20892.

Time: April 30, 2009, 8:30 a.m. to 2:40 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Bunim Room, Bethesda, MD 20892.

Contact Person: Ira W. Levin, PhD, Chief, Section on Molecular Biophysics, Division of Intramural Research, National Institute of Diabetes and Digestive and Kidney Diseases, NIH, Bethesda, MD 20892, 301–496–6844, *iwl@helix.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.

(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: February 26, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–4616 Filed 3–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for type 1 diabetes. The outcome of the evaluation will be a decision whether NIDDK should support the request and make available contract resources for development of the potential therapeutic to improve the treatment or prevent the development of type 1 diabetes and its complications. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Type 1 Diabetes—Rapid Access to Intervention Development Special Emphasis Panel; National Institute of Diabetes and Digestive and Kidney Diseases.

Date: March 27, 2009.

Time: 1 p.m.–3 p.m.

Agenda: To evaluate requests for preclinical development resources for potential new therapeutics for type 1 diabetes and its complications.

Place: 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dr. Myrlelne Staten, Senior Advisor, Diabetes, Translation Research, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, NIH, 6707 Democracy Boulevard, Bethesda, MD 20892–5460, 301 402–7886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 98.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 26, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–4619 Filed 3–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; K-Application SEP.

Date: March 26, 2009.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Functional Dyspepsia and Eradication of H. Pylori-Risks Vs. Benefits.

Date: April 2, 2009.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Lithotripsy Program Project.

Date: April 7, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; AASK Renal Disease Progression Ancillary Studies.

Date: April 10, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Wellner, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4721, *rw175w@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 26, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–4623 Filed 3–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Urothelium and UTI Program Projects.

Date: March 27, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Methotrexate Response In Treatment of UC.

Date: April 1, 2009.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Lifestyle Intervention to Treat Erectile Dysfunction (LITE).

Date: April 2, 2009.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Immunosuppression Withdrawal for Stable Pediatric Liver Transplant Recipients.

Date: April 2, 2009.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary Studies to Ongoing NIDDK Clinical Research Studies.

Date: April 3, 2009.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara A Woynarowska, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 26, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–4629 Filed 3–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Center for AIDS Intervention Research Core Support.

Date: March 27, 2009.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Enid Light, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6132, MSC 9608, Bethesda, MD 20852–9608, 301–443–0322, *elight@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 26, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–4630 Filed 3–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities; Recombinant DNA Research: Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines)

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of consideration of a proposed action under the *NIH Guidelines.*

SUMMARY: In 2006, the National Science Advisory Board for Biosecurity, an advisory committee to the Secretary of the Department of Health and Human Services, the NIH Director and all Federal entities that conduct/support life sciences research published a report

entitled ''Addressing Biosecurity Concerns Related to the Synthesis of Select Agents.'' [1] The report included a recommendation that the United States Government (USG) ''examine the language and implementation of current biosafety guidelines to ensure that such guidelines and regulations provide adequate guidance for working with synthetically derived DNA and are understood by all those working in areas addressed by the guidelines.'' The USG adopted this recommendation and asked NIH to review the *NIH Guidelines for Research with Recombinant DNA (NIH Guidelines)* to evaluate whether these guidelines need to be revised to address biosafety concerns for research with synthetic DNA. With the advice of the NIH Recombinant DNA Advisory Committee (RAC), which is responsible for advising the NIH Director on all aspects of recombinant DNA technology, including revisions to the *NIH Guidelines,* the following proposed changes were developed. As outlined in more detail below, the proposed changes will expand the scope of the *NIH Guidelines* to specifically cover nucleic acid molecules made solely by synthetic means. The changes apply to basic laboratory research and clinical research. In addition, changes were made to clarify the criteria for determining whether an experiment to introduce drug resistance into a microorganism raises important public health issues such that it must be reviewed by the RAC and approved by the NIH Director. Finally, the proposed amendments speak to the appropriate level of review for recombinant or synthetic experiments involving more than half but less than two-thirds of the genome of certain viruses in tissue culture. These changes were prompted by an increased understanding of the biology of certain viruses that demonstrate there may be biosafety risks with certain viruses that contain less than two-thirds of the viral genome.

DATES: The public is encouraged to submit written comments on this proposed action. Comments may be submitted to OBA in paper or electronic form at the OBA mailing, fax, and e-mail addresses shown below under the heading **FOR FURTHER INFORMATION CONTACT**. All comments should be submitted by May 4, 2009. All written comments received in response to this notice will be available for public inspection in the NIH OBA office, 6705 Rockledge Drive, Suite 750, MSC 7985, Bethesda, MD 20892–7985, weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions, or require additional information about these proposed changes, please contact OBA by e-mail at *oba@od.nih.gov,* or telephone at 301–496–9838. Comments can be submitted to the same e-mail address or by fax to 301–496–9839 or mail to the Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Suite 750, MSC 7985, Bethesda, Maryland 20892–7985. Background information may be obtained by contacting NIH OBA by e-mail at *oba@od.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background: Nucleic Acid (NA) synthesis technology, in combination with other rapidly evolving capabilities in the life sciences, such as directed molecular evolution and viral reverse genetics, has galvanized segments of the scientific community. It also has captured the attention of the general public and policymakers, prompting far-reaching questions about the potential use of these techniques—including the synthesis of novel forms of life. These techniques promise to accelerate scientific discovery and have the potential to yield new therapeutics for disease. This same technology may lead to the modification of existing or the creation of new pathogens with unexpected and potentially dangerous characteristics.

In 2004, the National Research Council (NRC) published a report that made an important contribution to the development of biosecurity policy for the biological sciences, ''Biotechnology in the Age of Terrorism: Confronting the Dual Use Issue.'' [2] While this report was not the first to recognize this problem, and indeed the U.S. Government (USG) had already initiated an examination of security issues in the biological sciences, the NRC report laid out a series of actions to improve biosecurity in life science research, one of which was the creation of an advisory body. The USG recognized the need for such an advisory body and formed the National Science Advisory Board for Biosecurity (NSABB) to advise the U.S. Government on strategies for minimizing the potential for misuse of information and technologies from life sciences research, taking into consideration both national security concerns and the needs of the research community. The NSABB, as it is chartered, differs somewhat from the panel proposed by the NRC report, but has aims similar to those envisioned by the NRC committee.

At the NSABB's first meeting, the Secretary of Health and Human Services tasked the NSABB with identifying potential biosecurity concerns raised by the rapidly advancing ability to synthesize select agents (7 CFR part 331, 9 CFR part 121, and 42 CFR part 73) and other dangerous pathogens. In 2006, NSABB published a report entitled ''Addressing Biosecurity Concerns Related to the Synthesis of Select Agents.'' [3] In that report the NSABB noted that practitioners of synthetic genomics or researchers using synthetic nucleic acids in the emerging field of synthetic biology are often educated in disciplines that do not routinely include formal training in biosafety, *e.g.*, engineering. These researchers may be uncertain about when to consult an Institutional Biosafety Committee (IBC).

The NSABB recommended to the Secretary of the Department of Health and Human Services that the language and implementation of current biosafety guidelines be examined to ensure that such guidelines and regulation provide adequate guidance for working with synthetically derived nucleic acids. This recommendation on the need for biosafety guidance was considered by the Executive Branch through a trans-Federal policy coordination process. The recommendation on the need for biosafety guidance was accepted by the U.S. Government with the understanding that implementation would be through modification of the *NIH Guidelines* as appropriate. The changes to the *NIH Guidelines* would then be cross-referenced in the Centers for Disease Control and Prevention/NIH publication entitled: *Biosafety in Microbiological and Biomedical Laboratories* (BMBL).

The Recombinant DNA Advisory Committee (RAC) considered the applicability of the *NIH Guidelines* to the creation of, and experiments with synthetic nucleic acids (''synthetic biology'') and whether the *NIH Guidelines* adequately address the biosafety concerns that may arise from this research. The proposed revisions to the *NIH Guidelines* are intended to clarify the applicability of the *NIH Guidelines* to research with synthetic nucleic acids and provide principles and procedures for risk assessment and management of such research.

While the initial NSABB recommendation focused on synthetic

[1] The full document is available at *http://oba.od.nih.gov/biosecurity/pdf/Final_NSABB_Report_on_Synthetic_Genomics.pdf.*

[2] The report is available from the National Academies Press: *http://www.nap.edu/catalog.php?record_id=10827#toc.*

[3] The full document is available at *http://oba.od.nih.gov/biosecurity/pdf/Final_NSABB_Report_on_Synthetic_Genomics.pdf.*

genomics, which is the synthesis of nucleic acids using chemical or other methods that do not require traditional recombinant DNA techniques, it was recognized that this may be only be the first step in a research proposal. The synthetic nucleic acid will then likely be placed in cells or organisms. As it is articulated in the *NIH Guidelines,* it is the manipulation of the recombinant nucleic acids that leads to different biosafety concerns. As such, the focus of any review of synthetic genomics from a biosafety perspective needs to address the biological experiments that will be carried out. Therefore, with respect to the NIH Guidelines, the task was to review the biosafety considerations of introducing these synthetic nucleic acids into biological systems.

Synthetic genomics utilizes different techniques than traditional recombinant methods of synthesis; however, the ultimate product may be the same. The biosafety considerations in most cases are related to the product being produced more than the technique used. In other words, the technique for creating sequences of nucleic acids is not determinative of virulence, transmissibility and pathogenicity of the product, which are key considerations in biosafety. There is no one to one correlation between increasing nucleic acid diversity and increasing risk of harm. Indeed, what has developed in nature involves complex and highly regulated sequences of nucleic acids in which there is often synergy between genes. Bringing together a number of genes or sequences from different sources may result in a nucleic acid sequence that is not functional in an organism. On the other hand, a single nucleic acid change which could be done by recombinant or synthetic means could lead to a significant enhancement in virulence. The focus of a biosafety analysis should be on the product with consideration of the source of the sequences. Synthetic techniques may result in a greater range of products than recombinant methods but the underlying challenge is the same: trying to understand how those disparate parts will act together. Ultimately a biological analysis of the end results will be required.

Under the current risk assessment framework of the *NIH Guidelines,* the starting point for any risk assessment begins with an assessment of the parent organism from which the sequence is derived. As discussed under Section II, Safety Considerations, synthetic techniques may enable the synthesis of more complex chimeras containing sequences from a number of different sources. This increasing complexity may make the task of determining the parent organism more challenging. This is addressed in proposed language that will be added to the risk assessment section of the *NIH Guidelines* (see proposed changes to Section II–A).

Therefore, the changes proposed below treat the biosafety risks of experiments that use recombinant and synthetic techniques as equivalent. Also, although it was recognized that synthetic genetic manipulation techniques are not necessarily a very recent development, the integration of other fields (for example, chemistry and engineering) may lead to rapid development of yet unknown products that may raise new biosafety risks not anticipated. The risk management framework being presented herein is based on the current science and that which appears to be feasible in the foreseeable future.

The amendments will broaden the scope of the *NIH Guidelines,* which currently cover research involving DNA molecules created via recombinant techniques (*i.e.*, joining of DNA molecules), to encompass nucleic acids that are synthesized chemically or by other means without the use of recombinant technology. As amended, the *NIH Guidelines* will apply to all nucleic acids. This is accomplished through changes in Section I–A, Purpose and Section I–B, Definition of Recombinant DNA Molecules. The required level of review will be based on the risk of the experiment, i.e. the risk to the laboratory worker, the public and the environment. Low risk basic research involving non-replicating synthetic nucleic acids will be exempt from the *NIH Guidelines* and from review at the local level. High risk basic and clinical studies may be subject to review by the RAC and the NIH. To effect these changes, four sections of the *NIH Guidelines* will be revised. The title of the document will be changed to *NIH Guidelines for Research Involving Recombinant and Synthetic Nucleic Acid Molecules* and throughout the *NIH Guidelines* the term recombinant DNA will be changed to recombinant and synthetic nucleic acids.

In addition to broadening the scope of the *NIH Guidelines* to encompass synthetic nucleic acids, included are proposed amendments to two other sections of the *NIH Guidelines,* Section III–A–1 and Section III–E–1, in order to (1) clarify the oversight of recombinant experiments involving the introduction of drug resistance traits and (2) to change the level of review for recombinant or synthetic experiments involving more than half but less than two-thirds of the genome of certain viruses in tissue culture. These proposed amendments were recommended by the RAC.

Section III–A–1 requires certain experiments involving the transfer of drug resistance traits to microorganisms to be reviewed by the RAC and approved by the NIH Director. The current language has raised concerns from IBCs and investigators seeking to identify those experiments that require this heightened review. The revisions to Section III–A–1 will clarify that all experiments involving the transfer of a drug resistance trait to a microorganism will be subject to RAC review and NIH Director approval if the microorganism's acquisition of the trait could compromise public health. The changes will clarify that the microorganism's ability to acquire the trait naturally is not relevant to the safety of the experiment, that the provisions apply even if the drug at issue is not considered the ''drug of choice,'' and that adverse effects on population subgroups need to be considered.

Under the *NIH Guidelines,* approval for an experiment under Section III–A is specific to the investigator submitting the proposal. Recognizing that this may not be an efficient use of resources and may slow important research, a new provision will authorize OBA to make a determination that a proposed experiment that would fall under Section III–A is equivalent to an experiment that has been reviewed previously as a Major Action and approved by NIH Director. In such cases, OBA will have the authority to permit this research to proceed without going through RAC review and NIH Director approval if OBA determines that there are no substantive differences in experimental design and pertinent information has not emerged since submission of the initial experiment that would impact on the biosafety or public health risks for the proposed experiments.

Section III–E–1 of the *NIH Guidelines* currently states that tissue culture experiments involving viral constructs that contain less than two-thirds of the genome of any one of the high risk viruses may be performed at the lowest containment level (Biosafety Level 1) and initiated upon registration with the local institutional biosafety committee. The change proposed to this section will increase the threshold to less than one-half of the viral genome and require evidence that the resulting nucleic acid molecules are not capable of producing a replication competent virus. These changes are prompted by an increased understanding of the biology of certain viruses for which there may be biosafety

risks for research involving less than two-thirds of the viral genome.

These recommendations were adopted unanimously by the RAC at its March 2008 meeting. Included in these proposed changes are targeted questions that were considered in developing the proposed revisions to the *NIH Guidelines.* NIH requests not only comments on the proposed changes but also comment on the specific issues raised by these questions.

It should be noted that the *NIH Guidelines* currently apply to research that is conducted at or sponsored by institutions that receive NIH funding for any research involving recombinant DNA. Due to these proposed changes, the *NIH Guidelines* will apply to research that is conducted at or sponsored by institutions that receive NIH funding for any research involving recombinant DNA and synthetic acid molecules. In addition, other, non-NIH, U.S. Government agencies, including the Department of Defense, the Department of Veterans Affairs and Department of Agriculture, currently have policies in place stating that all recombinant DNA research conducted by or funded by these agencies must comply with the *NIH Guidelines.* While the *NIH Guidelines* may not govern all Government funded research, it may be used as a tool for the entire research community to understand the potential biosafety implications of their research.

In reviewing the proposed changes it is important to understand that *NIH Guidelines* outline appropriate biosafety practices and containment measures for laboratory recombinant DNA (rDNA) research and govern the conduct of clinical trials that involve the deliberate transfer of rDNA, or DNA or RNA derived from rDNA, into human research participants. The focus of the *NIH Guidelines* is on the risks to laboratory workers, the public and the environment associated with rDNA research and if implemented, synthetic nucleic acid research. The *NIH Guidelines* do promote the use of biological containment through the application of highly specific biological barriers that may limit the infectivity, dissemination, or survival of recombinant agents outside the laboratory. Biological containment may, therefore, mitigate the consequences of intentional misuse of such agents but does not directly address biosecurity issues raised by deliberate exposure outside of a research setting. As revised, the *NIH Guidelines* will continue to focus on the biosafety aspects of research with recombinant and synthetic nucleic acid molecules.

There may also be biosecurity or dual use research concerns with some research involving recombinant or synthetic nucleic acid molecules, but that is beyond the scope of the *NIH Guidelines.* Biosecurity aspects of research involving infectious agents are addressed in other venues, including for example, in the CDC–NIH *Biosafety in Microbiological and Biomedical Laboratories,* 5th Edition (Section VI, Principles of Laboratory Biosecurity) and the Select Agent Rules (42 CFR 73, 9 CFR part 121 and 7 CFR part 131). In addition, the U.S.G. continues to address these issues. For example, the NSABB is developing recommendations for the oversight of dual use research and is also addressing the issue of personnel reliability among individuals working with select agents.

Proposed Amendments to the NIH Guidelines

In order to ensure that biosafety considerations of synthetic biology research are addressed appropriately, the NIH is proposing the following changes to the *NIH Guidelines:*

Title of the NIH Guidelines

The title of the document is proposed to be changed from the *NIH Guidelines for Research Involving Recombinant DNA Molecules to the NIH Guidelines for Research Involving Recombinant and Synthetic Nucleic Acid Molecules.*

Section I. Scope of the NIH Guidelines

In order to clarify the applicability of the *NIH Guidelines* to research involving synthetic nucleic acids (NA), the following modifications are proposed to Section I, Scope of the *NIH Guidelines.*

Section 1–A. Purpose

Section I-A (Purpose) of the *NIH Guidelines* currently states that: ''the purpose of the *NIH Guidelines* is to specify practices for constructing and handling: (i) Recombinant deoxyribonucleic acid (DNA) molecules, and (ii) organisms and viruses containing recombinant DNA molecules.'' Section I–A is proposed to be amended to read: ''The purpose of the *NIH Guidelines* is to specify the practices for constructing and handling: (i) Recombinant nucleic acid molecules, (ii) synthetic nucleic acid molecules, including those wholly or partially containing functional equivalents of nucleotides, or (iii) organisms and viruses containing such molecules.''

As a result of these modifications, the *NIH Guidelines* will clearly apply to both recombinant and synthetically derived nucleic acids, including those that contain functional analogs of nucleotides (*e.g.* , those used in artificially engineered genetic systems).

In accordance with this change in the scope of the *NIH Guidelines* the term ''recombinant DNA molecules'' will be replaced with ''recombinant and synthetic nucleic acid molecules.''

Section I–B. Definition of Recombinant and Synthetic Nucleic Acids

The current definition of recombinant DNA molecule in the *NIH Guidelines* (Section I–B) is limited because it only explicitly refers to DNA and requires that segments be joined, which may not need to occur in research with synthetic NAs. The proposed revisions to the definition would retain a definition of recombinant NA similar to the current one for recombinant DNA but also add synthetic NA created without joining of segments. The current definition of recombinant DNA in Section I–B of the *NIH Guidelines* is articulated in three paragraphs labeled as A, B, and C in this notice only. Paragraph A states: ''In the context of the *NIH Guidelines,* recombinant DNA molecules are defined as either: (i) Molecules that are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell, or (ii) molecules that result from the replication of those described in (i) above.'' Paragraph B states: ''Synthetic DNA segments which are likely to yield a potentially harmful polynucleotide or polypeptide (*e.g.* , a toxin or a pharmacologically active agent) are considered as equivalent to their natural DNA counterpart. If the DNA segment is not expressed *in vivo* as a biologically active polynucleotide or polypeptide product it is exempt from the *NIH Guidelines.*'' Paragraph C states: ''Genomic DNA of plants and bacteria that have acquired a transposable element, even if the latter was donated from a recombinant vector no longer present, are not subject to the *NIH Guidelines* unless the transposon itself contains recombinant DNA.''

The following modifications are proposed to Section I–B. Definition of Recombinant DNA Molecules: Paragraph A is proposed to be revised to read: ''In the context of the *NIH Guidelines,* recombinant and synthetic nucleic acids are defined as: (i) Recombinant nucleic acid molecules that are constructed by joining nucleic acid molecules and that can replicate in a living cell, (ii) synthetic nucleic acid molecules that are chemically, or by other means, synthesized or amplified nucleic acid molecules that may wholly or partially contain functional

equivalents of nucleotides, or (iii) molecules that result from the replication of those described in (i) or (ii) above.''

Paragraph B will no longer be included in the definition. It was added to the *NIH Guidelines* in 1982 to clarify that then novel synthetic DNA segments would be considered as equivalent to their natural DNA counterparts with regards to containment conditions; however, it only covered synthetic DNA if it produced a toxin or a pharmacologically active agent. The language presented difficulty in interpretation because of the lack of definition of ''toxin or a pharmacologically active agent.'' Paragraph B is proposed to be deleted due to the fact that the concepts are sufficiently covered in the following portions: The new (ii) in paragraph A which explicitly extends the scope of the *NIH Guidelines* to cover recombinant and synthetic constructs, and Section III–F (Exempt Experiments) of the *NIH Guidelines,* which as discussed later, exempts those synthetic nucleic acid constructs that do not pose a significant biosafety risk.

Paragraph C will be deleted from this portion and will be moved to Section III–F of the *NIH Guidelines.* This is a proposed reorganization of the *NIH Guidelines* so that exempt molecules will be described in one place. A new Section IIIF–7 is proposed to read: ''Genomic DNA molecules of plants and bacteria that have acquired a transposable element provided the transposable element does not contain any recombinant or synthetic DNA'' are not subject to the *NIH Guidelines.*

In accordance with these changes in the scope and definition of the *NIH Guidelines,* the term ''recombinant DNA molecules'' will be replaced with ''recombinant and synthetic nucleic molecules'' throughout the *NIH Guidelines*.

Section III–C–1. Experiments Involving the Transfer of Recombinant DNA, or DNA or RNA Derived From Recombinant DNA, Into One or More Human Research Participants

In accordance with the change to the scope and definition of recombinant DNA, the definition of human gene transfer experiments will be amended. The first paragraph of Section III–C–1 currently states: ''For an experiment involving the deliberate transfer of recombinant DNA, or DNA or RNA derived from recombinant DNA, into human research participants (human gene transfer), no research participant shall be enrolled (see definition of enrollment in Section I–E–7) until the RAC review process has been completed (see Appendix M–I–B, RAC Review Requirements).'' As amended the first paragraph will state: ''For an experiment involving the deliberate transfer of recombinant or synthetic nucleic acids into human research participants (human gene transfer), no research participant shall be enrolled (see definition of enrollment in Section I–E–7) until the RAC review process has been completed (see Appendix M–I–B, RAC Review Requirements).''

Section III–F. Exempt Experiments

Additional modifications are proposed to augment or clarify experiments that are exempt from the *NIH Guidelines*, those listed in Section III–F. The exemptions under Section III–F are designed to strike a balance between safety and overregulation. They exempt certain nucleic acid molecules from oversight by the *NIH Guidelines* because their introduction into a biological system is not expected to have a biosafety risk that requires review by an IBC or the introduction of these nucleic molecules into biological systems would be akin to processes that already occur in nature and hence determining proper biosafety practices would be evident by the characteristics of naturally occurring sequence and/or would be covered by other guidances. Is there a risk that these exemptions could inadvertently exempt an experiment that is deserving of IBC review? First, it is important to recognize that with the exception of the new proposed III–F–1 discussed below, the exemptions from the original *NIH Guidelines* have been preserved with minor modifications. While synthetic synthesis of nucleic acids will potentially raise new biosafety concerns the exemptions focus narrowly on a small set of products that should not raise biosafety concerns that warrant IBC review whether created by recombinant or synthetic means.

To emphasize that research exempt from the *NIH Guidelines* will still have biosafety considerations and that other standards of biosafety may apply, a modification is proposed to the introductory language. Section III–F currently states: ''The following recombinant DNA molecules are exempt from the *NIH Guidelines* and registration with the Institutional Biosafety Committee is not required.'' This portion is proposed to read: ''The following recombinant and/or synthetic nucleic acids molecules are exempt from the *NIH Guidelines* and registration with the Institutional Biosafety Committee is not required. However, other Federal and state standards of biosafety may still apply to such research (for example, the CDC/NIH Biosafety in Microbiological and Biomedical Laboratories Manual).''

Section III–F–1

A new exemption under Section III–F–1 will exempt synthetic nucleic acids that cannot replicate from the *NIH Guidelines* unless they are used in human gene transfer (see Section III–C–1). This exemption is proposed so that the *NIH Guidelines* apply to synthetic NA research in a manner consistent with the current oversight of basic and preclinical recombinant DNA research. Currently oversight is limited to recombinant molecules that replicate or are derived from such molecules. The added section exempts basic, non-clinical research with synthetic NA that can not replicate or were derived from molecules that can replicate. The biosafety risks of using such constructs in basic and preclinical research are believed to be low. If a nucleic acid is incapable of replicating in a cell, any toxicity associated with that nucleic acid should be confined to that particular cell or organism and spread to neighboring cells or organisms should not occur to any appreciable degree. This type of risk is identical to that observed with chemical exposures, although nucleic acids are generally far less toxic than most chemicals.

Members of the RAC Biosafety Working Group noted that one of the original impetuses for creating a special biosafety oversight for recombinant DNA research was the novel biosafety risks to the individual laboratory worker, the public health, and the environment presented by the ability of novel replicating nucleic acids to disseminate and persist within and outside of the laboratory. This risk of transmissibility is distinct from chemicals or other toxins, because of the potential for long-term persistence.

Human gene transfer clinical trials should be differentiated from basic research. Current human gene transfer trials often involve non-replicating recombinant molecules. These are captured by the *NIH Guidelines* (see Section III–C–1 and Appendix M), because they are derived through recombinant technology that has steps involving replication (*e.g.*, replication incompetent vectors, RNAi or antisense RNA expressed from vectors are all derived from replicating systems). The biosafety and health risks for human gene transfer for synthetic non-replicating nucleic acids are not fundamentally different from non-replicating recombinant vectors.

The safety distinction between laboratory research and human gene

transfer is based on the difference in the potential health risk due to inadvertent lab exposure during basic or preclinical work and deliberate clinical gene transfer. The doses and routes of administration used in human gene transfer generally increase the risks. The risks to be considered for human gene transfer are not limited to the replicative nature of the vector but include transgene effects, risks of insertional mutagenesis, and immunological responses. For example, in the context of human gene transfer, the deliberate transfer of large numbers of replication incompetent retroviral vectors to hematopoietic stem cells in human clinical trials for X-Linked severe combined immunodeficiency disease contributed to the development of leukemia in some subjects starting several years after dosing. This is a unique situation in human trials that would not be replicated in a preclinical lab setting. Human gene transfer also raises scientific, medical, social and ethical considerations that warrant special attention and public discussion.

The following new exemption is proposed to be inserted as Section III–F–1; the current exemptions III–F–1 through III–F–5 are proposed to be re-numbered as III–F–2 through III–F–6. Section III–F–6 is proposed to become III–F–8, because a new section III–F–7 is proposed to be inserted. Section III–F–1 is proposed to read:

Section III–F–1: Synthetic nucleic acids that can not replicate, and that are not deliberately transferred into one or more human research participants (see Section III–C and Appendix M).

In arriving at the conclusion that non-replicating synthetic nucleic acids pose limited risks to the public or environment, the RAC considered different types of potential experiments involving a range of possible exposures (*e.g.*, dose, route) and nucleic acids (*e.g.*, positive strand RNA viruses, replication incompetent integrating vectors). For most research, the risks were considered sufficiently low so that little benefit was considered to be gained by increased oversight, which may hinder research. However, some questions remained. The public is encouraged to submit written comments on the following questions raised by this proposed modification to distinguish between laboratory and clinical research with replicating and non-replicating NA molecules.

(1) Is there a sufficient distinction between the risks of basic and preclinical research with replicating vs. non-replicating synthetic molecules to warrant the exemption?

(a) What are the risks with the use of replication incompetent integrating vectors in the laboratory? For example, preclinical research with recombinant lentiviral vectors is covered by the current *NIH Guidelines* because the vectors are generated using a step involving replication. At the lower doses typically used in laboratory experiments, are the risks to the laboratory worker of such non-replicating, synthetic NA research sufficiently low as to warrant exemption from the *NIH Guidelines*?

(2) Since the increased risk associated with human gene transfer is in part related to the administration of higher doses, should the exemption be limited to experiments involving the handling of low quantities or doses of NAs? What quantity would not be expected to pose a biosafety risk?

(3) Are there examples of non-replicating, synthetic NA research that should not be exempt due to greater potential risks (*e.g.*, expression cassettes for oncogenes or toxins)?

(4) For human gene transfer research, are there classes of non-replicating molecules that should be exempt due to lower potential risks (*e.g.*, antisense RNA, RNAi, etc.)? If so, what criteria should be applied to determine such classes?

Section III–F–2

Section III–F–1 is proposed to be renumbered to III–F–2 and will be amended to clarify that replicating NAs that are not in cells (in addition to organisms and viruses) are exempt. Essentially, nucleic acids that are not in a biological system that will permit replication and that have not been modified to enable improved penetration of cell membranes are extremely unlikely to have biosafety risks.

The primary risks associated with all nucleic acids, whether synthetic or natural, are the effects these can engender when inside an organism or the cellular compartment. Nucleic acids can alter protein expression patterns in cells by binding to nucleic acids and blocking (1) replication of DNA, (2) transcription of DNA into RNA and (3) translation of RNA into protein. Furthermore, binding of synthetic or natural DNA to cellular nucleic acids may result in degradation of cellular DNA or RNA through the activity of natural cellular defense mechanisms. Natural or synthetic DNA may have catalytic activity (*e.g.*, ribozymes) that can cleave target sequences in nucleic acids. It is these effects that can potentially lead the cell or organism containing the nucleic acid to pose a risk to laboratory workers, the public or environment.

None of the effects described above will occur unless the nucleic acid is introduced into an organism, or a cell. Nucleic acids, by virtue of their physical and chemical properties do not readily penetrate cell membranes. The negative charge of a nucleic acid molecule effectively prevents transfer across the plasma membrane of a cell unless the negative charges of the molecule are either masked or neutralized by addition of chemical compounds (*e.g.,* cationic lipids, calcium phosphate) or the cell membrane is physically perforated (*e.g.,* electroporation) to enable penetration and uptake by the cell.

In practice, the current *NIH Guidelines* cover the introduction or modification of recombinant DNA in tissue culture, organisms and viruses. Therefore, for clarity and in recognition that techniques have developed to more readily permit introduction of nucleic acids into cells, the amended F–1 speaks to cells, organisms and viruses. In addition, as stated above, natural barriers exist for entry of unmodified nucleic acids into cells. However, manipulation of molecules modified for improved penetration of cell membranes in the laboratory may have increased risk due to the enhanced ability to penetrate cell membranes and thus be able to replicate. Therefore, section III-F–1 is being modified to address such modified nucleic acids as well.

Specifically, Section III–F–1 is proposed to be renumbered as III–F–2 and amended as follows:

The current Section III–F–1 states: ''Those that are not in organisms or viruses.''

Section III–F–1 will be re-numbered to III–F–2 and is proposed to be amended to: ''Section III–F–2. Recombinant or synthetic nucleic acids that are not in organisms, cells or viruses and that have not been modified or manipulated (*e.g.*, encapsulated into synthetic or natural vehicles) to render them capable of penetrating cellular membranes.''

The proposed Sections III–F–3 through III–F–7 retain exemptions that were in the original *NIH Guidelines* with minor revisions. In reviewing these exemptions it is important to understand that it is not the goal of the *NIH Guidelines* to regulate all nucleic acid research but rather that subset of research that through recombinant or now synthetic means results in unique organisms or cells that potentially possess characteristics not yet seen in nature and hence pose potential safety risks both to the individual as well as

the community should there be an inadvertent release. Specifically, the molecules that fall under the new Section III–F–3 (formerly Section III–F–2) are those that consist solely of the exact nucleic acid sequence from a single source that exists contemporaneously in nature. Those described in the new Sections F–4 and F–5 (formerly Sections F–3 and F–4) are nucleic acids that are being propagated in a host that is either the natural host for such nucleic acids or is a closely related prokaryotic or eukaryotic host. Again such constructs may already exist outside of a laboratory. Research that falls under F–6 (formerly Section F–5) is exempt because the manipulation of these nucleic acids in a laboratory setting would be equivalent to that which occurs in nature when certain organisms exchange genetic material via physiological processes (*e.g.*, bacterial mating) outside of a laboratory setting. It is limited to those organisms that are already known to exchange DNA in nature. Finally, research that falls under the proposed Section F–7 also involves a natural physiological process, i.e., transposition. Transposons are nucleic acid molecules that exist in a wide variety of organisms from bacteria to humans. These molecules have the ability to move from one portion of an organism's genome to another. This new Section of III–F captures what was previously an exemption to the definition in the *NIH Guidelines* of a recombinant DNA molecule. Unless a transposon has been modified to be a recombinant molecule, genomic DNA of either plants or bacteria that has acquired a transposon is not subject to the *NIH Guidelines.* This is because if these transposons have not been modified by the insertion of recombinant or synthetic DNA, they are equivalent to what is already in nature and the process occurs naturally outside of lab.

The following changes are proposed for the Section III–F exemptions.

Section III–F–3

Section III–F–2 is proposed to be re-numbered to III–F–3 and amended. In the current *NIH Guidelines,* research with molecules from a single DNA source is exempt. This would include molecules containing duplications or deletions; however, such molecules may present different risks than those of the wild type parent agents. The revised language is intended to clarify that exempt molecules must have the exact nucleic acid sequence from an organism that currently exists in nature in order to be exempt (*e.g.*, because the 1918 influenza no longer exists in nature, research involving the reconstructed virus would not qualify for this exemption). The exemption does not imply that there are no biosafety risks associated with such research but rather recognizes that the *NIH Guidelines* do not apply to wild-type strains currently found in nature because a risk assessment for such work can be made with reference to the biological characteristics of the wild-type organism and are covered by other NIH biosafety standards (for example CDC/NIH Biosafety in Microbiological and Biomedical Laboratories Manual).

The following modifications are proposed for Section III–F–2. Section III–F–2 is proposed to be re-numbered to III–F–3 and amended as follows:

The current III–F–2 states: ''Those that consist entirely of DNA segments from a single nonchromosomal or viral DNA source, though one or more of the segments may be a synthetic equivalent.'' III–F–2 is proposed to be renumbered to III–F–3 and is proposed to be amended to state: ''Recombinant or synthetic nucleic acids that consist solely of the exact nucleic acid sequence from a single source that exists contemporaneously in nature.''

This proposed modification would change ''single nonchromosomal or viral source'' to simply ''single source.'' Specific comment is requested as to whether it is sufficiently clear that single source refers to ''single chromosomal, non-chromosomal, or viral NA source'' or should the language be specifically spelled out?

Section III–F–4

The current Section III–F–3 is proposed to be renumbered to Section III–F–4 and amended. Section III–F–3 states: ''Those that consist entirely of DNA from a prokaryotic host including its indigenous plasmids or viruses when propagated only in that host (or a closely related strain of the same species), or when transferred to another host by well established physiological means.'' It is proposed to be amended as follows: ''Section III–F–4. Those that consist entirely of nucleic acids from a prokaryotic host including its indigenous plasmids or viruses when propagated only in that host (or a closely related strain of the same species), or when transferred to another host by well established physiological means.''

Section III–F–5

The current Section III–F–4 is proposed to be renumbered to Section III–F–5. Section III–F–4 currently states: ''Those that consist entirely of DNA from a eukaryotic host including its chloroplasts, mitochondria, or plasmids (but excluding viruses) when propagated only in that host (or a closely related strain of the same species).'' It is proposed to state the following: ''Section III–F–5: Those that consist entirely of nucleic acids from a eukaryotic host including its chloroplasts, mitochondria, or plasmids (but excluding viruses) when propagated only in that host (or a closely related strain of the same species).''

Section III–F–6

The current Section III–F–5 is proposed to be renumbered to Section III–F–6. The current Section III–F–5 states: ''Those that consist entirely of DNA segments from different species that exchange DNA by known physiological processes, though one or more of the segments may be a synthetic equivalent. A list of such exchangers will be prepared and periodically revised by the NIH Director with advice of the RAC after appropriate notice and opportunity for public comment (*see* Section IV–C–1–b–(1)–(c), Major Actions). See Appendices A–I through A–VI, Exemptions Under Section III–F–5—Sublists of Natural Exchangers, for a list of natural exchangers that are exempt from the *NIH Guidelines.*'' It is proposed to be amended to state: ''Section III–F–6. Those that consist entirely of DNA segments from different species that exchange DNA by known physiological processes, though one or more of the segments may be a synthetic equivalent. A list of such exchangers will be prepared and periodically revised by the NIH Director with advice of the RAC after appropriate notice and opportunity for public comment (*see* Section IV–C–1–b–(1)–(c), Major Actions). See Appendices A–I through A–VI, Exemptions Under Section III–F–6–Sublists of Natural Exchangers, for a list of natural exchangers that are exempt from the *NIH Guidelines.*'' Additionally, Appendix A1–through A–VI will be amended to reference Section III–F–6 rather than III–F–5.

Section III–F–7

A new Section III–F–7 is proposed to be added. This proposed new Section takes an exemption that was previously included in the original definition (Section I–B) and moves it to this Section so that the definition of recombinant and nucleic acids found in the proposed Section I–B is solely a definition and does not include exemptions. The proposed exemption language has been simplified to make it clear that unmodified transposons used in research are not subject to the *NIH*

Guidelines even if derived from a recombinant or synthetic system. Section I–B: Genomic DNA molecules of plants and bacteria that have acquired a transposable element, even if the latter was donated from a recombinant vector no longer present, are not subject to the *NIH Guidelines* unless the transposon itself contains recombinant DNA. New Section III–F–7 is proposed to state:

Section III–F–7. Genomic DNA molecules of plants and bacteria that have acquired a transposable element provided the transposable element does not contain any recombinant or synthetic DNA.

Section III–F–8

The current Section III–F–6 is proposed to be renumbered to Section III–F–8 and amended. This section provides a mechanism for the NIH Director to expand the exemptions to molecules not covered elsewhere in Section III–F. Research that falls under Section III–F–8 would need to have been reviewed and approved by the NIH Director following advice from the RAC and notice in the **Federal Register** to provide an opportunity for public comment. Only research that has been deemed to not present, following this extensive review process, a significant risk to health or the environment would fall under this section.

Current Section III–F–6 states: ''Those that do not present a significant risk to health or the environment (see Section IV–C–1–b–(1)–(c), Major Actions), as determined by the NIH Director, with the advice of the RAC, and following appropriate notice and opportunity for public comment. See Appendix C, Exemptions under Section III–F–6 for other classes of experiments which are exempt from the *NIH Guidelines.*'' Section III–F–6 is proposed to be amended to state: ''Section III–F–8. Those that do not present a significant risk to health or the environment (*see* Section IV–C–1–b–(1)–(c), Major Actions), as determined by the NIH Director, with the advice of the RAC, and following appropriate notice and opportunity for public comment. See Appendix C, Exemptions under Section III–F–8 for other classes of experiments which are exempt from the *NIH Guidelines.*'' Additionally Appendix A1– through A–VI will be amended to reference Section III–F–8 rather than III–F–6.

Section III–E–1. Experiments Involving the Formation of Recombinant DNA Molecules Containing No More Than Two-Thirds of the Genome of Any Eukaryotic Virus

Experiments covered by Section III–E–1 can be initiated using Biosafety Level (BL) 1 containment simultaneously with Institutional Biosafety Committee notice. Section III–E–1 currently states: ''Recombinant DNA molecules containing no more than two-thirds of the genome of any eukaryotic virus (all viruses from a single Family being considered identical [*see* Section V–J *Footnotes and References of Sections I–IV*]) may be propagated and maintained in cells in tissue culture using BL1 containment. For such experiments, it must be demonstrated that the cells lack helper virus for the specific Families of defective viruses being used. If helper virus is present, procedures specified under Section III–D–3, *Experiments Involving the Use of Infectious Animal or Plant DNA or RNA viruses or Defective Animal or Plant DNA or RNA viruses in the Presence of Helper Virus in Tissue Culture Systems,* should be used. The DNA may contain fragments of the genome of viruses from more than one Family but each fragment shall be less than two-thirds of a genome.''

This section applies to viral constructs containing less than ⅔ of the genome of any virus (with all viruses from a single Family being considered as identical). However, concerns were raised that this level of oversight may not be adequate for research with potential synthetic biology agents derived from multiple segments of NA from a Family of viruses. In addition, some wild type viruses (*e.g.*, herpes viruses) may be functional with less than ⅔ of the genome present. Therefore, the decision was made to propose to change ⅔ to one-half of the genome to reflect the current understanding of the biology of certain viruses. While the use of a quantitative measure to define properties of biological organisms is imperfect, the more conservative standard is consistent with Appendix C–1 *Recombinant DNA in Tissue Culture* which exempts from the *NIH Guidelines* recombinant DNA molecules from Risk Groups 1 and 2 that contain less than one-half of any eukaryotic viral genome. With this revision, experiments involving risk Group 3 and 4 viruses with less than one-half of any eukaryotic viral genome can be initiated at BL1 containment simultaneously with IBC registration provided evidence is also submitted attesting that the preparation(s) are free of replication competent virus, which may be generated through homologous recombination with endogenous proviruses or the use of a helper virus. If revised as proposed, an investigator will be permitted to initiate an experiment simultaneously with registration, since the retention of a quantitative standard provides such clear guidance.

Section III–E–1 is proposed to be amended to state: ''Recombinant and synthetic nucleic acid molecules containing no more than half of the genome of any one Risk Group 3 or 4 eukaryotic virus (all viruses from a single Family being considered identical [*see* Section V–J, *Footnotes and References of Sections I–IV*]) may be propagated and maintained in cells in tissue culture using BL1 containment (as defined in Appendix G) provided there is evidence that the resulting nucleic acid in these cells are not capable of producing a replication competent nucleic acid. For such experiments, it must be demonstrated that the cells lack helper virus for the specific Families of defective viruses being used. If helper virus is present, procedures specified under Section III–D–3, *Experiments Involving the Use of Infectious Animal or Plant DNA or RNA viruses or Defective Animal or Plant DNA or RNA viruses in the Presence of Helper Virus in Tissue Culture Systems* should be used. The nucleic acids may contain fragments of the genome of viruses from more than one Family but each fragment shall be less than one-half of a genome.''

Section IV–A Policy

Section IV–A concerns the roles and responsibilities of the local institutions and investigators in implementing the *NIH Guidelines.* It contains a general policy statement that is often evoked as the ''spirit'' of the *NIH Guidelines* because it acknowledges the inability of the document to describe specifically all conceivable research or emerging techniques; however, it remains the responsibility of researchers and institutions to adhere to ''the intent of the *NIH Guidelines* as well as to their specifics.'' In order to emphasize that the *NIH Guidelines* are an evolving document which are expected to be modified to address new developments in research or scientific techniques, the following modifications are proposed to Section IV–A (Policy).

Section IV–A currently states: ''The safe conduct of experiments involving recombinant DNA depends on the individual conducting such activities. The *NIH Guidelines* cannot anticipate every possible situation. Motivation and good judgment are the key essentials to protection of health and the environment. The *NIH Guidelines* are intended to assist the institution, Institutional Biosafety Committee, Biological Safety Officer, and the Principal Investigator in determining

safeguards that should be implemented. The *NIH Guidelines* will never be complete or final since all conceivable experiments involving recombinant DNA cannot be foreseen. Therefore, it is the responsibility of the institution and those associated with it to adhere to the intent of the *NIH Guidelines* as well as to their specifics. Each institution (and the Institutional Biosafety Committee acting on its behalf) is responsible for ensuring that all recombinant DNA research conducted at or sponsored by that institution is conducted in compliance with the *NIH Guidelines*. General recognition of institutional authority and responsibility properly establishes accountability for safe conduct of the research at the local level. The following roles and responsibilities constitute an administrative framework in which safety is an essential and integral part of research involving recombinant DNA molecules. Further clarifications and interpretations of roles and responsibilities will be issued by NIH as necessary.''

Section IV–A is proposed to be amended to read: ''The safe conduct of experiments involving recombinant DNA depends on the individual conducting such activities. The *NIH Guidelines* cannot anticipate every possible situation. Motivation and good judgment are the key essentials to protection of health and the environment. The *NIH Guidelines* are intended to assist the institution, Institutional Biosafety Committee, Biological Safety Officer, and the Principal Investigator in determining safeguards that should be implemented. The *NIH Guidelines* will never be complete or final since all experiments involving recombinant and/or synthetic nucleic acids cannot be foreseen. The utilization of new genetic manipulation techniques may enable work previously done by recombinant means to be accomplished faster, more efficiently or at larger scale. These techniques have not yet yielded organisms that present safety concerns that fall outside the current risk assessment framework used for recombinant DNA research. Nonetheless, an appropriate risk assessment of experiments involving these techniques must be conducted taking into account the way these approaches may alter the risk assessment. In addition, as the field develops, new techniques and applications need to be monitored and assessed to determine whether revisions to the *NIH Guidelines* are needed. As new techniques develop, the *NIH Guidelines* should be periodically reviewed to determine whether and how such research should be explicitly addressed. It is the responsibility of the institution and those associated with it to adhere to the intent of the *NIH Guidelines* as well as to their specifics. Therefore, each institution (and the Institutional Biosafety Committee acting on its behalf) is responsible for ensuring that all recombinant and/or synthetic nucleic acids research conducted at or sponsored by that institution is conducted in compliance with the *NIH Guidelines*. General recognition of institutional authority and responsibility properly establishes accountability for safe conduct of the research at the local level. The following roles and responsibilities constitute an administrative framework in which safety is an essential and integral part of research involving recombinant and/or synthetic nucleic acid molecules. Further clarifications and interpretations of roles and responsibilities will be issued by NIH as necessary.''

Section II. Safety Considerations

Currently, the risk assessment framework of the *NIH Guidelines* uses the risk group of the parent organism as a starting point for determining the necessary containment level. For example, genetic modifications using a Risk Group 3 organism (defined as agents that are associated with serious or lethal human disease for which preventive or therapeutic interventions may be available) would generally be carried out at BL3 but the containment level might be raised or lowered depending on the specific construct and the experimental manipulations. The RAC concluded that the current risk assessment framework under the *NIH Guidelines* is applicable to experiments with synthetic nucleic acids. However, additional language is proposed to provide further guidance for evaluating research utilizing the capabilities of synthetic biology, as use of these techniques may lead to the creation of complex organisms for which identification of a parent organism, the starting point of the existing recombinant DNA risk assessment, is more difficult. Risk assessment may also be complicated by the limitations in predicting function from sequence(s) or the synergistic effects from combining sequences from different sources in a novel context.

Section II–A–3 (Comprehensive Risk Assessment) currently states:

''In deciding on the appropriate containment for an experiment, the initial risk assessment from Appendix B, *Classification of Human Etiologic Agents on the Basis of Hazard,* should be followed by a thorough consideration of the agent itself and how it is to be manipulated. Factors to be considered in determining the level of containment include agent factors such as: Virulence, pathogenicity, infectious dose, environmental stability, route of spread, communicability, operations, quantity, availability of vaccine or treatment, and gene product effects such as toxicity, physiological activity, and allergenicity. Any strain that is known to be more hazardous than the parent (wild-type) strain should be considered for handling at a higher containment level. Certain attenuated strains or strains that have been demonstrated to have irreversibly lost known virulence factors may qualify for a reduction of the containment level compared to the Risk Group assigned to the parent strain (see Section V–B, *Footnotes and References of Sections I–IV*).

A final assessment of risk based on these considerations is then used to set the appropriate containment conditions for the experiment (see Section II–B, *Containment*). The containment level required may be equivalent to the Risk Group classification of the agent or it may be raised or lowered as a result of the above considerations. The Institutional Biosafety Committee must approve the risk assessment and the biosafety containment level for recombinant DNA experiments described in Sections III–A, *Experiments that Require Institutional Biosafety Committee Approval, RAC Review, and NIH Director Approval Before Initiation;* III–B, *Experiments that Require NIH/OBA and Institutional Biosafety Committee Approval Before Initiation;* III–C, *Experiments that Require Institutional Biosafety Committee and Institutional Review Board Approvals and NIH/OBA Registration Before Initiation;* III–D, *Experiments that Require Institutional Biosafety Committee Approval Before Initiation.*

Careful consideration should be given to the types of manipulation planned for some higher Risk Group agents. For example, the RG2 dengue viruses may be cultured under the Biosafety Level 2 (BL2) containment (see Section II–B); however, when such agents are used for animal inoculation or transmission studies, a higher containment level is recommended. Similarly, RG3 agents such as Venezuelan equine encephalomyelitis and yellow fever viruses should be handled at a higher containment level for animal inoculation and transmission experiments.

Individuals working with human immunodeficiency virus (HIV), hepatitis B virus (HBV) or other bloodborne pathogens should consult the applicable Occupational Safety and Health Administration regulation, 29 CFR 1910.1030, and OSHA publication 3127 (1996 revised). BL2 containment is recommended for activities involving all blood-contaminated clinical specimens, body fluids, and tissues from all humans, or from HIV- or HBV-infected or inoculated laboratory animals. Activities such as the production of research-laboratory scale quantities of HIV or other bloodborne pathogens, manipulating concentrated virus preparations, or conducting procedures that may produce droplets or aerosols, are performed in a BL2 facility using the additional practices and containment equipment recommended for BL3. Activities involving industrial scale volumes or preparations of concentrated HIV are conducted in a BL3 facility, or BL3 Large Scale if appropriate, using BL3 practices and containment equipment.

Exotic plant pathogens and animal pathogens of domestic livestock and poultry are restricted and may require special laboratory design, operation and containment features not addressed in *Biosafety in Microbiological and Biomedical Laboratories* (*see* Section V–C, *Footnotes and References of Sections I through IV*). For information regarding the importation, possession, or use of these agents see Section V–G and V–H, *Footnotes and References of Sections I through IV*.''

The first three paragraphs are proposed to be amended by inserting the following two new paragraphs between the current first and second paragraphs of Section II–A–3:

''In deciding on the appropriate containment for an experiment, the initial risk assessment from Appendix B, *Classification of Human Etiologic Agents on the Basis of Hazard,* should be followed by a thorough consideration of the agent itself and how it is to be manipulated. Factors to be considered in determining the level of containment include agent factors such as: virulence, pathogenicity, infectious dose, environmental stability, route of spread, communicability, operations, quantity, availability of vaccine or treatment, and gene product effects such as toxicity, physiological activity, and allergenicity. Any strain that is known to be more hazardous than the parent (wild-type) strain should be considered for handling at a higher containment level. Certain attenuated strains or strains that have been demonstrated to have irreversibly lost known virulence factors may qualify for a reduction of the containment level compared to the Risk Group assigned to the parent strain (see Section V–B, *Footnotes and References of Sections I–IV*).

While the initial risk assessment is based on the identification of the Risk Group of the parent agent, as technology moves forward, it may be possible to develop a chimera in which the parent agent may not be obvious. In such cases, the risk assessment should involve at least two levels of analysis. The first involves a consideration of the Risk Groups of the source(s) of the sequences and the second an analysis of the functional attributes of these sequences (e.g., sequence associated with virulence factors, transmissibility, etc.). It may be prudent to first consider the highest risk group classification of any agent sequence included in the chimera. Other factors to be considered include the percentage of the genome contributed by each of multiple parent agents, and the predicted function or intended purpose of each contributing sequence. The initial assumption should be that all sequences will function as predicted in the original host context.

The IBC must also be cognizant that the combination of certain sequences may result in an organism whose risk profile could be higher than that of the contributing organisms or sequences. The synergistic function of these sequences may be one of the key attributes to consider in deciding whether a higher containment level is warranted. A new biosafety risk may occur with a chimera formed through combination of sequences from a number of organisms or due to the synergistic effect of combining transgenes that results in a new phenotype.

A final assessment of risk based on these considerations is then used to set the appropriate containment conditions for the experiment (see Section II–B, *Containment*). The containment level required may be equivalent to the Risk Group classification of the agent or it may be raised or lowered as a result of the above considerations. The Institutional Biosafety Committee must approve the risk assessment and the biosafety containment level for recombinant DNA experiments described in Sections III–A, *Experiments that Require Institutional Biosafety Committee Approval, RAC Review, and NIH Director Approval Before Initiation;* III–B, *Experiments that Require NIH/OBA and Institutional Biosafety Committee Approval Before Initiation;* III–C, *Experiments that Require Institutional Biosafety Committee and Institutional Review Board Approvals and NIH/OBA Registration Before Initiation;* III–D, *Experiments that Require Institutional Biosafety Committee Approval Before Initiation*.''

Section III-A–1. Major Actions Under the NIH Guidelines

In reviewing the biosafety risks for synthetic genomics and biology and the different levels of review for each experiment, the RAC determined that it is important to also evaluate the class of experiments that require the highest level of review. In doing so, it was determined that the language for Section III–A–1 of the *NIH Guidelines* (research involving the introduction of drug resistance) does not clearly articulate the types of experiments that warrant this heightened review. Moreover, given the change in the use of antibiotics and the public health problems raised by the emergence of multi-drug resistant bacterial strains, clearly defining those experiments that require heightened review is a public health priority.

Section III–A–1-a currently states: ''The deliberate transfer of a drug resistance trait to microorganisms that are not known to acquire the trait naturally (see Section V–B, *Footnotes and References of Sections I–IV*), if such acquisition could compromise the use of the drug to control disease agents in humans, veterinary medicine, or agriculture, will be reviewed by RAC.''

Section III–A–1-a is proposed to be amended to: ''The deliberate transfer of a drug resistance trait to microorganisms, if such acquisition could compromise the ability to treat or manage disease agents in human and veterinary medicine, or agriculture will be reviewed by RAC (see Section V–B, Footnotes and References of Sections I–IV). Even if an alternative drug or drugs exist for the control or management of disease, it is important to consider how the research might affect the ability to control infection in certain groups or subgroups by putting them at risk of developing an infection by such microorganism for which alternative treatments may not be available. Affected groups or subgroups may include, but are not limited to: children, pregnant women, and people who are allergic to effective alternative treatments, immunocompromised or living in countries where the alternative effective treatment is not readily available.''

The deletion of the phrase ''that are not known to acquire the trait naturally'' is proposed because the mechanism of acquisition should not be relevant as to whether these experiments pose potential public health risk and as such

should receive a higher level of review. Moreover, all forms of antibiotic resistance occur naturally and the use of antibiotics creates selective pressure for resistant strains. The additional text recognizes that a drug may remain useful for control of a disease despite some percentage of the population of microorganisms having developed resistance. It is also intended to clarify that even if a particular drug is not considered the ''drug of choice'' to treat a disease, elimination of such a drug as a treatment option may still raise important clinical and public health considerations for certain subpopulations.

Once a Section III–A–I–a experiment is reviewed by the RAC and approved by the NIH Director, equivalent experiments may not need to follow the same approval process to determine the appropriate biosafety containment level for the work. A new section under III–B (Experiments that Require NIH/OBA and IBC Approval before Initiation) is proposed to be added to allow NIH/OBA the discretion to review and approve certain experiments if NIH/OBA determines that an equivalent experiment has already been approved by the NIH Director and there are no substantial changes to the proposed experiment or new information that would raise new biosafety or public health issues. Under this proposal, Investigators will be notified by NIH/OBA if such a determination has been made.

The following addition is proposed to be added to Section III–B of the *NIH Guidelines* to allow NIH/OBA the discretion to review and approve certain experiments that have been previously reviewed by the RAC and approved by the NIH Director as a Major Action.

''Section III–B–2, *Experiments that have been approved (under Section III–A–1–a) as Major Actions under the NIH Guidelines*

Upon receipt and review of an application from the investigator, NIH/OBA may determine that a proposed experiment is equivalent to an experiment that has previously been approved by the NIH Director as a Major Action, including experiments approved prior to implementation of these changes. An experiment will only be considered equivalent if, as determined by NIH/OBA, there are no substantive differences in experimental design or pertinent information has not emerged since submission of the initial III–A–1 experiment that would impact on the biosafety or public health risks for the proposed experiments. If such a determination is made by NIH/OBA, these experiments will not require review and approval under Section III–A.''

Dated: February 26, 2009.

Amy P. Patterson,

Acting Director, Office of Science Policy, National Institutes of Health.

[FR Doc. E9–4618 Filed 3–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–0929]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0040

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting a revision of their approval for the following collection of information: 1625–0040, Continuous Discharge Book, Application, Physical Exam Report, Sea Service Report, Chemical Testing, Entry Level Physical. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before April 3, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2008–0929] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) *Electronic submission.* (a) To Coast Guard docket at *http://www.regulation.gov.* (b) To OIRA by e-mail via: *oira_submission@omb.eop.gov.*

(2) *Mail or Hand delivery.* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(3) *Fax.* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in time, mark the fax to the attention of the Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the complete ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on whether this ICR should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. Comments to Coast Guard must contain the docket number of this request, [USCG 2008–0929]. For your comments to OIRA to be considered, it is best if they are received on or before April 3, 2009.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received,

without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–0929], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. In response to your comments, we may revise the ICR or decide not to seek an extension of approval for this collection. The Coast Guard and OIRA will consider all comments and material received during the comment period.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Enter the docket number [USCG–2008–0929] in the Search box, and click, ''Go>>.'' You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act Statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (73 FR 54843, September 23, 2008) required by 44 U.S.C. 3506(c)(2), and a follow-up notice reopening the comment period (73 FR 453, January 17, 2009). Neither Notice elicited any comments.

Information Collection Request

Title: Continuous Discharge Book, Application, Physical Exam Report, Sea Service Report, Chemical Testing, Entry Level Physical.

OMB Control Number: 1625–0040.

Type of Request: Revision of a currently approved collection.

Affected Public: Individuals and households.

Abstract: Certain information is necessary for the Coast Guard to determine issuance eligibility of merchant mariner credentials, *i.e.*, license, certificate of registry, and merchant marine documents. Title 46 U.S.C. 7302(b) authorizes the Coast Guard to issue a Continuous Discharge Book (CG Form 719A) upon request from an individual. Title 46 CFR 10.205(a), 10.207(a), 10.209(a)(1), 12.02–9(a), and 12.02–27(a)(1) mandate that each applicant for a license, certificate of registry, or merchant mariner document shall make written application on a Coast Guard furnished form (CG Form 719B). Title 46 CFR 10.205(d), 12.05–5, and 12.15–5 require each applicant requesting a license or merchant mariner document to present a completed Coast Guard physical examination report (CG Form 719K) executed by the physician. Title 46 CFR 10.207(e)(2) and 10.209(d)(2) state the report may be required. Further, paragraph 10.211(a) mandates criteria (CG Form 719S) for documenting sea service on vessels of less than 200 gross registered tons. Title 46 CFR 10.202(i) and 12.02–9(f) mandates that each applicant shall produce evidence (CG Form 719P) of having passed a chemical test for dangerous drugs. Title 46 CFR 12.02–17(e) requires entry-level merchant mariner document applicants to provide a statement from a qualified practitioner attesting to the applicant's medical fitness to perform the functions for which the document is issued (CG Form 719K/E).

Forms: CG–719A, CG–719B, CG–719K, CG–719K/E, CG–719S, CG–719P.

Burden Estimate: The estimated burden has decreased from 329,356 hours to 10,833 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: February 25, 2009.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E9–4535 Filed 3–3–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0128]

National Offshore Safety Advisory Committee; Charter Renewal

AGENCY: Coast Guard, DHS.

ACTION: Notice of charter renewal.

SUMMARY: Under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463), the Secretary of Homeland Security has renewed the charter for the National Offshore Safety Advisory Committee (NOSAC) for a 2-year period, from February 9, 2009 until February 9, 2011. This Committee advises the Coast Guard on safety, security and environmental protection issues relating to the offshore mineral and energy industries.

ADDRESSES: A copy of this notice and the Committee charter is available in our online docket, USCG–2009–0128, at *http://www.regulations.gov.* You may request a copy of the charter by writing Commander P.W. Clark, Designated Federal Officer (DFO) of NOSAC, at U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: James M. Magill, Assistant to DFO of NOSAC; telephone 202–372–1414.

Dated: February 24, 2009.

Howard L. Hime,

Acting Director of Commercial Regulations and Standards.

[FR Doc. E9–4534 Filed 3–3–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0117]

Merchant Marine Personnel Advisory Committee; Meetings

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) will meet in Buzzards Bay, MA, to discuss various issues relating to the training and fitness of merchant marine personnel. These meetings will be open to the public.

DATES: MERPAC will meet on Thursday, April 16, 2009, from 8 a.m. until 4 p.m., and Friday, April 17, 2009, from 8 a.m. until 3 p.m. These meetings may close early if all business is finished. Written

material and requests to make oral presentations should reach the Coast Guard on or before March 26, 2009. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before March 26, 2009.

ADDRESSES: The Committee will meet in the Bay State Conference Center at the Massachusetts Maritime Academy, 101 Academy Drive, Buzzards Bay, MA. Send written material and requests to make oral presentations to Mr. Mark Gould, Assistant to the Designated Federal Officer (DFO) of MERPAC, at Commandant (CG–5221), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593–0001. This notice, as well as all task statements discussed in this notice, may be viewed in our online docket, USCG–2009–0117, at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gould, Assistant to the DFO of MERPAC, at 202–372–1409.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of Meeting

The agenda for the April 16, 2009, Committee meeting is as follows:

(1) The full committee will meet to discuss the objectives for the meeting.

(2) Working groups addressing the following task statements may meet to deliberate—

(a) Task Statement 30, concerning Utilizing Military Sea Service for STCW Certifications;

(b) Task Statement 58, concerning Stakeholder Communications During MLD Program Restructuring and Centralization;

(c) Task Statement 64, concerning Recommendations on Areas in the STCW Convention and the STCW Code Identified for Comprehensive Review; and

(d) Task Statement 70, concerning Apprentice Mate/Steersman training program.

(3) New working groups may be formed to address issues proposed by the Coast Guard, MERPAC members, or the public.

(4) At the end of the day, the working groups will make a report to the full committee on what has been accomplished in their meetings. No action will be taken on these reports on this date.

The agenda for the April 17, 2009, Committee meeting is as follows:

(1) Introduction;

(2) Reports from the following working groups;

(a) Task Statement 30, concerning Utilizing Military Sea Service for STCW Certification;

(b) Task Statement 58, concerning Stakeholder Communications During MLD Program Restructuring and Centralization;

(c) Addendum to Task Statement 64, concerning Recommendations on Areas in the STCW Convention and the STCW Code Identified for Comprehensive Review; and

(d) Task Statement 70, concerning Apprentice Mate/Steersman Training Program;

(3) Other items which may be discussed:

(a) Standing Committee—Prevention Through People.

(b) Briefings concerning on-going projects of interest to MERPAC.

(c) Other items brought up for discussion by the Committee or the public.

(4) At the end of the day, the working groups will make a report and, if applicable, recommendations for the full committee to consider for presentation to the Coast Guard. Official action on these recommendations may be taken on this date.

Procedural

These meetings will be open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant to the DFO no later than March 26, 2009. Written material for distribution at a meeting should reach the Coast Guard no later than March 26, 2009. If you would like a copy of your material distributed to each member of the committee in advance of a meeting, please submit 25 copies to the Assistant to the DFO no later than March 26, 2009.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant to the DFO as soon as possible.

Dated: February 26, 2009.

H.L. Hime,

Acting Director of Commercial Regulations and Standards.

[FR Doc. E9–4533 Filed 3–3–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–16]

Owner Certification With HUD Tenant Eligibility and Rent Procedures

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Collection of tenant data to ensure owners comply with Federal statutes and regulations that (1) establish policies on who may be admitted to subsidized housing; (2) prohibit discrimination in conjunction with selection of tenants and units; (3) specify how tenants' incomes and rents must be compiled.

DATES: *Comments Due Date:* April 3, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0204) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality,

utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Owner Certification with HUD Tenant Eligibility and Rent Procedures.

OMB Approval Number: 2502–0204.

Form Numbers: HUD–50059, HUD–50059–A, HUD–9887/9887–A, HUD–27061–H, HUD–90100, HUD–90101, HUD–90102, HUD–90103, HUD–90104, HUD–90105–a, HUD–90105-b, HUD–90105–C, HUD–90105–d, HUD–90106, HUD–91066, HUD–91067.

Description of the Need for the Information and Its Proposed Use: Collection of tenant data to ensure owners comply with Federal statutes and regulations that (1) establish policies on who may be admitted to subsidized housing; (2) prohibit discrimination in conjunction with selection of tenants and units; (3) specify how tenants' incomes and rents must be compiled.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,160,726	1.51		0.411		1,348,679

Total Estimated Burden Hours: 1,348,679.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 26, 2009.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E9–4529 Filed 3–3–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–15]

Applications for Housing Assistance Payments; Special Claims Processing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Owners/agents submit vouchers to HUD or their Contract Administrators (CA) Performance Based Contract Administrators (PBCA) monthly to receive assistance payments for the difference between the gross rent and the total tenant payment for all assisted tenants. Special claims vouchers are also submitted by owners/agents to HUD or their CA/PBCA to receive an amount to offset unpaid rent, tenant damages, vacancies, and/or debt service losses.

DATES: *Comments Due Date:* April 3, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0182) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Applications for Housing Assistance Payments; Special Claims Processing.

OMB Approval Number: 2502–0182.

Form Numbers: HUD–52670, HUD–52670–A Part 1, HUD–52670–A Part 2, HUD–52670–A Part 3, HUD–52670–A Part 4, HUD–52670–A Part 5, HUD–52671–A/B/C/D

Description of the Need for the Information and Its Proposed Use: Owners/agents submit vouchers to HUD or their Contract Administrators (CA) Performance Based Contract Administrators (PBCA) monthly to receive assistance payments for the difference between the gross rent and the total tenant payment for all assisted tenants. Special claims vouchers are also submitted by owners/agents to HUD or their CA/PBCA to receive an amount to offset unpaid rent, tenant damages, vacancies, and/or debt service losses.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	21,787	13.40		1.034		301,951

Total Estimated Burden Hours: 301,951.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 26, 2009.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E9–4531 Filed 3–3–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

[LLCAD00000 L19900000.AL 0000]

Meeting of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of BLM-administered public lands on Friday, March 20, 2009, from 10 a.m. to 4 p.m., and meet in formal session on Saturday, March 21 from 8 a.m. to 4 p.m. at the Holiday Inn Express Hotel & Suites, 2700 Lenwood Road, Barstow, CA 92311.

The Council and interested members of the public will depart for the field tour at 10 a.m. from the lobby of the Holiday Inn Express Hotel & Suites. Members of the public are welcome to participate in the tour but should plan on providing their own transportation, lunch, and beverage. Four-wheel drive vehicles are strongly recommended for the field tour.

Agenda topics for the formal session on Saturday will include updates by Council members and reports from the BLM District Manager and five field office managers. Additional agenda topics are being developed. Once finalized, the field tour and meeting agendas will be published in a news release prior to the meeting and posted on the BLM California state Web site at *http://www.blm.gov/ca/news/rac.html*.

SUPPLEMENTARY INFORMATION: All California Desert District Advisory Council meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the Saturday meeting is tentatively scheduled from 8 a.m. to 4 p.m., the meeting could conclude prior to 4 p.m. should the Council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: David Briery, BLM California Desert District External Affairs, 951.697.5220.

Dated: February 20, 2009.

Steven J. Borchard,

District Manager.

[FR Doc. E9–4570 Filed 3–3–09; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB07900 09 L10100000.PH0000 LXAMANMS0000]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the Western Montana Resource Advisory Council will meet as indicated below.

DATES: The Western Montana RAC will meet March 31, 2009 at 9 a.m. The public comment period for the meeting will begin at 11:30 a.m. and the meeting is expected to adjourn at approximately 3 p.m.

ADDRESSES: The meeting will be held at the Butte Field Office, 106 N. Parkmont, Butte, Montana.

FOR FURTHER INFORMATION CONTACT: David Abrams, Western Montana Resource Advisory Council Coordinator, Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At the March 31 meeting, topics we plan to discuss include: Introduction of new members, cooperative rangeland monitoring, forest health issues, a review of Forest Service fee proposals, and election of officers.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

Richard M. Hotaling,

Field Manager.

[FR Doc. E9–4443 Filed 3–3–09; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW160877]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Tatonka Oil & Gas, Inc. for competitive oil and gas lease WYW160877 for land in Weston County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Acting Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms

for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year, and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW160877 effective August 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Julie L. Weaver,

Acting Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E9–4633 Filed 3–3–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Beaufort Sea and Chukchi Sea Planning Areas Oil and Gas Lease Sales 209, 212, 217, and 221

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Extension of written comment period for the Draft Environment Impact Statement (DEIS) for Beaufort Sea and Chukchi Sea Planning Areas Oil and Gas Lease Sales 209, 212, 217, and 221.

SUMMARY: The MMS is extending the written comment period on the DEIS from March 16, 2009, to March 30, 2009.

SUPPLEMENTARY INFORMATION: The MMS published the Notice of Availability of the DEIS in the **Federal Register** on December 19, 2008 (72 FR 77835). The Notice of Availability provided for interested parties to submit written comments on the DEIS until March 16, 2009. The MMS is now extending the written comment period an additional 2 weeks, to March 30, 2009. Written comments may be submitted to the Regional Director, Alaska OCS Region, Minerals Management Service, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5820, or online at *http://ocsconnect.mms.gov*.

FOR FURTHER INFORMATION CONTACT: Please contact Ms. Deborah Cranswick at (907) 334–5267 in MMS's Alaska OCS Region, 3801 Centerpoint Drive, Ste 500, Anchorage, AK 99503–5823.

Dated: February 10, 2009.

Chris C. Oynes,

Associate Director for Offshore Energy and Minerals Management.

[FR Doc. E9–4583 Filed 3–3–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Extension of Comment Period on the Draft Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2010–2015 (DPP) and Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Proposed 5-Year Program

AGENCY: Minerals Management Service, Interior.

ACTION: Extension of Time for Request for Comments.

SUMMARY: On February 10, 2009, the Secretary of the Interior announced a new comprehensive approach to the Nation's offshore energy plan, which includes four parts and affects the Draft Proposed 5-year OCS Oil and Gas Leasing Program for 2010–2015 (DPP), published on January 16, 2009, by the previous Administration. The Secretary's four steps are—

○ An additional 180 days for public comment on the DPP and the Notice of Intent to Prepare an EIS for the proposed 5-year program to September 21, 2009;

○ Preparation by MMS and the U.S. Geological Survey of a report setting forth all the information available on our offshore energy resources, with the report to be completed within 45 days of the Secretary's announcement;

○ Regional meetings to be convened by the Secretary on each coast and in Alaska to gather the best ideas for how to move forward with a comprehensive offshore energy plan, with the meetings to occur in the 30 days following completion of the report; and

○ Commitment by the Secretary to issuing a final rulemaking on offshore renewable energy resources in the coming months.

This **Federal Register** Notice announces the 180-day extension of time for receipt of comments on the DPP and the Notice of Intent to Prepare an EIS for the proposed 5-year program. The original comment period was announced in the **Federal Register** on January 21, 2009 (74 FR 3631) with a closing date of March 23, 2009. The new closing date is September 21, 2009. The additional time will give states, stakeholders, and affected communities the opportunity to provide input on how, whether, and where the Nation's offshore areas should be considered as part of the Nation's energy strategy.

Section 18 of the OCS Lands Act (43 U.S.C. 1344) specifies a multi-step process of consultation and analysis that must be completed before the Secretary of the Interior may approve a new 5-year program. The required steps following this notice include the development of a proposed program, a proposed final program, and Secretarial approval. Pursuant to the National Environmental Policy Act (NEPA), the MMS also will prepare an EIS for the new 5-year program. The notice in the **Federal Register** on January 21, 2009 (74 FR 3631) started the formal scoping process for the EIS under 40 CFR 1501.7, and solicited information regarding issues and alternatives that should be evaluated in the EIS. The EIS will analyze the potential impacts of the adoption of the proposed 5-year program.

DATES: Please submit comments and information to the MMS no later than September 21, 2009.

Public Comment Procedure

The MMS will accept comments in one of two formats: By mail or our Internet commenting system. Please submit your comments using only one of these formats, and include full names and addresses. Comments submitted by other means may not be considered. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

ADDRESSES: You may submit comments on the DPP and/or the Notice of Intent by any of the following methods.

• *Federal eRulemaking Portal: http://www.regulations.gov*. Under the tab ''More Search Options,'' click ''Advanced Docket Search,'' then select ''Minerals Management Service'' from the agency drop-down menu, then click the submit button. In the Docket ID column, select MMS–2008–OMM–0045 to submit public comments and to view related materials available for the DPP or MMS–2008–OMM–0046 to submit public comments and to view related materials available for the Notice of Intent to Prepare an EIS. Information on using *Regulations.gov*, including instructions for accessing documents,

submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. The MMS will post all comments.

• Mail or hand-carry comments on the DPP to the Department of the Interior, Minerals Management Service, Attention: Leasing Division (LD), 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference ''2010–2015 Oil and Gas Leasing in the Outer Continental Shelf,'' in your comments and include your name and return address. Comments on the Notice of Intent to Prepare an EIS should be mailed or hand-carried to Mr. J.F. Bennett, Chief, Branch of Environmental Assessment, Minerals Management Service, 381 Elden Street, MS 4042, Herndon, Virginia 20170.

FOR FURTHER INFORMATION CONTACT: Renee Orr, 5-Year Program Manager, at 703–787–1215 for the DPP; or James Bennett, Chief, Branch of Environmental Assessment, at 703–787–1600 for the Notice of Intent to Prepare an EIS.

Dated: February 25, 2009.

Walter D. Cruickshank,

Acting Director, Minerals Management Service.

[FR Doc. E9–4581 Filed 3–3–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Denali National Park and Preserve Aircraft Overflights Advisory Council Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting for the Denali National Park and Preserve Aircraft Overflights Advisory Council within the Alaska Region.

SUMMARY: The National Park Service (NPS) announces a meeting of the Denali National Park and Preserve Aircraft Overflights Advisory Council. The purpose of this meeting is to discuss mitigation of impacts from aircraft overflights at Denali National Park and Preserve. This meeting is open to the public and will have time allocated for public testimony. The public is welcomed to present written or oral comments. The meeting will be recorded and a summary will be available upon request from the Superintendent for public inspection approximately six weeks after each meeting. The Aircraft Overflights Advisory Council is authorized to operate in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The Denali National Park and Preserve Aircraft Overflights Advisory Council meeting will be held on Tuesday, April 7th, from 9 a.m. to 5 p.m., Alaska Standard Time. The meeting may end early if all business is completed.

Location: National Park Service Building, 4175 Geist Road, Fairbanks, AK 99709, (907) 457–5752. The public can also attend the meeting by videoconferencing at the Talkeetna Ranger Station, 22241 South B Street, Talkeetna, AK 99676, (907) 733–2231.

FOR FURTHER INFORMATION CONTACT: Miriam Valentine, Denali Planning. E-mail: *Miriam_Valentine@nps.gov*. Telephone: (907) 733–9102 at Denali National Park, Talkeetna Ranger Station, PO Box 588, Talkeetna, AK 99676. For accessibility requirements please call Miriam Valentine (907) 733–9102.

SUPPLEMENTARY INFORMATION: Meeting location and dates may need to be changed based on weather or local circumstances. If the meeting dates and location are changed, notice of the new meeting will be announced on local radio stations and published in local newspapers.

The agenda for the meeting will include the following, subject to minor adjustments:

1. Call to order.
2. Roll Call and Confirmation of Quorum.
3. Chair's Welcome and Introductions.
4. Review and Approve Agenda.
5. Member Reports.
6. Agency and Public Comments.
7. Superintendent and NPS Staff Reports.
8. Agency and Public Comments.
9. Other New Business.
10. Agency and Public Comments.
11. Set time and place of next Advisory Council meeting.
12. Adjournment.

Dated: February 12, 2009.

Victor Knox,

Deputy Regional Director, Alaska Region, National Park Service.

[FR Doc. E9–4571 Filed 3–3–09; 8:45 am]

BILLING CODE 9832–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of May 2, 2009 Meeting.

SUMMARY: This notice sets forth the date of the May 2, 2009 meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, May 2, 2009 from 10 a.m. to 1 p.m. (Eastern). The Commission will meet jointly with the Flight 93 Memorial Task Force.

Location: The meeting will be held at the Somerset County Courthouse, Court Room #1, located at 111 E. Union Street, Somerset, PA 15501.

Agenda:

The May 2, 2009 joint Commission and Task Force meeting will consist of:

1. Opening of Meeting and Pledge of Allegiance.
2. Review and Approval of Commission Minutes from February 7, 2009.
3. Reports from the Flight 93 Memorial Task Force and National Park Service. Comments from the public will be received after each report and/or at the end of the meeting.
4. Old Business.
5. New Business.
6. Public Comments.
7. Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501, 814.443.4557.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. Address all statements to: Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Dated: February 12, 2009.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. E9–4574 Filed 3–3–09; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee Findings and Recommendations Regarding Cultural Items in the Possession of the New York State Museum

AGENCY: National Park Service, Interior.

ACTION: Native American Graves Protection and Repatriation Review Committee: Findings and Recommendations.

This notice is published as part of the National Park Service's administrative

responsibilities pursuant to the Native American Graves Protection and Repatriation Act (25 U.S.C. 3006 (g)). The findings of fact and recommendations to the disputing parties do not necessarily represent the views of the National Park Service or the Secretary of the Interior.

SUMMARY:

The Native American Graves Protection and Repatriation Review Committee (Review Committee) was established by Section 8 of the Native American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C. 3006) and is an advisory body governed by the Federal Advisory Committee Act (5 App. U.S.C. 1-16). At its October 11-12, 2008 public meeting in San Diego, CA, the Review Committee, acting pursuant to its responsibilities to convene the parties to a dispute, review the information provided by the parties, and make findings of fact and recommendations relating to the cultural affiliation of the human remains in an inventory, heard a dispute between the Onondaga Nation and the New York State Museum. The issue before the Review Committee was whether the relevant information presented by the Onondaga Nation shows that, more likely than not, a relationship of shared group identity reasonably can be traced between the Onondaga Nation and human remains representing a minimum of 180 individuals which had been removed from the ''Engelbert Site,'' also known as NYSM Site #171, in Nichols, Tioga County, New York and which are in the possession and under the control of the New York State Museum. The Review Committee found, by a preponderance of the evidence, that a relationship of shared group identity reasonably can be traced between the present-day Onondaga Nation and the human remains from the Engelbert Site.

SUPPLEMENTARY INFORMATION: In 1998, the New York State Museum (the Museum) completed an ''Inventory of Native American Human Remains from the Engelbert Site, Tioga County, New York (NYSM Site #171), in the Possession of the New York State Museum'' (the inventory). The Native American human remains were excavated and removed from the Engelbert Site in 1967 and 1968, as a result of the construction of the Southern Tier Expressway (New York State Route 17). The Museum had acquired the human remains in question in 1989. The Museum determined that all the human remains in the inventory were culturally unidentifiable.

In 2007, the Onondaga Nation (the Nation) presented to the Museum information relevant to showing cultural affiliation between the Nation and the human remains in question, and requested that the Museum repatriate the human remains listed in the inventory to the Nation. In response, the Museum refused to repatriate the human remains in the inventory to the Nation, asserting that the Nation had not shown cultural affiliation by a preponderance of the evidence.

Disputing the decision of the Museum, the Nation asked the Review Committee to facilitate the dispute between the Nation and the Museum. The Review Committee Chair agreed to the Nation's request.

At its October 11-12, 2008 meeting, the Review Committee considered the dispute between the Nation and the Museum. The sole issue of material fact between the parties was whether the relevant information provided by the Onondaga Nation showed, by a preponderance of the evidence, cultural affiliation between the human remains listed in the inventory and the Nation on the basis of geographical, kinship, biological, archeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

FINDINGS OF FACT: By a vote of five to one - six members, comprising a quorum, were present -- the Review Committee found that the preponderance of the evidence shows a relationship of shared group identity between the Onondaga Nation (and the greater Haudenosaunee Confederacy, of which the Nation is a member-nation) and the remains of the 180 Native American individuals in the Engelbert Site inventory.

RECOMMENDATIONS TO THE DISPUTING PARTIES: By a vote of five to one - six members, comprising a quorum, were present -- the Review Committee recommended that, consistent with the NAGPRA criteria, the New York State Museum expeditiously repatriate the remains of the 180 Native American individuals in the Engelbert Site inventory to the Onondaga Nation. In addition, by a unanimous vote - six members, comprising a quorum, were present -- the Review Committee recommended that the New York State Museum reevaluate the cultural affiliation of all the Native American human remains in its possession, or under its control, which, on the basis of their age, the Museum hitherto had determined to be ''culturally unidentifiable'' and that, in doing so, the Museum use the preponderance of all the available, relevant evidence as the standard for deciding cultural affiliation or lack thereof.

Dated: February 27, 2009

Rosita Worl

Chair, Native American Graves Protection and Repatriation Review Committee

[FR Doc. E9–4668 Filed 3–3–09; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–668]

In the Matter of Certain Non-Shellfish Derived Glucosamine and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 28, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cargill, Incorporated of Wayzata, Minnesota. A letter supplementing the complaint was filed on February 13, 2009. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain non-shellfish derived glucosamine and products containing same by reason of infringement of certain claims of U.S. Patent No. 7,049,433. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Erin D.E. Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2550.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2008).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 25, 2009, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain non-shellfish derived glucosamine and products containing same that infringe one or more of claims 1–10 of U.S. Patent No. 7,049,433, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Cargill, Incorporated, 15407 McGinty Rd. W., Wayzata, Minnesota 55391.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nantong Foreign Trade Medicines & Health Products Co., Ltd., 6/F Commercial Building, 15 Middle Quingnian Rd., Nantong, Jiangsu, China 226006.

DNP International, Inc., 12802 Leffingwell Ave., Bldg. E, Santa Fe Springs, CA 90670.

Tiancheng International, Inc. (USA), 2851 E. Philadelphia St., Ontario, CA 91761–8553.

Hygieia Health Co., Ltd., Building # 54, 5/F 1089 Qinzhou Road (N), Shanghai, China 200233.

TSI Health Sciences, Inc., 7168 Expressway, Missoula, MT 59808–8587.

Ethical Naturals, Inc., 330 Sir Francis Drake Blvd., Suite H, San Anselmo, CA 94960.

(c) The Commission investigative attorney, party to this investigation, is Erin D.E. Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: February 26, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–4539 Filed 3–3–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–09–005]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 11, 2009 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification list.
4. Inv. Nos. 701–TA–460 and 461 (Preliminary) (Ni-Resist Pistons Inserts From Argentina and Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before March 12, 2009; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before March 19, 2009.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 26, 2009.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E9–4524 Filed 3–3–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–09–006]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 12, 2009 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification list.
4. Inv. Nos. 731–TA–1014, 1016, and 1017 (Second Review) (Polyvinyl Alcohol from China, Japan, and Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before March 26, 2009.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 26, 2009.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E9–4525 Filed 3–3–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on February 26, 2009, an electronic version of a proposed consent decree was lodged in the United States District Court for the Western District of North Carolina in *State of North Carolina et al.* v. *El Paso Natural Gas Company, et al.*, No. 5:04 CV 38 (Consolidated Cases). The consent decree settles claims by the United States against Beaunit Corporation under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), as amended, 42 U.S.C. 9606 & 9607, in connection with the FCX Site, a facility approximately 1.5 miles west of downtown Statesville, Iredell County, North Carolina (the ''Site''). Under the terms of the proposed consent decree, Beaunit will pay the United States $846.54.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. Comments should refer to *State of North Carolina et al.* v. *El Paso Natural Gas Company, et al.*, No. 5:04 CV 38 (Consolidated Cases) and DOJ # 90–11–3–08264.

During the public comment period, the proposed consent decree may also be examined on the following U.S. Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. The consent decree may be examined at the Office of the United States Attorney for the Western District of North Carolina, The Carillon Bldg., 227 West Trade St., Suite 1700, Charlotte, North Carolina.

A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to the referenced case and DOJ Reference Number, and please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the U.S. Treasury, or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–4509 Filed 3–3–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,389]

A. Schulmanm, Inc., Polybatch Color Center, Sharon Center, OH; Notice of Affirmative Determination Regarding Application for Reconsideration

By application received on February 4, 2009, the petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on December 22, 2008. The Notice of Determination was published in the **Federal Register** on January 14, 2009 (74 FR 2139).

The initial investigation resulted in a negative determination based on the finding that imports of color concentrates did not contribute importantly to worker separations at the subject firm and no shift in production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information regarding a shift in production of color concentrates to Mexico.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 24th day of February 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–4547 Filed 3–3–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,190]

Hafner USA, Inc., New York, NY; Notice of Negative Determination on Reconsideration

On January 13, 2009, the Department issued an Affirmative Determination Regarding Application for Reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of Hafner USA, Inc., New York, New York (subject firm). The Department's Notice was published in the **Federal Register** on January 26, 2009 (74 FR 4460).

The initial determination was based on the Department's findings that the subject worker group does not support a firm or appropriate subdivision that produces an article domestically.

In order to apply for TAA based on increased imports, the subject worker group must meet the group eligibility requirements under Section 222(a) of the Trade Act of 1974, as amended. Under Section 222(a)(2)(A), the following criteria must be met:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision.

29 CFR 90.2 states that a group means ''three or more workers in a firm or an appropriate subdivision thereof'' and that a significant number or proportion of the workers means ''at least three workers in a firm (or appropriate subdivision thereof) with a work force of fewer than 50 workers.'' The regulation also states that ''increased imports means that imports have increased either absolutely or relative to domestic production compared to a representative base period. The representative base period shall be one year consisting of the four quarters immediately preceding the date which is twelve months prior to the date of the petition.''

Because the petition date is October 3, 2008, the relevant period (the twelve months prior to the date of the petition) is October 2007 through September 2008 and the representative base period is October 2006 through September 2007.

The Department has carefully reviewed information submitted during the initial and reconsideration investigations. The Department determines that the petition did not cover a valid worker group (the group consisted of only two workers at the subject firm) and that, during relevant period, less that three workers were separated or were threatened with separation from the subject firm.

Based on the information above, the Department determines that the group eligibility requirements under Section 222(a) of the Trade Act of 1974, as amended, were not met.

Even if there was a valid worker group and the worker separation threshold was met, the Department would not have issued a certification applicable to the subject worker group.

During the reconsideration investigation, the Department confirmed that the subject firm ceased production in the United Stated in 2005. The North Carolina facility identified in the request for reconsideration was a marketing office. The Virginia facility identified in the request for reconsideration (Hafner LLC, a subsidiary of Hafner, Inc., Gordonsville, Virginia) was certified on May 16, 2005 (TA–W–57,119) based on a shift of production to Canada.

Because there was no domestic production during the relevant period, the Department determines that there was no domestic production that increased imports could have impacted. Further, the Department determines that there was no shift of production to a foreign country during the relevant period.

In order for the Department to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA), the subject worker group must be certified eligible to apply for Trade Adjustment Assistance (TAA). Since the subject workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Hafner USA, Inc., New York, New York.

Signed at Washington, DC, this 24th day of February 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–4546 Filed 3–3–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,780]

Harman/Becker Automotive Systems, Inc., Including On-Site Leased Workers From Elwood Staffing, Account Temps and PMI, Currently Known as Spartan Staffing Martinsville, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 20, 2007, applicable to workers of Harman/Becker Automotive Systems, Inc., Martinsville, Indiana. The notice was published in the **Federal Register** on August 2, 2007 (72 FR 42436).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of automotive speakers.

New information shows that workers leased from Elwood Staffing, Account Temps and PMI, currently known as Spartan Staffing were employed on-site at the Martinsville, Indiana location of Harman/Becker Automotive Systems, Inc. The Department has determined that these workers were sufficiently under the control of Harman/Becker Automotive Systems, Inc. to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Elwood Staffing, Account Temps and PMI, currently known as Spartan Staffing, working on-site at the Martinsville, Indiana location of the subject firm.

The intent of the Department's certification is to include all workers employed at Harman/Becker Automotive Systems, Inc. who were adversely affected by a shift in production of automotive speakers to Mexico.

The amended notice applicable to TA–W–61,780 is hereby issued as follows:

All workers of Harman/Becker Automotive Systems, Inc., including on-site leased workers from Elwood Staffing, Account Temps and PMI, currently known as Spartan Staffing, Martinsville, Indiana, who became totally or partially separated from employment on or after June 28, 2006 through July 20, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of February 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–4542 Filed 3–3–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,939]

Hewlett Packard Inkjet and Web Solutions Division Including On-Site Leased Workers From CDI, Manpower, Securitas Security Services USA, Volt Cable Consultants, D/B/A Black Box Network Services Managed Business Solutions and 888 Consulting Group, Inc., D/B/A TAC Worldside, Corvallis, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and

Alternative Trade Adjustment Assistance on September 19, 2008, applicable to workers of Hewlett Packard, Inkjet and Web Solutions Division, including on-site leased workers from CDI, Manpower, Securitas Security Services USA and Volt, Corvallis, Oregon. The notice was published in the **Federal Register** on October 3, 2008 (73 FR 57682). The certification was amended on December 4, 2008 to include on-site leased workers from Cable Consultants, d/b/a Black Box Network Services. The notice was published in the **Federal Register** on December 15, 2008 (73 FR 76058).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of inkjet supplies, particularly in jet printer cartridge heads.

New information shows that workers leased from Managed Business Solutions and 888 Consulting Group, Inc., d/b/a TAC Worldwide were employed on-site at the Corvallis, Oregon location of Hewlett Packard, Inkjet and Web Solutions Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers from Managed Business Solutions and 888 Consulting Group, Inc., d/b/a TAC Worldwide working on-site at the Inkjet and Web Solutions Division, Corvallis, Oregon location of the subject firm.

The amended notice applicable to TA-W–63,939 is hereby issued as follows:

All workers of Hewlett Packard, Inkjet and Web Solutions Division, including on-site leased workers from CDI, Manpower, Securitas Security Services USA, Volt, Managed Business Solutions and 888 Consulting Group, Inc., d/b/a TAC Worldwide, Corvallis, Oregon, engaged in the production of inkjet supplies, who became totally or partially separated from employment on or after August 26, 2007, through September 19, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 20th day of February 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–4545 Filed 3–3–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,932; TA–W–62,364E; TA–W–62,364D; TA–W–62,364E]

Keeper Corporation Including On-Site Leased Workers of AAA Staffing, North Windham, CT; Including Employees in Support of Keeper Corporation, North Windham, CT Working in the Following Locations: West Grove, PA; Bountiful, UT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 13, 2008, applicable to workers of Keeper Corporation, including leased workers of AAA Staffing, North Windham, Connecticut. The notice was published in the **Federal Register** on March 26, 2008 (73 FR 16064). The certification was amended on December 5, 2008 to include employees in support of the North Windham, Connecticut location working out of Lawrenceville, Georgia and Smyrna, Tennessee. The notice was published in the **Federal Register** on December 15, 2008 (73 FR 76058–76059).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of cargo control products such as tie downs, towing straps and bungee cords.

New information shows that worker separations have occurred involving employees in support of the North Windham, Connecticut facility of Keeper Corporation working out of West Grove, Pennsylvania and Bountiful, Utah. Mr. Paul Delaney and Mr. William Hill provided sales functions supporting the production of cargo control products such as tie down, towing straps and bungee cords at the North Windham, Connecticut location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the North Windham, Connecticut facility of Keeper Corporation working out of West Grove, Pennsylvania and Bountiful, Utah.

The intent of the Department's certification is to include all workers of Keeper Corporation, North Windham, Connecticut who was adversely affected by a shift in production of cargo control products such as tie downs, towing straps and bungee cords to China.

The amended notice applicable to TA–W–62,932 is hereby issued as follows:

All workers of Keeper Corporation, including on-site leased workers of AAA Staffing, North Windham, Connecticut (TA–W–62,932), all workers of Keeper Corporation, Manchester, Connecticut (TA–W–62,932A), including employees in support of Keeper Corporation, North Windham, Connecticut working out of Lawrenceville, Georgia (TA–W–62,932B), Smyrna, Tennessee (TA–W–62,932C), West Grove, Pennsylvania (TA–W–62,932D) and Bountiful, Utah (TA–W–62,932E), who became totally or partially separated from employment on or after February 28, 2007, through March 13, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of February 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–4543 Filed 3–3–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,505]

SB Acquisition, LLC, DBA Saunders Brothers Including On-Site Leased Workers From Manpower, Fryeburg, ME; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated January 29, 2009, the petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on January 2, 2009. The Notice of Determination was published in the **Federal Register** on January 26, 2009 (74 FR 4464).

The initial investigation resulted in a negative determination based on the finding that sales and production at the subject firm increased during the period of January through November 2008, when compared to the same period in 2007.

In the request for reconsideration, the petitioner provided additional information indicating that sales and production at the subject facility declined during the relevant period and that the subject firm imported products like or directly competitive with the products manufactured at the subject firm.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 23rd day of February 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–4548 Filed 3–3–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,422]

Springs Global U.S., Inc., Springs Direct Division, Springmaid Wamsutta Factory Store, Lancaster, SC; Notice of Revised Determination on Remand

On February 6, 2009, the U.S. Court of International Trade (USCIT) remanded to the U.S. Department of Labor (Department) for further review *Former Employees of Springs Global, Inc., Springs Global Direct Division, Springmaid-Wamsutta Factory Store, Lancaster, South Carolina (FEO Springs Global)* v. *United States,* Court No. 08–00255.

On May 19, 2008, an official of Springs Global U.S. Inc. (subject firm) filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers of Springs Global U.S. Inc., Springs Global Direct Division, Springmaid-Wamsutta Factory Store, Lancaster, South Carolina (subject facility).

The subject facility closed during February 2008. Prior to the closure, workers at the subject facility managed Springs Global, U.S., Inc. (subject firm) retail operations, sold linen products manufactured by the subject firm to the public and other subject firm employees, and handled special orders for linen products placed by other subject firm employees.

The negative determination, issued on May 30, 2008, stated that in order to be considered eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, the subject worker group must work for a ''firm'' or appropriate subdivision that produces an article domestically and there must be a relationship between the workers' work and the article produced by the workers' firm or appropriate subdivision. The determination also stated that although the subject firm produced an article, the subject workers did not support that production. The Department determined that the subject worker group cannot be considered import impacted or affected by a shift in production of an article. The Department's Notice of determination was published in the **Federal Register** on June 16, 2008 (73 FR 34044).

The Department did not receive a request for administrative reconsideration.

In the complaint, Plaintiffs allege that workers at the subject facility, who ''provided the means by which Springs Global dispensed of manufactured goods that were not able to be sold otherwise * * * thereby enabling the company's production operations * * * to reduce their per-unit overhead and operate more efficiently,'' should be treated like the workers covered by TA–W–62,768 (Springs Global U.S., Inc., Springs Direct Division, Corporate Support Group, Lancaster, South Carolina; certified February 14, 2008). Workers covered by TA–W–63,422 are located in the same building as workers covered by TA–W–62,786.

Workers covered by TA–W–62,786 are engaged in production estimation, production scheduling, distribution, logistics, and operational services. The determination for TA–W–62,786 stated that the workers supported production at a TAA-certified facility (Springs Global U.S., Inc., Grace Complex, Bedding Division, Lancaster, South Carolina; TA–W–61,258) and that the worker separations are ''related to a shift of production and increased imports of textile products.''

The group eligibility requirements for directly-impacted workers under Section 222(a) of the Trade Act of 1974, as amended, based on a shift of production are satisfied if the criteria set forth under Section 222(a)(2)(B) have been met:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision, and one of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

On remand, the Department carefully reviewed the language of the statute, the Department's policy, Plaintiffs' submissions, and the administrative record.

The intent of the Department is for a certification to cover all workers of the subject firm or appropriate subdivision who were adversely affected by increased imports of the article produced by the firm or a shift in production of the article, based on the investigation of the TAA/ATAA petition.

After careful review on remand, the Department determines that a significant number or proportion of the workers in the appropriate subdivision of the subject firm was separated. Further, the Department determines that these workers performed activities related to the firm's production of an article, that the firm shifted production of that article to a foreign country (and there were increased imports of like or directly competitive articles produced by the firm), and this shift in production was a factor in Plaintiffs' separations.

Based on the above, the Department determines that the group eligibility requirements under Section 222(a)(2)(B) of the Trade Act of 1974, as amended, have been met.

In accordance with Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA. The Department has determined in this case that the group eligibility requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable.

Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts during the remand investigation, I determine that there was a shift of production from the workers' firm or subdivision to Brazil of articles that are like or directly competitive with those produced by the subject firm or subdivision, and there has been or is likely to be an increase in imports of like or directly competitive articles. In accordance with the provisions of the Act, I make the following certification:

All workers of Springs Global U.S. Inc., Springs Global Direct Division, Springmaid-Wamsutta Factory Store, Lancaster, South Carolina, who became totally or partially separated from employment on or after May 19, 2007, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of February 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–4544 Filed 3–3–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,280]

Eaton Corporation, Mentor, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 18, 2009 in response to a worker petition filed by a company official on behalf of workers of Eaton Corporation, Mentor, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of February 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–4550 Filed 3–3–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,214]

Everett Charles Technologies, Inc., Fixture and Services Group, Longmont, CO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 11, 2009 in response to a worker petition filed by a company official on behalf of workers of Everett Charles Technologies, Inc., Fixture And Services Group, Longmont, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of February 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–4549 Filed 3–3–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,326]

Horton Mfg. Co. LLC, Tallmadge, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 23, 2009 in response to a worker petition filed on behalf of workers of Horton Mfg. Co. LLC, Tallmadge, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 25th day of February 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–4552 Filed 3–3–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,339]

Pentagon Technologies Group, Inc., Portland, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 23, 2009 in response to a worker petition filed by a company official on behalf of workers of Pentagon Technologies Group, Inc., Portland, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of February 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–4553 Filed 3–3–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,359]

The Modesto Bee Ad Production Group, Modesto, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 24, 2009, in response to a worker petition filed on behalf of workers at *The Modesto Bee,* Ad Production Group, Modesto, California.

The petitioning group of workers is covered by an active certification (TA–W–64,860) which expires on February 11, 2011.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of February 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–4541 Filed 3–3–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,299]

United States Steel Great Lakes Works, Ecorse, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 19, 2009 in response to a petition filed by the United Steelworkers of America, Local 1299 on behalf of workers of United States Steel Great Lakes Works, Ecorse, Michigan.

The petitioning group of workers is covered by an earlier petition (TA–W–64,773) filed on December 19, 2008 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed in Washington, DC, this 24th day of February 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–4551 Filed 3–3–09; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before April 3, 2009. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.
E-mail: request.schedule@nara.gov.
FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Grain Inspection, Packers, and Stockyards Administration (N1–545–09–1, 2 items, 2 temporary items). Records relating to the agency's internal and public Web sites. Included are Web management records as well as Web content.

2. Department of Agriculture, Risk Management Agency (N1–258–08–3, 11 items, 11 temporary items). Records relating to crop insurance products and providers, including such records as insurance fund management and operations records, accounting records, and records pertaining to debt management.

3. Department of Agriculture, Risk Management Agency (N1–258–08–4, 1 item, 1 temporary item). Records relating to requests for interpretations of agency procedures. Included are

requests, interpretations, appeals, and background files.

4. Department of Agriculture, Risk Management Agency (N1–258–08–5, 6 items, 5 temporary items). Records relating to the development and management of crop insurance plans for specific crops. Proposed for permanent retention are final policy dockets reviewed and approved by the Federal Crop Insurance Corporation Board.

5. Department of Agriculture, Risk Management Agency (N1–258–08–7, 3 items, 3 temporary items). Proposals, project files, and other records supporting risk management partnerships, grants, and cooperative agreements.

6. Department of Agriculture, Risk Management Agency (N1–258–08–8, 4 items, 4 temporary items). Records relating to maximum yields used to monitor production, files that pertain to non-reinsured supplemental insurance products, division-level weekly reports, and general correspondence with industry associations.

7. Department of the Army, Agency-wide (N1–AU–09–2, 1 item, 1 temporary item). Master files of an electronic information system that contains records management information, such as records retention schedules, file plans, user lists, and unit profile data.

8. Department of Education, Office of Communications and Outreach (N1–441–08–12, 7 items, 1 temporary item). Routine communications records, including such records as photographs of award and retirement ceremonies, inquiries received from the media, reference copies of publications, radio news feeds on education issues, and artwork created in connection with the production of publications. Proposed for permanent retention are publications, posters, photographs, video recordings, and testimony by senior officials that relate to the agency's mission and substantive policies and activities.

9. Department of Health and Human Services, Food and Drug Administration (N1–88–08–1, 22 items, 22 temporary items). Records relating to medical device pre-marketing applications and post-marketing surveillance, radiological product monitoring, and x-ray trend surveys.

10. Department of Health and Human Services, Food and Drug Administration (N1–88–08–3, 5 items, 5 temporary items). Records relating to training, including such records as course descriptions and materials, course rosters, training reports, and employee training and certification records.

11. Department of Homeland Security, Headquarters Offices (N1–563–08–3, 11 items, 8 temporary items). Distribution lists, copies of grant project files, interagency agreements, responses to requests for information, presentations and speeches by non-executive level staff, and situation awareness reports maintained by non-executive level staff and staff outside of the National Operations Center. Proposed for permanent retention are biographies of senior level staff, brochures, publications, and posters.

12. Department of Justice, Justice Management Division (N1–60–08–27, 5 items, 4 temporary items). Records of the Audit Liaison Group, including such records as audit and investigation files, background materials, and correspondence. Final Inspector General and Attorney General semi-annual reports to Congress are proposed for permanent retention.

13. Department of Justice, Justice Management Division (N1–60–09–4, 6 items, 6 temporary items). Records of the Justice Command Center, including such records as watch logs, message logs, contact lists, and travel logs. Also included are master files of the Justice Automated Command Center System, which tracks incoming calls and messages and also includes information on key agency personnel, such as contact information, travel status, and committee appointments.

14. Department of Justice, Bureau of Prisons (N1–129–09–4, 1 item, 1 temporary item). Master files for an electronic information system used to track and maintain control over tools and shop equipment.

15. Department of Justice, Federal Bureau of Investigation (N1–65–06–9, 3 items, 3 temporary items). Outputs, usage agreements, memorandums of understanding, and security audit logs associated with the National DNA Indexing System.

16. Department of Justice, Federal Bureau of Investigation (N1–65–09–3, 10 items, 10 temporary items). Records relating to agency health care activities. Records relate to such matters as emergency medicine programs, fitness for duty programs, alcohol and controlled substance abuse programs, and regional health care.

17. Environmental Protection Agency, Agency-wide (N1–412–07–61, 3 items, 2 temporary items). Records relating to disaster response, other than records relating to disasters that are designated as major disasters by the President. Included are such records as damage surveys, damage assessments, environmental samplings, and inspection reports. Paper copies of these records were previously approved for disposal. Proposed for permanent retention are records relating to disasters designated as major disasters by the President.

18. Federal Communications Commission, Media Bureau (N1–173–08–9, 7 items, 7 temporary items). Master files of an electronic information system used for such purposes as submitting cable community registrations, making operator information changes, and filing annual signal leakage reports and aeronautical frequency notifications.

Dated: February 27, 2009.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E9–4729 Filed 3–3–09; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL INDIAN GAMING COMMISSION

Fee Rate

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted preliminary annual fee rates of 0.00% for tier 1 and 0.058% (.00058) for tier 2 for calendar year 2009. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self regulation under 25 CFR part 518, the preliminary fee rate on class II revenues for calendar year 2009 shall be one-half of the annual fee rate, which is 0.0290% (.000290).

FOR FURTHER INFORMATION CONTACT: Kwame Mainoo, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone (202) 632–7003; fax (202) 632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid,

report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the preliminary rate being adopted today are effective for calendar year 2009. Therefore, all gaming operations within the jurisdiction of the Commission are required to self administer the provisions of these regulations, and report and pay any fees that are due to the Commission by March 31, 2009.

Dated: February 24, 2009.

Philip N. Hogen,

Chairman, National Indian Gaming Commission.

[FR Doc. E9–4410 Filed 3–3–09; 8:45 am]

BILLING CODE 7565–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2009–0040]

Agency Information Collection Activities: Proposed Collection; Comment Request; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on February 9, 2009 (74 FR 6421) that informs the public of a notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment on the collection ''Billing Instructions for NRC Cost Type Contracts (3150–0109).''

FOR FURTHER INFORMATION CONTACT: Gregory Trussell, NRC Clearance Officer, Office of Information Services; telephone (301) 415–6445 or *infocollects.resource@nrc.gov*.

SUPPLEMENTARY INFORMATION: On page 6421, first column, the subject heading is corrected to read ''Docket No. NRC–2009–0040'' instead of ''Docket No. NRC–2008–0040.'' The same change should be made in the second column, last paragraph, where the docket number appears twice.

Dated at Rockville, Maryland, this 19th day of February 2009.

For the Nuclear Regulatory Commission.

Gregory Trussell,

NRC Clearance Officer.

[FR Doc. E9–4566 Filed 3–3–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289; NRC–2009–0097]

Exelon Generation Company, LLC Three Mile Island Nuclear Station, Unit 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix R, Section III.G, ''Fire Protection of Safe Shutdown Capability,'' for the use of operator manual actions in lieu of the requirements specified in Section III.G.2 as requested by Exelon Generation Company, LLC (the licensee, formerly AmerGen Energy Company, LLC), for operation of Three Mile Island Nuclear Station, Unit 1 (TMI–1), located in Dauphin County, Pennsylvania. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant exemptions to 10 CFR part 50, Appendix R, Section III.G.2 based on two operator manual actions contained in the licensee's Fire Protection Program (FPP). The licensee's FPP requires that the identified operator manual actions be performed outside of the control room to achieve shutdown following fires in certain fire areas. The licensee states that each of the manual actions were subjected to a manual action feasibility review for TMI–1 that determined that the manual actions are feasible and can be reliably performed.

The proposed action is in accordance with the licensee's application dated February 4, 2008, as supplemented on January 28, 2009, Agencywide Documents Access and Management System (ADAMS) accession numbers ML080350369 and ML090280577, respectively. In the January 28, 2009, supplement, the licensee withdrew one of the three originally proposed manual actions from the exemption request, since they have determined that action is no longer required.

The Need for the Proposed Action

The proposed exemption from 10 CFR part 50, Appendix R, was submitted in response to the need for an exemption as identified by NRC Regulatory Information Summary (RIS) 2006–10, ''Regulatory Expectations with Appendix R Paragraph III.G.2 Operator Manual Actions.'' The RIS noted that NRC inspections identified that some licensees had relied upon operator manual actions, instead of the options specified in Paragraph 10 CFR part 50, Appendix R, III.G.2, as a permanent solution to resolve issues related to Thermo-Lag 330–1 fire barriers. The licensee indicates that the operator manual actions, referenced in the February 4, 2008 application, were previously included in correspondence with the NRC and found acceptable in a fire protection-related Safety Evaluation (SE) dated September 7, 1988, ADAMS accession number 8809150224. However, RIS 2006–10 identifies that an exemption under 10 CFR 50.12 is necessary for use of the manual actions in lieu of the requirements of 10 CFR part 50, Appendix R, III.G.2, even if the NRC previously issued an SE that found the manual actions acceptable. The proposed exemption provides the formal vehicle for NRC approval for the use of the specified operator manual actions instead of the options specified in 10 CFR part 50, Appendix R, III.G.2.

Environmental Impacts of the Proposed Action

The NRC staff evaluated the manual operator actions presented in the proposed exemption in an NRC SE dated September 7, 1988, (ADAMS accession number 8809150224) and found that they maintained a safe shutdown capability that satisfies the requirements of 10 CFR 50, Appendix R, III.G. In addition, the licensee supplemented the February 4, 2008 request for exemption on January 28, 2009, with additional information to confirm that the operator manual actions addressed in the 1988 SE for which the exemptions are sought, are feasible and that the safety basis for these actions remains valid. Therefore, the proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. The NRC staff, thus, concludes that granting the proposed exemption would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-

radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement Related to the Operation of Three Mile Island Nuclear Station, Units 1 and 2, NUREG–0552, dated December 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on January 30, 2009, the NRC staff consulted with the Pennsylvania State official, Michael Murphy of the Pennsylvania State Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 4, 2008, as supplemented on January 28, 2009, ADAMS accession numbers ML080350369 and ML090280577, respectively. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 24th day of February 2009.

For the Nuclear Regulatory Commission.

Peter Bamford,

Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–4565 Filed 3–3–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Trade Advisory Committee on Small and Minority Business (ITAC–11)

AGENCY: Office of the United States Trade Representative.

ACTION: Correcting Date of Notice of a Partially Opened ITAC–11 Meeting (Published in FR Volume 74, Page 8819).

SUMMARY: The correct date for The Industry Trade Advisory Committee on Small and Minority Business (ITAC–11) published in **Federal Register** Volume 74 page 8819 is Monday, March 9, 2009. The meeting will be closed to the public from 9 a.m. to 12:30 p.m. and opened to the public from 1 p.m. to 3:30 p.m.

DATES: The meeting is scheduled for March 9, 2009, unless otherwise notified.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, Room B41–A/B, located at 14th Street and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Laura Hellstern, DFO for ITAC–11 at (202) 482–3222, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following agenda items will be considered.

- Status of U.S. Commercial Service Activities for FY09.
- The TPCC Agencies and Their Role in Export Promotion and Trade Policy.

Christina R. Sevilla.

Acting Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. E9–4611 Filed 3–3–09; 8:45 am]

BILLING CODE 3190–W9–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28637; 812–13541]

DFA Investment Dimensions Group Inc., et al.; Notice of Application

February 26, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: The order would permit certain management investment companies and unit investment trusts registered under the Act to acquire shares of certain open-end management investment companies or unit investment trusts registered under the Act that are outside of the same group of investment companies as the acquiring investment companies.

APPLICANTS: DFA Investment Dimensions Group Inc. (''DFAIDG''), Dimensional Emerging Markets Value Fund Inc. (''DEM''), Dimensional Investment Group Inc. (''DIG''), and The DFA Investment Trust Company (''DFAITC,'' and together with DFAIDG, DEM, and DIG, the ''Trusts'') and Dimensional Fund Advisors LP (''Advisor'').

FILING DATES: The application was filed on June 11, 2008, and amended on December 8, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 March 23, 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–

1090; Applicants, 2901 Via Fortuna, Terrace V, Floor 2, Austin, TX 78746.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Attorney Adviser, at (202) 551–6819, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Trusts are open-end management investment companies registered under the Act and are each comprised of separate series (each, a ''Fund'' and collectively the ''Funds'') that pursue distinct investment objectives and strategies. Each of DFAIDG, DEM, and DIG is organized as a Maryland corporation. DFAITC is organized as a Delaware statutory trust. Certain Funds pursue their investment objectives through a master-feeder arrangement in reliance on section 12(d)(1)(E) of the Act.[1] The Advisor is a Delaware limited partnership and is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'').[2] The Advisor serves as investment adviser to those Funds that invest directly in portfolio securities.

2. Applicants request relief to permit registered management investment companies (''Investing Management Companies'') and registered unit investment trusts (''Investing Trusts,'' and together with the Investing Management Companies, ''Funds of Funds'') that are not part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trusts, to acquire shares of the Funds in excess of the limits in section 12(d)(1)(A) of the Act, and to permit a Fund, any principal underwriter for a Fund, and any broker or dealer registered under the Securities Exchange Act of 1934 (''Broker'') to sell shares of a Fund to a Fund of Funds in excess of the limits of section 12(d)(1)(B) of the Act. Applicants request that the relief apply to: (1) Each open-end management investment company or unit investment trust registered under the Act that currently or subsequently is part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trusts and is advised or sponsored by the Advisor or any entity controlling, controlled by, or under common control with the Advisor (such open-end management investment companies are referred to as ''Open-end Funds;'' such unit investment trusts are referred to as ''UIT Funds;'' and both Open-end Funds and UIT Funds are included in the term ''Funds''); (2) each Fund of Funds that enters into a Participation Agreement (as defined below) with a Fund to purchase shares of the Funds; and (3) any principal underwriter to a Fund or Broker selling shares of a Fund.[3]

3. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act and registered as an investment advisor under the Advisers Act (''Fund of Funds Adviser''). A Fund of Funds Adviser may contract with an investment adviser which meets the definition of section 2(a)(20)(B) of the Act (a ''Subadviser''). Any Subadviser will be registered as an investment adviser under the Advisers Act. Each Investing Trust will have a sponsor (''Sponsor''). Applicants represent that to ensure that Funds of Funds comply with the terms and conditions of the requested relief, a Fund of Funds must enter into a participation agreement between a Trust, on behalf of the relevant Funds, and the Fund of Funds (''Participation Agreement'') before investing in a Fund beyond the limits imposed by section 12(d)(1)(A). The Participation Agreement will require the Fund of Funds to adhere to the terms and conditions of the requested order. The Participation Agreement will include an acknowledgment from the Fund of Funds that it may rely on the requested order only to invest in the Funds and not in any other registered investment company.

4. Applicants state that the Funds will offer Funds of Funds simple and efficient investment vehicles to achieve their asset allocation or diversification objectives. Applicants state that the Funds also provide high quality, professional investment program alternatives to Funds of Funds that do not have sufficient assets to operate comparable funds.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any Broker from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act to permit Funds of Funds to acquire shares of the Funds in excess of the limits in section 12(d)(1)(A) of the Act, and a Fund, any principal underwriter for a Fund and any Broker to sell shares of a Fund to a Fund of Funds in excess of the limits of section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement and conditions will adequately address the concerns underlying the applicable limits in sections 12(d)(1)(A) and (B) of the Act, which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue

[1] A Fund of Funds (as defined below) may not invest in a Fund that serves as a feeder Fund unless the feeder Fund is part of the same group of investment companies as its corresponding master fund.

[2] All references to the term ''Advisor'' herein include successors-in-interest to the Advisor. Successors-in-interest are limited to any entity resulting from a reorganization of the Advisor into another jurisdiction or a change in the type of business organization.

[3] All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. A Fund of Funds may rely on the requested order only to invest in the Funds and not in any other registered investment company.

influence over the Funds.[4] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting the Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to each Subadviser, any person controlling, controlled by or under common control with the Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by or under common control with the Subadviser (''Subadviser Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Open-end Fund or sponsor to a UIT Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Subadviser, Sponsor, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser, Subadviser, Sponsor or employee is an affiliated person; however any person whose relationship to a Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate.

5. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of each Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' (within the meaning of section 2(a)(19) of the Act) (''Disinterested Trustees''), will find that the advisory fees charged under the advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Open-end Fund in which the Investing Management Company may invest. In addition, a Fund of Funds Adviser or trustee or Sponsor of a Fund of Funds will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Open-end Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee, or Sponsor, or an affiliated person of the Fund of Funds Adviser, trustee, or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee, or Sponsor, or its affiliated person by an Open-end Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants also state that with respect to registered separate accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Fund level.[5] Other sales charges and service fees, as defined in Rule 2830 of the NASD Conduct Rules (''Rule 2830''), if any, will only be charged at the Fund of Funds level or at the Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830.

6. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants propose condition 12 to ensure that the proposed structure will not result in unnecessary complexity. Applicants also note that a Fund reserves the right to reject any investment by a Fund of Funds.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person. Applicants seek relief from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its shares to and redeem its shares from a Fund of Funds.[6]

2. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, (b) the proposed transaction is consistent with the policies of each registered investment company involved, and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such 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. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act.

3. Applicants believe that any proposed transactions directly between Funds and a Fund of Funds will be consistent with the policies of each Fund and such Fund of Funds. The Participation Agreement will require any Fund of Funds that purchases shares from a Fund to represent that the purchase of shares from the Fund by a Fund of Funds will be accomplished in compliance with the investment restrictions of the Fund of Funds and will be consistent with the investment

[4] A ''Fund of Funds Affiliate'' is defined as a Fund of Funds Adviser, Subadviser, Sponsor, promoter, or a principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is defined as an investment adviser, sponsor, promoter, or principal underwriter of a Fund, and any person controlling, controlled by, or under common control with any of those entities.

[5] Applicants represent that a Fund of Funds will represent in the Participation Agreement that no insurance company sponsoring a registered separate account will be permitted to invest in the Fund of Funds unless the insurance company has certified to the Fund of Funds that the aggregate of all fees and charges associated with each contract that invests in the Fund of Funds, including fees and charges at the separate account, Fund of Funds, and Fund levels, will be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.

[6] Applicants acknowledge that receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgment.

policies set forth in the Fund of Fund's registration statement.

4. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that all shares of the Funds sold and redeemed by the Funds will be sold and redeemed at net asset value as required by rule 22c–1 under the Act. Applicants also state that the proposed arrangement is consistent with the policies and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The members of a Fund of Funds Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadviser Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds Advisory Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of a Fund, it (except for any member of the Fund of Funds Advisory Group or Subadviser Group that is a separate account) will vote its shares of the Fund in the same proportion as the vote of all other holders of the Fund's shares. This condition does not apply to the Subadviser Group with respect to a Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Open-end Fund) or as the sponsor (in the case of a UIT Fund). A registered separate account will seek voting instructions from its contract holders and will vote its shares in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An unregistered separate account will either (a) vote its shares of the Fund in the same proportion as the vote of all other holders of the Fund's shares, or (b) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in shares of a Fund to influence the terms of any services or transactions between the Funds of Funds or a Fund of Funds Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to assure that the Fund of Funds Adviser and any Subadviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Open-end Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Open-end Fund (''Board''), including a majority of the Disinterested Trustees, will determine that any consideration paid by the Open-end Fund to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Open-end Fund, (b) is within the range of consideration that the Open-end Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions, and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Open-end Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Open-end Fund or sponsor to a UIT Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Open-end Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by an Open-end Fund in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Open-end Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Open-end Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Open-end Fund. The Board of the Open-end Fund will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Open-end Fund, (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index, and (c) whether the amount of securities purchased by the Open-end Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Open-end Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Open-end Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of an Open-end Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Open-end Fund were made.

8. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), the Fund of Funds and the Fund will execute a Participation Agreement stating without limitation that their boards of directors or trustees and their investment advisers, or sponsors and trustees, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Open-end Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Open-end Fund of the investment. At such time, the Fund of Funds will also transmit to the Open-end Fund a list of the names of each

Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Open-end Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement and, in the case of an Open-end Fund, the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the Disinterested Trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Open-end Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

10. A Fund of Funds Adviser, or trustee, or Sponsor of a Fund of Funds, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received from any plan adopted by an Open-end Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor, or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor, or its affiliated person, by an Open-end Fund, in connection with the investment by the Fund of Funds in the Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person by an Open-end Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

11. With respect to registered separate accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Fund level. Other sales charges and service fees, as defined in Rule 2830, if any, will only be charged at the Fund of Funds level or at the Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830.

12. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that the Fund (a) acquires such securities in compliance with section 12(d)(1)(E) of the Act; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act), or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Fund to (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4604 Filed 3–3–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28638; 812–13441]

IndexIQ ETF Trust, et al.; Notice of Application

February 27, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from Sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act; and under Sections 6(c) and 17(b) of the Act for an exemption from Sections 17(a)(1) and (a)(2) of the Act; and under Section 12(d)(1)(J) for an exemption from Sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: IndexIQ ETF Trust (''Trust''), IndexIQ Advisors LLC (''Advisor'') and ALPS Distributors, Inc. (''Distributor'').

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares of certain series.

FILING DATES: The application was filed on October 23, 2007 and amended on August 1, 2008, November 19, 2008, January 28, 2009 and February 12, 2009. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 March 19, 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: Gregory Bassuk, IndexIQ ETF Trust and IndexIQ Advisors LLC, 800 Westchester Avenue, Suite N–611, Rye Brook, NY 10573; ALPS Distributors, Inc., c/o Thomas A. Carter, 1290 Broadway, Suite 1100, Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel at (202) 551–6811 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

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 Trust is organized as a Delaware statutory trust and is registered as an open-end management investment company under the Act. The Trust will initially offer Shares of five series (''Initial Funds''), each of which will track an equity securities index (''Index'').[1]

2. Applicants request that the order apply to the Initial Funds and any additional series of the Trust and other open-end investment management companies registered under the Act or series thereof, that may be created in the future (the ''Future Funds'').[2] Any Future Fund will be (a) advised by the Advisor or an entity controlling, controlled by or under common control with the Advisor, and (b) comply with the terms and conditions of the application. The Initial Funds and the Future Funds together are the ''Funds.''

3. The Advisor, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act'') and will serve as the investment adviser to each Fund. The Advisor may enter into sub-advisory agreements with one or more investment advisers each of which will serve as a sub-adviser to a Fund (each, a ''Subadvisor''). Each Subadvisor will be registered under the Advisers Act. The Distributor is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as the principal underwriter and distributor for the Creation Units of Shares. The Distributor is not affiliated with the Advisor or any Subadvisor.

4. Each Fund will hold certain equity securities and other financial instruments (''Portfolio Holdings'') selected to correspond, before fees and expenses, generally to the price and yield performance of an Index. The Index for each Initial Fund will consist primarily of exchange-traded funds (''ETFs'') and shares of pooled investment vehicles (''ETVs'')[3] (each such Index, a ''FOF Index''). The Initial Funds and any other Fund that has a FOF Index as its Index are referred to herein as ''FOF Funds.'' Certain of the Indexes for Future Funds may be composed of equity securities of domestic issuers and non-domestic issuers meeting the requirements for trading in U.S. markets (''Domestic Indexes''). Other Indexes for Future Funds may be composed of equity securities of non-domestic issuers (''International Indexes''). Funds that track Domestic Indexes are referred to as ''Domestic Funds'' and Funds that track International Indexes are referred to as ''International Funds.'' Funds that track Indexes that are not FOF Indexes are referred to as ''Single-Tier Funds.'' The Indexes are based on a proprietary, rules-based methodology developed by Financial Development HoldCo LLC (d/b/a INDEXIQ) (''FDH'') (''Rules-Based Process''). The Rules-Based Process, including the rules which govern the inclusion and weighting of securities in the Indexes, will be publicly available, including on the Funds' Web site (''Web site''), along with the identities and weightings of the component securities of each Index (''Index Constituents'') and the Portfolio Holdings of each Fund. While FDH may modify the Rules-Based Process in the future, FDH does not intend to do so. Any change to the Rules-Based Process would not take effect until FDH had given the public at least 60 days advance notice of the change and had given reasonable notice of the change to the Calculation Agent. The ''Calculation Agent'' is the entity that, pursuant to an agreement with FDH, is solely responsible for all Index calculation, maintenance and dissemination activities.[4] The Calculation Agent is not, and will not be, an affiliated person, or an affiliated person of an affiliated person, of the Funds, the Advisor, any Subadvisor, the Distributor or any promoter of the Funds. The Indexes will be reconstituted on a periodic basis no more frequently that monthly.

5. Applicants state that the Index Provider will not have any responsibility for the management of the Funds. In addition, applicants have adopted policies and procedures that, among other things, are designed to limit or prohibit communications between the Index Provider and its other employees (''Firewalls''). Among other things, the Firewalls prohibit the Index Provider from disseminating non-public information about the Indexes, including potential changes to the Rules-Based Process, to, among others, the employees of the Advisor and any Subadvisor responsible for managing the Funds or any Affiliated Account (as defined below) (''advisory personnel''). An Affiliated Account is any registered investment company, separately managed account of institutional investors or privately offered fund that is not deemed to be an investment company in reliance on Section 3(c)(1) or Section 3(c)(7) of the Act for which FDH acts as investment advisor or subadvisor. The Advisor also has adopted Firewalls that prohibit advisory personnel from sharing any non-public information about the Funds and any Affiliated Account with the Index Provider. Further, the Advisor and any Subadvisor has or will have, pursuant to rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules under the Advisers Act. The Advisor, any Subadvisor and Distributor also have adopted or will adopt a Code of Ethics as required under rule 17j–1 under the Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in rule 17j–1) from engaging in any conduct prohibited in rule 17j–1. In addition, the Advisor and any Subadvisor has adopted or will adopt policies and procedures to detect and prevent insider trading as required under Section 204A of the Advisers Act, which are reasonably designed taking into account the nature of their business, to prevent the misuse in violation of the Advisers Act, Exchange Act, or rules and regulations under the Advisers Act and Exchange Act, of material non-public information.

6. The investment objective of each Fund will be to provide investment results that correspond, before fees and expenses, generally to the price and

[1] The Initial Funds are: IQ Hedge Multi-Strategy Composite ETF, IQ Hedge Long/Short ETF, IQ Hedge Macro ETF, IQ Hedge Event-Driven ETF, and IQ Hedge Market Neutral ETF.

[2] All existing entities that intend to rely on the order are named as applicants. Any other existing or future entity that relies on the order in the future will comply with the terms and conditions of the application. A Fund of Funds (as defined below) may rely on the order only to invest in Single-Tier Funds (as defined below) and not in any other registered investment company, Initial Fund or FOF Fund (as defined below).

[3] Each ETV will be structured as a special purpose vehicle that owns a pool of assets and has issued equity interests in such pool for sale by registering with the Commission under the Securities Act of 1933, as amended (''Securities Act'').

[4] The Calculation Agent will determine the number, type and weight of Index Constituents that comprise each Index and will perform all other calculations that are necessary to determine the proper constitution of each Index. FDH will not disclose any information about any Index's constitution to the Advisor, any Subadvisor or the Funds prior to the publication of such information on the Web site. However, an employee of FDH will monitor the Rules-Based Process and the Indexes (''Index Administrator''), and other employees of FDH may be appointed to assist the Index Administrator (''Index Group,'' and together with the Index Administrator, ''Index Provider'').

yield performance of its Index.[5] Intra-day values of each Index will be disseminated every 15 seconds throughout the trading day. A Fund will utilize either a replication or representative sampling strategy which will be disclosed with regard to each Fund in its prospectus (''Prospectus'').[6] A Fund using a replication strategy will invest in the Index Constituents in its Index in approximately the same proportions as in the Index. In certain circumstances, such as when there are practical difficulties or substantial costs involved in holding every security in an Index or when one or more Index Constituents is less liquid, illiquid or unavailable, a Fund may use a representative sampling strategy pursuant to which it will invest in some, but not all of the Index Constituents of its Index.[7] Applicants anticipate that a Fund that utilizes a representative sampling strategy will not track the performance of its Index with the same degree of accuracy as an investment vehicle that invests in all Index Constituents of the Index with the same weighting as the Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Index of less than 5 percent.

7. Creation Units are expected to range between 15,000 to 200,000 Shares as will be clearly stated in the relevant Fund's Prospectus. Applicants expect that the initial price of a Creation Unit will fall in the range of $1,000,000 to $10,000,000. All orders to purchase Creation Units must be placed with the Distributor, by or through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will be responsible for transmitting the orders to the Funds. An Authorized Participant must be either: (a) A broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC'', and such participant, ''DTC Participant''). Shares of each Fund generally will be sold in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of securities designated by the Advisor or Subadvisor to correspond generally to the price and yield performance of the relevant Index (the ''Deposit Securities''), together with the deposit of a specified cash payment (''Balancing Amount''). The Balancing Amount is an amount equal to the difference between (a) the net asset value (''NAV'') per Creation Unit of a Fund and (b) the total aggregate market value per Creation Unit of the Deposit Securities.[8] Each Fund may permit a purchaser of Creation Units to substitute cash in lieu of depositing some or all of the Deposit Securities if the Advisor or Sub-Advisor believes such method would reduce the Fund's transaction costs or enhance the Fund's operating efficiency.[9]

8. An investor purchasing a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or redemption of Creation Units.[10] The maximum Transaction Fees relevant to each Fund and the method of calculating such Transaction Fees will be disclosed in the Prospectus or statement of additional information (''SAI'') of such Fund. The Distributor also will be responsible for delivering the Fund's Prospectus to those persons purchasing Creation Units, and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

9. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares of the Funds will be listed and traded on an Exchange. It is expected that one or more member firms of a Listing Exchange will be designated to act as a specialist (''Specialist'') or a market maker (''Market Maker'') and maintain a market for Shares trading on the Listing Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

10. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). A Specialist or Market Maker, in providing a fair and orderly secondary market for the Shares, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[11] Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

11. Shares will not be individually redeemable, and owners of Shares may

[5] Applicants represent that each Single-Tier Fund will invest at least 80% of its total assets in some or all of the Index Constituents of its Index or, in the case of International Funds, Index Constituents and depositary receipts representing such Index Constituents. ''Depositary Receipts'' will typically be American Depositary Receipts, but may include Global Depositary Receipts and Euro Depositary Receipts. Each FOF Fund will invest at least 80% of its total assets in ETFs, ETVs and other Index Constituents of its FOF Index. Each Fund also may invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents, as well as in stocks not included in its Index, but which the Advisor or Subadvisor believes will help the Fund track its Index.

[6] All representations and conditions contained in the application that require a Fund to disclose particular information in the Fund's Prospectus and/or annual report shall be effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009).

[7] Under the representative sampling strategy, the Advisor and any Subadvisor will seek to construct a Fund's portfolio so that its market capitalization, industry weightings, fundamental investment characteristics (such as return variability, earnings valuation and yield) and liquidity measures perform like those of the Index.

[8] Each Fund will sell and redeem Creation Units only on a ''Business Day'' which is defined as any day that the New York Stock Exchange, the Listing Exchange (defined below), and the custodian of the Fund are open for business, and includes any day that a Fund is required to be open under section 22(e) of the Act. Each Business Day, prior to the opening of trading on the Listing Exchange (defined below), the list of names and amount of each security constituting the current Deposit Securities and the Balancing Amount will be made available. Any national securities exchange (as defined in section 2(a)(26) of the Act) (''Exchange'') on which Shares are listed (''Listing Exchange'') will disseminate, every 15 seconds during its regular trading hours, through the facilities of the Consolidated Tape Association, an amount per individual Share representing the sum of the estimated Balancing Amount and the current value of the Deposit Securities.

[9] Applicants state that in some circumstances or in certain countries, it may not be practicable or convenient, or permissible under the laws of certain countries or the regulations of certain foreign stock exchanges, for an International Fund to operate exclusively on an ''in-kind'' basis. Applicants also note that when a substantial rebalancing of a Fund's portfolio is required, the Advisor or a Subadvisor might prefer to receive cash rather than stocks so that the Fund may avoid transaction costs involved in liquidating part of its portfolio to achieve the rebalancing.

[10] Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities, including operational processing and brokerage costs, and part or all of the spread between the expected bid and the offer side of the market relating to such Deposit Securities.

[11] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

acquire those Shares from a Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) Portfolio Holdings designated to be delivered for Creation Unit redemptions on the date that the request for redemption is submitted (''Fund Securities'') and (b) a ''Cash Redemption Payment,'' consisting of an amount calculated in the same manner as the Balancing Amount, although the actual amount of the Cash Redemption Payment may differ if the Fund Securities are not identical to the Deposit Securities on that day. An investor may receive the cash equivalent of a Fund Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy. A redeeming investor will pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

12. Applicants state that in accepting Deposit Securities and satisfying redemptions with Fund Securities, the relevant Funds will comply with the federal securities laws, including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act. As a general matter, the Deposit Securities and Fund Securities will correspond pro rata to the Portfolio Holdings held by each Fund, although Fund Securities received on redemption may not always be identical to Deposit Securities deposited in connection with the purchase of Creation Units for the same day.

13. Neither the Trust nor any individual Fund will be marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an ''ETF,'' an ''investment company,'' a ''fund,'' or a ''trust.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units or Shares, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Units only. The same approach will be followed in the SAI, shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

Applicants' Legal Analysis

1. Applicants request an order under Section 6(c) of the Act granting an exemption from Sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act; and under Sections 6(c) and 17(b) of the Act granting an exemption from Sections 17(a)(1) and 17(a)(2) of the Act; and under Section 12(d)(1)(J) of the Act for an exemption from Sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such 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. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from Section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of Section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because the Shares will not be individually redeemable, applicants request an order that would permit each Fund, as a series of an open-end management investment company, to issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase the Shares in Creation Units and redeem Creation Units from each Fund. Applicants state that because Creation Units may always be purchased and redeemed at NAV, the market price of the Shares should not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in the Shares will take place at negotiated prices, not at a current offering price described in a Fund's Prospectus, and not at a price based on NAV. Thus, purchases and sales of the Shares in the secondary market will not comply with Section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under Section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by Section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing of Shares. Applicants maintain that while there is little legislative history regarding Section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to

discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for the International Funds is contingent not only on the settlement cycle of the United States market, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the International Funds. Applicants state that local market delivery cycles for transferring Fund Securities to redeeming investors, coupled with local market holiday schedules, will, under certain circumstances, require a delivery process longer than seven calendar days for International Funds. Applicants request relief under Section 6(c) of the Act from Section 22(e) to allow the International Funds to pay redemption proceeds up to 12 calendar days after the tender of any Creation Units for redemption. Except as disclosed in the relevant International Fund's Prospectus and/or SAI, applicants expect that each International Fund will be able to deliver redemption proceeds within seven days.[12] Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date thereof), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Fund.

8. Applicants state that Section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that Section 22(e) was designed to prevent.

Section 12(d)(1)

9. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request an exemption to permit management investment companies (''Acquiring Management Companies'') and unit investment trusts (''Acquiring Trusts'') registered under the Act that are not sponsored or advised by the Advisor or any entity controlling, controlled by, or under common control with the Advisor and are not part of the same ''group of investment companies,'' as defined in Section 12(d)(1)(G)(ii) of the Act, as the Trust (collectively, ''Acquiring Funds'') to acquire Shares of a Single-Tier Fund beyond the limits of Section 12(d)(1)(A). No Acquiring Fund will be in the same group of investment companies as defined in Section 12(d)(1)(G)(ii) of the Act as the Single-Tier Funds. In addition, applicants seek relief to permit a Single-Tier Fund or a broker-dealer (''Broker'') that is registered under the Exchange Act to sell Shares of such Single-Tier Fund to an Acquiring Fund in excess of the limits of Section 12(d)(1)(B).

11. Each Acquiring Management Company will be advised by an investment adviser within the meaning of Section 2(a)(20)(A) of the Act (the ''Acquiring Fund Advisor'') and may be sub-advised by one or more investment advisers within the meaning of Section 2(a)(20)(B) of the Act (each an ''Acquiring Fund Subadvisor''). Each Acquiring Fund Advisor and Acquiring Fund Subadvisor will be registered under the Advisers Act. Each Acquiring Trust will be sponsored by a sponsor (''Sponsor'').

12. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in Section 12(d)(1), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

13. Applicants believe that neither the Acquiring Funds nor an Acquiring Fund Affiliate would be able to exert undue influence over the Single-Tier Funds.[13] To limit the control that an Acquiring Fund may have over a Single-Tier Fund, applicants propose a condition prohibiting an Acquiring Fund Advisor or Sponsor, any person controlling, controlled by, or under common control with the Acquiring Fund Advisor or Sponsor, and any investment company and any issuer that would be an investment company but for Sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Acquiring Fund Advisor or Sponsor, or any person controlling, controlled by, or under common control with an Acquiring Fund Advisor or Sponsor (''Acquiring Fund's Advisory Group'') from controlling (individually or in the aggregate) a Single-Tier Fund within the meaning of Section 2(a)(9) of the Act. The same prohibition would apply to any Acquiring Fund's Subadvisor, any person controlling, controlled by or under common control with the Acquiring Fund's Subadvisor, and any investment company or issuer that would be an investment company but for Sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Acquiring Fund's Subadvisor or any person controlling, controlled by or under common control with the Acquiring Fund's Subadvisor (''Acquiring Fund's Sub-Advisory Group'').

14. Applicants propose other conditions to limit the potential for undue influence over the Single-Tier Funds, including that no Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Single-Tier Fund) will cause a Single-Tier Fund to purchase a security in any offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or

[12] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

[13] An ''Acquiring Fund Affiliate'' is an Acquiring Fund Advisor, Acquiring Fund Subadvisor, Sponsor, promoter, or principal underwriter of an Acquiring Fund, and any person controlling, controlled by, or under common control with any of these entities. A ''Single-Tier Fund Affiliate'' is the Advisor, Subadvisor, promoter, or principal underwriter of a Single-Tier Fund and any person controlling, controlled by or under common control with any of these entities.

selling syndicate that is an officer, director, member of an advisory board, Acquiring Fund Advisor, Acquiring Fund Subadvisor, employee or Sponsor of an Acquiring Fund, or a person of which any such officer, director, member of an advisory board, Acquiring Fund Advisor, Acquiring Fund Subadvisor, employee, or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by Section 10(f) of the Act is not an Underwriting Affiliate).

15. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Acquiring Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of Section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged to the Acquiring Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Single-Tier Fund in which the Acquiring Management Company may invest. In addition, except as provided in condition 12, an Acquiring Fund Advisor or a trustee (''Trustee'') or Sponsor of an Acquiring Trust, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received by the Acquiring Fund Advisor or Trustee or Sponsor or an affiliated person of the Acquiring Fund Advisor, Trustee or Sponsor, from a Single-Tier Fund in connection with the investment by the Acquiring Fund in the Single-Tier Fund. Applicants also state that any sales charges or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds set forth in Conduct Rule 2830 of the NASD.

16. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Single-Tier Fund may acquire securities of any investment company or company relying on Section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in Section 12(d)(1)(A) of the Act. To ensure that Acquiring Funds comply with the terms and conditions of the requested relief from Section 12(d)(1), any Acquiring Fund that intends to invest in a Single-Tier Fund in reliance on the requested order will enter into a written agreement with such Single-Tier Fund (''Acquiring Fund Agreement'') requiring the Acquiring Fund to adhere to the terms and conditions of the requested order. The Acquiring Fund Agreement also will include an acknowledgement from the Acquiring Fund that it may rely on the requested order only to invest in the Single-Tier Funds and not in any other investment company, Initial Fund or FOF Fund.

17. Applicants also note that a Single-Tier Fund may choose to reject any direct purchase of Creation Units by an Acquiring Fund. To the extent that an Acquiring Fund purchases Shares of a Single-Tier Fund in the secondary market, a Single-Tier Fund would still retain its right to reject any initial investment by an Acquiring Fund in excess of the limits in Section 12(d)(1)(A) by declining to enter into an Acquiring Fund Agreement with an Acquiring Fund.

Sections 17(a)(1) and (2) of the Act

18. Section 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person (''Second-Tier Affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities.

19. Applicants request an exemption from Section 17(a) of the Act pursuant to Sections 6(c) and 17(b) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons of the Fund or Second-Tier Affiliates solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more other registered investment companies (or series thereof) advised by the Advisor or an entity controlling, controlled by or under common control with the Advisor.

20. Applicants believe that permitting the affiliated persons described above to effect in-kind purchases or redemptions of Creation Units would not give rise to the abuses that section 17(a) seeks to prevent. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Units will be the same for all purchases and redemptions. Deposit Securities and Fund Securities will be valued in the same manner as Portfolio Holdings. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons, or Second-Tier Affiliates, of a Fund to effect a transaction detrimental to other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Funds.

21. Applicants also seek relief from Section 17(a) to permit a Single-Tier Fund that is an affiliated person of an Acquiring Fund to sell its Shares to and redeem its Shares from an Acquiring Fund, and to engage in the accompanying in-kind transactions with the Acquiring Fund.[14] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by an Acquiring Fund for the purchase or redemption of Shares directly from a Single-Tier Fund will be based on the NAV of the Single-Tier Fund.[15] Applicants believe that any proposed transactions directly between the Single-Tier Funds and Acquiring Funds will be consistent with the policies of each Acquiring Fund. The purchase of Creation Units by an Acquiring Fund directly from a Single-Tier Fund will be accomplished in accordance with the investment restrictions of any such Acquiring Fund and will be consistent with the investment policies set forth in the Acquiring Fund's registration statement. The Acquiring Fund Agreement will require any Acquiring Fund that purchases Creation Units directly from a Single-Tier Fund to represent that the purchase of Creation Units from a

[14] Applicants believe that an Acquiring Fund likely will purchase Shares of the Single-Tier Funds in the secondary market and will not purchase or redeem Creation Units directly from a Single-Tier Fund.

[15] Applicants acknowledge that receipt of compensation by (a) an affiliated person of an Acquiring Fund, or an affiliated person of such person, for the purchase by the Acquiring Fund of Shares of a Single-Tier Fund or (b) an affiliated person of a Single-Tier Fund, or an affiliated person of such person, for the sale by the Single-Tier Fund of its Shares to an Acquiring Fund may be prohibited by section 17(e)(1) of the Act. The Acquiring Fund Agreement also will include this acknowledgment.

Single-Tier Fund by an Acquiring Fund will be accomplished in compliance with the investment restrictions of the Acquiring Fund and will be consistent with the investment policies set forth in the Acquiring Fund's registration statement.

Applicants' Conditions

Applicants agree that any order of granting the requested relief will be subject to the following conditions: [16]

ETF Relief

1. As long as the Trust operates in reliance on the requested order, the Shares of each Fund will be listed on an Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable, and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Website, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) The prior Business Day's NAV and the mid-point of the bid-ask spread at the time of the calculation of NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

4. The Prospectus and annual report for each Fund also will include: (a) the information listed in condition 3(b), (i) in the case of the Fund's Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Fund): (i) The cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Index.

5. Each Fund's Prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the Fund, which is a registered investment company, and that the acquisition of Shares by investment companies is subject to the restrictions of Section 12(d)(1) of the Act. In addition, the Prospectus for each Single-Tier Fund will disclose that it has received an exemptive order that permits registered investment companies to invest in such Single-Tier Fund beyond the limits in Section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an Acquiring Fund Agreement with the Single-Tier Fund regarding the terms of the investment.

6. The requested ETF Relief will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based exchange-traded funds.

Section 12(d)(1) Relief

7. The members of an Acquiring Fund's Advisory Group will not control (individually or in the aggregate) a Single-Tier Fund within the meaning of Section 2(a)(9) of the Act. The members of an Acquiring Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Single-Tier Fund within the meaning of Section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding Shares of a Single-Tier Fund, an Acquiring Fund's Advisory Group or an Acquiring Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25% of the outstanding Shares of a Single-Tier Fund, it will vote its Shares in the same proportion as the vote of all other holders of the Shares. This condition will not apply to the Acquiring Fund's Sub-Advisory Group with respect to a Single-Tier Fund for which the Acquiring Fund's Subadvisor or a person controlling, controlled by, or under common control with the Acquiring Fund's Subadvisor acts as the investment adviser within the meaning of Section 2(a)(20)(A) of the Act.

8. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring Fund in a Single-Tier Fund to influence the terms of any services or transactions between an Acquiring Fund or an Acquiring Fund Affiliate and the Single-Tier Fund or the Single-Tier Fund Affiliate.

9. The board of directors or trustees of an Acquiring Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Acquiring Fund Advisor and any Acquiring Fund Subadvisor are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Fund Affiliate from a Single-Tier Fund or a Single-Tier Fund Affiliate in connection with any services or transactions.

10. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Single-Tier Fund) will cause a Single-Tier Fund to purchase a security in any Affiliated Underwriting.

11. Before investing in the Shares of a Single-Tier Fund in excess of the limits in Section 12(d)(1)(A), each Acquiring Fund and such Single-Tier Fund will execute an Acquiring Fund Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers or Sponsors or Trustees, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Single-Tier Fund in excess of the limit in Section 12(d)(1)(A)(i), an Acquiring Fund will notify such Single-Tier Fund of the investment. At such time, the Acquiring Fund will also transmit to such Single-Tier Fund a list of names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Single-Tier Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Single-Tier Fund and the Acquiring Fund will maintain and preserve a copy of the order, the Acquiring Fund Agreement, and the list of names with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

12. The Acquiring Fund Advisor, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received under any plan adopted by a Fund under rule 12b–1 under the Act) received from a Single-Tier Fund by the Acquiring Fund Advisor, Trustee or Sponsor, or an affiliated person of the Acquiring Fund Advisor, Trustee or Sponsor, other than any advisory fees paid to the Acquiring Fund Advisor, Trustee or Sponsor, or its affiliated person by the Single-Tier Fund, in connection with the investment by the Acquiring Fund in the Single-Tier Fund.

[16] *See* note 7, *supra*.

Any Acquiring Fund Subadvisor will waive fees otherwise payable to the Acquiring Fund Subadvisor, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from a Single-Tier Fund by the Acquiring Fund Subadvisor, or an affiliated person of the Acquiring Fund Subadvisor, other than any advisory fees paid to the Acquiring Fund Subadvisor or its affiliated person by a Single-Tier Fund, in connection with any investment by the Acquiring Management Company in such Single-Tier Fund made at the direction of the Acquiring Fund Subadvisor. In the event that the Acquiring Fund Subadvisor waives fees, the benefit of the waiver will be passed through to the Acquiring Management Company.

13. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

14. Once an investment by an Acquiring Fund in the securities of a Single-Tier Fund exceeds the limit in Section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of a Fund (''Board''), including a majority of the directors or trustees that are not ''interested persons'' within the meaning of Section 2(a)(19) of the Act (''independent trustees''), will determine that any consideration paid by such Single-Tier Fund to an Acquiring Fund or Acquiring Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by such Single-Tier Fund; (b) is within the range of consideration that such Single-Tier Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Single-Tier Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser.

15. The Board, including a majority of the independent trustees, will adopt procedures reasonably designed to monitor any purchases of securities by a Single-Tier Fund in an Affiliated Underwriting once an investment by an Acquiring Fund in the securities of such Single-Tier Fund exceeds the limit of Section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in the Single-Tier Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Single-Tier Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Single-Tier Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders of the Single-Tier Fund.

16. Each Single-Tier Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Acquiring Fund in the Shares of the Single-Tier Fund exceeds the limit of Section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

17. Before approving any advisory contract under Section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Single-Tier Fund in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

18. No Single-Tier Fund will acquire securities of any investment company or companies relying on Sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in Section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4602 Filed 3–3–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 5, 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)(5), (7), 9(B) and (10) and 17 CFR 200.402(a)(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 and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, March 5, 2009 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

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: February 26, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–4564 Filed 3–3–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59451; File No. SR–NYSEALTR–2009–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by NYSE Alternext US LLC Amending Rule 472–NYSE Alternext Equities (Communications With the Public)

February 25, 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 February 5, 2009, NYSE Alternext US LLC (the ''Exchange'' or ''NYSE Alternext'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(6) thereunder.[5] NYSE Alternext filed Amendment No. 1 to the proposed rule change on February 12, 2009.[6] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 472–NYSE Alternext Equities to conform with proposed amendments to corresponding NYSE Rule 472 submitted in a companion filing by the New York Stock Exchange LLC (''NYSE'').[7]

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

[6] Amendment No. 1 removed unnecessary language regarding the operative date of the proposed rule change.

[7] *See* SR–NYSE–2009–14 (submitted on February 5, 2009).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 472–NYSE Alternext Equities to conform with proposed amendments to corresponding NYSE Rule 472, submitted in a companion filing by the NYSE, which itself conforms with amendments to corresponding FINRA Incorporated NYSE Rule 472 recently filed by FINRA and approved by the Commission.

Background

As described more fully in a related rule filing,[8] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC, and continues to operate as a national securities exchange registered under Section 6 of the Act.[9] The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the ''Equities Relocation''). The Exchange's equity trading systems and facilities at 11 Wall Street (the ''NYSE Alternext Trading Systems'') are operated by the NYSE on behalf of the Exchange.[10]

As part of the Equities Relocation, NYSE Alternext adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Alternext Equities Rules to govern trading on the NYSE Alternext Trading Systems.[11] The NYSE Alternext Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Alternext Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

Proposed Conforming Amendments to NYSE Alternext Equities Rules

As noted above, the Exchange proposes to amend Rule 472—NYSE Alternext Equities to conform with proposed amendments to corresponding NYSE Rule 472 submitted in a companion filing by the NYSE. As discussed in more detail below, the NYSE is filing the proposed rule change to harmonize NYSE Rule 472 with changes to corresponding Incorporated NYSE Rule 472 recently filed by the Financial Industry Regulatory Authority, Inc. (''FINRA'') and approved by the Commission.[12] The Exchange is proposing to adopt the NYSE's proposed rule change in the form that it was filed with the Commission, subject to such technical changes as are necessary to apply the changes to the Exchange. The Exchange further proposes that the operative date of the rule change be the same as the operative date of the NYSE's proposed rule change, on which this filing is based.

FINRA amended NASD Rules 2210 (Communications with the Public) and 2211 (Institutional Sales Material and Correspondence) and FINRA Incorporated NYSE Rule 472 (Communications with the Public) to remove, in certain circumstances, the

[8] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex 2008–62) (approving the Merger).

[9] 15 U.S.C. 78f.

[10] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63) (approving the Equities Relocation).

[11] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR–NYSE–2008–106); Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10); and Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11).

[12] *See* Securities Exchange Act Release No. 59096 (December 12, 2008), 73 FR 77085 (December 18, 2008) (SR–FINRA–2008–044).

pre-approval requirements for the use of ''market letters.'' [13]

Specifically, FINRA created a new definition of the term ''market letter'' in NASD Rule 2211 and modified the definition in FINRA Incorporated NYSE Rule 472 to mean any communication specifically excepted from the definition of ''research report'' under NASD Rule 2711(a)(9)(A) and FINRA Incorporated NYSE Rule 472.10(2)(a). In addition, FINRA amended the definition of ''sales literature'' in NASD Rule 2210 to exclude market letters. FINRA also amended FINRA Incorporated NYSE Rule 472 to eliminate the requirement that a qualified person approve market letters in advance of distribution. Finally, FINRA amended the definition of ''correspondence'' in NASD Rule 2211 to include market letters (as well as any written letter or electronic mail message) distributed by a member to one or more of its existing retail customers and fewer than 25 prospective retail customers within any 30 calendar-day period.

NYSE correspondingly proposes to amend NYSE Rule 472 to conform to FINRA's approved amendments to the incorporated version of the Rule. Under the proposed amended NYSE Rule 472, members and member organizations would be permitted to distribute ''market letters,'' as redefined, to customers and the public without obtaining prior approval by a supervisory analyst or qualified person. As redefined under the proposed amendments, ''market letters'' would comprise any communication that is excepted from the definition of ''research report'' contained in NYSE Rule 472.10(2)(a). As communications with the public, market letters remain subject to the supervision and review requirements of NYSE Rule 342.17, which require each member and member organization to establish written policies and procedures that are appropriate for their business, size, structure and customers for the review of such communications.[14]

The Exchange proposes to correspondingly amend Rule 472—NYSE Alternext Equities in the form proposed by the NYSE, subject to such changes as are necessary to apply the proposed changes to the Exchange. The Exchange also proposes to add ''-NYSE Alternext Equities'' to the title of the Rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and further the objectives of Section 6(b)(5) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 proposed rule change also supports the principles of Section 11A(a)(1) [17] of the Act in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization among NYSE Rules, NYSE Alternext Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for their common members and member organizations. To the extent the Exchange has proposed changes that differ from the proposed NYSE version of Rule 472, such changes are technical in nature and do not change the substance of the proposed NYSE Alternext Equities Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the proposal qualifies for immediate effectiveness upon filing as a non-controversial rule change in accordance with Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) [19] thereunder. The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes the waiver of this period will allow it to conform its rule to NYSE and FINRA rules without delay and ensure that there is no regulatory gap among those rules. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to promptly conform its rule to NYSE and FINRA rules and ensure elimination of any potential regulatory gap.[21] Therefore, the Commission designates the proposal as operative upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[13] *See* Securities Exchange Act Release No. 59096 (December 12, 2008), 73 FR 77085 (December 18, 2008).

[14] FINRA has proposed to amend the current requirements governing the supervision and review of correspondence, including FINRA Incorporated NYSE Rule 342.17 and NASD Rule 3010. *See* Regulatory Notice 08–24 (May 2008).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78k–1(a)(1).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] 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).

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–NYSEALTR–2009–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEALTR–2009–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* 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–NYSEALTR–2009–10 and should be submitted on or before March 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

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[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59457; File No. SR–BATS–2009–006]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.9, Entitled ''Orders and Modifiers''

February 26, 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 February 20, 2009, BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 11.9, entitled ''Orders and Modifiers,'' to provide for a new order type, a Partial Post Only at Limit Order. In addition, the Exchange is proposing to eliminate an Exchange order processing behavior described in Rule 11.9(c)(4) and (c)(5) as the ''price sliding process'' due to the fact that this functionality is rarely selected by Users of the Exchange.

The text of the proposed rule change is available at the Exchange's website at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide a new order type to Users of the Exchange, a Partial Post Only at Limit Order. The Exchange currently allows Users to enter BATS Post Only Orders,[5] which do not remove liquidity from the Exchange. Frequently, Exchange Users utilize BATS Post Only Orders because such Users do not want to be charged the access fee for removing liquidity from the BATS Book.[6] However, if such Users could receive a price better than their limit price (*i.e.*, price improvement), then the Exchange believes that such Users may wish to remove that liquidity and pay the access fee. In addition, regardless of whether any part of the order is executed with price improvement, the Exchange believes that some Users of BATS Post Only Orders would be willing to remove from the BATS Book a certain amount of liquidity at the order's limit price if the residual of the order could then post to the BATS Book at that limit price. Accordingly, as proposed, the new order type will enable Users to: (i) enter an order to the Exchange that will remove liquidity from the Exchange when the order will receive price improvement; and (ii) designate a ''Maximum Remove Percentage,'' instructing the Exchange to execute up to a designated percentage of the order size remaining after any applicable price improvement execution by removing liquidity at the order's limit price if the residual, after executions at the limit price, can be posted on the BATS Book.[7]

If no Maximum Remove Percentage is entered, then a Partial Post Only at Limit Order will only remove liquidity to the extent the order will obtain price improvement from its limit price. If no price improvement on an order is obtained, but a Maximum Remove

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] As defined in Exchange Rule 11.9(c)(5).

[6] The Exchange currently charges $0.0025 per share removed from the BATS Book, except for securities priced below $1.00, for which no access fee is charged.

[7] Because the Exchange cannot post a bid or offer with a partial share amount (*e.g.*, 99.9 shares), any Maximum Remove Percentage that would result in such an amount will be rounded down to the next whole share amount (*e.g.*, 99 shares).

Percentage has been entered with the order, then the order would execute at the limit price up to the Maximum Remove Percentage size only if, after removal of the shares set by the Maximum Remove Percentage, the order could then post to the BATS Book. As with BATS Only and BATS Post Only orders, Users may designate Partial Post Only at Limit Orders as being subject to the Exchange's displayed price sliding process or may opt-out of displayed price sliding. Regardless of which setting is selected, an order with a Maximum Remove Percentage will only execute at its limit price if it can be posted to the BATS Book at its limit price after executions permitted by the Maximum Remove Percentage. Thus, if an order's Maximum Remove Percentage would otherwise allow removal of all liquidity from the BATS Book at the order's limit price, but would lock or cross another market if posted to the BATS Book and displayed by the Exchange at that limit price, the order would not remove any liquidity at its limit price, but rather, would be cancelled or price slid, depending on the User's instructions.[8]

The following examples demonstrate how the Partial Post Only at Limit Order will operate on the Exchange. For purposes of these examples, assume that in security ''ABC'' the Exchange has 1,000 shares of liquidity at a $10.00 offer price and also has resting orders on its book to sell 1,000 shares at $10.01 and 1,000 shares at $10.03.

- *Example #1:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 1,000 shares of ABC at $10.01 with no Maximum Remove Percentage. The order would be filled in its entirety at $10.00.
- *Example #2:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 2,500 shares of ABC at $10.01 with no Maximum Remove Percentage. 1,000 shares of the order would be filled at $10.00, and the remaining 1,500 shares would be subject to the Exchange's displayed price sliding process or would be cancelled back to the User because posting such remainder at its limit price would lock the BATS Book and the User did not specify a Maximum Remove Percentage permitting removal of any liquidity at the order's limit price.
- *Example #3:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 2,500 shares of ABC at $10.02 with no Maximum Remove Percentage. 1,000 shares of the order would be filled at $10.00, 1,000 shares of the order would be filled at $10.01 and the remaining 500 shares would be posted as a bid on the BATS Book at $10.02.
- *Example #4:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 5,000 shares of ABC at $10.01 with a Maximum Remove Percentage of 10 percent. 1,000 shares of the order would be filled at $10.00 but the remainder of the order (4,000 shares) would be subject to the Exchange's displayed price sliding process or would be cancelled back to the User because the order could only remove up to 10% of the remaining order, after price improvement, at its limit price (or 400 shares) and removal of that amount would leave 600 shares of liquidity resting on the BATS Book at the limit price of $10.01. Accordingly, the remainder of the User's order could not be posted because it would lock the BATS Book at $10.01, and the parameters of the designated Maximum Remove Percentage would not permit additional shares to be removed at that price.
- *Example #5:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 5,000 shares of ABC at $10.01 with a Maximum Remove Percentage of 25 percent. 1,000 shares of the order would be filled at $10.00, 1,000 shares would be filled at $10.01, the order's limit price, based on the designated Maximum Remove Percentage (25% of 4,000 remaining shares would permit maximum removal at the limit price of 1,000 shares), and the remaining 3,000 shares would be posted as a bid on the BATS Book at $10.01.
- *Example #6:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 5,000 shares of ABC at $10.00 with a Maximum Remove Percentage of 25 percent. Although the order would not receive any price improvement, 1,000 shares of the order would be filled at $10.00, the order's limit price, based on the designated Maximum Remove Percentage (25% of the 5,000 share order would permit maximum removal at the limit price of up to 1,250 shares), and the remaining 4,000 shares would be posted as a bid on the BATS Book at $10.00.

The Exchange believes that the proposed order type benefits its Users by providing additional flexibility, in a single order type, to meet the true trading interests of market participants.

The Exchange is also proposing to eliminate references to the ''price sliding process,'' from the Exchange Rule 11.9. Very few Exchange Users currently utilize the price sliding process, and in fact, on certain trading days, the Exchange does not receive any orders where a User has selected this process. Instead, most Users either submit orders with the default ''displayed price sliding'' option selected or opt-out of displayed price sliding. Accordingly, the proposed rule change deleting the price sliding process and adopting Partial Post Only at Limit Orders without reference to the price sliding process would simplify the Exchange's Rules by eliminating an option seldom used by Users of the Exchange.

In addition to the proposed changes above, the Exchange is proposing to make certain non-substantive changes to Exchange Rule 11.12 to update and correct cross-references to other Exchange Rules.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[9] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[10] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by allowing Users to enter a modified form of ''post only'' order that will execute to the extent such order will receive price improvement or remove a designated portion of the remaining order, after price improvement, at its limit price if such order could then post to the BATS Book. In addition, removal of the references to the price sliding process will simplify the Exchange's Rules by deleting a functionality offered by the Exchange but not frequently used by market participants that submit orders to the Exchange.

The Exchange believes that Users that submit BATS Post Only Orders to the Exchange are primarily seeking to avoid access fees charged for removing liquidity, but that such Users would be willing to pay an access fee to the extent their order could obtain price improvement. Because of this price improvement, the Exchange believes that the order proposed in this rule filing will help Users obtain better

[8] As set forth in Exchange Rule 11.9(c)(4), the displayed price sliding process is the default but Users can elect instead to opt-out of displayed price sliding, in which case, any remainder of the order would be cancelled back to the User.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

prices for their orders submitted to the Exchange, even if such orders are subject to an access fee. In addition, the Exchange believes that some Users would like the added efficiency of being able to submit one order to the Exchange that will remove a certain amount of liquidity at the order's limit price (based on the size of the order following price improvement), and then, provided all liquidity has been removed at its limit price, post to the BATS Book, rather than first submitting an order to remove liquidity at a certain price level and then submitting a BATS Post Only Order.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

Normally, a proposed rule change filed under 19b–4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that immediate implementation of the new proposed order type will permit the Exchange to remain competitive with another market center that has recently adopted a similar order type pursuant to an immediately effective rule filing.[14] In addition, with respect to the Exchange's proposal to eliminate the price sliding process, the Exchange represents that very few Exchange Users currently utilize the price sliding process, and in fact, on certain trading days, the Exchange does not receive any orders where a User has selected this process. Further, the Exchange represents that it has communicated with the limited number of Users that have utilized the price sliding process over the past several months to inform such Users of the Exchange's intent to eliminate this functionality, and such Users have indicated that they have no objection to the elimination of this functionality.[15] On this basis, the Commission has determined that waiving the 30-day operative date is consistent with the protection of investors and the public interest and designates the proposal as operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2009–006 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–BATS–2009–006. 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–BATS–2009–006 and should be submitted on or before March 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied the five-day pre-filing notice requirement.

[14] *See* Securities Exchange Act Release No. 59259 (January 15, 2009), 74 FR 4491 (January 26, 2009) (notice of immediate effectiveness of rule change to establish a Post Only Order for NASDAQ OMX BX, Inc.).

[15] Telephone conversation between Anders Franzon, Associate General Counsel, BATS Exchange, Inc., and Rebekah Liu, Special Counsel, Division of Trading and Markets, Commission, on February 19, 2009.

[16] 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).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59463; File No. SR–FICC–2009–02]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Allow for Direct Membership for Non-Domestic Entities

February 26, 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 February 19, 2009, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared primarily by FICC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change allows direct membership for non-U.S. entities in FICC's Government Securities Division (''GSD'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC 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

Currently, GSD Rule 2 (''Members'') includes a broad category for ''foreign netting members.'' GSD Rule 2A (''Initial Membership Requirements'') sets forth membership criteria for these firms and includes, among other requirements, that the entity be regulated in its home country by a financial regulatory authority and that it be in compliance with the financial reporting and responsibility standards set by its home country regulator.

FICC has designed its rules and various membership agreements to minimize the risks posed by the admission of non-domestic entities by availing itself of the benefits and protections of various U.S. state and federal bankruptcy rules and regulations. With this approach, FICC has historically accepted only foreign banks with U.S. branches or agencies into the ''foreign netting member'' category of GSD membership. While this is not technically a requirement in GSD's current rules, FICC imposed this limitation because of various state and federal bankruptcy law ''safe harbors'' that would apply to a U.S. branch's assets should a non-domestic member become insolvent. These safe harbors include ''ring fencing'' provisions that would set aside a U.S. branch's assets for distribution to the branch's creditors[3] and procedures designed to protect creditors in the case of a foreign entity's default, including recognizing security interests and netting agreements, and rights to access member-posted collateral.[4]

Recently, U.S. bankruptcy laws have expanded the reach of federal safe harbors to non-U.S. entities without a U.S. branch or agency.[5] FICC believes that these statutory changes strengthen FICC's ability to access and secure collateral posted at FICC by an insolvent non-U.S. member without a domestic branch by providing protection similar to that which applies to a U.S. member or branch or agency of a non-U.S. member.[6]

This rule filing will remove references in GSD's rules to domestic branches or agencies with respect to foreign members, thereby facilitating ''direct'' membership for these entities at GSD.[7] Non-U.S. applicants will still be required to meet the minimum financial requirements set forth in GSD Rule 2A for foreign netting members[8] and those entities accepted into membership will be required to comply with all rule provisions applicable to foreign netting members.

FICC believes that the proposed rule filing is consistent with the requirements of Section 17A of the Act[9] and the rules and regulations thereunder applicable to FICC because it does not adversely affect the safeguarding of securities or funds in FICC's control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any written comments it receives.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The NY ring-fence law is Section 606, subsection 4, of the NYBL. Currently, FICC has an Illinois branch of a foreign bank as a member. FICC represents that the Illinois ring fence law is identical to New York's ring fence law.

[4] *See* Sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act, 12 U.S.C. 4403(a) and 4404(a) (confirming the enforceability of bilateral netting contracts and clearing organization netting contracts, notwithstanding other provisions of federal law, by ensuring that parties can exercise termination, liquidation, and acceleration rights, as well as netting rights, under a netting contract).

[5] FICC believes that Section 561 of the bankruptcy code makes it clear that the bankruptcy code's safe harbor provisions now apply to ''ancillary proceedings.'' Ancillary proceedings, discussed in Chapter 15 of the bankruptcy code, refer to an attempt by a foreign liquidator to present itself in a U.S. court to institute proceedings to attempt to apply adverse foreign law to determine the disposition of the estate of a non-U.S. entity.

[6] Historically, FICC's concern centered on ancillary proceedings that might be brought by a foreign liquidator in a U.S. bankruptcy court seeking to apply foreign law to the disposition of an insolvent foreign member's assets. The U.S. Bankruptcy Code has been amended to provide that the safe harbors are available in such a proceeding, which was not that case prior to the recent amendments of the bankruptcy code.

[7] The Commission has approved similar rule filings submitted by The Depository Trust Company and the National Securities Clearing Corporation. Securities Exchange Act Release Nos. 58345 (Aug. 12, 2008), 73 FR 48411 (Aug. 19, 2008) [File No. SR–DTC–2007–16] and 58344 (Feb. 27, 2008), 73 FR 12485 (Mar. 7, 2008) [File No. SR–NSCC–2007–15].

[8] GSD's rules state that if an applicant is a foreign entity that is applying to become a ''foreign netting member'', it must satisfy the minimum financial requirements (defined by reference to regulatory capital as defined by the applicant's home country regulator) that are applicable to the netting system membership category that the FICC determines would be applicable to the foreign firm if it were organized or established under U.S. law.

[9] 15 U.S.C. 78q–1.

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–FICC–2009–02 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 No. SR–FICC–2009–02. 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, 450 Fifth Street, NW., 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 FICC's principal office and on FICC's Web site at *http://ficc.com/gov/gov.docs.jsp?NS-query=#rf.* 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 submission should refer to File No. SR–FICC–2009–02 and should be submitted on or before March 25, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FICC. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(A) of the Act,[10] which requires, among other things, that FICC, as a registered clearing agency, be so organized and has the capacity to be able to safeguard securities and funds in its custody or control or for which it is responsible. The Commission notes that the proposed rule change adopts membership standards and safeguards that are substantively identical to those of the National Securities Clearing Corporation and The Depository Trust Company, which were published for comment in 2008 and generated no comments.[11] The Commission does not believe that this proposal raises new regulatory issues. Moreover, the changes in U.S. bankruptcy laws cited by FICC appear to have strengthened FICC's ability to secure the funds and securities pledged as collateral by a non-U.S. entity to FICC in the event that such entity were to become insolvent. Therefore, the proposed rule change should enhance FICC's capacity to safeguard securities and funds in its custody or control or for which it is responsible.

At FICC's request, the Commission finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**, pursuant to Section 19(b)(2) of the Act.[12] The Commission believes that accelerating approval of this proposal is appropriate in that the proposed rule change is substantively identical to rules proposed by FICC-affiliated clearing agencies and approved by the Commission in 2008,[13] and that it will allow prospective non-U.S. entities that wish to avail themselves of FICC's clearance and settlement, cost-savings, and risk-management services without undue delay.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act[14] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–FICC–2009–02) be and hereby is approved on an accelerated basis.[16]

For the Commission by the Division of Trading and Markets pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4603 Filed 3–3–09; 8:45 am]

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[10] 15 U.S.C. 78q–1(b)(3)(A).

[11] *Supra,* note 7.

[12] 15 U.S.C. 78s(b).

[13] *Supra,* note 7.

[14] 15 U.S.C. 78q–1.

[15] 15 U.S.C. 78s(b)(2).

[16] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59452; File No. SR–BX–2009–012]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ OMX BX Equities System

February 25, 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 February 19, 2009, NASDAQ OMX BX, Inc. (''BX'') 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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX proposes to modify pricing for BX members using the NASDAQ OMX BX Equities System. BX will implement this rule change on March 2, 2009. The text of the proposed rule change is attached as Exhibit 5[3] and is available at *http://nasdaqomxbx.cchwallstreet.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, BX 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. BX has prepared summaries, set forth in Sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that while provided in Exhibit 5 to the filing, the text of the proposed rule change is not attached to this notice but is available at the Commission's Public Reference Room and at *http://nasdaqomxbx.cchwallstreet.com.*

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

BX is proposing to reduce its fee to access liquidity posted on the BX book from $0.0022 per share executed to $0.0014 per share executed. Since its launch on January 16, 2009, BX has begun to acquire market share in U.S. equities trading. However, in a highly competitive environment in which routing decisions are affected by execution costs and the likelihood of accessing liquidity, BX believes that a fee reduction will increase the likelihood of BX receiving orders ahead of other venues posting the same prices, thereby encouraging further liquidity provision through BX and enhancing its market quality through greater depth of book.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls. The proposed fee change applies uniformly to all BX members. The impact of the changes upon the net fees paid by a particular market participant will depend upon the order types that it uses and the prices of its quotes and orders (*i.e.*, its propensity to add or remove liquidity). BX notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed changes will lower the cost of accessing liquidity through BX.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] 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–BX–2009–012 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–BX–2009–012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–012 and should be submitted on or before March 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4556 Filed 3–3–09; 8:45 am]

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[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59455; File No. SR–NASDAQ–2009–013]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

February 25, 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 February 19, 2009, The NASDAQ Stock Market LLC (''NASDAQ'') 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 NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing.

The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement this rule change on March 2, 2009. The text of the proposed rule change is attached as Exhibit 5 [5] and is available at *http://www.cchwallstreet.com/nasdaq*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing several changes to its fees for order execution and routing through the NASDAQ Market Center. The changes are primarily a response to pricing changes that were recently announced by the New York Stock Exchange (''NYSE'') that affect the fees paid by NASDAQ when it routes orders to NYSE.[6] As a result, NASDAQ is changing its routing fees to ensure that its members are not disadvantaged when their orders are routed to NYSE.

The changes in fees for routing to NYSE apply to securities other than exchange-traded funds. An order that attempts to execute in the NASDAQ Market Center for the full size of the order prior to routing and being executed at NYSE will receive a $0.0010 rebate if the order adds liquidity at the NYSE after routing, to pass through the rebate that NYSE itself will pay. Other orders that attempt to execute in the NASDAQ Market Center for the full size of the order prior to routing will be assessed a fee of $0.0018 to reflect the NYSE's new fee to access liquidity.[7] For orders that do not attempt to execute in the NASDAQ Market Center for the full size of the order prior to routing, the fee will generally be $0.0020 per share executed. However, the fee will be $0.0019 per share executed for members with an average daily volume through the NASDAQ Market Center in all securities during the month of more than 35 million shares of liquidity provided, in the case of orders of such members that do not attempt to execute in the NASDAQ Market Center and are not designated as intermarket sweep orders. The corresponding fees are currently $0.0010 and $0.0009, respectively. A pricing tier for members with an average daily volume of more than 50 million shares of liquidity routed to NYSE is being removed, since NASDAQ has concluded that members would not generally qualify for this tier unless they also qualify for the tier for members with an average daily volume of more than 35 million shares of liquidity provided. In addition, obsolete language regarding orders that add liquidity to the NYSE book but do not attempt to execute in NASDAQ prior to routing is being removed, since all orders that post to the NYSE book must check the NASDAQ book prior to routing.[8]

The fee for an order that executes in the NYSE closing process as a ''market-at-the-close'' or ''limit-at-the-close'' order is being increased from $0.0004 to $0.0005, and fee for orders that execute at the NYSE as an odd lot transaction (including the odd lot portion of a partial round lot order) is being increased from $0.0004 to $0.0010, to reflect corresponding changes by NYSE.

NASDAQ is also introducing a new per order fee for members that make inefficient use of certain features of NASDAQ's routing facility. When NASDAQ members route to the NYSE after having their orders check the NASDAQ book, they may designate their orders as eligible for posting to the NASDAQ book after accessing available liquidity at NYSE and elsewhere, or they may designate their orders for posting the NYSE book. The new fee will apply to round lot or mixed lot orders that attempt to execute in the NASDAQ Market Center for the full size of the order prior to routing, but that are designated as not eligible to post in the NASDAQ Market Center (''DOTI Orders''). If a member sends an average of more than 10,000 DOTI Orders per day during the month, and the ratio between total DOTI Orders and DOTI Orders that are fully or partially executed (either at NASDAQ or NYSE) exceeds 300 to 1, then the member will be charged a fee of $0.01 for each order that exceeds the ratio. For example, if a member sends 200,000 DOTI Orders during the month and only 100 of the orders result in executions, a ratio of 300 to 1 would equate to 30,000 DOTI Orders. Accordingly, the 170,000 DOTI Orders in excess of this level would each be assessed a fee of $0.01, resulting in a charge of $1,700.

NASDAQ is introducing this new fee to address the practice of members routing an order to the NYSE book through NASDAQ and quickly cancelling the order and resubmitting it at a different price if it does not execute within a short period of time. The practice offers no benefits in terms of liquidity posted to the NASDAQ book or execution or routing revenues, and could place unwarranted burdens on NASDAQ routing systems. Members wishing to continue to use this routing strategy may do so through other means of routing to NYSE, but will be discouraged from doing so through NASDAQ systems.

NASDAQ is also changing its fee for routing directed orders (including directed intermarket sweep orders) to NASDAQ OMX BX, Inc. (''BX''), decreasing the applicable fee from $0.0035 per share executed to $0.0016 per share executed. The change reflects the fact that effective March 2, 2009, BX will reduce its fee for order executions to $0.0014.[9] Accordingly, the current fee for routing to BX is disproportionate to the fee that NASDAQ will be charged by BX when conducting such routing. In this respect, the change is similar to pricing in effect at NYSE Arca, whose fees to route to NYSE are lower than its fees to route to other venues, to reflect the lower fees charged by NYSE itself.[10]

Finally, with respect to executions of securities listed on exchanges other than

[5] The Commission notes that while provided in Exhibit 5 to the filing, the text of the proposed rule change is not attached to this notice but is available at the Commission's Public Reference Room and at *http://www.cchwallstreet.com/nasdaq*.

[6] *See* NYSE and NYSE Arca Announce Changes in Equities Transaction Pricing, Effective March 1 (February 2, 2009) (available at *http://www.nyse.com/press/1233573357875.html*. The key features of NYSE's changes are the introduction of a liquidity provider rebate and an increase in order execution fees.

[7] The current fees are $0.0008 if the order is designated as eligible only to remove liquidity from the NASDAQ book prior to routing, and $0.00075 if the order is eligible to post back to the NASDAQ book if not executable at the NYSE. There is currently no charge or credit for orders that add liquidity at NYSE after routing.

[8] *See* Securities Exchange Act Release No. 58721 (October 2, 2008), 73 FR 59696 (October 9, 2008) (SR–NASDAQ–2008–079).

[9] *See* SR–BX–2009–012 (February 19, 2009), Securities Exchange Act Release No. 59452 (February 25, 2009).

[10] *See http://www.nyse.com/pdfs/NYSEArca_Equities_Fees.pdf*.

NASDAQ and NYSE, NASDAQ is decreasing the liquidity provider rebate it pays to members with an average daily volume through the NASDAQ Market Center in all securities during the month of more than 35 million shares of liquidity provided, from $0.0031 per share to $0.0028 per share. The change reverses an ''inverted'' pricing structure that had previously been in effect for this group of members with respect to these securities, under which the rebate for providing liquidity exceeded the charge of $0.0029 to access liquidity.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Section 6(b)(4) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The impact of the changes upon the net fees paid by a particular market participant will depend upon a number of variables, including its monthly volume, the order types it uses, and the prices of its quotes and orders (*i.e.*, its propensity to add or remove liquidity). NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. In general, the proposed changes are designed to ensure that the fees charged by NASDAQ to route to NYSE and BX reflect the fees charged to, and rebates received by, NASDAQ in connection with such routing. The proposal also reduces the rebate paid to certain members with respect to providing liquidity in stocks listed on venues other than NYSE and NASDAQ. NASDAQ believes, however, that its fees for trading such stocks remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to NASDAQ rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and subparagraph (f)(2) of Rule 19b–4 thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2009–013 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–NASDAQ–2009–013. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–013 and should be submitted on or before March 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4563 Filed 3–3–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59450; File No. SR–NYSE–2009–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by New York Stock Exchange LLC Amending NYSE Rule 472 (Communications With the Public)

February 25, 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 February 5, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(6) thereunder.[5] NYSE filed Amendment No. 1 to the proposed

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

rule change on February 12, 2009.[6] 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 NYSE Rule 472 to conform with amendments to corresponding FINRA Incorporated NYSE Rule 472 (defined below) recently filed by the Financial Industry Regulatory Authority, Inc. (''FINRA'') and approved by the Commission.[7]

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend NYSE Rule 472 to conform with amendments to corresponding FINRA Incorporated NYSE Rule 472 recently filed by FINRA and approved by the Commission.

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, NYSE, NYSER and FINRA entered into an agreement (the ''Agreement'') to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations (''FINRA Incorporated NYSE Rules'').[8] As part of its effort to reduce regulatory duplication and relieve firms that are members of both FINRA and the Exchange of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the Common Rules in order to create a consolidated FINRA rulebook.[9]

Proposed Conforming Amendments to NYSE Rules

As discussed in more detail below, FINRA amended NASD Rules 2210 and 2211 and FINRA Incorporated NYSE Rule 472. The NYSE hereby proposes to amend NYSE Rule 472 to conform to FINRA Incorporated NYSE Rule 472, as amended.

FINRA amended NASD Rules 2210 (Communications with the Public) and 2211 (Institutional Sales Material and Correspondence) and FINRA Incorporated NYSE Rule 472 (Communications with the Public) to remove, in certain circumstances, the pre-approval requirements for the use of ''market letters.''[10]

Specifically, FINRA created a new definition of the term ''market letter'' in NASD Rule 2211 and modified the definition in FINRA Incorporated NYSE Rule 472 to mean any communication specifically excepted from the definition of ''research report'' under NASD Rule 2711(a)(9)(A) and FINRA Incorporated NYSE Rule 472.10(2)(a). In addition, FINRA amended the definition of ''sales literature'' in NASD Rule 2210 to exclude market letters. FINRA also amended FINRA Incorporated NYSE Rule 472 to eliminate the requirement that a qualified person approve market letters in advance of distribution. Finally, FINRA amended the definition of ''correspondence'' in NASD Rule 2211 to include market letters (as well as any written letter or electronic mail message) distributed by a member to one or more of its existing retail customers and fewer than 25 prospective retail customers within any 30 calendar-day period.

The Exchange correspondingly proposes to amend NYSE Rule 472 to conform to FINRA's approved amendments to the incorporated version of the Rule. Under the proposed amended NYSE Rule 472, members and member organizations would be permitted to distribute ''market letters,'' as redefined, to customers and the public without obtaining prior approval by a supervisory analyst or qualified person. As defined under the proposed amendments, ''market letters'' would comprise any communication that is excepted from the definition of ''research report'' contained in NYSE Rule 472.10(2)(a). As communications with the public, market letters remain subject to the supervision and review requirements of NYSE Rule 342.17, which require each member and member organization to establish written policies and procedures that are appropriate for their business, size, structure and customers for the review of such communications.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change also supports the principles of Section 11A(a)(1)[14] of the Act in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

In particular, the Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between NYSE Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more

[6] Amendment No. 1 removed unnecessary language regarding the operative date of the proposed rule change.

[7] *See* Securities Exchange Act Release No. 59096 (December 12, 2008), 73 FR 77085 (December 18, 2008) (order approving SR–FINRA–2008–044). NYSE Alternext US LLC has submitted a companion rule filing to conform its corresponding Rule 472–NYSE Alternext Equities to the changes proposed in this filing. *See* SR–NYSEALTR 2009–10, submitted February 5, 2009).

[8] *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement) and Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as ''Common Rules''). Paragraph 2(b) of the 17d–2 Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

[9] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[10] *See* Securities Exchange Act Release No. 59096 (December 12, 2008), 73 FR 77085 (December 18, 2008).

[11] FINRA has proposed to amend the current requirements governing the supervision and review of correspondence, including FINRA Incorporated NYSE Rule 342.17 and NASD Rule 3010. *See* Regulatory Notice 08–24 (May 2008).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1).

efficient regulatory compliance for Dual Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the proposal qualifies for immediate effectiveness upon filing as a non-controversial rule change in accordance with Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) [16] thereunder. The Exchange asserts that the proposed rule change (i) Will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes the waiver of this period will allow it to conform its rule to the FINRA NYSE Incorporated Rule without delay and ensure that there is no regulatory gap among those rules. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to promptly conform its rules to the FINRA NYSE Incorporated Rule and ensure elimination of any potential regulatory gap.[18] Therefore, the Commission designates the proposal as operative upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com*. 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–2009–14 and should be submitted on or before March 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4557 Filed 3–3–09; 8:45 am]

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[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] 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).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59454; File No. SR–NYSEALTR–2009–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext U.S. LLC To Delete Certain Rules Governing the Trading of Listed Options

February 25, 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 February 23, 2009, NYSE Alternext US LLC (the ''Exchange'' or ''NYSE Alternext'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete old rules governing the trading of listed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

options which are being replaced by rules identified in a separate filing, SR-NYSEALTR–2008–14, which proposes new Section 900NY. The old rules will no longer apply upon a) the implementation of a new trading platform for options, NYSE Amex System (''System'') and b) relocation of the Trading Floor to 11 Wall Street, New York, NY. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In a separate filing, SR–NYSEALTR–2008–14, the Exchange has proposed rules to introduce a modern electronic trading platform to support options trading, and in addition, proposes to update and reorganize open outcry trading at the time of the migration to the new platform and the move to a new Options Trading Floor at 11 Wall Street, New York, NY. The new rule set is proposed as Section 900NY.

Rule Section 900NY will replace certain existing NYSE Alternext Rules. These are, under General Rules, Rule 1, Hours of Business; Rule 2, Visitors; Rule 21, Appointment of the Senior Supervisory Officer, Senior Floor Officials, Exchange Officials and Floor Officials; Rule 21, Authority of Floor Officials; Rule 27A, Allocation of Options; Rule 170, Registration and Functions of Specialists; Rule 171, Specialist Financial Requirements; Rule 172, Relief and Temporary Specialists; Rule 173, Relief and Temporary Specialist Financial Requirements; Rule 174, Disclosures by Specialists Prohibited; Rule 175, Specialist Prohibitions. Under Trading of Options Contracts, the superseded Rules are, in Section 1, Rule 900, Applicability Definitions and References; in Section 2, Rule 918, Trading Rotations, Halts, and Suspensions; in Section 3, Rule 933, Automatic Execution of Options Orders; Rule 934, Limitation on Orders; Rule 936, Cancellation and Adjustment of Equity Options Transactions; in Section 4, Rule 941, Operation of the Linkage; Rule 942, Order Protection; Rule 943, Locked Markets; Rule 944, Limitation on Principal Order Access.

Additionally, Section 900NY will replace, in Section 5—Floor Rules Applicable to Options, Rule 950, Rules of General Applicability; Rule 951, Premium Bids and Offers; Rule 952, Minimum Price Variations; Rule 953, Acceptance of Bid or Offer; Rule 954, Units of Trading; Rule 955, Floor Reports of Exchange Options Transactions; Rule 956, Open Orders on ''Ex Date''; Rule 957, Accounts, Orders and Records of Registered Traders, Designated NYSE Alternext Remote Traders, Specialists and Associated Persons; Rule 958, Options Transactions of Registered Traders; Rule 958A, Application of the Firm Quote Rule, Rule 959, Accommodation Transactions; in Section 9, Rule 992, Exchange Options Market Data System; in Section 11—Stock Index Options, Rule 918C, Trading Rotations, Halts and Suspensions; and in ANTE Rules, all Rules (Rule 900 –ANTE through Rule 997–ANTE).

This filing seeks to remove these replaced Rules from the NYSE Alternext US LLC Rulebook upon implementation of the new NYSE Amex Options trading system and the opening of the new Trading Floor at 11 Wall Street.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[5] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange has requested that the Commission waive the 30-day operative delay to the extent that such action is necessary to make the proposed rule change operative upon implementation of the new NYSE Amex Options trading system and the opening of the new Options Trading Floor at 11 Wall Street.[9] The Commission hereby grants the Exchange's request and believes that such action is consistent with the protection of investors and the public interest.[10] If the Commission approves SR–NYSEALTR–2008–14, it will be necessary for this proposed rule change to become operative simultaneously with the operative date of the new rules proposed in SR–NYSEALTR–2008–14. Otherwise, the Exchange would have conflicting rules on its books. Therefore, the Commission waives any part of the 30-day period in connection with this filing that is necessary to make the two filings operative simultaneously. The

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] The implementation of the new trading system and opening of the new Options Trading Floor are currently scheduled for March 2, 2009, pending approval of SR–NYSEALTR–2008–14.

[10] For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission notes, however, that its action in this matter is without prejudice to any action it may take with respect to SR–NYSEALTR–2008–14.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NYSEALTR–2009–17 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–NYSEALTR–2009–17. 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–NYSEALTR–2009–17 and should be submitted on or before March 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4562 Filed 3–3–09; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59453; File No. SR–NYSEArca–2009–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To Adopt a Policy Relating to its Treatment of Trade Reports That it Determines To Be Inconsistent With the Prevailing Market

February 25, 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 February 9, 2009, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Exchange Act Rule 19b–4(f)(6). The Commission is publishing this notice to solicit comments on the proposal from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca, Inc. (the ''Exchange''), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to adopt a policy relating to its treatment of trade reports that it determines to be inconsistent with the prevailing market.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Trades in listed securities occasionally occur at prices that deviate significantly from prevailing market prices and those trades sometimes establish a high, low or last sale price for a security that does not reflect the true market for the security.

The Consolidated Tape Association (''CTA'') offers each Participant in the CTA Plan the discretion to append an indicator (an ''Aberrant Report Indicator'') to a trade report to indicate that the market believes that the trade price in a trade executed on that market does not accurately reflect the prevailing market for the security. The CTA recommends that data recipients should exclude the price of any trade to which the Aberrant Report Indicator has been appended from any calculation of the high, low and last sale prices for the security.

During the course of surveillance by the Exchange or as a result of notification by another market, listed company or market participant, the Exchange may become aware of trade prices that do not accurately reflect the prevailing market for a security. In such a case, the Exchange proposes to adopt as policies that it:

- May determine to append an Aberrant Report Indicator to any trade report with respect to any trade executed on the Exchange that the Exchange determines to be inconsistent with the prevailing market; and
- Shall discourage vendors and other data recipients from using prices to which the Exchange has appended the Aberrant Report Indicator in any calculation of the high, low or last sale price of a security.

The Exchange will urge vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades excluded from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy. Upon initial adoption of the Aberrant Report Indicator, the Exchange will also

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

contact all of its listed companies to explain the aberrant trade policy and will notify users of the information that these are still valid trades. The Exchange will inform the affected listed company each time the Exchange or another market appends the Aberrant Report Indicator to a trade in an NYSE Arca listed stock and will remind the users of the information that these are still valid trades in that they were executed and not unwound as in the case of a clearly erroneous trade.

While the CTA disseminates its own calculations of high, low and last sale prices, vendors and other data recipients—and not the Exchange—frequently determine their own methodology by which they wish to calculate high, low and last sale prices. Therefore, the Exchange shall endeavor to explain to those vendors and other data recipients the deleterious effects that can result from including in the calculations a trade to which the Aberrant Report Indicator has been appended.

In making the determination to append the Aberrant Report Indicator, the Exchange shall consider all factors related to a trade, including, but not limited to, the following:

- Material news released for the security;
- Suspicious trading activity;
- System malfunctions or disruptions;
- Locked or crossed markets;
- A recent trading halt or resumption of trading in the security;
- Whether the security is in its initial public offering;
- Volume and volatility for the security;
- Whether the trade price represents a 52-week high or low for the security;
- Whether the trade price deviates significantly from recent trading patterns in the security;
- Whether the trade price reflects a stock-split, reorganization or other corporate action;
- The validity of consolidated tape trades and quotes in comparison to national best bids and offers; and
- The general volatility of market conditions.

In addition, the Exchange proposes that its policy shall be to consult with the listing exchange (if the Exchange is not the listing exchange) and with other markets (in the case of executions that take place across multiple markets) and to seek a consensus as to whether the trade price is consistent with the prevailing market for the security.

In determining whether trade prices are inconsistent with the prevailing market, the Exchange proposes that Exchange policy shall be to follow the following general guidelines: The Exchange will determine whether a trade price does not reflect the prevailing market for a security if the trade occurs during regular trading hours (*i.e.*, 9:30 a.m. to 4 p.m.) and occurs at a price that deviates from the ''Reference Price'' by an amount that meets or exceeds the following thresholds:

Trade price	Numerical threshold
Between $0 and $15.00	Seven Percent.
Between $15.01 and $50.00.	Five Percent.
In excess of $50.00	Three Percent.

The ''Reference Price'' refers to (a) if the primary market for the security is open at the time of the trade, the national best bid or offer for the security, or (b) if the primary market for the security is not open at the time of the trade, the first executable quote or print for the security on the primary market after execution of the trade in question. However, if the circumstances suggest that a different Reference Price would be more appropriate, the Exchange will use the different Reference Price. For instance, if the national best bid and offer for the security are so wide apart as to fail to reflect the market for the security, the Exchange might use as the Reference Price a trade price or best bid or offer that was available prior to the trade in question.

If the Exchange determines that a trade price does not reflect the prevailing market for a security and the trade represented the last sale of the security on the Exchange during a trading session, the Exchange may also determine to remove that trade's designation as the last sale. The Exchange may do so either on the day of the trade or at a later date, so as to provide reasonable time for the Exchange to conduct due diligence regarding the trade, including the consideration of input from markets and other market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 [3] of the Act in general and furthers the objectives of Section 6(b)(5) [4] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Aberrant Report Indicator is consistent with the protection of investors and the public interest in that the Exchange will seek to ensure a proper understanding of the Aberrant Report Indicator among securities market participants by: (i) Urging vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades excluded from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy; (ii) informing the affected listed company each time the Exchange or another market appends the Aberrant Report Indicator to a trade in an NYSE Arca listed stock; and (iii) reminding the users of the information that these are still valid trades in that they were executed and not unwound as in the case of a clearly erroneous trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act [5] and Rule 19b–4(f)(6) thereunder,[6] the Exchange has designated this proposal as one that effects a change that: (A) Does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under 19b–4(f)(6) normally may not become operative for 30 days after the date of

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

filing.[7] However, Rule 19b–4(f)(6)(iii)[8] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change to become operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to a proposal previously approved by the Commission.[9] The Commission believes that the Exchange's proposal to append an Aberrant Report Indicator to certain trade reports is a reasonable means to alert investors and others that the Exchange believes that the trade price for a trade executed in its market does not accurately reflect the prevailing market for the security. In addition, the Commission notes that the Exchange will use objective numerical thresholds in determining whether a trade report is eligible to have an Aberrant Trade Indicator appended to it. The Commission further notes that the Exchange's appending the Aberrant Trade Indicator to a trade report has no effect on the validity of the underlying trade. Finally, waiving the 30-day operative delay will allow the Exchange to apply the proposed change to future aberrant trades immediately.[10] Based on the above, the Commission designates the proposal to become operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–09 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–NYSEArca–2009–09. 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–NYSEArca–2009–09 and should be submitted on or before March 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4561 Filed 3–3–09; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 58736 (October 6, 2008), 73 FR 60380 (October 10, 2008) (SR–NYSE–2008–91).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 3, 2009. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Disclosure Statement Leveraged, Disclosures Statement—Non-Leveraged Licensees.

SBA Form Numbers: 856 & 856A.

Frequency: On occasion.

Description of Respondents: Small businesses investment companies.

Responses: 350.

Annual Burden: 162.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E9–4521 Filed 2–27–09; 11:15 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business

Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before May 4, 2009.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, Office of Financial Assistance, 202–205–7528, *sandra.johnston@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA collects this information from lenders who participate in the secondary market program. The information is used to facilitate and administer secondary market transactions in accordance with 15 U.S.C. 634(f)(3) and to monitor the program for compliance with 15 U.S.C.

Title: ''Secondary Participation Guaranty Agreement''.

Description of Respondents: SBA Participating Lenders.

Form Number's: 1086, 1502.

Annual Responses: 530.

Annual Burden: 42,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E9–4607 Filed 3–3–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11671 and #11672]

Georgia Disaster #GA–00020

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Georgia dated.

Incident: Severe Storms and Tornadoes.

Incident Period: 02/20/2009.

Effective Date: 02/26/2009.

Physical Loan Application Deadline Date: 04/27/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 11/26/2009.

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 disaster declaration, 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:

Thomas.

Contiguous Counties:

Georgia: Brooks, Colquitt, Grady, Mitchell.

Florida: Jefferson, Leon.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	4.375
Homeowners without Credit Available Elsewhere	2.187
Businesses with Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
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 11671 C and for economic injury is 11672 0.

The States which received an EIDL Declaration # are Georgia, Florida.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: February 26, 2009.

Darryl K. Hairston,

Acting Administrator.

[FR Doc. E9–4605 Filed 3–3–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6512]

Advisory Committee on Historical Diplomatic Documentation; Notice of Charter Renewal

The Advisory Committee on Historical Diplomatic Documentation is renewing its charter for a period of two years. This Advisory Committee will continue to make recommendations to the Historian and the Department of State on all aspects of the Department's program to publish the *Foreign Relations of the United States* series as well as on the Department's responsibility under statute (22 U.S.C. 4351, *et seq.*) to open its 30-year old and older records for public review at the National Archives and Records Administration. The Committee consists of nine members drawn from among historians, political scientists, archivists, international lawyers, and other social scientists who are distinguished in the field of U.S. foreign relations.

Questions concerning the Committee and the renewal of its Charter should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123 (e-mail *history@state.gov*).

Dated: February 6, 2009.

Marc Susser,

Executive Secretary, Department of State.

[FR Doc. E9–4599 Filed 3–3–09; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 6516]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 11 a.m. on March 18, 2009, in Room 1422 of the United States Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC 20593. The primary purpose of the meeting is to prepare for the ninety-fifth session of the Legal Committee (LEG 95) of the International Maritime Organization (IMO) to be held 30 March–3 April 2009 at the IMO's London Headquarters.

The LEG 95 provisional agenda calls for the Legal Committee to examine the provision of financial security, which includes (1) a progress report on the work of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding claims for Death, Personal Injury and Abandonment of Seafarers and (2) follow-up on resolutions adopted by the International Conference on the Removal of Wrecks, 2007: development of a single model compulsory insurance certificate. The Legal Committee will address monitoring the implementation of the HNS Convention and development of a possible draft protocol to the Convention. The following items are also on the LEG 95 agenda: review

of proposed amendments to the Committee's guidelines on work methods; the guidelines on fair treatment of seafarers in the event of a maritime accident; matters arising from the one hundred and first regular session of the Council; and election of officers. Finally, the Legal Committee will review technical cooperation activities related to maritime legislation and the status of Conventions and other treaty instruments adopted as a result of the work of the Legal Committee, and will allot time to address any other issues that may arise on the Committee's work program.

Members of the public are invited to attend the SHC meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should call or send an e-mail two days before the meeting. Upon request, participating by phone may be an option. For further information please contact Captain Charles Michel or Lieutenant Amber Ward, at U.S. Coast Guard, Office of Maritime and International Law (CG–0941), 2100 Second Street, SW., Washington, DC 20593–0001; e-mail: *Amber.S.Ward@uscg.mil*; telephone: (202) 372–3794; or fax: (202) 372–3972.

Dated: February 25, 2009.

Mark Skolnicki,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E9–4601 Filed 3–3–09; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Congestion and Delay Reduction at Chicago's O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The final rule addresses persistent flight delays due to over-scheduling at Chicago O'Hare International Airport.

DATES: Please submit comments by May 4, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9595, or by e-mail at: *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION: Federal Aviation Administration (FAA).

Title: Congestion and Delay Reduction at Chicago's O'Hare International Airport.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0716.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 32 respondents.

Frequency: The information is collected every two months.

Estimated Average Burden per Response: Approximately 37 minutes per response.

Estimated Annual Burden Hours: An estimated 1,183 hours annually.

Abstract: The final rule addresses persistent flight delays due to over-scheduling at Chicago O'Hare International Airport.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

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 February 24, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–4358 Filed 3–3–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Standards District Office at Honolulu, HI (HNL FSDO)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

Notice is hereby given that on or about January 18, 2009, the Flight Standards District Office at Honolulu, Hawaii will be divided into two separate FAA offices. Services to operators operating under Title 14, U.S.C. Part 121 of Hawaii provided by this office will now be provided services by the Honolulu Certificate Management Office (HNLCMO) located in Honolulu, Hawaii. This information will be reflected in the FAA Organizational Statement the next time it is reissued.

Issued in Los Angeles, CA, on February 2, 2009.

John M Allen,

Director, Flight Standards Service.

[FR Doc. E9–4362 Filed 3–3–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2009–0055]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions from the diabetes standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 24 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate commercial motor vehicles in interstate commerce.

DATES: Comments must be received on or before April 3, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2009–0055 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketinfo.dot.gov.*

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:

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 statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 24 individuals listed in this notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Lloyd R. Ackley, Jr.

Mr. Ackley, age 55, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ackley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A commercial driver's license (CDL) from New York.

Scott D. Baroch

Mr. Baroch, 40, has had ITDM since 1981. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Baroch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Montana.

Kelly G. Bauman

Mr. Bauman, 42, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bauman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Wyoming.

Martin J. Bowsher

Mr. Bowsher, 56, has had ITDM since 2003. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bowsher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arizona.

Michael G. Chisum

Mr. Chisum, 55, has had ITDM since 1993. His endocrinologist examined him in 2008 and certified that he has had one symptomatic hypoglycemic reaction in the past 5 years, that did not result in loss of consciousness, require the assistance of another person, or result in impaired cognitive function that occurred without warning. He understands diabetes management and monitoring; has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chisum meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Mexico.

Timothy N. Davenport

Mr. Davenport, 48, has had ITDM since 1992. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davenport meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Tennessee.

Ryan S. Ficke

Mr. Ficke, 24, has had ITDM since 1997. His endocrinologist examined him in 2008 and certified that he has had one hypoglycemic reaction due to low blood sugar and hot weather resulting in

loss of consciousness, requiring the assistance of another person, and resulting in impaired cognitive function that occurred without warning in the past 5 years. According to his endocrinologist, he understands diabetes management and monitoring; and now has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ficke meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

James P. Gilmore

Mr. Gilmore, 39, has had ITDM since 1996. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gilmore meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he has stable proliferative diabetic retinopathy. He holds a Class D operator's license from Massachusetts.

Henry S. Glover

Mr. Glover, 39, has had ITDM since 2005. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Glover meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Texas.

James R. Halliday

Mr. Halliday, 46, has had ITDM since 1989. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Halliday meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable non-proliferative diabetic retinopathy. He holds a Class D operator's license from New York.

Nathan M. Hennix

Mr. Hennix, 26, has had ITDM since 2001. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hennix meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from North Dakota.

Jeffrey D. Horsey

Mr. Horsey, 49, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Horsey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Delaware.

Wilbert E. Isadore

Mr. Isadore, 56, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Isadore meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Andrew J. Lunsford

Mr. Lunsford, 54, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lunsford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class CA CDL from Michigan.

Eddie J. Nosser

Mr. Nosser, 50, has had ITDM since 2005. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nosser meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Paul J. O'Neal, Jr.

Mr. O'Neal, 55, has had ITDM since 1991. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. O'Neal meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

Larry W. Partridge

Mr. Partridge, 56, has had ITDM since 2004. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Partridge meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arkansas.

Joseph C. Perrin, III

Mr. Perrin, 48, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Perrin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

Debra A. Pipes

Ms. Pipes, 55, has had ITDM since 2005. Her endocrinologist examined her in 2008 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Pipes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2008 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Indiana.

Michael J. Rouark

Mr. Rouark, 49, has had ITDM since 1999. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rouarck meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Kentucky.

John T. Savelsberg, III

Mr. Savelsberg, 31, has had ITDM since 2004. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Savelsberg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds am operator's license from Virginia.

Scott C. Sisk

Mr. Sisk, 40, has had ITDM since 1984. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sisk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist and optometrist examined him in 2008 and certified that he has stable non-proliferative diabetic retinopathy. He holds a Class C operator's license from Georgia.

Ronald A. Stachura

Mr. Stachura, 35, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stachura meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class ABCD from Wisconsin.

Chris M. Testa

Mr. Testa, 46, has had ITDM since 2004. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Testa meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the

[1] Section 4129(a) refers to the 2003 Notice as a ''final rule.'' However, the 2003 Notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: February 26, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–4577 Filed 3–3–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No: FTA–2008–0009]

National Transit Database: Policy on Reporting of Coordinated Human Services Transportation Data

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Final Policy on Reporting of Coordinated Human Services Transportation Data to the National Transit Database.

SUMMARY: This notice announces the Federal Transit Administration's (FTA) policy on the reporting of coordinated human services transportation data to the National Transit Database (NTD). On August 12, 2008, FTA proposed a new policy clarifying how transit providers reporting to the NTD may include sponsored trips in their reports. FTA received two comments on the proposed policy and is now formally adopting the new policy.

DATES: *Effective Date:* March 4, 2009.

FOR FURTHER INFORMATION CONTACT: For program issues, John D. Giorgis, Office of Budget and Policy, (202) 366–5430 (telephone); (202) 366–7989 (fax); or *john.giorgis@dot.gov* (e-mail). For legal issues, Richard Wong, Office of the Chief Counsel, (202) 366–0675 (telephone); (202) 366–3809 (fax); or *richard.wong@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The National Transit Database (NTD) was established by Congress ''to help meet the needs of * * * the public for information on which to base public transportation service planning * * *'' (49 U.S.C. 5335). To support this goal, recipients or beneficiaries of Urbanized Area Formula Grants (49 U.S.C. 5307) or Other Than Urbanized Area Formula Grants (49 U.S.C. 5311) are required to report to the NTD. Some other providers of transit service in urbanized areas report voluntarily to the NTD for purposes of benefitting their local urbanized area in the urbanized area apportionments. Currently, over 650 transit providers in urbanized areas and over 60 State, Territorial, and Tribal Departments of Transportation representing over 1,300 transit providers in rural areas report to the NTD through an Internet-based reporting system. Each year, performance data from the urbanized area submissions are used to apportion over $6 billion of FTA funds under the Urbanized Area Formula Grants and Fixed-Guideway Modernization Grants (49 U.S.C. 5309(b)(2)) Programs. These data are also used in the annual National Transit Summaries and Trends report, the biennial Conditions and Performance Report to Congress, in meeting FTA's obligations under the Government Performance and Results Act, and in public reports available on *http://www.ntdprogram.gov.*

For many years, it has been FTA's policy to require urbanized area transit providers reporting demand response service to the NTD to exclude from their reports service data for certain sponsored trips. These trips were typically arranged and paid for by a third party for a specific group of clients (such as participants in programs like Medicaid, Head Start, sheltered workshops, or assisted living centers), and these sponsored trips were often not open to the general public at large. Excluding data for these trips from the NTD also excluded them from the calculation of the apportionment of formula grants for urbanized areas. In light of FTA's policies and guidance on Coordinated Human Services Transportation, FTA proposed to clarify this policy for the 2008 NTD Report Year to specify that transit providers are to report data for all of their demand response service as public transportation, except for those services that are defined as charter service under FTA's recently revised charter rule (49 CFR 604, 73 FR 2326, January 14, 2008). FTA also proposed to require transit agencies in urbanized areas to separately report their ''regular unlinked passenger trips'' and their ''sponsored demand response unlinked passenger trips'' for demand response service.

II. Comments and FTA Response to Comments

On August 12, 2008, FTA published a notice in the **Federal Register** (73 FR 47641) inviting comments on this proposed policy on reporting coordinated human services transportation data to the NTD. FTA received two comments on the proposed change.

One commenter supported the proposed policy. A second commenter objected to this policy on the grounds that the policy would impose NTD reporting requirements on human services transportation providers that are coordinated through a brokerage operated by a reporting transit provider, and that the burdensome nature of the NTD reporting requirements on these small-scale human service transportation providers would result in a reduction in service from these providers. The commenter noted that almost all of the human services transportation providers coordinated through the brokerage received very little Federal funding, and that this Federal funding was usually not through the Section 5307 Program. The commenter also noted that many of the required NTD reporting elements are not currently collected at all, and the ridership metrics that are collected are not compliant with FTA Circular 2710.1A.

Response: FTA clarifies that this policy only applies to what trips a transit provider reports to the NTD, but does not extend NTD reporting requirements to any other transit provider. The NTD requires a transit provider to report all transit trips provided using its own directly-operated equipment or through its own subcontractors. Coordinating a trip through a brokerage does not create a subcontractor relationship with the other human service transportation providers participating in a brokerage. Thus, such trips should not be reported to the NTD by a transit provider operating a brokerage. The only trips from the brokerage that the transit provider should report to the NTD are those referred to itself and carried out using its own directly-operated equipment or using its purchased transportation subcontractors.

If a transit provider wishes to benefit from the service data generated by trips coordinated through a brokerage, it may do so by requesting a separate NTD Identification Number (NTD ID) for making a consolidated report on behalf of the participants in the brokerage. The transit provider would then be responsible for ensuring that this consolidated report is fully in compliance with all NTD reporting requirements found in the Reporting Manuals and with the Uniform System of Accounts.

FTA also wishes to clarify that it is not necessary for the ridership metrics of unlinked passenger trips (UPT) and passenger miles traveled (PMT) reported to the NTD to be collected as described in FTA Circular 2710.A. This Circular delineates requirements for reporting UPT and PMT data through statistical sampling when 100% counts of UPT and PMT are either unavailable or unreliable. Transit providers should report 100% counts of UPT and PMT to the NTD whenever they are available and reliable, and should not report this data to the NTD through statistical sampling in these cases. Almost all demand response systems keep records of their UPT sufficient to report a 100% count. Most demand response systems also record origins and destinations of their passengers, which may be used to generate a 100% count of PMT, and so avoid statistical sampling.

III. Final Policy

This policy shall take effect for the 2008 NTD Report Year, so that any transit provider wishing to take advantage of this policy for the 2008 NTD Report Year may do so. Since many transit providers have already begun completing their 2008 NTD Reports, however, FTA will also accept any reports from the 2008 NTD Report Year made under the old policy. This policy will take effect for all agencies beginning with the 2009 NTD Report Year. Any transit provider unable to comply with this policy for 2009 may request a waiver for up to one year from FTA through the efile functionality of the NTD Online Reporting System.

Transit providers should report all demand response services provided to individuals as public transportation services, regardless of whether the trip was sponsored in whole or in part by a third party, except for those services that are defined as charter service under FTA's recently revised charter rule (49 CFR Part 604, 73 FR 2326, January 14, 2008). Service that meets the definition of charter service must be reported on a quarterly basis to the charter registration Web site, as required by the charter rule, and data for these trips should not be reported as revenue service to the NTD.

Charter service is defined, in part, as ''transportation provided * * * at the request of a third party for the exclusive use of a bus or van at a negotiated price,'' with the caveat that ''charter service * * * does not include demand response service to individuals.'' Transit providers reporting to the NTD may distinguish their demand response services, particularly their sponsored demand response service, from charter service by a number of factors:

(1) Charter service is *exclusive*, whereas demand response service is *shared-ride.* If the transit provider may mix passengers from a trip sponsor with other demand response passengers on the same trip, then the trip is shared-ride service, and service data for that trip should be reported to the NTD as public transportation.

(2) Charter service is *service to a group*, whereas demand response service is *service to individuals.* Service to individuals can be identified by a vehicle trip that includes multiple origins, multiple destinations, or both, even when the clients have exclusive use of the vehicle. Some demand response sponsored trips carried out as part of a Coordinated Human Services Transportation Plan, such as trips for Head Start, assisted living centers, or sheltered workshops, may be provided on an exclusive basis, but are provided to service multiple origins to a single destination, a single origin to multiple destinations, or even multiple origins to multiple destinations. Transit providers should report service data for these trips to the NTD as public transportation.

(3) Charter service is *for a specific event or function*, whereas demand response service is *regular and continuing.* Some demand response sponsored trips carried out as part of a Coordinated Human Services Transportation Plan may be exclusive, and may be for a group from a single origin to a single destination, but may occur on a frequently reoccurring basis, such as daily, weekly, biweekly, or monthly. Transit providers should report service data for these trips to the NTD as public transportation.

(4) Demand response service may also include certain trips that are exclusive, for a group, from a single origin to a single destination, and that reoccur on a less-frequent basis than once per month, so long as these trips are *arranged and operated under the same terms and conditions as the demand response system for individuals.* These terms and conditions include advance notice requirements, service windows for pick-up and drop-off, and price.

Service carried out by the demand response units of transit providers that are exclusive, for a group, from a single origin to a single destination, for a single event, and not under the usual terms and conditions of the demand response system for individuals should be considered to be charter service. Transit providers should report these services to the charter registration Web site. The following diagram provides a visual representation of this guidance.

Transit providers reporting to the NTD must specifically exclude from their reports on revenue service any service that meets the definition of ''charter service'' under the charter rule, and thus, must be reported to the charter registration Web site. This exclusion includes charter service legally provided to a Qualified Human Services Organization (QHSO), as provided for by the charter rule.

Transit providers reporting to the NTD must report their *regular unlinked passenger trips* and their *sponsored unlinked passenger trips* separately for demand response service, but not for any other modes of service. *Regular unlinked passenger trips* would refer to those demand response trips that are arranged and paid for by individuals, even when those individuals pay the fare with user-side subsidies, such as coupons or passes provided a QHSO. *Regular unlinked passenger trips* would include all demand response trips provided pursuant to the requirements of the Americans with Disabilities Act of 1990. *Sponsored unlinked passenger trips* would include all trips where the transit provider is directly reimbursed in whole or in part by some third party that has helped arrange for the trips. This distinction would make reporting of these services for urbanized area transit providers consistent with the reporting of these services for transit providers in rural areas to the Rural NTD. Since this proposal is being announced late in the 2008 Report Year, FTA will grant a waiver from reporting separately regular and sponsored unlinked passenger trips for the 2008 Report Year to any NTD Reporter that requests such a waiver.

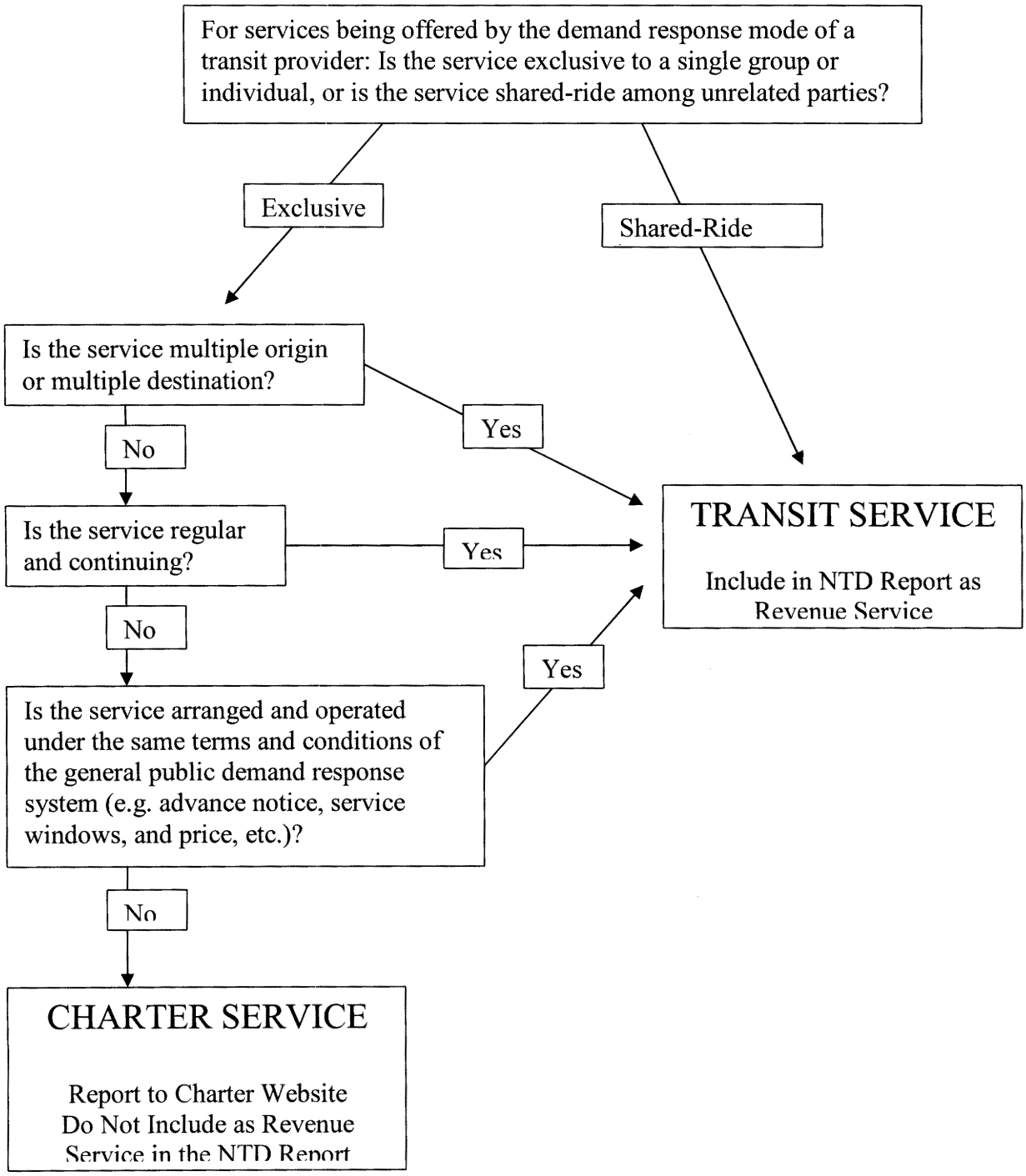
Issued in Washington, DC, this 20th day of February 2009.

Matthew Welbes,

Acting Administrator.

BILLING CODE 4910–57–P

Evaluation of Transit Demand Response vs. Charter



[FR Doc. E9–4634 Filed 3–3–09; 8:45 am]
BILLING CODE 4910–57–C

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Assistance to Small Shipyards Grant Program

AGENCY: Maritime Administration, Department of Transportation, Office of Shipyards and Marine Technology.

ACTION: Notice of Small Shipyard Grant Program.

Catalog of Federal Domestic Assistance Number: 20.814.

FOR FURTHER INFORMATION CONTACT: Jean E. McKeever, Associate Administrator for Business and Workforce Development, Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; phone: (202) 366–5737; fax: (202) 366–6988; or e-mail: *jean.mckeever@dot.gov*.

Key Dates: The period for submitting grant applications, as mandated by statute, commenced on February 17, 2009 and will terminate on April 20, 2009. The applications must be received by the Maritime Administration by 5 p.m. EST on April 20, 2009. Applications received later than this time will not be considered. The Maritime Administrator intends to award grants no later than August 17, 2009.

Funding Opportunity: Section 3508 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) and the section entitled ''Supplemental Grants for Assistance to Small Shipyards'' in the American Recovery and Reinvestment Act, 2009, provide that the Maritime Administration shall establish an assistance program for small shipyards. Under this program, there is currently an aggregate of $98,000,000 available for grants for capital improvements, and related infrastructure improvements at qualified shipyard facilities that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration. ($2,000,000 of the $100,000,000 appropriated for the program is reserved for program administration.) Such grants may not be used to construct buildings or other physical facilities or to acquire land unless such use is specifically approved by the Administrator as being consistent with and supplemental to capital and related infrastructure improvements. Grant funds may also be used for maritime training programs to foster technical skills and operational productivity in communities whose economies are related to or dependent upon the maritime industry. However, grants for such training programs may only be awarded to ''Eligible Applicants'' as described below but training programs can be established through vendors to such applicants.

Award Information: The Maritime Administration intends to award the full amount of the available funding through grants to the extent that there are worthy applications. No more than 25 percent of the funds available will be awarded to shipyard facilities that have more than 600 production employees. The Maritime Administration will seek to obtain the maximum benefit from the available funding by awarding grants for as many of the most worthy projects as possible. The Maritime Administration may partially fund projects by selecting parts of the total project. The start date and period of performance for each award will depend on the specific project and must be agreed to by the Maritime Administration.

Eligibility Information: 1. Eligible Applicants—the statutes referenced in ''Funding Opportunity'' above provide that shipyards can apply for grants. The shipyard facility for which a grant is sought must be in a single geographical location, located in or near a maritime community, and may not have more than 1200 production employees. 2. Other Considerations in Making Awards—In providing grants, the Administrator shall take into account (a) the economic circumstances and conditions of the maritime community near to which a shipyard facility is located; (b) projects that would be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration; and (c) projects that would be effective in fostering employee skills and enhancing productivity.

Matching Requirements: (1) Except as provided in item (2) below, Federal funds for any eligible project shall not exceed 75 percent of the total cost of such project. The remaining portion of the cost shall be paid in funds from or on behalf of the awardee. The applicant will be required to submit detailed financial statements and any necessary supporting documentation demonstrating how and when such matching requirement is proposed to be funded. (2) Exceptions—If the Administrator determines that a proposed project merits support and cannot be undertaken without a higher percentage of Federal financial assistance, the Administrator may award a grant for such project with a lesser matching requirement than is described in item (1). (3) Unless waived for good cause, the awardee's matching requirement must be paid prior to payment of any federal funds for the project.

Application: An application should be filed on standard Form SF–424 which can be found on the internet at *Marad.dot.gov*. Although the form is available electronically, we request that the application be filed in hard copy as indicated below due to the amount of information requested. A shipyard facility may include multiple projects in one application. In order to allow us to evaluate whether an applicant meets the statutory criteria, the application for a grant should also provide the following information as an addendum to Form SF–424:

1. Unique identifier of entity's parent company (when applicable): Data Universal Numbering System (DUNS + 4 number) (when applicable).
2. Shipyard company officer's certification as to shipyard's compliance with the following requirements: (a) The shipyard facility for which a grant is sought is located in a single geographical location in or near a maritime community and (b)(i) The shipyard facility has no more than 600 production employees, or (ii) The shipyard facility has more than 600 production employees, but less than 1200 production employees.
3. A comprehensive detailed description of the project.
4. A description of the need for the project and an explanation of how the project will fulfill this need.
5. An analysis demonstrating how the project will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, or reconfiguration.
6. A detailed itemization of the cost of the project together with supporting documentation, including vendor quotes and installation costs.
7. Detailed methodology and timeline for implementing the project.
8. A prioritized list of project elements and cost of each if funding for entire project is not available.
9. Most recent CPA audited, reviewed or compiled financial statements.
10. Detailed pro forma financial statements together with any supporting documentation demonstrating how and when such matching requirement is proposed to be funded.
11. Shipyard company officer's certification that the grant recipient has the authority to carry out the proposed project.
12. Any existing programs or arrangements that can be used to supplement or leverage the federal grant assistance.
13. Information concerning the economic circumstances and conditions

of the maritime community near to which the shipyard is located.

14. Certification in accordance with the Department of Transportation's regulation restricting lobbying, 49 CFR part 20, that the applicant has not, and will not, make any prohibited payments out of the requested grant.

Additional information may be requested as deemed necessary by the Maritime Administration in order to facilitate and complete its review of the application. If such information is not provided, the Maritime Administration may deem the application incomplete and cease processing it.

Where to File Application: An original copy of the application together with seven additional copies shall be submitted to Jean E. McKeever, Associate Administrator for Business and Workforce Development, Room W21–318, Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

Evaluation of Applications: The Administrator will evaluate the applications on the basis of the economic information provided and in terms of how well the project for which a grant is requested would be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration. The Administrator will award grants in his sole discretion in such amounts and under such conditions for those projects he determines will best further the statutory purposes of the small shipyard grant program.

Conditions Attached To Awards: The grant agreement will set out the records to be maintained by the awardee which must be available for review and audit by the Administrator, as well as any other conditions and requirements. Please note that the awardee will be required to submit periodic reports to include, among other things, the number of direct, on-project jobs created or sustained by the award, and to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number of job-years created and the total increase in employment since the date of enactment of the American Recovery and Reinvestment Act of 2009.

(Authority: 46 U.S.C. 54101; 49 CFR 1.66)

By Order of the Acting Deputy Maritime Administrator.

Dated: February 26, 2009.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E9–4532 Filed 3–3–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2009–0044]

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 4, 2009.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. Please identify the proposed collection of information for a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Sean H. McLaurin, NHTSA, 1200 New Jersey Avenue, SE., Room W55–123, NVS–420, Washington, DC 20590. Mr. McLaurin's telephone number is (202) 366–4800. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i.) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii.) The accuracy the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii.) How to enhance the quality, utility, and clarity of the information to be collected;

(iv.) How to minimize the burden of the collection of information on those who are to respond including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Extension of Clearance.

OMB Control Number: 2127–0001.

Affected Public: State, Local, or Tribal Government.

Form Number: This collection of information uses no standard form.

Abstract: The purpose of the NDR is to assist States and other authorized users in obtaining information about problem drivers. State motor vehicle agencies submit and use the information for driver licensing purposes. Other users obtain the information for transportation safety purposes.

Estimated Annual Burden: 4157.

Number of Respondents: The number of respondents is 51—the fifty States and the District of Columbia.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondent, including the use of automated collection techniques or other forms of information technology.

Issued on February 26, 2009.

Dennis Utter,

Office Director for the Office of Traffic Records and Analysis.

[FR Doc. E9–4635 Filed 3–3–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 466X)]

BNSF Railway Company—Discontinuance of Trackage Rights Exemption—in Kootenai County, ID

On February 12, 2009, BNSF Railway Company (BNSF) filed with the Surface Transportation Board (Board) a petition under U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue trackage rights over approximately 1.39 miles of rail line owned by Union Pacific Railroad Company, between milepost 7.40 at Gibb and milepost 8.79 at Coeur d'Alene, in Kootenai County, ID. The line traverses U.S. Postal Service Zip Code 83814.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 2, 2009.

Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8(b).

Any offer of financial assistance (OFA) for subsidy under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket No. AB–6 (Sub-No. 466X) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Karl Morell, 1455 F Street, NW., Suite 225, Washington, DC 20005. Replies to the petition are due on or before March 24, 2009.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Congressional and Public Services at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: February 24, 2009.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–4328 Filed 3–3–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: States Where Licensed for Surety

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and Request for comments.

SUMMARY: The Financial Management Service, 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. By this notice, the Financial Management Service solicits comments concerning the form ''States Where Licensed for Surety.''

DATES: Written comments should be received on or before May 4, 2009.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Rose Miller, Manager, Surety Bond Branch, Room 632F, 3700 East West Highway, Hyattsville, MD 20782, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: States Where Licensed for Surety.

OMB Number: 1510–0013.

Form Number: FMS 2208.

Abstract: Information is collected from insurance companies in order to provide Federal bond approving officers with this information. The listing of states, by company, appears in Treasury's Circular 570, ''Surety Companies Acceptable on Federal Bonds.''

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 318.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 318.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: February 25, 2009.

David Rebich,

Acting Assistant Commissioner Management (CFO).

[FR Doc. E9–3668 Filed 3–3–09; 8:45 am]

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March 4, 2009

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standard; Rearview Mirrors; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2009–0041]

RIN 2127–AK43

Federal Motor Vehicle Safety Standard; Rearview Mirrors

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This document initiates rulemaking to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 111, *Rearview Mirrors*,[1] to improve a driver's ability to see areas to the rear of a motor vehicle in order to mitigate fatalities and injuries associated with backover incidents. The agency and Congress are concerned that vehicles have ''blind zones,''[2] areas behind the vehicle in which drivers may have difficulty seeing and avoiding a person or other obstacle. Through this notice, NHTSA presents its initial research efforts and solicits additional information that will enable the agency to develop an effective proposal to mitigate backover incidents related to vehicle rear blind zones.

DATES: Comments must be received on or before May 4, 2009.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION: For technical issues: Ms. Elizabeth Mazzae, Vehicle Research and Test Center, Telephone: (937) 666–4511. Facsimile: (202) 366–3171. For legal issues: Ari Scott, Office of Chief Counsel, Telephone (202) 366–2992. Facsimile: (202) 366–3820. You may send mail to these officials at: The National Highway Traffic Safety Administration, Attention: NVS–010, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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I. Executive Summary

This advance notice of proposed rulemaking (ANPRM) initiates rulemaking to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 111, *Rearview Mirrors*, to improve a driver's ability to see areas to the rear of a motor vehicle to reduce backover incidents. The agency is issuing an ANPRM for two reasons. First, the agency is obligated, pursuant to the Cameron Gulbransen Kids Transportation Safety Act of 2007 (the ''K.T. Safety Act'') Public Law 110–189, February 28, 2008, 122 Stat. 639, to undertake rulemaking to expand the required field of view to enable the driver of a motor vehicle to detect areas

[1] 49 CFR 571.111, Standard No. 111, Rearview Mirrors.

[2] We note that this is different than what many people informally call a ''blind spot,'' a term used to describe an area to the side of the car where people may not be able to see a vehicle when changing lanes.

behind the vehicle to reduce death and injury resulting from backing incidents and initiate the rulemaking in a specified time period. Second, as there are a wide variety of means to address the problem of backover incidents, the National Highway Traffic Safety Administration (NHTSA) is interested in soliciting public comment on the current state of research and the efficacy of available countermeasures.

The problem of backovers claims the lives of approximately 292 people, many of them children every year. A backover is a specifically-defined type of incident, in which a non-occupant of a vehicle (i.e., a pedestrian or cyclist) is struck by a vehicle moving in reverse. Unlike most other types of crashes, many backovers occur off public roadways, in areas such as driveways and parking lots. Furthermore, a disproportionate number of victims of backovers are children under 5 years old and adults 70 or older. While there are several potential reasons for this, children are particularly likely to be missed by drivers of rear-moving vehicles because they cannot be seen due to a ''blind zone'' [3] in the area directly to the rear of vehicle. In addition, children are more likely to move unknowingly into a blind zone when the driver does not suspect anyone to be there.

NHTSA believes that the problem of backovers warrants an appropriate agency action. In response to a Congressional requirement of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [4], NHTSA has been gathering data on backover incidents from a wide variety of sources. Based on this research, the agency estimates that on average there are 292 fatalities and 18,000 injuries (3,000 of which are judged to be incapacitating) resulting from backovers every year. Of those, 228 fatalities and 17,000 injuries were attributed to backover incidents involving passenger vehicles under 10,000 pounds. While all passenger vehicle types (cars, sport utility vehicles, pickups, and vans) are involved in backover fatalities and injuries, the data indicate that backover fatality numbers show pickup trucks (72 of 288) and utility vehicles (68 of 228) to be overrepresented when compared to all non-backing traffic injury crashes and to their proportion to the passenger vehicle fleet. Regardless of the type of vehicle involved, backover incidents have garnered significant attention, due to the fact that many have involved parents accidentally backing over their own children or similar situations. In this notice, NHTSA describes some of the research and information-gathering activities it has performed. This research centers on four major topic areas.

The first area involves the nature of backover incidents and backing crashes generally. NHTSA has reviewed the details of documented backover incidents, including the locations of backover victims, the paths the victims took to enter the path of the vehicle, and the visibility characteristics of the vehicles involved. This notice outlines the information we have about these crashes, whether the lack of visibility is playing a significant role, and whether or not the characteristics of a class or type of vehicle are a contributing factor.

A second area of focus involves the evaluation of various strategies for improving rear visibility. For example, one strategy could be to ensure that the vehicles which are over represented in terms of fatalities and injuries are improved. Such a strategy would focus on pickup trucks or utility vehicles.[5] Another strategy, could seek to establish a minimum blind zone area for vehicles under 10,000 pounds. Our research indicates that a vehicle's rear blind zone area is statistically correlated with its rate of backing crashes.[6] Using this correlation, it may be possible to determine which vehicles most warrant rear visibility improvement based on the size of their rear blind zones and the setting of a ''threshold''. Possible strategies such as these are discussed in this notice and comments are requested.

The third topic involves the evaluation of various countermeasures. NHTSA has consulted past agency research, industry and other outside sources, and conducted new research to help determine the costs, effectiveness, and limitations of a wide variety of countermeasures. Four types of countermeasures are described in this notice, including direct vision (i.e., what can be seen by a driver glancing directly out a vehicle's windows), rear-mounted convex mirrors, rear object detection sensors (such as ultrasonic or radar-based devices), and rearview video (RV) systems. While research is ongoing, this notice describes how these systems work, how well they perform in identifying pedestrians, and how effectively drivers may use them. Where possible, we have also included preliminary cost and benefit information. While we examine several application scenarios (all passenger cars and all light trucks, only light trucks, and some combinations) and discount rates of 3 and 7 percent, the net cost per equivalent life saved for camera systems ranged from $13.8 to $72.2 million.[7] For sensors, it ranged from $11.3 to $62.5 million. According to our present model, none of the systems are cost effective compared to our comprehensive cost estimate for a statistical life of $6.1 million.[8]

A fourth topic involves consideration of technical specifications and test procedures that could be used to describe and evaluate the performance aspects of direct view, and rear-mounted convex mirrors, rear object detection sensors, and rearview video (RV) systems. The agency presents preliminary information on potential technical specifications and test procedures that we have identified and we want to solicit information on how these specifications and procedures should be refined for the purposes of developing repeatable compliance tests.

Finally, NHTSA presents a series of questions in this notice. We are requesting public input on a variety of areas, including the areas described above, studies on the effectiveness of various indirect rear visibility systems (i.e., devices that aid a driver in seeing areas around a vehicle, such as mirrors or video systems) that have been implemented in the U.S. and abroad, or technological possibilities that can enhance the reliability of existing technologies. The agency is also seeking information on the costs of implementation of all available technologies to develop more robust cost and benefit estimates.

II. Cameron Gulbransen Kids Transportation Safety Act of 2007

Subsection (b) of the Cameron Gulbransen Kids Transportation Safety Act, directs the Secretary of Transportation to initiate rulemaking to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 111, *Rearview Mirrors*, to expand the required field of view to enable the driver of a motor vehicle to detect areas behind the motor

[3] We note that this is different than what many informally call a ''blind spot,'' a term used to describe an area to the side of the car where people may not be able to see a vehicle when changing lanes.

[4] Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law No. 109–59, section 1109, 119 Stat. 1114, 1168 (2005).

[5] Fatalities and Injuries in Motor Vehicle Backing Crashes, NHTSA Report to Congress (2008).

[6] Partyka, S., Direct-View Rear Visibility and Backing Risk for Light Passenger Vehicles (2008).

[7] PRIA, Executive Summary.

[8] $6.1 million is the comprehensive value that NHTSA used for a statistical life. Further information about this value is available in the PRIA published with this notice.

vehicle to reduce death and injury resulting from backing incidents.

The relevant provisions in subsection (b) are as follows:

(b) Rearward Visibility—Not later than 12 months after the date of the enactment of this Act, the Secretary shall initiate a rulemaking to revise Federal Motor Vehicle Safety Standard 111 (FMVSS 111) to expand the required field of view to enable the driver of a motor vehicle to detect areas behind the motor vehicle to reduce death and injury resulting from backing incidents, particularly incidents involving small children and disabled persons. The Secretary may prescribe different requirements for different types of motor vehicles to expand the required field of view to enable the driver of a motor vehicle to detect areas behind the motor vehicle to reduce death and injury resulting from backing incidents, particularly incidents involving small children and disabled persons. Such standard may be met by the provision of additional mirrors, sensors, cameras, or other technology to expand the driver's field of view. The Secretary shall prescribe final standards pursuant to this subsection not later than 36 months after the date of enactment of this Act.

(c) Phase-In Period—

(1) PHASE-IN PERIOD REQUIRED—The safety standards prescribed pursuant to subsections (a) and (b) shall establish a phase-in period for compliance, as determined by the Secretary, and require full compliance with the safety standards not later than 48 months after the date on which the final rule is issued.

(2) PHASE-IN PRIORITIES—In establishing the phase-in period of the rearward visibility safety standards required under subsection (b), the Secretary shall consider whether to require the phase-in according to different types of motor vehicles based on data demonstrating the frequency by which various types of motor vehicles have been involved in backing incidents resulting in injury or death. If the Secretary determines that any type of motor vehicle should be given priority, the Secretary shall issue regulations that specify—

(A) which type or types of motor vehicles shall be phased-in first; and

(B) the percentages by which such motor vehicles shall be phased-in.

Congress emphasized the protection of small children and disabled persons, and added that the revised standard may be met by the ''provision of additional mirrors, sensors, cameras, or other technology to expand the driver's field of view.'' While NHTSA does not interpret the Congressional language to necessarily require that all of these technologies eventually be integrated into the final requirement, we are examining the merits of each of them.

Applicability

With regard to the scope of vehicles covered by the mandate, the statute refers to all motor vehicles less than 10,000 pounds (except motorcycles and trailers). This language means that the revised regulation would apply to passenger cars, multipurpose passenger vehicles, buses, and trucks with a Gross Vehicle Weight Rating (GVWR) less than 10,000 lbs.

Statutory Deadline

The Cameron Gulbransen Kids Transportation Safety Act of 2007 specified a rapid timeline for development and implementation of this rulemaking. Specifically, the Secretary is required to publish a final rule within 36 months of the passage of the Act (February 28, 2011). Moreover, the agency must initiate rulemaking within 12 months of the Act (February 28, 2009). However, it should be noted that under Section 4 of the Act,[9] if the Secretary determines that the deadlines applicable under this Act cannot be met, the Secretary shall establish new deadlines, and notify the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of the new deadlines describing the reasons the deadlines specified under the Act could not be met.

III. Existing Regulatory Requirements for Rear Visibility

As of today, no country has minimum rear field of view requirements for vehicles weighing less than 10,000 lbs. All countries do, however, have standards for side and interior rearview mirrors, although differences do exist in terms of mirror requirements. No country requires rearview video systems or any other type of indirect vision device for viewing areas directly behind the vehicle; however, Europe does have performance requirements for systems for indirect vision, if installed.

A. U.S.

FMVSS No. 111, Rearview Mirrors establishes requirements for the use, field of view, and mounting of motor vehicle rearview mirrors for rear visibility.[10] This standard was enacted in 1976 and applies to passenger cars, multipurpose passenger vehicles, trucks, buses, school buses and motorcycles. The purpose of this standard is to reduce the number of deaths and injuries that occur when the driver of a motor vehicle does not have a clear and reasonably unobstructed view to the rear. With respect to passenger cars, the standard requires that manufacturers mount flat (also referred to as ''plane'' or ''unit magnification'') mirrors both inside the vehicle and outside the vehicle on the driver's side. The inside mirror must, except as specified below, have a field of view at least 20 degrees wide and a sufficient vertical angle to provide a view of a level road surface extending to the horizon beginning not more than 200 feet (61 m) behind the vehicle. In cases where the interior mirror does not meet the specified field of view requirements, a plane or convex exterior mirror must be mounted on the passenger's side of the car. While a specific field of view is not indicated for the passenger-side rearview mirror, the driver's side rearview mirror is required to be a plane mirror that provides ''the driver a view of a level road surface extending to the horizon from a line, perpendicular to a longitudinal plane tangent to the driver's side of the vehicle at the widest point, extending 2.4 m (7.9 ft) out from the tangent plane 10.7 m (35.1 ft) behind the driver's eyes, with the seat in the rearmost position.''

If a manufacturer uses an interior rearview mirror which meets the field of view requirements, and wishes to install an exterior passenger-side mirror voluntarily, it may use any type of mirror for that purpose. In the case of light trucks, manufacturers may either comply with the passenger car requirement or have plane or convex outside mirrors with reflective surface area of not less than 126 square centimeters (19.5 square inches) on each side of the vehicle. Reflectance (image brightness) criteria are also established in this standard.

FMVSS No. 111 does not currently establish minimum rear field of view requirements for vehicles, nor does it contain minimum requirements for indirect vision systems, such as rearview video systems. Because of the current absence of a federal regulation of this aspect of performance, there is the possibility that there may be existing State laws or regulations that regulate the vehicle's rear field of view of passenger vehicles.[11] However, as of this time, NHTSA is not aware of any such State laws or regulations. However, we request comment on existing or pending State laws or regulations in this area, as well as the basis and effect of such regulation, if any exist.

B. Other Countries

ECE

In 1981, the United Nations Economic Commission for Europe (ECE) enacted

[9] Cameron Gulbransen Kids Transportation Safety Act of 2007, S.694, 110th Cong. section 4 (2007).

[10] 49 CFR 571.111, Standard No. 111, Rearview mirrors.

[11] See Federalism discussion below in section XV.

Regulation 46 which details uniform provisions concerning the approval of devices for indirect vision.[12] ECE 46 defines devices for indirect vision as those that observe the area adjacent to the vehicle which cannot be observed by direct vision, including ''conventional mirrors, camera-monitors or other devices able to present information about the indirect field of vision to the driver.'' While ECE 46 contains specifications for exterior rearview mirrors, it does not, directly regulate the rear field of view. Specifications are provided to define the required minimum size of the interior rearview mirror's surface area, but not its field of view. This regulation applies to all power-driven vehicles with at least four wheels that are used for the carriage of people or goods, and vehicles with less than four wheels that are fitted with bodywork which partly or wholly encloses the driver.

ECE 46 requires driver and passenger ''flat'' side rearview mirrors as found in FMVSS No. 111. ECE 46 differs from FMVSS No. 111 in that it also permits wide-angle convex mirrors on the driver's side of the vehicle for all classes of vehicles except for certain vehicles over 7.5 tons, for which they are required.

The ECE 46 regulation also outlines requirements for devices for indirect vision other than mirrors for vehicles with more than eight seating positions and those configured for refuse collection. Specifically, it contains a general requirement that camera-monitor devices, if present, shall perceive a visible spectrum and shall always render this image without the need for interpretation into the visual spectrum. The device's visual display is required to be located approximately in the same direction as the interior rearview mirror. The monitor is required to render a minimum contrast under various light conditions as specified by International Organization for Standardization (ISO) 15008:2003 [13] and have an adjustable luminance level. The regulation also defines detection distance, the distance measured at ground level from the eye point to the extreme point at which a critical object can be perceived, as an aspect of camera-monitor device performance.

A January 2008 amendment to ECE Regulation 46 required that a camera-monitor system must display to the driver a flat horizontal portion of the road directly behind the vehicle from the rear bumper outward to a distance of 2000 mm (6.6 ft). It further specified that if an indirect vision device other than a camera-monitor is used, a test object 50 cm (19.7 in) in height and 30 cm (11.8 in) in diameter must be visible in the specified area. However, in a later amendment of UNECE 46 (dated August 7, 2008) this requirement was removed and replaced with the statement, ''Vehicles may be equipped with additional devices for indirect vision.'' [14] This change allows for indirect vision systems to be installed on European vehicles without meeting any performance requirements.

Canada

Canada has rearview mirror requirements that are essentially identical to those in the U.S. All passenger cars are required to have a driver's-side outside rearview mirror. Passenger cars are also required to be equipped with an interior rearview mirror providing ''the driver with a field of view to the rear that is not less than 20 degrees measured horizontally rearward from the projected eye point and extends to the horizon and includes a point on the road surface not more than 60 m (200 feet) directly behind the vehicle.'' If the interior rearview mirror does not meet these requirements, a side rearview mirror must be mounted on the passenger side of the vehicle opposite the driver's side.

Japan

Japanese regulation, Article 44, provides a performance based requirement for rearview mirrors.[15] For light vehicles, rearview mirrors must be present that enable drivers to check the traffic situation around the left-hand lane edge and behind the vehicle from the driver's seat.[16] The regulation requires that the driver be able to ''visually confirm the presence of a cylindrical object 1 m high and 0.3 m in diameter (equivalent to a 6-year-old child) adjacent to the front or the left-hand side of the vehicle (or the right-hand side in the case of a left-hand drive vehicle), either directly or indirectly via mirrors, screens, or similar devices.'' Article 44 does not specify requirements for rear-mounted convex mirrors and rearview video systems, therefore these devices are allowed, but not required under the standard. Rear-mounted convex mirrors are commonly used as backing aids on sport utility vehicles (SUVs) and vans in Japan; however, NHTSA is not aware of research documenting the effectiveness of these mirrors in mitigating backover crashes.

Korea

The Korean regulation on rearview mirrors, Article 50,[17] outlines rearview mirror requirements for a range of vehicles. Article 50 requires a flat or convex exterior mirror mounted on the driver's side for passenger vehicles and buses with less than 10 passengers. For buses, cargo vehicles, and special motor vehicles, flat or convex rear-view mirrors are required on both sides of the vehicle. Article 50 does not address rear-mounted convex mirrors and rearview video systems, therefore these devices are allowed, but not required under the standard. Again, rear-mounted convex mirrors are commonly used as backing aids on SUVs and vans in Korea; however, NHTSA is not aware of research documenting the effectiveness of these mirrors in mitigating backover crashes.

IV. Backover Safety Problem

Based on our information to date, NHTSA has found that the problem of backovers claims the lives of hundreds of people every year. NHTSA defines backover as a specifically-defined type of incident, in which a non-occupant of a vehicle (i.e., a pedestrian or cyclist) is struck by a vehicle moving in reverse. However, because many backovers occur off public roadways, in areas such as driveways and parking lots, NHTSA's ordinary methodologies for collecting data as to the specific numbers and circumstances of backover incidents have not always given the agency a complete picture of the scope and circumstances of these types of incidents. The following sections detail NHTSA's attempts to both quantify the number of backover incidents and determine their nature.

A. Injuries and Fatalities in Backing Incidents

In response to SAFETEA–LU Sections 2012 and 10305, NHTSA developed the Not in Traffic Surveillance (NiTS) system to collect information about all nontraffic crashes, including nontraffic backing crashes. NiTS provided information on these backing crashes

[12] ECE 46–02, Uniform Provisions Concerning the Approval of: Devices for Indirect Vision and of Motor Vehicles with Regard to the Installation of these Devices, (August 7, 2008).

[13] ISO 15008:2003 Road vehicles—Ergonomic aspects of transport information and control systems—Specifications and compliance procedures for in-vehicle visual presentation.

[14] Section 15.3.5 of ECE 46–02, Uniform Provisions Concerning the Approval of: Devices for Indirect Vision and of Motor Vehicles with Regard to the Installation of these Devices, (August 7, 2008).

[15] Japanese Safety Regulation Article 44 and attachments 79–81.

[16] Vehicles manufactured for the Japanese market are right-hand drive.

[17] Korean Safety Regulation Article 50.

that occurred off the traffic way and which were not included in NHTSA's Fatality Analysis Reporting System (FARS) or the National Automotive Sampling System—General Estimates System (NASS–GES). The subset of backing crashes that involve a pedestrian, bicyclist, or other person not in a vehicle, is referred to as ''backovers.'' This is distinguished from the larger category of ''backing crashes,'' which would include such non-backover events such as a vehicle going in reverse and colliding with another vehicle, or a vehicle backing off an embankment or into a stationary object. While the primary purpose of this rulemaking is to prevent backovers, any technology that improves rear visibility should have a positive effect on backing crashes in general.

Based on 2002–2006 data from FARS and NASS–GES, and 2007 data from NiTS, NHTSA estimates that 463 fatalities and 48,000 injuries a year occur in traffic and nontraffic backing crashes.[18] Most of these injuries are minor injuries, but an estimated 6,000 per year are incapacitating injuries. Overall, an estimated 65 percent (302) of the fatalities and 62 percent (29,000) of the injuries in backing crashes occurred in nontraffic situations.

With regard to injuries and fatalities related specifically to backovers, these account for an estimated 63 percent (292) of the fatalities and 38 percent (18,000) of the injuries in backing crashes for all vehicles (cars, light trucks or vans, heavy trucks, and other/multiple vehicles). Other backing crash scenarios account for an estimated 171 fatalities (37 percent) and 30,000 injuries (62 percent) per year. Table 1 shows the fatalities and injuries in all backing crashes. Table 1 also demonstrates that backover victims tend to be more seriously injured than individuals in other backing crashes (i.e., non-backover crash incidents). In fact, more than half (10,000 of 18,000) of the injuries in backovers are more severe than possible (minor) injuries.

TABLE 1—ANNUAL ESTIMATED FATALITIES AND INJURIES IN ALL BACKING CRASHES FOR ALL VEHICLES [19]

Injury severity	Total		Backovers		Other backing crashes	
	Estimated total	Sample count	Estimated total	Sample count	Estimated total	Sample count
Fatalities	463	1,610	292	716	171	894
Incapacitating Injury	6,000	304	3,000	131	3,000	173
Non-incapacitating Injury	12,000	813	7,000	372	5,000	441
Possible Injury	27,000	929	7,000	179	20,000	750
Injured Severity Unknown	2,000	48	1,000	23	2,000	25
Total Injuries	48,000	2,094	18,000	705	30,000	1,389

Source: FARS 2002–2006, NASS–GES 2002–2006, NiTS 2007.
Note: Estimates may not add up to totals due to independent rounding.

B. Vehicle Type Involvement in Backing Incidents

Most backover fatalities and injuries involve passenger vehicles. As indicated in Table 2, 78 percent of the backover fatalities and 95 percent of the backover injuries involved passenger vehicles. An estimated fifteen percent (68) of the backing crash fatalities occur in multivehicle crashes, and an estimated thirteen percent (62) occur in single-vehicle non-collisions such as occupants who fall out of and are struck by their own backing vehicles. About half of the backing crash injuries (20,000 per year) occur in multivehicle crashes involving backing vehicles. Table 3 indicates that all major passenger vehicle types (cars, utility vehicles, pickups, and vans) are involved in backover fatalities and injuries. However, the data indicate that some vehicles may have a greater risk of involvement in backing crashes than other vehicles. Table 3 illustrates that pickup trucks and utility vehicles are overrepresented in backover fatalities when compared to all non-backing traffic injury crashes and to their proportion to the passenger vehicle fleet.

TABLE 2—INJURIES AND FATALITIES AND INJURIES BY BACKING CRASH TYPE FOR ALL VEHICLES

Backing crash scenarios	All vehicles		Passenger vehicles	
	Fatalities	Injuries	Fatalities	Injuries
Backovers: Striking Nonoccupant	292	18,000	228	17,000
Backing: Striking Fixed Object	33	2,000	33	2,000
Backing: Noncollision	62	1,000	53	1,000
Backing: Striking/Struck by Other Vehicle	68	24,000	39	20,000
Backing: Other	8	3,000	8	3,000
Total Backing	463	48,000	361	43,000

[18] Fatalities and Injuries in Motor Vehicle Backing Crashes, NHTSA Report to Congress (2008).

[19] Id.

TABLE 3—PASSENGER VEHICLE BACKOVER FATALITIES AND INJURIES BY VEHICLE TYPE

Backing vehicle type	Fatalities	Percent of fatalities	Estimated injuries	Estimated percent of injuries	Percent of vehicles in non-backing traffic injury crashes	Percent of fleet
Car	59	26	9,000	54	62	58
Utility Vehicle	68	30	3,000	20	14	16
Van	29	13	1,000	6	8	8
Pickup	72	31	3,000	18	15	17
Other Light Vehicle	0	0	*	2	1	<1
Passenger Vehicles	228	100	17,000	100	100	100

Source: FARS 2002–2006, NASS–GES 2002–2006, NiTS 2007.
Note: * indicates estimate less than 500, estimates may not add up to totals due to independent rounding.

C. Age Involvement in Backing Incidents

Table 4 contains the age of the backover victim for fatalities and injuries for all backovers as well as backovers involving passenger vehicles. Table 4 also details the proportion of the United States (U.S.) population in each age category from the U.S. Census Bureau's Population Estimates Program for comparison. Similar to previous findings, backover fatalities disproportionately affect children under 5 years old and adults 70 or older. When restricted to backover fatalities involving passenger vehicles, children under 5 account for 44 percent of the fatalities, and adults 70 and older account for 33 percent. The difference in the results between all backovers and passenger vehicle backovers occurs because large truck backovers, which are excluded from the passenger vehicle calculations, tend to affect adults of working age.

TABLE 4—ALL BACKOVER FATALITIES AND INJURIES BY AGE OF VICTIM

Age of victim	Fatalities	Percent of fatalities	Estimated injuries	Estimated percent of injuries	Sample count of injuries	Percent of population
All Vehicles:						
Under 5	103	35	2,000	8	37	7
5–10	13	4	*	3	33	7
10–19	4	1	2,000	12	75	14
20–59	69	24	9,000	48	383	55
60–69	28	9	2,000	8	54	8
70+	76	26	3,000	18	107	9
Unknown			*	2	16	
Total	292	100	18,000	100	705	100
Passenger Vehicles:						
Under 5	100	44	2,000	9	35	7
5–10	10	4	1,000	3	30	7
10–19	1	1	2,000	12	71	14
20–59	29	13	8,000	46	319	55
60–69	15	6	1,000	8	46	8
70+	74	33	3,000	19	95	9
Unknown			*	2	12	
Total	228	100	17,000	100	608	100

Source: U.S. Census Bureau, Population Estimates Program, 2007 Population Estimates; FARS 2002–2006, NASS–GES 2002–2006, NiTS 2007.

The proportion of backover injuries by age group is more similar to the proportion of the population than for backover fatalities. However, while children under 5 years old appear to be slightly overrepresented in backover injuries compared to the population, adults 70 and older appear to be greatly overrepresented. One reason for the relatively large proportion of injuries in backover crashes among older adults may be that backovers involving younger nonoccupants may not result in an injury while the same backover involving an older nonoccupant may result in a fall and a broken bone.

Table 5 presents passenger vehicle backover fatalities by year of age for victims less than 5 years old. Out of all backover fatalities involving passenger vehicles, 26 percent (60 out of 228) of victims are 1 year of age and younger.

TABLE 5—BREAKDOWN OF BACKOVER FATALITIES AND INJURIES INVOLVING PASSENGER VEHICLES FOR VICTIMS UNDER AGE 5 YEARS

Age of victim (years)	Number of fatalities
0	<1
1	59
2	23
3	14
4	3
Total	100

Note: Estimates may not add to totals due to independent rounding.

Source: U.S. Census Bureau, Population Estimates Program, 2007 Population Estimates; FARS 2002–2006, NASS–GES 2002–2006, NiTS 2007.

D. Special Crash Investigation Backover Case Summary

In addition to collecting police-reported backovers through NHTSA's data collection infrastructure, NHTSA's efforts to understand backover incidents have included a Special Crash Investigation (SCI) program. The SCI program was created to examine the safety impact of rapidly changing technologies and to provide NHTSA with early detection of alleged or potential vehicle defects.

SCI began investigating cases related to backovers in October 2006.[20] SCI receives notification of potential backover cases from several different sources including media reports, police and rescue personnel, contacts within NHTSA, reports from the general public, as well as notifications from the NASS. As of July 1, 2008, SCI had received a total of 52 notifications from a combination of all sources regarding backovers.[21] For the purpose of the SCI cases, an eligible backover was defined as a light passenger vehicle where the back plane strikes or passes over a person who is either positioned to the rear of the vehicle or is approaching from the side. SCI primarily focuses on cases involving children; however, it investigates some cases involving adults. The majority of notifications received do not meet the criteria for case assignment. Typically the reasons for not pursuing further include:

○ The reported crash configuration is outside of the scope of the program,

○ Minor incidents with no fatally or seriously injured persons, or

○ Incidents where cooperation can not be established with the involved parties.

As an example, many reported incidents are determined to be side or frontal impacts, which exclude them from the program. NHTSA requests that commenters submit any other existing backover incident data that could aid in providing a clearer picture of the range of backover accidents.

The SCI effort to examine backover crashes includes an on-site inspection of the scene and vehicle, as well as interviews of the involved parties when possible. When an on-site investigation is not possible, backover cases are investigated remotely through an examination of police-provided reports and photos as well as interviews with the involved parties. For each backover case investigated, a case vehicle visibility study is also conducted to determine the vehicle's blind zones and also to determine at what distance behind the vehicle the occupant may have become visible to the driver.

Through July 2008, NHTSA had completed special crash investigations of 52 backover cases.[22] The 52 backing vehicles were comprised of 17 passenger cars, 21 sport utility vehicles, and 14 pickup trucks. Only 4 of the cases (8 percent) contained vehicles equipped with a backup or parking aid. Eighty-eight percent of the backover crashes (46 of the 52) involved children, ranging in age from less than 1 year old up to 13 years old, who were struck by vehicles. Adults were generally excluded from the study unless they were seriously injured or killed or if the backing vehicles were equipped with backing or parking aids. A total of 6 cases were investigated involving struck adults. Of the 52 backover cases, exactly half (26) involved fatally injured nonoccupants.

A breakdown of the victim's path of travel prior to being struck is as follows: 24 were approaching from the right or left of the vehicle, 19 were stationary behind the vehicle, 10 were unknown, and one was ''other.''[23]

E. Assessment of Backover Crash Risk by Pedestrian Location

NHTSA believes it would be helpful to know whether and to what degree the pedestrian's location at the start of a vehicle's backing plays a part in the likelihood of the pedestrian being struck. As such, NHTSA used data from a recent NHTSA study of drivers' backing behavior[24] to estimate the relative risk of a pedestrian colliding with a vehicle during a backing maneuver.

A Monte Carlo simulation was used to calculate a probability-based risk weighting for a test area centered behind the vehicle. The probability-based risk weightings for each grid square were based on the number of pedestrian-vehicle backing crashes predicted by the simulation for trials for which the pedestrian was initially (i.e., at the time that the vehicle began to back up) in the center of one square of the grid of 1-foot squares. A total of 1,000,000 simulation trials were run with the pedestrian initially in the center of each square. Additional details about assumptions relating to the vehicle and pedestrian, as well as the simulation, are presented in Appendix A.

Figure 1 summarizes the calculated relative crash risk for each grid square. Note that the white shaded area does not have a zero backover risk; it merely has a low (less than 15 percent of the maximum) risk. This analysis shows that the probability of crash decreases rapidly as the pedestrian's initial location is moved back, further away, from the rear bumper of the vehicle. There are substantial side lobes, giving pedestrians some risk of being hit even though they were not initially directly behind the vehicle. The results suggest that coverage of an area 12 feet wide by 36 feet long centered behind the vehicle would address pedestrian locations having relative crash risks of 0.15 and higher. To address crash risks of 0.20 and higher, an area 7 feet wide and 33 feet long centered behind the vehicle would need to be covered. NHTSA seeks comment on the coverage area that is needed to establish a reasonable safety zone behind the vehicle.

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[20] Fatalities and Injuries in Motor Vehicle Backing Crashes, NHTSA Report to Congress (2008).

[21] Since SCI investigates as many relevant cases that they are notified about as possible and not on a statistical sampling of incidents, results are not representative of the general population.

[22] The data obtained for the SCI cases cited in this report are based on preliminary case information. Data are subject to change based on final investigative findings.

[23] Note that one or more cases examined involved multiple victims, causing the total of the path breakdown scenarios to be 53 rather than 52.

[24] Mazzae, E. N., Barickman, F. S., Baldwin, G. H. S., and Ranney, T. A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

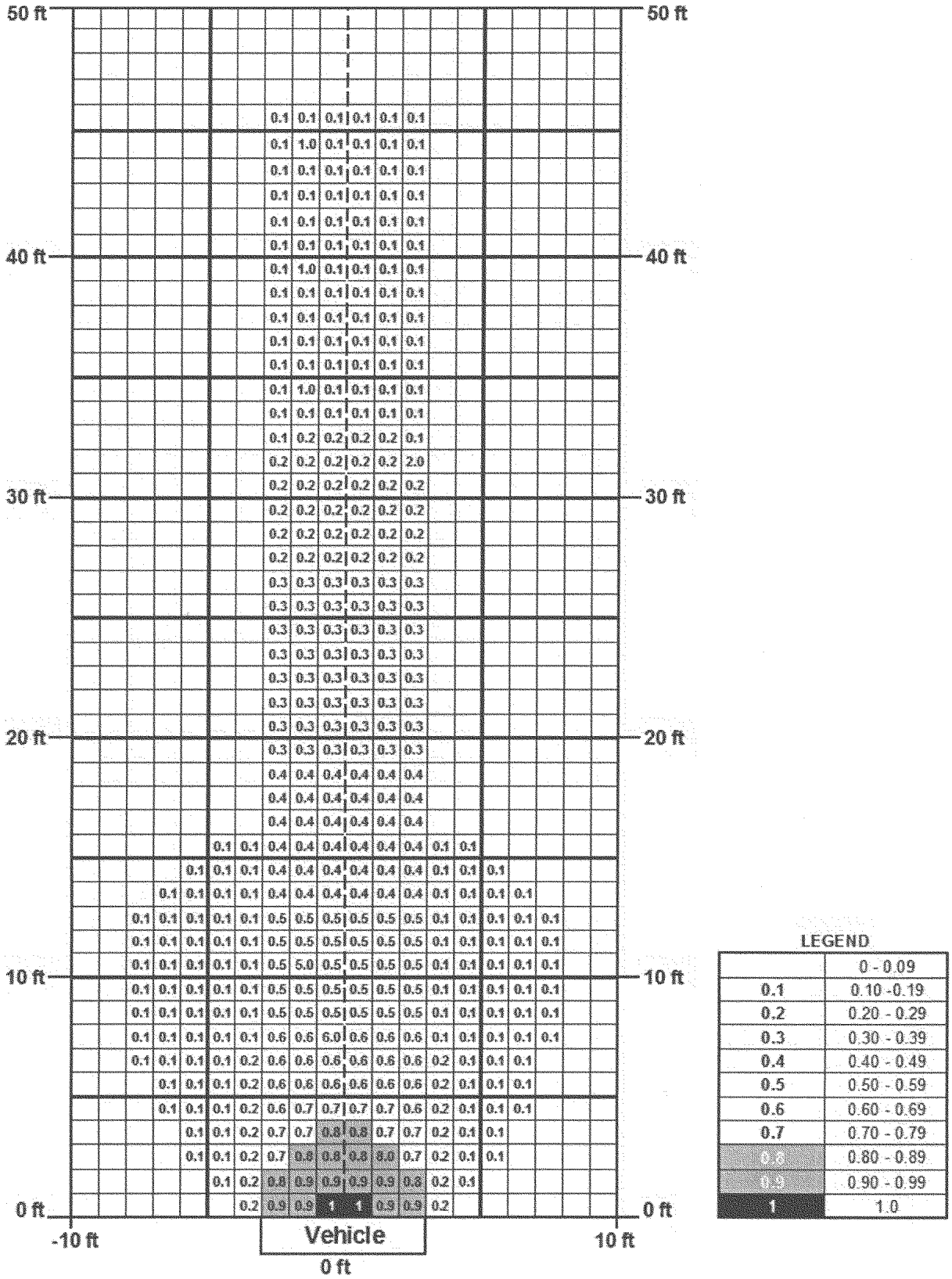

Figure 1. Relative Probability of a Backing Vehicle Striking a Walking Pedestrian as a Function of Pedestrian Initial Location (Empty squares have a crash risk of ≤0.1.)

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V. Technologies for Improving Rear Visibility

Since the early 1990s, NHTSA has actively researched approaches to mitigate backing crashes for heavy and light vehicles by assessing the effectiveness of various backing aid technologies. In recent years, manufacturers have added object detection sensors and video cameras to vehicles to aid drivers in performing backing maneuvers. According to Ward's 2008 Automotive Yearbook, backing aids utilizing sensors and/or video cameras were installed in approximately 14 percent of model year 2007 light vehicles.[25] While these systems are becoming increasingly available, they have typically been marketed as parking aids to help drivers detect and avoid obstacles in low-speed backing scenarios.

To assess whether or not these systems could also be used to detect pedestrians, the agency has, and continues to, evaluate them. The agency has also evaluated rear-mounted convex mirrors and rearview video systems. In the following sections, we outline the technologies we have evaluated, research conducted by the agency and others, and offer our preliminary observations on how they would meet the Congressional directive to improve the rear visibility of current vehicles.

A. Rear-Mounted Convex Mirrors

Description

Rear-mounted convex mirrors are mirrors with a curved reflective surface thereby providing a wider field of view than plane (i.e., flat) mirrors. These mirrors can be mounted at the upper center of the rear window with the reflective surface pointing at the ground (commonly referred to as backing mirrors, under mirrors, or ''look-down'' mirrors), the driver's side upper corner of the vehicle (commonly seen on delivery vans or mail delivery trucks and called ''corner mirrors''), or integrated into the inside face of both rearmost pillars (called ''cross-view'' mirrors). While center or corner-mounted convex rearview mirrors show the driver an area behind the vehicle, rear cross-view mirror pairs are intended to aid a driver when backing into a right-of-way by showing objects approaching on a perpendicular path behind the vehicle.

To view the area behind a vehicle, interior rear-mounted convex mirrors can be viewed directly by the driver, if in his direct line of sight, or they may be looked at indirectly by viewing their reflection in the interior or exterior rearview mirror. In the case of a rear ''look-down mirror,'' the driver can either glance rearward directly at this mirror, or view its reflection in the interior rearview mirror. For a rear convex corner mirror, the driver must look into the driver's side (i.e., exterior) rearview mirror to view the reflection of the rear convex corner mirror. In the case of rear cross-view mirrors, they can be viewed directly by the driver or indirectly by viewing their reflection in the interior rearview mirror.

In the U.S., rear-mounted convex mirrors are sometimes seen on delivery trucks and vans. Rear-mounted convex mirrors are primarily available as aftermarket products in the U.S., but are also available as original equipment on one sport utility vehicle.[26] In Korea and Japan, rear-mounted convex mirrors are used on small school buses, short delivery trucks, and some multipurpose vehicles (e.g., SUVs) to allow drivers to view areas behind a vehicle.

While rear convex cross-view mirrors are available as aftermarket products that mount to the inside of the rear window for all passenger car body types, this is not the case for look down mirrors. Rear convex look-down or corner convex mirrors need to have a rear window that is vertically aligned with the rear of the vehicle (such as a station wagon, SUV or van) in order to have a clear view of the area behind the vehicle.

Research

NHTSA has conducted research on rear-mounted convex mirrors for use on medium straight trucks and to a limited extent, passenger vehicles (i.e., cars, trucks, vans, SUVs). The research and how its results may be related to the improvement of rear visibility are discussed below.

Passenger Vehicle Research

In response to Section 10304 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU),[27] NHTSA conducted a study to evaluate methods to reduce the incidence of injury, death, and property damage caused by backing collisions of passenger vehicles.[28] The examination of two convex mirror systems revealed that pedestrians and objects were not visible in some areas directly behind the vehicle (this area could be described as the area bounded by the vertical planes formed by the sides of the vehicle, and extending rearward). The research also found that the convexity of the mirrors caused significant image distortion, and reflected objects were difficult to discern. It is unknown if this issue can be addressed in future designs. For the tested designs, concentrated glances were necessary to identify the nature of rear obstacles; it is not known if a driver making quick glances prior to initiating a backing maneuver would allocate sufficient time to allow recognition of an obstacle or pedestrian shown in the mirror.

Current Mirror Research

NHTSA is currently evaluating the image quality (distortion and minification) and field of view of rear-mounted convex mirrors. The mirror types being examined include an aftermarket rear convex look-down mirror, aftermarket rear corner convex mirror, aftermarket rear convex cross-view mirrors designed for SUVs and passenger cars (e.g., sedans, coupes), and original equipment rear convex cross-view mirrors on a 2003 Toyota 4Runner.

Figure 2 below illustrates the types of measurements that NHTSA plans to collect to evaluate the image quality and field of view for rear convex mirrors. As illustrated in the Figure, using a test device that simulates a 1-year-old child, the rear convex look-down mirror shows an area directly behind a vehicle (a 2007 Honda Odyssey minivan) but beyond 15 feet from the bumper, the image could not be discerned.

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[25] 2008 Ward's Automotive Yearbook.

[26] Rear cross-view mirrors have been available on the Toyota 4Runner base model vehicles since MY 2003.

[27] SAFETEA–LU, Sec. 1109, 119 Stat. 1168.

[28] Mazzae, E.N. and Garrott, W.R., Experimental Evaluation of the Performance of Available Backover Prevention Technologies, NHTSA Technical Report No. DOT HS 810 634, September 2006.

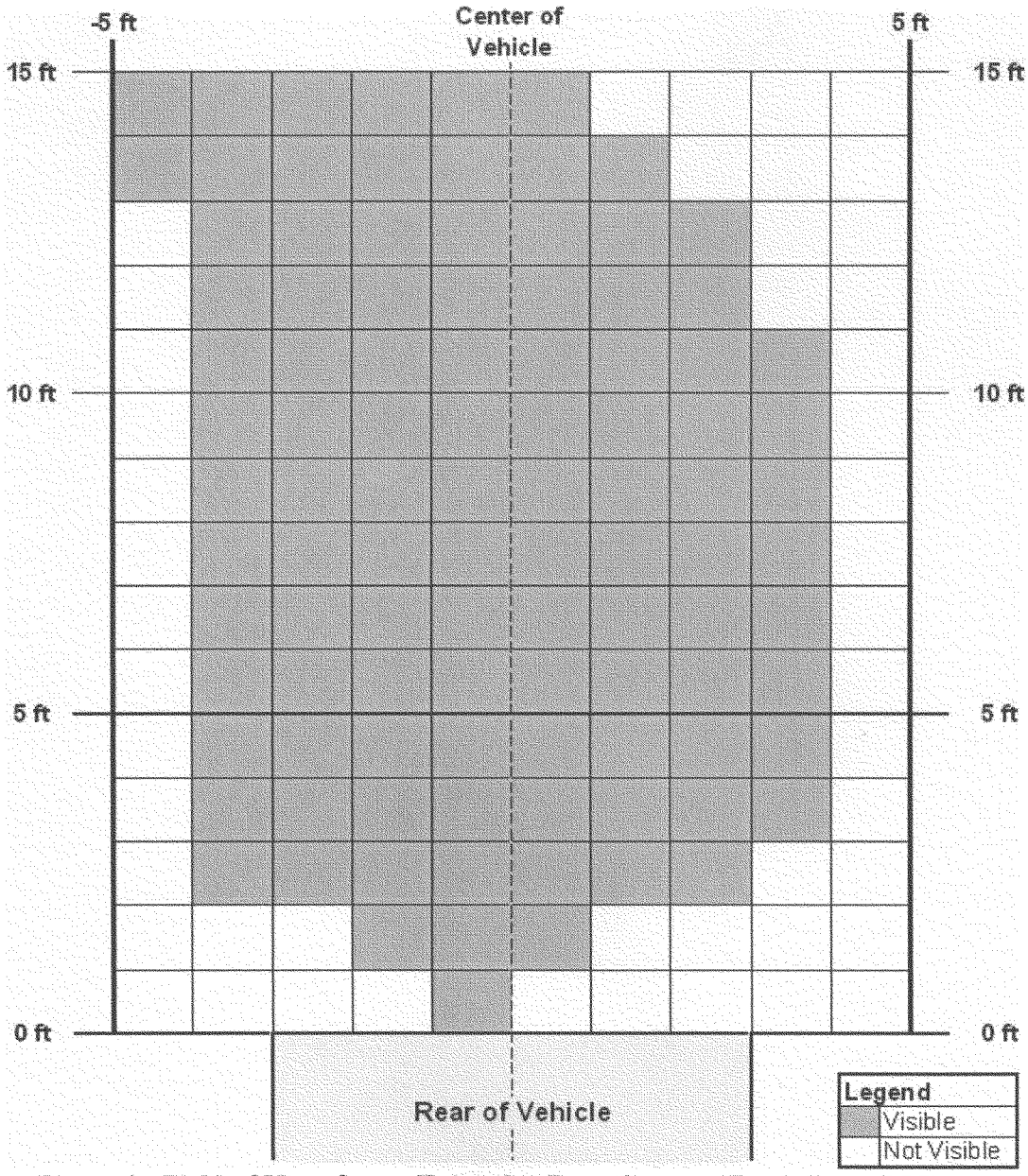

Figure 2. Field of View for an Exemplar Rear Convex "Look-Down" Mirror.

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Using the same 1-year-old child-sized test device, Figure 3 illustrates the measured field of view for an exemplar rear convex cross-view mirror system. The area behind the vehicle cannot be seen, rather, only the area that extends outward from both rear corners of the vehicle.

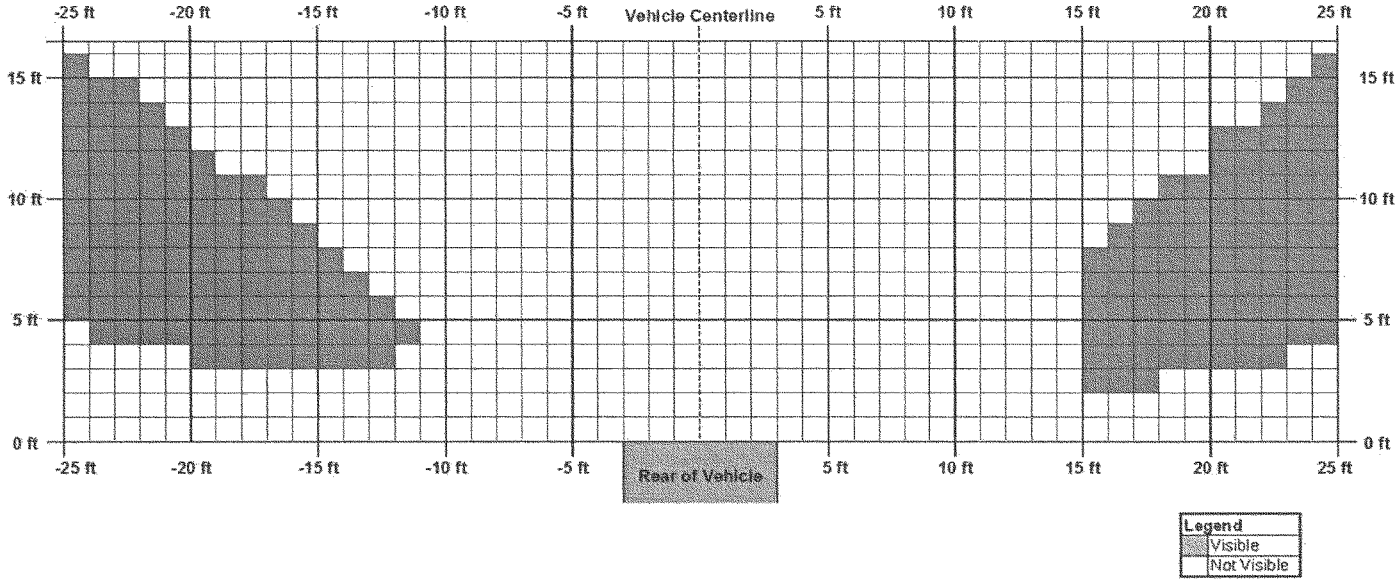

Figure 3. Field of View for an Exemplar Rear Convex Cross-view Mirror System mounted on a 2006 BMW 330i (Shaded Area is Visible).

NHTSA previously evaluated the quality of images displayed by a rear corner convex mirror mounted on a 1996 Grumman-Olsen step van with a 12-foot long box.[29] Using those data, an analysis was performed in which linear extrapolation and two-dimensional interpolation [30] were applied to estimate at which of four locations behind the vehicle a 1-year-old child dummy (i.e., anthropomorphic test device, or ATD) could be visible to a driver using a rear corner convex mirror. The four locations assessed are labeled A through D in Figure 4.

[29] Mazzae, E.N., and Garrott, W.R., Experimental Evaluation of the Performance of Available Backover Prevention Technologies for Medium Straight Trucks, NHTSA Technical Report No. DOT HS 810 865, November 2007.

[30] Measured minutes of arc subtended by the test object were first linearly extrapolated to estimate the effects of differences in the distance from the driver eyepoint to the side rearview mirror and the distance from the side rearview mirror to the rear corner convex mirror. Two-dimensional linear interpolation was then used to correct for reducing the vehicle width from the 7.0 feet for the step van to the 6.0 feet more typical of light passenger vehicle and for estimating minutes of arc subtended at the four locations, A through D. Note that estimates based upon multiple multi-linear extrapolation/interpolation were made because they could be done quickly using data that NHTSA had previously collected.

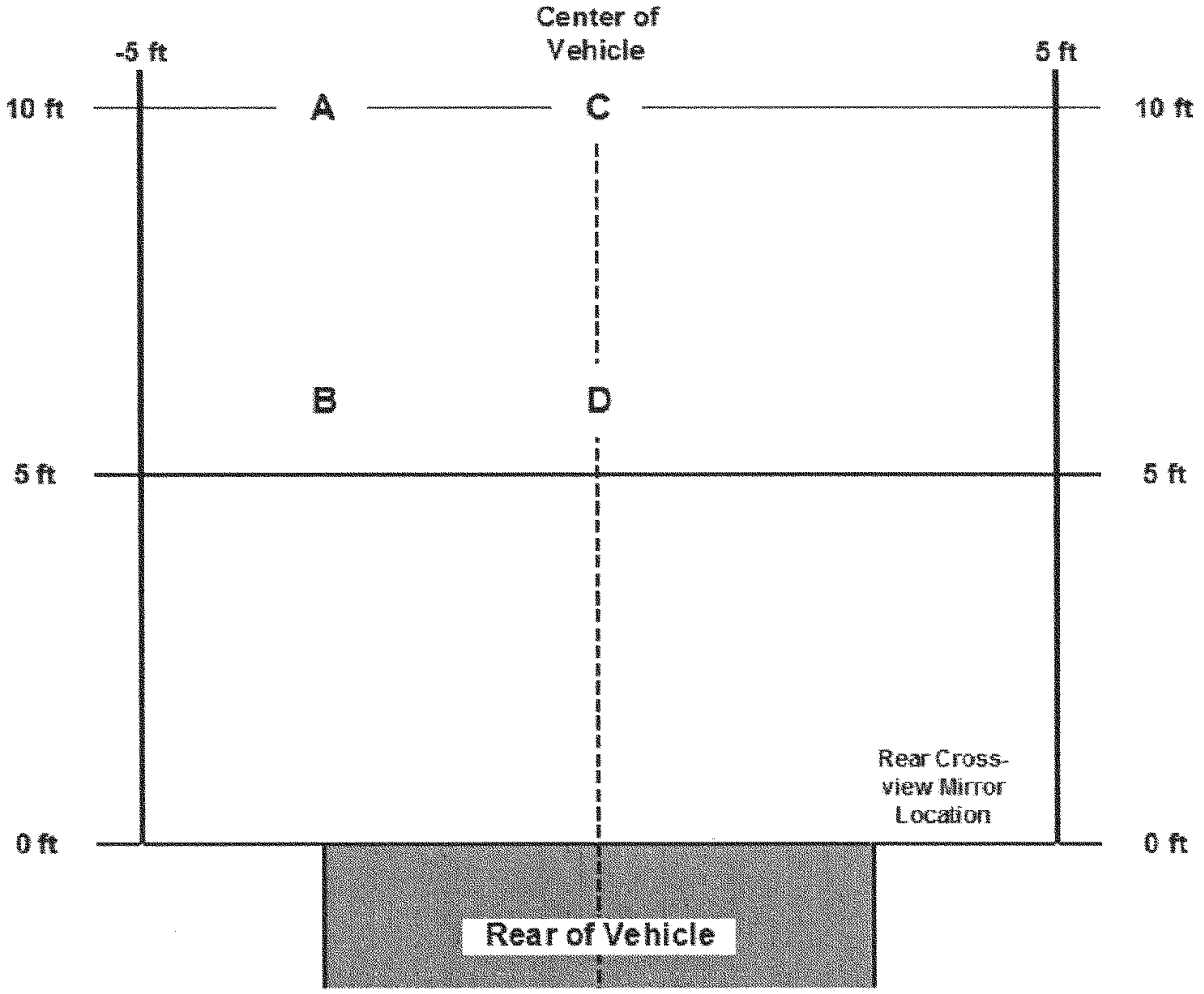

Figure 4. Location of Visibility Calculation Points Behind the Vehicle

The reflected image of the 1-year-old dummy becomes less minified and is easier for the driver to discern as the location of the dummy moves either forward towards the rear bumper of the vehicle or laterally towards the driver's side of the vehicle. Therefore, for a vehicle for which the dummy is visible at Point A, the dummy is expected to be visible anywhere across the entire width of the vehicle for distances up to at least 10 feet from the vehicle's rear bumper.

Estimated visibility of the 1-year-old dummy for each of the four locations (identified in Figure 4) for 9 vehicles is shown in Table 6.

TABLE 6—VISIBILITY OF A 1-YEAR-OLD CHILD DUMMY USING A CORNER REAR CROSS-VIEW MIRROR

Year	Make	Model	Can see Point A?	Can see Point B?	Can see Point C?	Can see Point D?
2008	Chevrolet	Express	No	No	No	Yes.
2003	Volvo	XC90	No	No	Yes	Yes.
2005	Nissan	Armada	No	No	No	Yes.
2007	Saturn	Vue	No	No	Yes	Yes.
2007	Jeep	Commander	No	No	Yes	Yes.
2008	Toyota	Highlander	No	No	Yes	Yes.
2007	Ford	Edge	No	No	Yes	Yes.
2005	Chevrolet	Uplander	No	No	No	Yes.
2003	Toyota	4Runner	No	No	Yes	Yes.

As the table indicates, it is not expected that a driver could see the 1-year-old dummy when the dummy is located directly behind the passenger's side of the vehicle at a distance of 6 or 10 feet back from the vehicle's rear bumper. The quality of the reflected image is better on the vehicle's centerline, with the dummy expected to be visible for six out of nine vehicles when it is located 10 feet back from the rear bumper and visually discernable to the driver for all nine vehicles when it is only 6 feet aft of the rear bumper.

This mirror research is scheduled to be completed in 2009 and will be summarized in a published NHTSA report thereafter. Along with comments received to this notice, NHTSA hopes to use this research information in the development of a proposal.

Observations

Some advantages of rear-mounted convex mirrors include that when compared to video cameras and object detection sensors, they are relatively inexpensive (e.g., less than $40 retail as an aftermarket product) and have the potential to last the life of the vehicle. They also provide a wider field of view than that provided by plane mirrors. However, they also possess inherent disadvantages. In general, convex mirrors compress (i.e., minify) and distort the image of reflected objects in their field of view. This image distortion and image minification make objects and pedestrians appear very narrow and difficult for the driver to discern and identify. These aspects of image quality worsen as the length of the vehicle increases.

Rear cross-view mirrors are positioned to show an area to the side and rear of the vehicle but they do not provide a good view of the area directly behind the vehicle (the area bounded by two imaginary planes tangent to the sides of the vehicle. As such, a pedestrian or object in this area could be invisible to the driver. They can however, help drivers see objects approaching the rear of the vehicle along a perpendicular path. NHTSA is aware that single rear convex look-down mirrors are commonly found on SUVs and vans in Korea and Japan. However, we are unaware of any publicly available studies that have been conducted to assess the effectiveness of these mirrors in improving rear visibility. We seek comment on the availability of any such studies.

B. Rearview Video Systems

Description

A growing number of vehicles in the U.S. are equipped with rearview video systems. These systems can permit a driver to see much of the area behind the vehicle via a video display showing the image from a video camera mounted on the rear of the vehicle. The images may be presented to the driver using an existing screen in the vehicle, such as a navigation system or multifunction display screen, or by adding a display incorporated into the dashboard or interior rearview mirror.

Costs for these rearview video systems are estimated at approximately $58–$88 for vehicles equipped with a navigation system or other type of multi-function visual display, to $158–$189 for vehicles requiring a dashboard-mounted display screen, or $173–$203 for vehicles with an RV display integrated into the interior rearview mirror.[31]

Research

Recent research on rearview video systems conducted by NHTSA and our observations about the research are presented below.

NHTSA Testing in Support of SAFETEA–LU

In response to Section 10304 of SAFETEA–LU, NHTSA examined three rearview video systems (RV): One in combination with original equipment rear parking sensors, one aftermarket system combining both RV and parking sensor technologies, and one original equipment RV system.[32] This examination of RV systems included assessment of their field of view and their potential to provide drivers with information about obstacles behind the vehicle.

Through this study, the agency made the following observations. The rearview video systems examined provided a clear image of the area behind the vehicle in daylight and indoor lighting conditions. RV systems displayed images of pedestrians or obstacles behind the vehicle to a substantial range of 23 feet or more, except for an area within 8–12 inches of the rear bumper at ground level. Beyond the rear bumper, the rearview video systems also displayed areas wider than 50 feet.

The location and angle at which the rearview video camera is mounted on the back of the vehicle affects the size of the field of view provided by the system. The longitudinal range of the images displayed by the two original equipment RV systems tested differed significantly. One rearview video system's camera presented an image having a limited vertical angle, resulting in a substantially shorter longitudinal range along the centerline of the vehicle (ending at approximately 23 feet from the rear bumper at ground level). For a 3-year-old child dummy centered 2 feet behind the vehicle, the shorter visible range exhibited by this particular RV system caused the top of the dummy's head to be out of view.

Observations

We found that RV systems can display areas on the ground almost directly adjacent to the bumper of the vehicle. Furthermore, RV systems offer the possibility of a wide field of view, with some systems able to show 180 degrees behind the vehicle.

However, during the short course of testing, NHTSA also noted some operational issues with video camera performance in certain weather conditions, such as rain and snow. For example, rain drops and the buildup of ice on the video camera lens can significantly reduce the quality of the view provided by the RV system. Also, in evaluating these technologies we have not had the opportunity to assess the long-term performance and reliability of RV systems, as well as the effects of harsh weather conditions on their long-term operation.

C. Sensor-Based Rear Object Detection Systems

Description

Sensor-based object detection systems use electronic sensors that transmit a signal which, if an obstacle is present in a sensor's detection field, bounces the signal back to the sensor producing a positive ''detection'' of the obstacle. These sensors detect objects in the vicinity of a vehicle at varying ranges depending on the technology. To date, commercially-available object detection systems have been based on short-range ultrasonic technology or longer range radar technology, although advanced infrared sensors are under development as well.

Sensor-based object detection systems have been available for over 15 years as aftermarket products and for a lesser period as original equipment. Original equipment systems have been marketed as a convenience feature or ''parking aid'' for which the vehicle owner's manual can contain language denoting

[31] PRIA, section VI.

[32] Mazzae, E.N. and Garrott, W.R., Experimental Evaluation of the Performance of Available Backover Prevention Technologies, NHTSA Technical Report No. DOT HS 810 634, September 2006.

sensor performance limitations with respect to detecting children or small moving objects. Aftermarket systems, however, are frequently marketed as safety devices for warning drivers of the presence of small children behind the vehicle.

NHTSA has investigated the cost of sensor-based rear object detection systems. Currently, we estimate the cost of a backing system based on ultrasonic technology to be $51–$89 and the cost of a system based on radar technology to be approximately $92.[33]

Research

NHTSA Research in Support of SAFETEA–LU

NHTSA examined eight sensor-based original equipment and aftermarket rear parking systems in response to Section 10304 of the SAFETEA–LU mandate.[34] NHTSA conducted testing to measure the object detection performance of short range sensor-based systems. Measurements included static field of view (i.e., both the vehicle and test objects were static), static field of view repeatability, and dynamic detection range for different laterally moving test objects. The agency assessed the system's ability to detect a 74-inch-tall adult male walking in various directions to the rear of the vehicle. Detection performance was also evaluated in a series of static and dynamic tests with 1-year-old and 3-year-old children.

Sensor-based systems tested were generally inconsistent and unreliable in detecting pedestrians, particularly children, located behind the vehicle. Testing showed that, in most cases, pedestrian size affected detection performance, as adults elicited better detection response than 1 or 3-year-old children. Specifically, each system could generally detect a moving adult pedestrian (or other objects) behind a stationary vehicle; however, each system exhibited some difficulty in detecting moving children. The sensor-based systems tested were found to operate reliably (i.e., without malfunction), with the exception of one aftermarket ultrasonic system that malfunctioned after only a few weeks, rendering it unavailable for use in remaining tests.

While examining the consistency of system detection performance, the agency observed that each sensor-based system exhibited some degree of variability in its detection performance and patterns. Specifically, detection inconsistencies were generally noticed at the periphery of the detection zones and typically for no more than 1 foot in magnitude. On average, these sensor-based systems had detection zones which generally covered an area directly behind the vehicle. The system with the longest detection range could detect a 3-year-old child up to 11 feet from the rear bumper (along a 3–5 ft wide strip of area along the vehicle's centerline). The majority of systems were unable to detect test objects less than 28 inches in height.

The response times of sensor-based systems were also evaluated in this study. In order for sensor-based backover avoidance systems to assist in preventing collisions, warnings must be generated by the system in a timely manner and the driver must perceive the warning within sufficient time to respond appropriately to avoid a crash. With regards to system response times, ISO 17386:2004,[35] ''Manoeuvring Aids for Low Speed Operation (MALSO)—Performance requirements and test procedures'', outlines performance requirements for sensor-based object detection systems. This standard recommends a maximum system response time of 0.35 seconds. NHTSA's tests showed that the response times for the eight tested sensor systems varied from 0.18 to 1 second, and only three of them met the ISO response time limit. For the systems that did not meet the recommended 0.35-second limit, it is unlikely (assuming typical backing speeds[36] and driver reaction times) that warnings would be provided to a driver in sufficient time to allow the driver to bring the vehicle to a stop and avoid a possible collision with an obstacle or moving child.

NHTSA Experimental Research: Performance of Sensor-Based Rear Object Detection Systems

NHTSA's 2008 study of drivers' use of rearview video systems[37] involved an observation of drivers of vehicles equipped with an ultrasonic-based rear parking sensor system in addition to an RV system. In a staged experimental trial in which an unexpected obstacle was presented to test participants while backing out of a garage, the rear parking sensor system on the particular vehicle involved in this study detected the obstacle and provided a warning indication of the presence of the obstacle behind the vehicle in 38 percent (5 out of 13) of the event trials for participants with vehicles equipped with the combination system. These data describing the performance of a sensor-based rear parking aid as used by average drivers reflect similar detection performance deficiencies as have been observed in NHTSA's laboratory testing of the detection performance of sensor-based object detection systems.[38] [39]

Paine, Macbeth & Henderson Proximity Sensor Research

Paine, Macbeth & Henderson tested the performance of proximity sensor backing aids.[40] They reported that proximity sensors tested exhibited limited ability to detect objects for vehicles traveling at 5 km/h (3.1 mph) or more. According to their conclusions, proximity sensors were prone to produce ''nuisance alarms'' in some driving situations and were deemed an unviable option to reduce backing incidents. While the authors suggested that a more effective system to mitigate backing incidents may be to incorporate sensors and wide-angle video camera technology, no data were provided to support this statement.

GM Experimental Research on Sensor-Based Systems for the Reduction of Backing Incidents

GM outlined the functional capabilities of their ultrasonic rear park assist system. The system was designed to detect larger poles and parking barriers greater than 7.5 cm in diameter with a length of 1.0 meter or more. It was not designed to detect objects less than 25 cm in height. In addition, the system was not designed to detect obstacles directly below the bumper or under the vehicle. GM notes that smaller or thinner objects or pedestrians

[33] PRIA, section VI.

[34] Mazzae, E.N. and Garrott, W.R., Experimental Evaluation of the Performance of Available Backover Prevention Technologies, NHTSA Technical Report No. DOT HS 810 634, September 2006.

[35] ISO 17386:2004 Transport information and control systems—Manoeuvring Aids for Low Speed Operation (MALSO)—Performance requirements and test procedures.

[36] Note that average backing speed was found to be 2.26 mph in NHTSA's ''On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS).'' Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). National Highway Traffic Safety Administration, DOT 811 024, page 34.

[37] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

[38] Mazzae, E.N. and Garrott, W.R., Experimental Evaluation of the Performance of Available Backover Prevention Technologies, NHTSA Technical Report No. DOT HS 810 634, September 2006.

[39] Mazzae, E.N. and Garrott, W.R., Experimental Evaluation of the Performance of Available Backover Prevention Technologies for Medium Straight Trucks, NHTSA Technical Report No. DOT HS 810 865, November 2007.

[40] Paine, M., Macbeth, A., and Henderson, M. (2003). The Danger to Young Pedestrians from Reversing Motor Vehicles. 18th International Technical Conference on the Enhanced Safety of Vehicles. Paper Number 466.

may not be detected by this system, and indicates this fact explicitly in the system's instructional materials.[41] [42]

Observations

The development of sensor-based systems for use as parking aids has been in progress for at least 15 years. Ultrasonic sensors inherently have detection performance that varies as a function of the degree of sonic reflectivity of the obstacle surface. For example, objects with a smooth surface such as plastic or metal reflect well, whereas objects with a textured surface, such as clothing, may not reflect as well. Radar sensors, which are able to detect the water in a human's body, are better able to detect pedestrians, but demonstrate inconsistent detection performance, especially with regard to small children.

NHTSA is aware that the performance of current sensor-based systems can be influenced by the algorithms that are used for detection. As stated previously, these systems are implemented as parking aids rather than safety systems and thus this may have attributed to the observed performance. While it is possible to modify the detection algorithms of sensor-based object detection systems to allow for better detection of children, one result of such a modification could result in other less favorable aspects of system performance, such as increased false alarms. From a driver confidence standpoint, an increase in false alarms could have the effect of decreasing the system's overall effectiveness as a driver's desire to use the system decreases.

D. Multi-Technology (Sensor + Video Camera) Systems

Description

In the context of this document, multi-technology backing aid systems are those systems that utilize both video and sensor-based technologies. Prior to MY 2007, these technologies functioned independently if both were present on a vehicle. Recently, truly integrated systems that use data from rear object detection sensors to present obstacle warnings that are superimposed on the RV display image have become commercially available. Whether integrated or not, vehicles equipped with both rearview video and sensor technologies have the ability to detect obstacles (via a rear parking sensor system) and alert a driver (by directing their attention to the rearview video system display) to the presence of the obstacle.

Research

As previously mentioned in Part C of this section, NHTSA's work in response to Section 10304 of the SAFETEA–LU mandate included the measurement of the object detection performance of short range sensor-based systems. One of the systems examined was the integrated rearview video and ultrasonic-based rear parking aid system of a 2007 Cadillac Escalade. This system used object detection information from an ultrasonic rear parking aid to present obstacle warnings to the driver through warning symbology superimposed on the RV display image. Specifically, a warning triangle symbol was shown on the RV display image in the approximate location of the obstacle. While the performance of the ultrasonic-based rear parking aid system showed the same issues as other tested systems using that sensor technology, the presentation of integrated warnings may be useful in directing a driver's attention to the image of a rear obstacle presented on the rearview video display. However, in order to assess the effectiveness of this or any other integrated system in mitigating backover incidents, research with drivers using the system is needed.

Observations

Testing of the vehicle examined showed that the integrated rear parking aid and rearview video aspects of the backing aid system performed, from a sensor point of view, the same as would these two technologies if tested separately. The performance of the backing aid technologies present on this vehicle may not represent the performance of all such systems commercially available today. With improved technology integration that may utilize image processing to confirm the presence of rear obstacles, performance enhancements may be possible. The agency seeks comment on whether any recent studies have been performed with other integrated multi-technology backing aid systems.

E. Future Technologies

Description

NHTSA is aware of two additional sensor technologies being developed that could be used to improve a vehicle's rear visibility; infrared-based object detection systems and video-based object recognition systems. As with other sensor systems, infrared-based systems emit a signal, which if an object is within its detection range, will bounce back and be detected by a receiver. Rear object detection via video camera uses real-time image processing capability to identify obstacles behind the vehicle and alert the driver of their presence.

Research

Ongoing NHTSA Backing Crash Countermeasure Research

In addition to the previously mentioned rear-mounted convex mirror research, NHTSA is currently engaged in cooperative research with GM on Advanced Collision Avoidance Technology relating to backing incidents. The ACAT backing systems project is assessing the ability of more advanced technologies to mitigate backing crashes, and refining a tool to assess the potential safety benefit of these technologies. The focus of the ACAT Backing Crash Countermeasure Program is to characterize backing crashes in the U.S. and investigate a set of integrated countermeasures to mitigate them at appropriate points along the crash timeline (prior to entering the vehicle and continuing throughout the backing sequence). The objective of this research is to estimate potential safety benefits or harm reduction that these countermeasures might provide. A Safety Impact Methodology (SIM), consisting of a software-based simulation model together with a set of objective tests for evaluating backing crash countermeasures, will be developed to estimate the harm reduction potential of specific countermeasures. Included in the SIM's methods for estimating potential safety benefits will be a consideration of assessing and modeling unintentional potential disbenefits that might arise from a countermeasure.

Observations

While these technology applications may eventually prove viable, because of their early stages of development it is not possible at this time to assess their ability to effectively expand the visible area behind a vehicle. Similarly, the completion of NHTSA's advanced technology research effort is not expected until calendar year 2011 and thus will not occur prior to the Congressional deadline. The agency seeks comments on the timeframe for the commercial availability of these technologies, and on any other

[41] Instructional materials include the following warning: ''If children, someone on a bicycle, or pets are behind your vehicle, (ultrasonic rear park assist) won't tell you they are there. You could strike them and they could be injured or killed.''

[42] Green, C. and Deering, R. (2006). Driver Performance Research Regarding Systems for Use While Backing. Society of Automotive Engineers, Paper No. 2006–01–1982.

advanced technology developments not identified here.

F. Summary and Questions Regarding Technologies for Improving Rear Visibility

Given the mandate from Congress to improve the rear visibility of vehicles, NHTSA's preliminary assessment of the known research to date seems to indicate that RV systems have greater potential to improve vehicles' rear visibility than sensor-based rear object detection systems and rear-mounted convex mirrors. However, we believe it is premature to limit manufacturers' design options at this time. To this end, we put forth the following questions and solicit comments on our assessments of these technologies, and any information on the feasibility of alternative approaches or systems.

(1) While the objective to ''expand the required field of view to enable the driver of a motor vehicle to detect areas behind'' the vehicle implies enhancement of what a driver can visually see behind a vehicle, the language of the K.T. Safety Act also mentions that the ''standard may be met by the provision of additional mirrors, sensors, cameras, or other technology.'' NHTSA seeks comment regarding the ability of object detection sensor technology to improve visibility and comply with the requirements of the Act.

(2) What specific customer feedback have OEMs received regarding vehicles equipped with rear parking sensor systems? Have any component reliability or maintenance issues arisen? Is sensor performance affected by any aspect of ambient weather conditions?

(3) What specific customer feedback have OEMs received regarding vehicles equipped with rearview video systems? Have any rearview video system component reliability or maintenance issues arisen?

(4) What are the performance and usability characteristics of rearview video systems and rear-mounted convex mirrors in low light (e.g., nighttime) conditions?

(5) Is there data available regarding consumers' and vehicle manufacturers' research regarding backing speed limitation, haptic feedback to the driver, or use of automatic braking?

(6) What types of rear visibility countermeasures are anticipated to be implemented in the vehicle fleet through the 2012 timeframe?

(7) Can rear-mounted convex mirrors be installed on light vehicles other than SUVs and vans? What is the rationale for U.S. manufacturers' choosing to install rear parking sensors and video cameras, rather than rear-mounted convex mirrors as are commonly installed on SUVs and minivans in Korea and Japan? NHTSA is particularly interested in any information on the effectiveness of rear-mounted convex mirrors in Korea and Japan.

(8) NHTSA seeks any available research data documenting the effectiveness of rear convex cross-view mirrors in specifically addressing backover crashes.

(9) NHTSA seeks comment and data on whether it is possible to provide an expanded field of view behind the vehicle using only rear-mounted convex mirrors.

(10) NHTSA is aware of research conducted by GM that suggests that drivers respond more appropriately to visual image-based confirmation of object presence than to non-visual image based visual or auditory warnings. Is there additional research on this topic?

(11) NHTSA requests input and data on whether the provision of graphical image-based displays (e.g., such as a simplified animation depicting rear obstacles), rather than true-color, photographic visual displays would elicit a similarly favorable crash avoidance response from the driver.

(12) To date, rearview video systems examined by NHTSA have displayed to the driver a rear-looking perspective of the area behind the vehicle. Recently introduced systems which provide the driver with a near 360-degree view of the area around the entire vehicle do so using a ''birds-eye'' perspective using images from four cameras around the vehicle. During backing, it appears that, by default, this birds-eye view image is presented simultaneously along with the traditional rear-facing camera image. NHTSA requests data or input on whether this presentation method is likely to elicit a response from the driver that is at least as favorable as that attained using traditional, rear-view image perspective, or whether this presentation is more confusing for drivers.

VI. Drivers' Use and the Associated Effectiveness of Available Technologies To Mitigate Backovers

In order to establish effectiveness estimates for different systems which may be utilized to mitigate backover crashes, the agency has conducted research on vehicles equipped with such systems, including those utilizing ultrasonic and radar sensors and rearview video cameras. As with any passive technology, NHTSA believes that it is reasonable to assume that in order for the technology to assist in preventing backing crashes, the driver must use the technology (e.g., look at the video display, if present), perceive the indication that a pedestrian or object is present, and respond quickly, and with sufficient force applied to the brake pedal, to bring the vehicle to a stop. While we have previously discussed the performance of the technologies, this section will outline what the agency knows about driver use and the resulting effectiveness of technologies that could be used to mitigate backover crashes.

NHTSA has not conducted system effectiveness research with drivers for all of the four system types discussed in this notice. However, that relevant research NHTSA and industry have conducted is summarized here.

A. Rear-Mounted Convex Mirrors

NHTSA has not conducted research focused on examining driver's use of mirrors to aid in the performance of backing maneuvers. However, NHTSA's study of drivers' use of rearview video systems during staged and naturalistic backing maneuvers did produce data regarding drivers' use of the side and interior rearview mirrors as well as direct glance behavior.[43] This behavior suggests that drivers would use the mirrors. Table 7 shows that the mean percentage of total glance time during a backing maneuver in which drivers glanced at the driver-side mirror, passenger-side mirror, and interior rearview mirror. Independent of the presence of a backing aid, drivers spent over 25 percent of the time during a backing maneuver glancing rearward over their right shoulder.

[43] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

TABLE 7—MEAN PERCENTAGE OF TOTAL GLANCE TIME TO MIRROR LOCATIONS FOR A BACKING MANEUVER WITH STAGED OBSTACLE AVOIDANCE EVENT [44]

Glance location	Mean percentage of total glance time during a backing maneuver
Driver-side Mirror/Driver-side Window [45]	15
Interior Rearview Mirror	5
Passenger-side Mirror/Passenger-side Window [46]	15

NHTSA is currently engaged in research to examine the performance of these mirrors in displaying images of rear obstacles. While NHTSA has not yet conducted driving research with these mirrors we are planning to conduct research to examine drivers' behavior and ability to avoid crashes with rear-mounted convex mirrors in 2009. Upon completion, this mirror research will be summarized in a published NHTSA report. Along with comments received to this notice, NHTSA hopes to use this research information in the development of a proposal.

B. Rearview Video Systems

NHTSA has conducted and we are aware of some work conducted by GM that examined drivers' use of rearview video based backing aids and their ability to use them to mitigate crashes. Below is a brief summary of this research.

NHTSA Experimental Research: On-Road Study of Drivers' Use of Rearview Video Systems

NHTSA conducted experimental research aimed to determine whether drivers look at the RV display during backing. While hardware performance testing has shown the rearview video systems can provide to the driver an image of any obstacles behind the vehicle in the RV system's field of view, the driver must take the initiative to look at the display throughout the backing maneuver in order for the RV system to provide any benefit. The goal of this study was to further our understanding of the degree to which drivers may actively use RV systems while backing and whether the provision of such visual information will translate into decreased backing and backover incidents.

This study also provided information useful in estimating the effectiveness of RV and supplemental sensors, in aiding drivers to avoid a backing crash. For example, the number of times per backing maneuver that a driver looked at the RV screen was tabulated. A driver that looks at the screen more often is more likely to notice when an obstacle appears. A look at the beginning of a backing maneuver is less likely to result in a driver's detection of an obstacle than would frequent checking of the screen throughout the maneuver.

Drivers' use of rearview video systems was observed during staged and naturalistic backing maneuvers to determine whether drivers look at the RV display during backing and whether use of the system affects backing behavior.[47] Thirty-seven test participants, aged 25 to 60 years, were comprised of twelve drivers of RV-equipped vehicles, thirteen drivers of vehicles equipped with an RV system and a rear parking sensor system, and twelve drivers of vehicles with no backing aid system. All three system conditions were presented using original equipment configurations of the 2007 Honda Odyssey minivan. All participants had driven and owned a 2007 Honda Odyssey minivan as their primary vehicle for at least six months. Participants were not aware that the focus of the study was on their behavior and performance during backing maneuvers.

Participants drove their own vehicles for a period of four weeks in their normal daily activities while backing maneuvers were recorded. At the end of four weeks, participants returned to the research lab to have the recording equipment removed. At the lab, the participants took a test drive in which an unexpected 36-inch-tall obstacle consisting of a two-dimensional photograph of a child appeared behind the vehicle during a final backing maneuver. Additional details of the test method are provided in Appendix B of this notice.

The results of the naturalistic driving and unexpected obstacle scenario are provided below.

Results for Naturalistic Driving

- A total of 6,145 naturalistic backing maneuvers were recorded in the study, none of which resulted in a significant collision; however, some collisions (i.e., with trash receptacles and other parked vehicles) occurred during routine backing.
- In the real-world backing situations, drivers equipped with RV systems spent 8 to 12 percent of the time looking at the RV display during backing maneuvers.
- On average, drivers made 2.17 glances per backing maneuver with the RV-only system, and 1.65 glances per maneuver with the RV and sensor system.
- Overall, drivers looked at least once at the RV display on approximately 65 percent of backing events, and looked more than once at the RV display on approximately 40 percent of backing events.

Results for Unexpected Obstacle Maneuver

- Drivers with an RV system made 13 to 14 percent of glances at the RV video display during the initial phase of backing in the staged maneuvers, independent of system presence.
- Drivers spent over 25 percent of backing time looking over their right shoulder in the staged backing maneuvers.
- Only participants who looked at the RV display more than once during the maneuver avoided a crash during the staged crash-imminent obstacle event.
- Results indicated that the RV system was associated with a statistically significant (28 percent) reduction in crashes with the unexpected obstacle as compared to participants without an RV system. All participants in the ''no system'' condition crashed, since the staged obstacle event scenario was designed such that drivers without an RV system could not see the obstacle.

Results of this study indicate that drivers looked at the RV display in approximately 14 percent of glances in baseline and obstacle events and 10 percent of glances in naturalistic backing maneuvers. The agency recognized that the timing and frequency of drivers' glances at the RV display has a noticeable impact on the likelihood of rear obstacle detection. However, making single or multiple glances at the RV display at the start of the maneuver does not ensure that the path behind the vehicle will remain clear for the entire backing maneuver.

Overall, this study estimates that video-based backing systems would

[44] Id.

[45] Note that due to the close proximity of the mirror and window on each side of the vehicle, the driver-side mirror and driver-side window glance locations were impossible to distinguish from each other.

[46] Note that due to the close proximity of the mirror and window on each side of the vehicle, the passenger-side mirror and passenger-side window glance locations were impossible to distinguish from each other.

[47] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

mitigate approximately 28 to 42 percent of backover crashes [48].

GM Experimental Research on Driver Performance Using Video-Based Backing Aid Systems

GM conducted research to investigate ways to assist drivers in recognizing people or objects behind their vehicle while performing backing maneuvers.[49] One study compared parking behaviors for rear camera and ultrasonic rear parking assist systems together, separately, and under traditional parking conditions (i.e., neither system). An obstacle was placed unexpectedly behind a driver's vehicle prior to the start of a backing maneuver to assess the driver's performance in obstacle detection and avoidance.[50] Twenty-four participants struck the obstacle, while five participants avoided the obstacle. Of those participants who avoided the obstacle, three saw the obstacle while looking at the RV display (two in the RV system condition, one in the ultrasonic rear park assist and RV system condition), one saw the obstacle in their mirror (ultrasonic rear park assist and RV system condition), and one participant noticed the obstacle out of the back window (RV system condition). These results indicated that participants with an RV system were less likely to be involved in a backing incident.

GM also sponsored a second research study to evaluate driver performance with rear camera systems.[51] In this study, each participant parked their vehicle using a rear camera and ultrasonic system more than 30 times, including practice trials. During one scenario, participants, unaware that an experimenter placed an obstacle behind the vehicle, were asked to perform a backing maneuver to engage the ultrasonic rear park assist and the rear camera system. In some cases, a flashing symbol was employed in the approximate location of the rear obstacle as presented on the video display screen. While there were no statistically significant effects of either the symbol or the location of the obstacle, 65 percent of participants avoided the obstacle. Greater experience with the camera system and an increased number of trials presented that involved a ruse may have attributed to a higher object avoidance rate in this study than compared to the first study.

Overall, GM's research on rearview video systems suggested that RV systems may provide limited benefit in some backing scenarios.[52]

C. Sensor-Based Rear Object Detection Systems

NHTSA and GM have both conducted research on drivers' use of sensor-based backing aids and their ability to use them to mitigate crashes. Below is a brief summary of this research.

NHTSA Experimental Research: Driver Performance With Rearview Video and Sensor-Based Rear Object Detection Systems

NHTSA's study of drivers' use of rearview video systems (discussed in detail earlier in this document) also involved an observation of drivers of vehicles equipped with both an RV system and an ultrasonic-based rear parking sensor system. The rear parking sensor system tested detected the obstacle and provided a warning indication of the presence of a rear obstacle to the driver in 38 percent (5 out of 13) of the event trials for participants with vehicles equipped with the combination system. Four of these 5 participants crashed into the obstacle.

The test vehicle involved in the study had a control that allowed the driver to disable the parking sensor system. During the course of this study, half of the participants whose vehicles were equipped with a rear parking sensor system either stated or were observed to have turned the system off at least some of the time. Four participants made unsolicited comments to members of the research staff about turning off the rear parking sensor system on their vehicle.[53] One of the four participants reported that he just did not use it. The three other participants stated that they frequently turned the rear parking sensor system off when driving through a restaurant drive-through lane due to nuisance alarms (i.e., audible notifications of the presence of vehicles that the driver is already aware of). A sixth participant did not comment on not using the system, but was observed having the rear parking sensor system on their vehicle switched off during their initial meeting visit. This tendency for some drivers to turn the rear parking sensor system off causes NHTSA to be concerned about the potential for this technology to be effective in mitigating backover incidents.

GM Experimental Research on Driver Performance Using Sensor-Based Backing Aid Systems

GM sponsored a study on the effectiveness of auditory backing warnings provided by a rear object detection system.[54] The study found that only 13 percent of drivers avoided hitting an unexpected obstacle, and over 87 percent of the drivers collided with the obstacle following the warning. Sixty-eight percent of drivers provided with the warning demonstrated precautionary behaviors in response to the warning, such as covering the brake with their foot, tapping the brake, or braking completely. While 44 percent of participants braked, these braking levels were generally insufficient to avoid a collision. Although data provides some evidence that warnings influenced driver behavior, warnings were unreliable in terms of their ability to induce drivers to immediately brake to a complete stop.

This study further suggests that knowledge and experience with a backing warning system may not significantly improve immediate driver response to a backing warning. While specific training on the operation of the system was provided to eight drivers, only one avoided the obstacle. In each case, drivers reported that they did not expect to encounter an obstacle in their backing path. Many drivers also reported that they searched for an obstacle following the warning, but ''didn't see anything'' and continued their backing maneuver. These perceptions suggest that drivers' expectations are important when seeking to influence driver behavior.

NHTSA Experimental Research: Driver Performance With Sensor-Based Rear Object Detection Systems

NHTSA is currently engaged in research to assess drivers' ability to avoid backing crashes in a vehicle equipped with only a sensor-based rear object detection system. This work is scheduled to be completed in 2009 and

[48] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

[49] Green, C. and Deering, R. (2006). Driver Performance Research Regarding Systems for Use While Backing. Society of Automotive Engineers, Paper No. 2006–01–1982.

[50] McLaughlin, S.B., Hankey, J.M., Green, C.A., and Kiefer, R.J. (2003). Driver Performance Evaluation of Two Rear Parking Aids. Proceedings of the 2003 Enhanced Safety Vehicle Conference.

[51] Green, C. and Deering, R. (2006). Driver Performance Research Regarding Systems for Use While Backing. Society of Automotive Engineers, Paper No. 2006–01–1982.

[52] Green, C. and Deering, R. (2006). Driver Performance Research Regarding Systems for Use While Backing. Society of Automotive Engineers, Paper No. 2006–01–1982.

[53] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

[54] Green, C. and Deering, R. (2006). Driver Performance Research Regarding Systems for Use While Backing. Society of Automotive Engineers, Paper No. 2006–01–1982.

will be summarized in a published NHTSA report thereafter. Along with comments received to this notice, NHTSA hopes to use this research information in the development of a proposal.

D. Multi-Technology (Sensor + Camera) Systems

NHTSA has not conducted research examining drivers' use of any integrated, multi-technology systems designed to aid drivers in performing backing maneuvers. However, NHTSA's study of drivers' use of rearview video systems (discussed in detail earlier in this document) involved an observation of drivers of vehicles equipped with both an RV system and an ultrasonic-based rear parking sensor system that functioned independently. Data from this study indicated that equipping a vehicle with a rear object detection system and an RV system that are not integrated resulted in lesser backing crash avoidance effectiveness than attainable with RV alone. Although statistically not significant due to the relatively small number of test participants, more participants with vehicles equipped with both an RV and a rear parking sensor system (85 percent) crashed into an obstacle than did those (58 percent) driving vehicles equipped with only an RV system. However, the fact that the rear parking sensor system only detected the obstacle in 38 percent of test trials may help explain the result if the drivers relied on the sensor system first. NHTSA's research on the performance of currently available sensor-based systems in detecting rear obstacles has shown their performance to be inconsistent, particularly in the detection of small children. It is possible that those performance deficits for sensor-based rear object detection systems could have a negative impact on the overall effectiveness of RV systems, particularly if drivers rely on the sensor system's auditory alerts to cue them to look at the RV display.

During our study, drivers of the vehicles with RV and sensors looked at the RV system visual display less frequently than did drivers of the same vehicle equipped with only the RV system. NHTSA seeks comment on whether there is research that would indicate why this would occur or if others have found a similar trend.

E. Summary

Table 8 presents a summary of the estimated effectiveness information for systems that may aid in the mitigation of backover incidents that NHTSA has collected to date. Estimates for system performance in detecting rear obstacles and overall effectiveness based on driver use are listed separately. System performance for rearview video systems was assumed to be 100 percent, since these systems have the capability to show any object within their field of view. System performance for sensor-based systems is based on object detection rates seen in the obstacle avoidance event presented in the study of drivers' use of rearview video systems.[55] Overall effectiveness values for rearview video systems alone and combined with a rear parking sensor system are based on results of NHTSA's study of drivers' use of rearview video systems. The value for rear parking sensor systems is calculated based on a combination of the 39 percent object detection rate from the study of drivers' use of rearview video systems and additional data that NHTSA has collected. We note that GM's study of drivers' use of backing warning systems found that only 13 percent of drivers were able to avoid a crash with a rear obstacle in a staged scenario using a rear parking sensor system.[56]

TABLE 8—ESTIMATED SYSTEM PERFORMANCE AND OVERALL EFFECTIVENESS

Countermeasure	System performance in object detection—percent detections	Percent overall effectiveness (technology + driver)
Rear-Mounted Convex Mirrors	(Research underway)	(Research underway).
Rearview Video	100	42[57].
Rearview Video + Sensors	100	15[58].
Sensors	39[59]	17.66[60] (estimate).

F. Questions

(1) NHTSA has not conducted research to estimate a drivers' ability to avoid crashes with a backing crash countermeasure system based only on sensor technology. We request any available data documenting the effectiveness of backing crash countermeasure systems based only on sensor technology in aiding drivers in mitigating backing crashes.

(2) NHTSA has not conducted research to estimate drivers' ability to avoid crashes with a backing crash countermeasure system based on multiple, integrated technologies (e.g., rear parking sensors and rearview video functions in one integrated system). We request any available objective data documenting the effectiveness of multi-technology backing crash countermeasure systems in mitigating backing crashes. We also request comment on what types of technology combinations industry may consider feasible for use in improving rear visibility.

(3) NHTSA requests any available data documenting the image quality of rear-mounted convex mirrors and their effectiveness in aiding drivers in preventing backing crashes.

(4) NHTSA requests any available additional objective research data documenting the effectiveness of sensor-based, rearview video, mirror, or combination systems that may aid in mitigating backover incidents.

(5) NHTSA requests information regarding mounting limitations for rear-mounted convex mirrors.

VII. Rear Visibility of Current Vehicles

The degree of direct rear visibility (i.e., what a driver can directly see with or without the aid of non-required mirrors or other devices) in a particular vehicle depends on a number of factors, including the driver's size and various aspects of the vehicle's design, such as the width of a vehicle's structural pillars (i.e., B and C pillars) and the size of its window openings. Rear seat head restraints can also affect direct rear

[55] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

[56] General Motors (2006). Driver Performance Research Regarding Systems for Use While Backing. Society of Automotive Engineers, Paper No. 2006–01–1982.

[57] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

[58] Id.

[59] Id.

[60] PRIA, section V.

visibility.[61] Additionally, due to their geometries and the position of a driver's eyes with respect to the bottom of the rear window (or top edge of a pickup truck's tailgate), vehicles with greater overall height and length are likely to have larger rear blind zone areas than shorter vehicles.

To assess a vehicle's rear visibility and how it varies from vehicle to vehicle, in 2007,[62] NHTSA measured the rear visibility characteristics of 44 recent-model light vehicles.[63] NHTSA's measurements involved assessment of the visibility of a visual target over an area stretching 35 feet to either side of the vehicle's centerline, 90 feet back from the vehicle's rear bumper, and 20 feet forward of the rear bumper. Rear visibility metrics were calculated using a subset of this area measuring 60 feet wide by 50 feet long (3000 square feet). The agency selected a 29.4-inch-tall visual target representing the approximate height of a 1-year-old child and the youngest walking potential backover victims. Rear visibility was measured for both a 50th percentile adult male driver (69.1 inches tall) and a 5th percentile adult female driver (59.8 inches tall). The areas over which the visual target was visually discernible using direct glances (i.e., looking out vehicle windows) and indirect glances (i.e., looking into side or interior rearview mirrors) were determined.

While NHTSA measured the area indirectly visible to the driver in the side and interior rearview mirrors, we focused our assessment on direct rear visibility in order to assess the degree to which the vehicle's structure affects what a driver can see out the vehicle's windows. This permitted an assessment of how rear visibility is affected by a vehicle's structure and allowed for better vehicle comparison since this metric varied more than would rear visibility measured using both direct vision and indirect vision devices together. In other words, considering both direct and indirect rear visibility together would allow less room for distinguishing between the qualities of rear visibility amongst vehicles. Examples of the measured direct fields of view for four common vehicles types are shown in Figures 5–8.

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[61] Note that 49 CFR Sec. 571.111 Standard No. 111, *Rearview mirrors,* Section 5.1.1 states that ''The line of sight may be partially obscured by seated occupants or by head restraints.''

[62] Mazzae, E.N., Garrott, W.R. (2008). Light Vehicle Rear Visibility Assessment. National Highway Traffic Safety Administration, DOT 810 909.

[63] Measured vehicles included the ten top-selling passenger cars and light trucks for calendar year 2006.

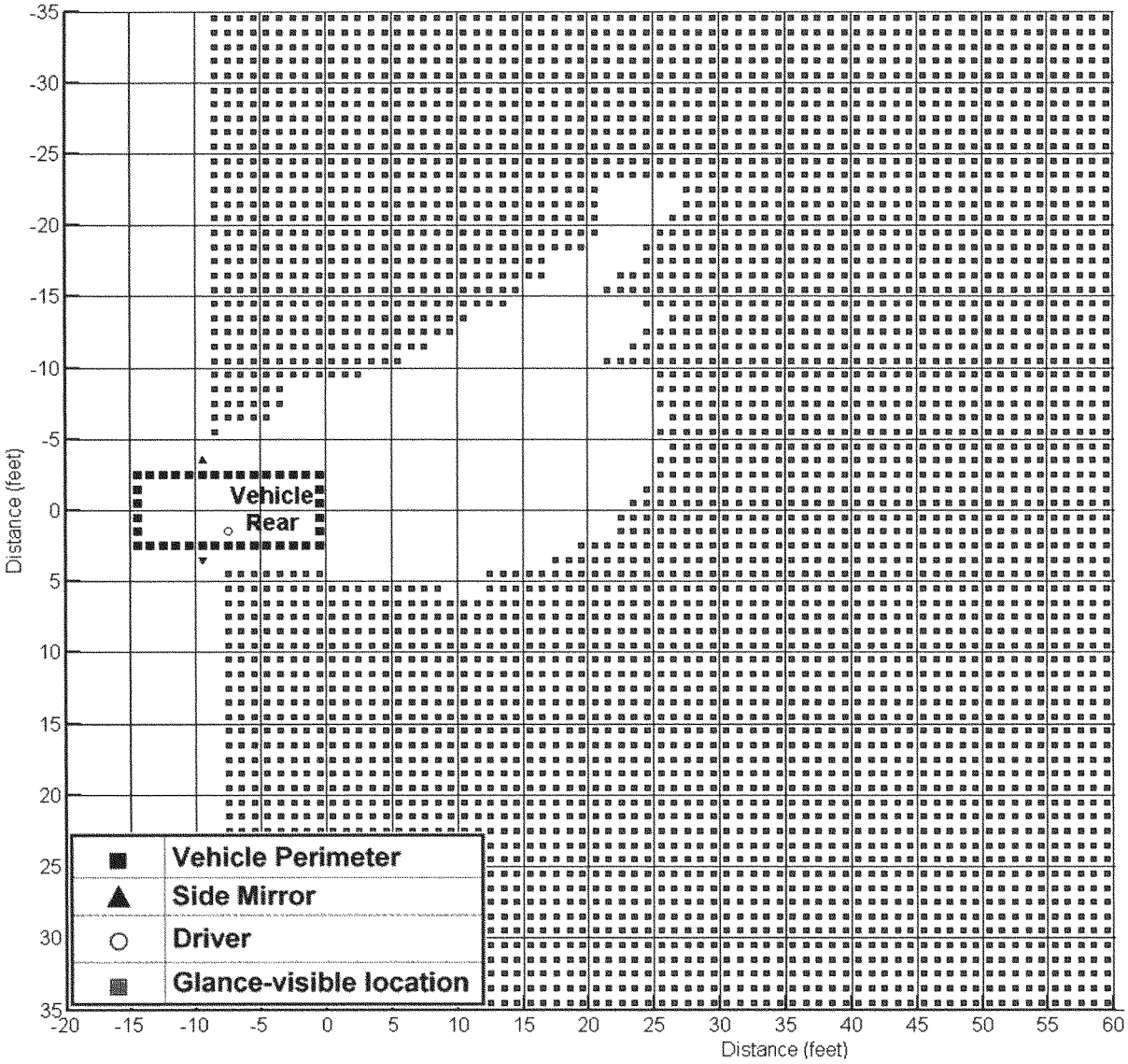

Figure 5. Direct Field of View Measured Using a 50th Percentile Male Driver: Passenger Car (2007 Chevrolet Cobalt, Coupe).

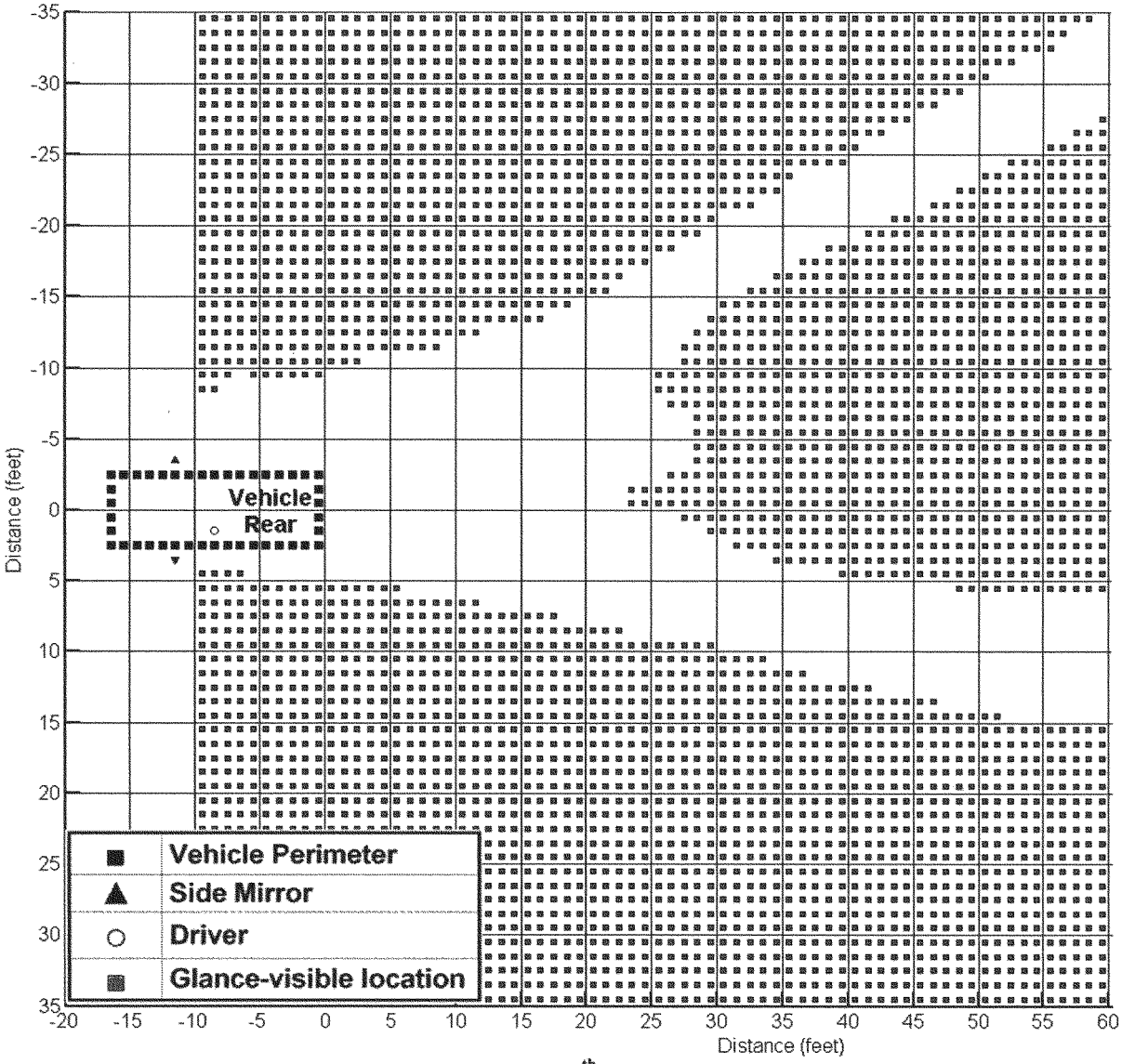

Figure 6. Direct Field of View Measured Using a 50th Percentile Male Driver: Minivan (2007 Honda Odyssey).

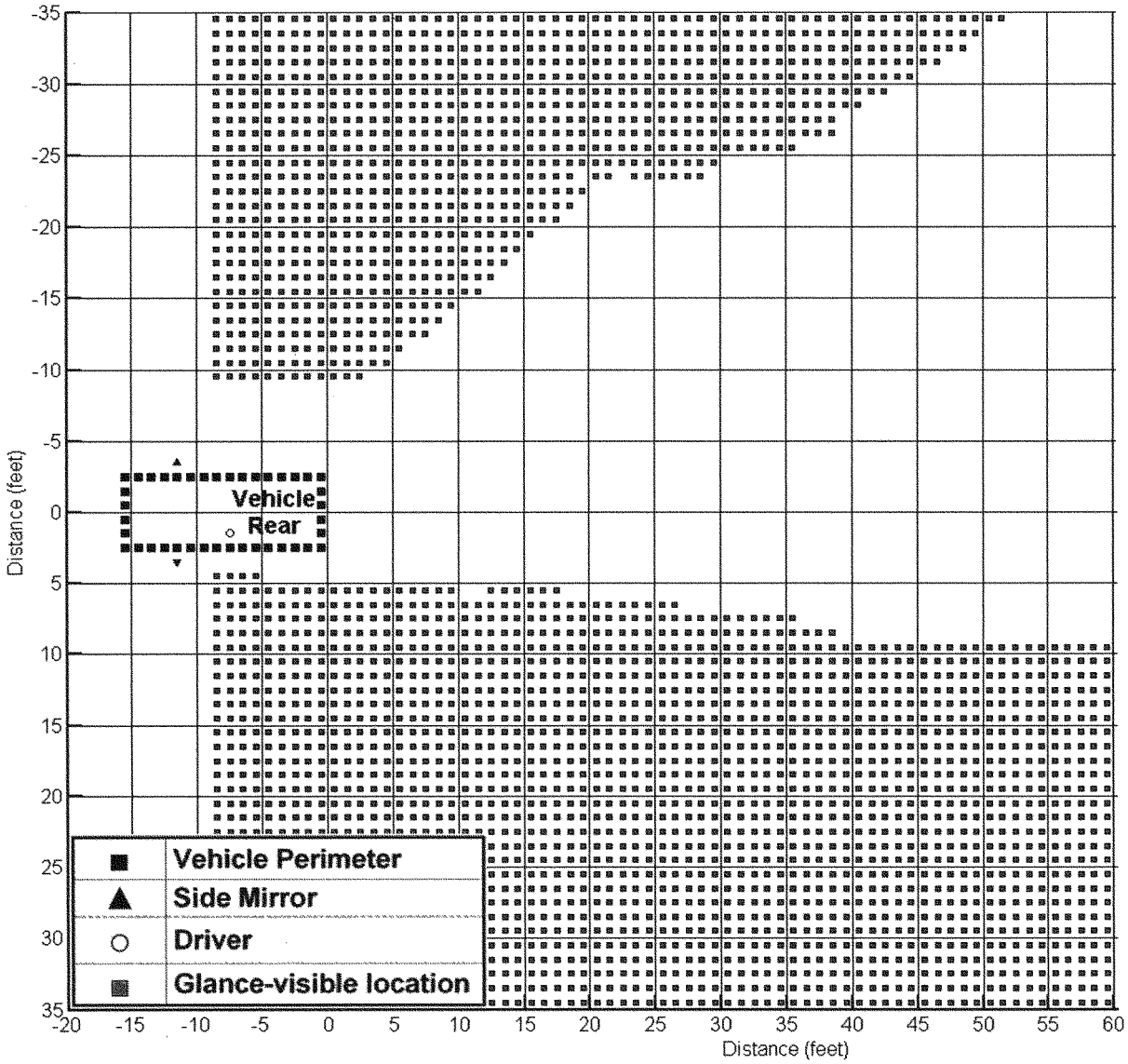

Figure 7. Direct Field of View Measured Using a 50th Percentile Male Driver: SUV (2007 Jeep Commander 4x4).

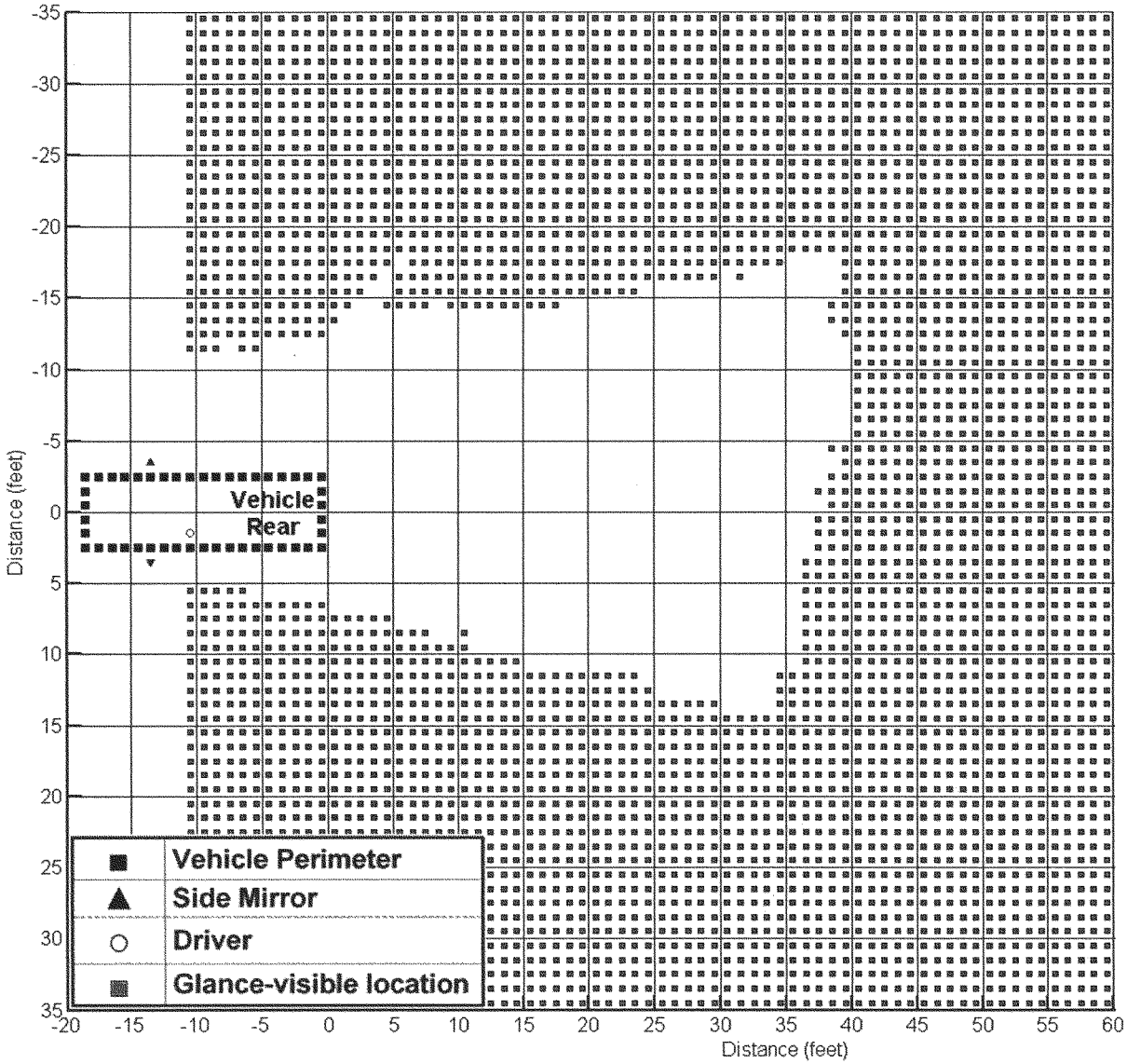

Figure 8. Direct Field of View Measured Using a 50th Percentile Male Driver: Pickup Truck (2006 Ford F-150, 4x4, 4-door Extended Cab).

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Through this study, NHTSA estimated that rear blind zone areas [64] for individual vehicles ranged from approximately 100 to 1,440 square feet over the 3,000 square-foot measurement area. When summarized by vehicle category and curb weight (as a surrogate indicator for vehicle size), as illustrated in Figure 9, the data shows that average direct-view rear blind zone areas varied within these groups. The greatest range of direct-view rear blind zone area size was seen for the 4,000–5,000 lb SUV group. Figure 10 illustrates that SUVs (as a whole) were associated with the largest average direct-view rear blind zone area as well as the largest range of values for the four body types examined. Overall, LTVs (vans, pickups, and SUVs) as a vehicle class were observed to have larger rear blind zone areas than passenger cars, as indicated in Figure 10.

[64] ''Rear blind zone area'' is defined here to mean the area in square feet within a 50-foot wide by 60-foot long area and at ground level over which a 29.4-inch-tall object is visible using direct vision.

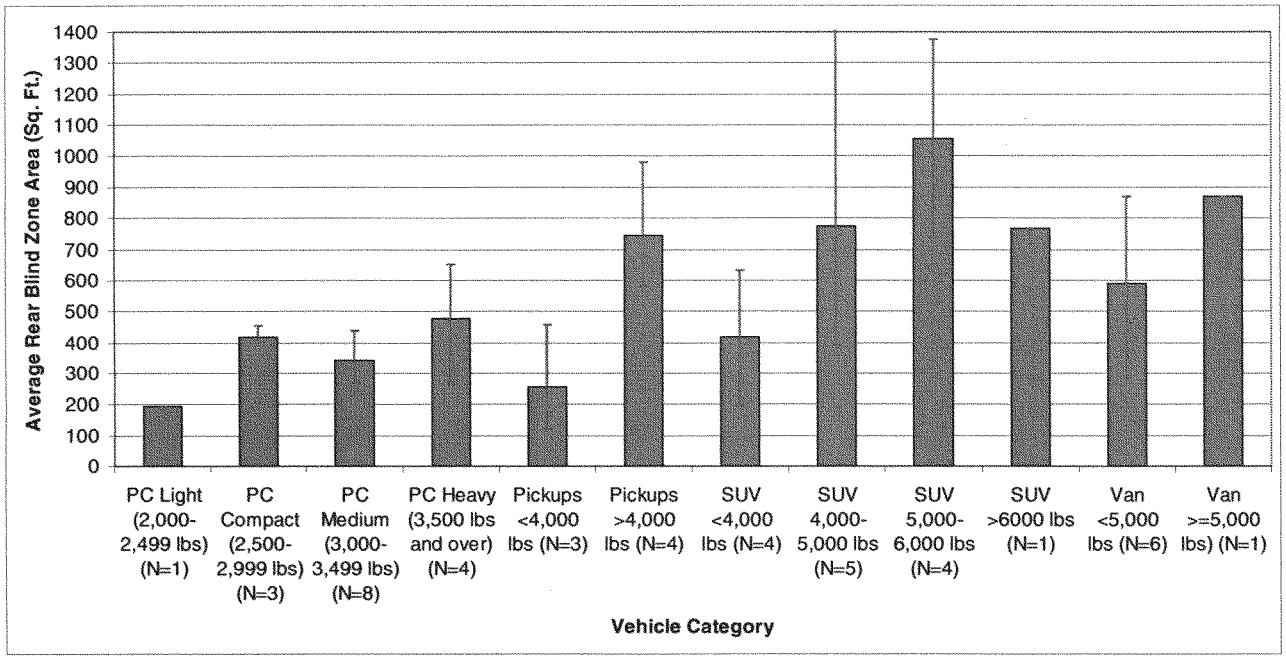

Figure 9. Direct-View Rear Blind Zone Area by Vehicle Category for a Measurement Field of 50 Feet Long by 60 Feet Wide.
Source: Light Vehicle Rear Visibility Assessment, DOT HS 810 909.
Note Error bars show the range of values for each vehicle

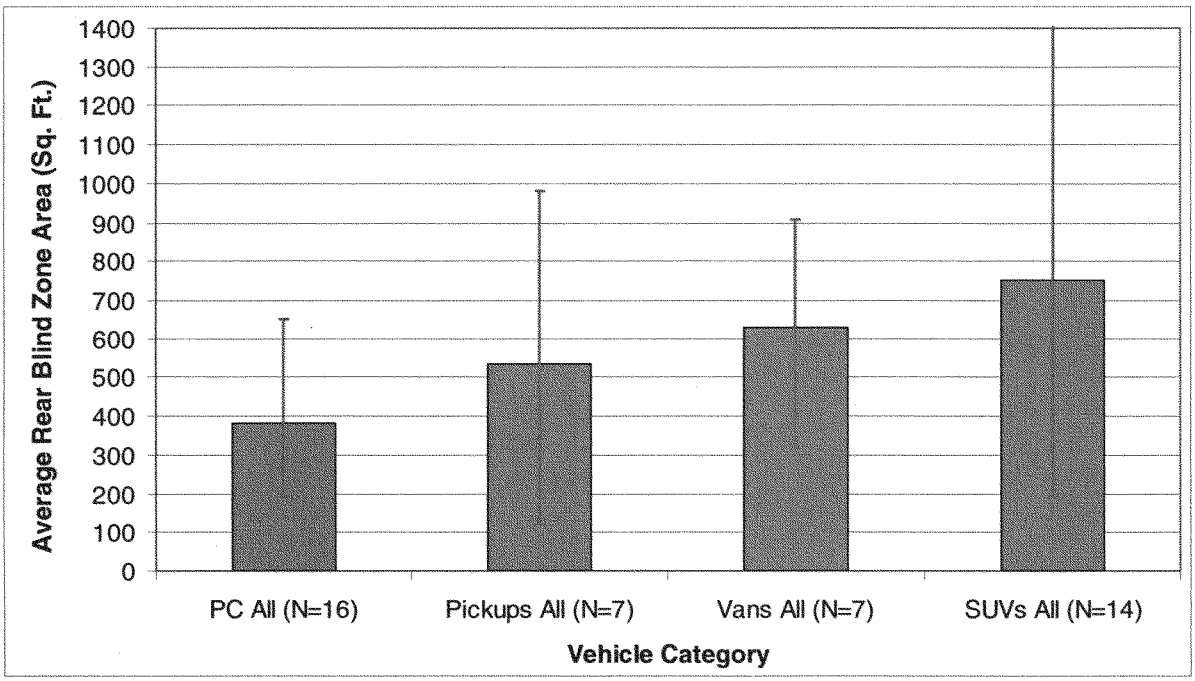

Figure 10. Direct-View Rear Blind Zone Area by Vehicle Category for a Measurement Field of 50 Feet Long by 60 Feet Wide.
Source: Light Vehicle Rear Visibility Assessment, DOT HS 810 909.
Note: Error bars show the range of values for each vehicle category.

For all 44 vehicles, NHTSA also measured the distance behind the vehicle at which the visual target could first be seen, i.e., the direct-view rear longitudinal sight distance. Average direct-view rear longitudinal sight distances were determined by mathematically averaging eight longitudinal sight distance measurements taken in 1-foot increments across the rear of each vehicle. As illustrated in Figure 11, LTVs generally had longer rear longitudinal sight distances than passenger cars. Exceptions to this trend included a few small pickup trucks for which average direct-view rear sight distance values were in the vicinity of those measured for smaller passenger cars, as shown in Figure 12. Average direct-view rear sight distance values

were longest for a full-size van, SUVs and pickup trucks with a curb weight of 4,000 lbs or greater.

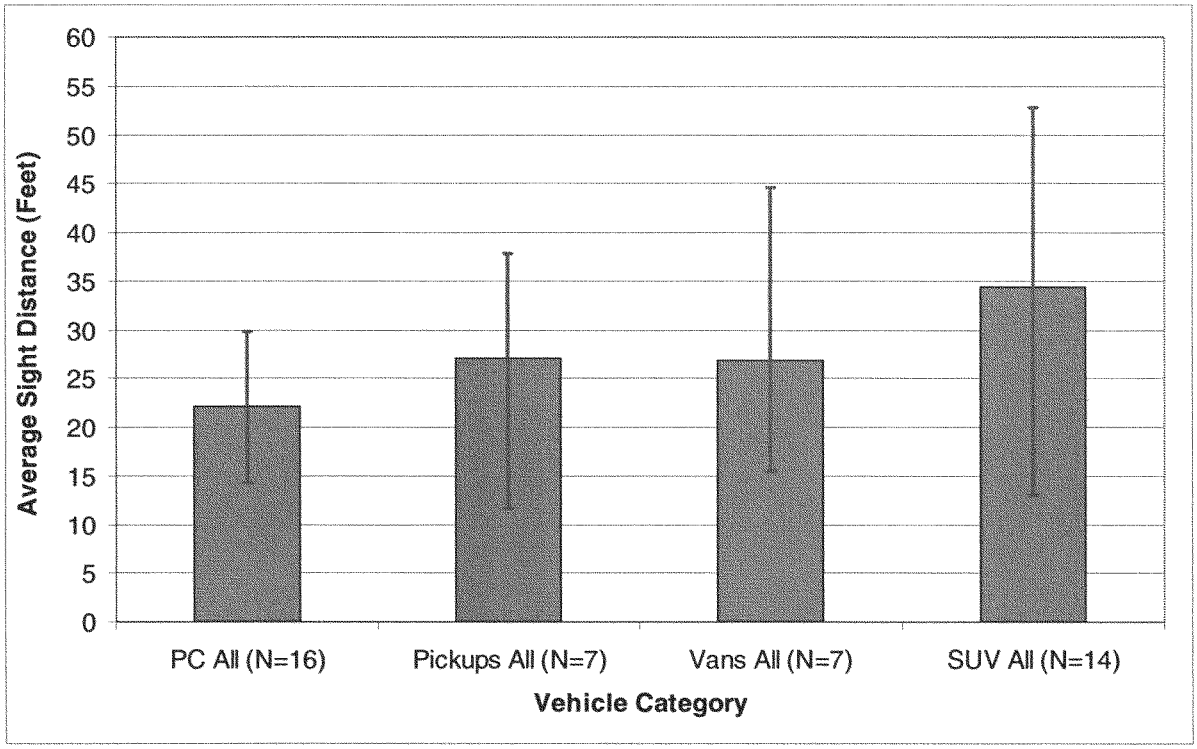

Figure 11. Direct-View Average Rear Longitudinal Sight Distance by Vehicle Category.
Source: Light Vehicle Rear Visibility Assessment, DOT HS 810 909
Note: Error bars show the range of values for each vehicle category.

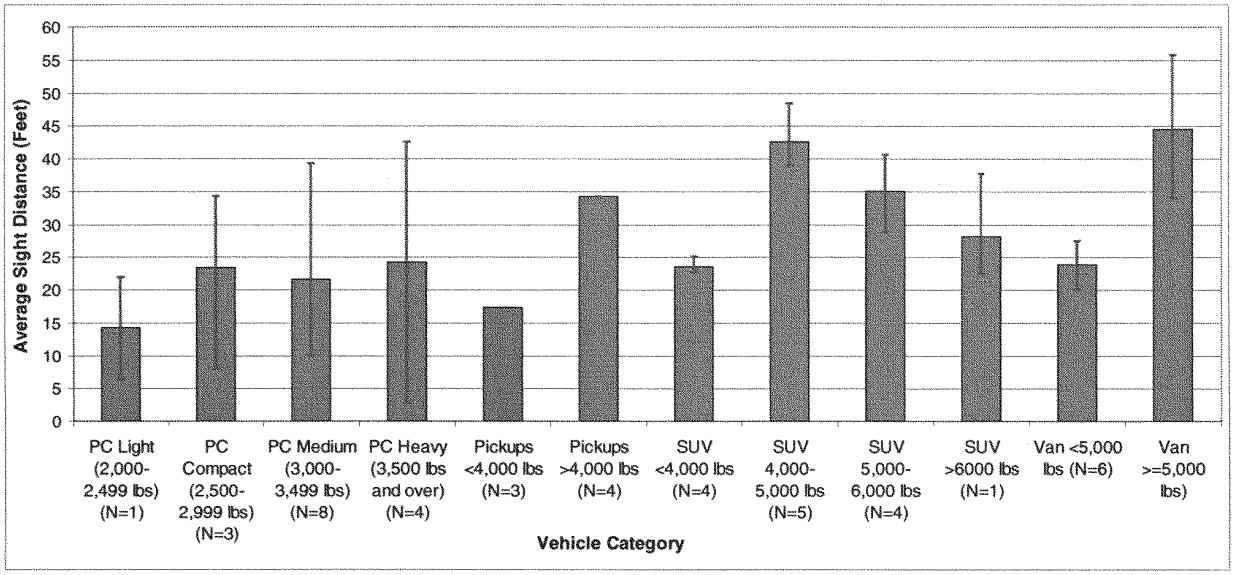

Figure 12. Direct-View Average Rear Longitudinal Sight Distance by Vehicle Category and Curb Weight.
Source: Light Vehicle Rear Visibility Assessment, DOT HS 810 909
Note: Error bars show the range of values for each vehicle category.

Overall, our direct-view rear visibility measurements indicated that LTVs measured in this study exhibited worse rear visibility when compared with passenger cars, but there was overlap amongst all vehicle categories.

VIII. Relationship Between Rear Visibility and Backing/Backover Crashes

Using the direct-view rear blind zone area and longitudinal sight distance measurements [65] discussed in the prior section, NHTSA investigated whether a statistical relationship could be identified between these metrics and all backing crashes, as well as backover crashes (i.e., the subset of backing crashes involving a pedestrian or bicyclist being struck by a backing vehicle).[66] NHTSA assessed the relationship between real world backing/backover crashes and rear visibility based on three metrics: average rear longitudinal sight distance, direct-view rear visibility measurements for a 50 feet long by 60 feet wide [67] test area, and direct-view rear visibility for a 50 feet long by 20 feet wide [68] test area.

Backing risk was estimated from police-reported crashes in the State Data System.[69] To calculate risk, backing rates were derived for 21 vehicle groups with vehicles that had at least 25 backing crashes to account for statistical variability. Backing rate data were provided by the following states for the specified calendar years:

- Alabama (2000–2003)
- Florida (2000–2005)
- Georgia (2000–2005)
- Illinois (2000–2005)
- Kansas (2001–2006)
- Kentucky (2000–2005)
- Maryland (2000–2005)
- Michigan (2004–2006)
- Missouri (2000–2005)
- Nebraska (2000–2004)
- New Mexico (2001–2006)
- New York (2000)
- North Carolina (2000–2005)
- Pennsylvania (2000–2001, 2003–2005)
- Utah (2000–2004)
- Washington (2002–2005)
- Wisconsin (2000–2005)
- Wyoming (2000–2005)

Simple correlation analysis [70] revealed an association between direct-view rear blind zone area and backing crash risk. Specifically, larger blind zone areas tended to be associated with a greater risk of being involved in a backing crash. A statistically significant relationship [71] between backing crash risk and direct-view rear blind zone area was discovered for both test areas, suggesting that this metric is a sensitive predictor of backing crash risk. However, in this analysis, the association between average rear longitudinal sight distance and backing risk was found to be weaker and not statistically significant due to the relatively small number of backover incidents, suggesting that this metric is not a sensitive predictor of backing crash risk.[72]

Logistic analysis [73] for the risk of a backover incident produced results that approached statistical significance for the rear blind zone area metrics, with a similar trend and magnitude as those for all backing crashes. Vehicles with the largest blind zone areas had 2–3 times the risk of a backover incident than those vehicles with the smallest blind zone areas.[74] Conversely, estimated results for the risk of backover using rear longitudinal sight distance were not statistically significant.

IX. Options for Mitigating Backover Incidents

Using rear blind zone area as a metric, NHTSA's research seems to indicate that there is a range of performance amongst vehicles and that LTVs on average had worse rear visibility than passenger cars. NHTSA also found a statistically significant correlation between rear blind zone area and backing crashes. Finally, our crash data appear to indicate that LTVs are overrepresented in backing and backover crashes. Based on these findings, NHTSA has identified potential approaches to improve rear visibility and to address the backing and backover crash risks for passenger vehicles.

A. Approaches for Improving Vehicles' Rear Visibility

One approach would be to eliminate all rear blind zones by requiring that all vehicles have a rear blind zone size of 0 sq. ft. (i.e., no rear blind zone). Such a requirement would be met by a visibility enhancement countermeasure that allowed the driver to see or otherwise determine that a pedestrian is in a specified zone behind the vehicle. This strategy would improve rear visibility for all vehicles.

Alternatively, NHTSA could specify that all LTVs as a vehicle class have no rear blind zone since our crash data indicated that this vehicle category seems to be overrepresented in backing and backover crashes. This alternative would target the class of vehicles which are disproportionately responsible for the largest portion of backover fatalities.

Another approach would be to establish a maximum rear blind zone area limit (based on crash rate) that all vehicles, or LTVs as a vehicle class, would have to meet.[75] The threshold would be applied to all vehicles, such that any vehicle not meeting the minimum rear visibility threshold would be required to be equipped with a rear visibility countermeasure. Because styling engineers would have a target threshold giving them an idea of minimum ''acceptable'' rear visibility, such an approach would allow manufacturers the flexibility to consider and improve those attributes of a vehicle that contribute to rear visibility since they would have the option of not having to provide a rear visibility enhancement countermeasure. Depending on how high or low the threshold was set, for example, the agency could focus countermeasure application on vehicles with the largest rear blind zone areas and those vehicles

[65] Mazzae, E.N., Garrott, W.R. (2008). Light Vehicle Rear Visibility Assessment. National Highway Traffic Safety Administration, DOT 810 909.

[66] Partyka, S., Direct-View Rear Visibility and Backing Risk for Light Passenger Vehicles (2008).

[67] This area was chosen because it was the largest available measurement area for the facility in which these measurements were conducted.

[68] The 50 feet long by 20 feet wide test area was examined to assess how much of the area behind the vehicle was critical to consider for rear visibility in relation to the prevention of backover incidents.

[69] The states provide annual files of their police-reported data under voluntary agreements with NHTSA. These are collected by the National Center for Statistics and Analysis, Office of Data Acquisition. The data are available for agency use. Public release of any of the files requires written approval from the individual state.

[70] A simple correlation measures the strength of the statistical relationship between two variables. For example, one can graph two variables (such as the real-world risk of being involved in a backing crash as a function of laboratory measures of rear visibility) as a scatter plot. A simple correlation analysis measures how closely the plot resembles a line. If the plot suggests a line, then we might conclude that the laboratory measures are useful in predicting real-world involvements. However, it is difficult to use this approach if one suspects that there are complicating (confounding) factors that affect the simple comparison between two variables.

[71] $r=0.51$, $p=0.02$.

[72] $r=0.26$.

[73] A logistic analysis allows us to account for complicating factors (such as systematic differences in how vehicles are used and by whom) by including them in a statistical model. This model predicts the risk of a crash being a backing crash as a function the laboratory measures of rear visibility after removing (controlling for) the effects of measurable complicating factors.

[74] Partyka, S., Direct-View Rear Visibility and Backing Risk for Light Passenger Vehicles (2008).

[75] Additional details on how a rear blind zone area based threshold might be developed are in Appendix D.

that are most involved in backing and backover crashes.

Using these approaches, NHTSA offers our preliminary information regarding the benefits and costs of various scenarios.

B. Cost Benefit Scenarios

For the relevant technologies, we have generated estimates using two different types of video cameras available in the market today and two different types of object detection sensors. For rearview video systems, some manufacturers are using cameras with a 130-degree field of view while others are using ones with a 180-degree field of view. These are noted as ''130° Camera'' and ''180° Camera,'' respectively. Note that these angular values are camera specifications and indicate the angle of view with respect to the center of the camera lens and not the center of the rear of the vehicle. Due to styling issues, cameras on some vehicle models may be mounted off-center and, as a result, their fields of view may not be symmetrical with respect to the center of the vehicle's rear bumper. The sensor technologies included in the estimates are ultrasonic and radar. It should be noted that given our lack of information regarding the effectiveness of mirrors, we could not generate a cost benefit scenario using this technology.

Using various scenarios, NHTSA has developed preliminary estimates of the costs and benefits for improving rear visibility assuming 16.6 million (8.5 million LTVs and 8.1 million passenger cars) total vehicles.[76] One scenario involves the application of a rear visibility countermeasure to all vehicles and a second assumes that a countermeasure is applied to all LTVs and no passenger vehicles. Given that a rear visibility threshold has not yet been established and that NHTSA has not measured all vehicle models sold in the U.S. to determine their rear blind zone areas, two additional, hypothetical scenarios were considered. One scenario assumes that a rear visibility countermeasure would be required for all LTVs and any passenger cars that do not comply with the rear visibility threshold (hypothetically assumed to encompass 25 percent of vehicles).[77] Another scenario assumes that a rear visibility countermeasure would be required for any light vehicle that does not comply with the rear visibility threshold (hypothetically assumed to encompass 75 percent of LTVs and 25 percent of passenger cars).[78] Table 9 presents the overall range of costs and benefits across these four scenarios.

TABLE 9—PRELIMINARY BENEFITS AND COSTS ESTIMATES—ACROSS FOUR COUNTERMEASURE APPLICATION SCENARIOS [79]

Countermeasure technology options	Net cost (does not consider vehicles already equipped with RV) (in $M)	Cost per life saved (in $M)	Total fatalities avoided	Total injuries avoided
RV with 130° Camera and Interior Mirror Display	$1,153–$2,577	$16.17–$57.27	26–69	1,279–5,189
RV with 130° Camera and In-Dash Display	981–2,294	15.69–56.41	26–69	1,279–5,189
RV with 180° Camera and Interior Mirror Display	1,325–3,005	13.76–50.99	31–82	1,689–6,141
RV with 180° Camera and In-Dash Display	1,234–2,811	14.61–52.76	31–82	1,689–6,141
Ultrasonic Rear Object Detection System	277–766	11.25–33.84	5–24	399–1,793
Radar Rear Object Detection System	571–1,397	21.02–49.84	6–26	479–1,976
Rear-mounted Convex Mirrors	(Research in progress)			

Additional details regarding these calculations can be found in the preliminary regulatory impact analysis document, ''Rear Visibility Technologies: FMVSS No. 111.'' NHTSA will continue to gather information on price and vehicle equipment trends for use in refining these estimates of costs and benefits for improving rear visibility.

C. Questions

NHTSA requests comments on benefits and costs for rear visibility enhancement countermeasures and the possibility of developing a rear blind zone area based minimum acceptable rear visibility threshold. Specific questions are as follows:

(1) NHTSA seeks comment on the areas behind a vehicle that may be most important to consider when improving rear visibility. Furthermore, while the distribution of visible area behind the vehicle was not considered in the blind zone area metrics (e.g., rear blind zone area) discussed in this document, it may be helpful to specify some specific areas behind the vehicle that must be visible.

(2) NHTSA invites comment as to how an actual threshold based on vehicles' rear blind zone area could be defined.

(3) For vehicles whose rear visibility does not meet a required minimum threshold and thus require a countermeasure, OEMs may decide to further alter the styling of the rear of the vehicle to the detriment of direct rear visibility (e.g., making the rear window a tiny, circular porthole). Based on the fact that NHTSA's research [80] showed that drivers of RV-equipped vehicles glanced at least one time at the RV display in only 65 percent of backing maneuvers, maintaining good direct rear visibility may be important for the other 35 percent of cases in which the RV system is not used. Therefore, NHTSA is considering specifying a minimum portion of a vehicle's rear visibility that must be provided via direct vision (i.e., without the use of mirrors or other indirect vision device). NHTSA seeks comments on this approach, such as input regarding how a minimum threshold should be specified, and how much of a vehicle's rear area should be visible via direct vision?

[76] This sales figure represents 2007 vehicle sales. For the subsequent NPRM, updated sales figures will be used.

[77] To illustrate this approach, this example scenario assumes that 25 percent of passenger cars will not comply with the rear visibility threshold.

[78] To illustrate this approach, this example scenario assumes that 75 percent of LTVs and 25 percent of passenger cars will not comply with the rear visibility threshold.

[79] Cost calculations presented in Table 9 assume a 3 percent discount rate. Values also consider ranges of effectiveness for the technologies listed. Additional details regarding these calculations can be found in the PRIA.

[80] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

(4) NHTSA requests information regarding anticipated costs for rear visibility enhancement countermeasures.

(5) Given the increasing popularity of LCD panel televisions and likely resulting price decline, what decline in price can be anticipated for LCD displays used with rearview video systems? Will similar price reduction trends be seen for video cameras for rearview video system application?

(6) NHTSA requests information on the estimated price of rear visibility enhancement countermeasures at higher sales volumes, as well as the basis for such estimates.

(7) NHTSA requests any available data on rearview video system maintenance frequency rates and replacement costs. How often are rearview video cameras damaged in the field?

(8) NHTSA requests comments on which types of possible rear visibility enhancement countermeasure technologies may be considered for use on which types of vehicles. This information is important for estimating the costs of countermeasure implementation in the fleet.

(9) NHTSA requests information regarding available studies or data indicating the effectiveness of dashboard display-based rearview video systems and rearview mirror based rearview video systems. What are the key areas that will impact the real-world effectiveness of these systems as they become more common in the fleet?

(10) NHTSA requests objective data on the use, effectiveness, and cost of rear-mounted convex mirrors.

X. Options for Measuring a Vehicle's Rear Visibility

If a maximum rear blind zone area limit threshold is used to establish the need for a vehicle to be equipped with a countermeasure, its rear visibility characteristics would need to be measured and that vehicle's direct-view rear visibility and rear blind zone areas would need to be calculated. As such, if the agency chooses to establish a threshold value for minimum performance, a test procedure would need to be developed. In this section, the agency identifies those test procedures it has identified that could be used for this purpose. The advantages and disadvantages of the different identified methods are also discussed.

A. Rear Visibility Measurement Procedures

Society of Automotive Engineers

The Society of Automotive Engineers (SAE) [81] has created a recommended practice for determining the areas around a vehicle that a driver can see through direct vision (i.e., without the use of mirrors or another indirect vision device). This procedure uses computer-based simulations to describe rear visibility for a particular vehicle. Using standard driver eye points and a three-dimensional computer model of the vehicle, the simulation allows the rotation of sight lines originating from the eye points to determine the areas that the driver should be able to see outside the vehicle.[82] This approach to determine a vehicle's visibility characteristics is theoretical and has not been assessed for reproducibility and repeatability against actual vehicles.

Paine, Macbeth & Henderson

In 2003, Paine, Macbeth & Henderson described a method to approximate a driver's sight line using an H-point machine and laser pointing device. Using the data, a ''visibility index'' was calculated to highlight the researchers' belief that vehicle design plays a major role in the rear visibility of vehicles.

This study, sponsored by the Insurance Australia Group, was designed to be easily repeatable and standardized to enable accurate comparisons between vehicles.[83] The laser device was mounted to the side of the H-point machine's head fixture in the approximate vicinity of where a driver's head would be located. A dimensioned grid was positioned behind the test vehicle and a test target consisting of a cylinder 600 mm (24 in.) tall and 200 mm (7.87 in.) in diameter was used. Additionally, the driver's seat was placed in its lowest and furthest back position and adjusted to ensure that the rear of the H-point device was placed at a 25 degree angle.

Data from this test procedure were used to calculate vehicle ratings by considering several factors including the total visible area behind the vehicle; the visible distance across the rear of the vehicle; and the presence of backing aids such as proximity sensors and rearview camera systems. Consequently, the authors identified several vehicle design aspects that affect rear visibility, including a high bootlid (referred to as the ''trunk lid'' in the US); rear-mounted spare tires; rear head restraints; center high-mounted brake lights; rear mounted wipers; and rear spoilers.

NHTSA believes the rear visibility assessment method outlined by these researchers has merit. However, further refinement may be desirable. For instance, a more accurate eye point for location of the laser beam would better simulate what a 50th percentile male would be able to see. The agency is undertaking research to examine the use of laser-based methods of measuring a vehicle's rear visibility characteristics.

Consumer Reports Linear Rear Blind Spot Measurement Method

Consumer Reports evaluates vehicles for rear visibility and publishes the findings as part of their new vehicle reviews. In their August 2006 report, they examined vehicles to determine the closest distance at which a 28-inch object (approximating the height of a child less than 1 year old) could be detected behind a vehicle.[84] During the evaluation, drivers [85] were seated in the vehicle and asked to detect an object while it was moved outward from the rear of the vehicle along its centerline. The distance from the rear bumper at which the driver could detect the object was measured, and then these sight distances were published as consumer information.

Consumer Reports' data describe a rear sight distance as measured at the centerline of the vehicle, which may not accurately describe rear visibility across the entire width of the rear of the vehicle and therefore not fully address the risk of a backing crash. In addition, the use of human drivers, particularly a single driver of a particular height, to estimate rear visibility for a vehicle is likely to produce results that are subject to variability stemming from individual differences. While this information may be helpful to consumers, for the purposes of establishing a Federal regulation on rear visibility, NHTSA would be required to follow an approach that has demonstrated objectivity and repeatability.

[81] SAE J1050, Describing and Measuring the Driver's Field of View; Revised 2003–01.

[82] Note: NHTSA has not evaluated the engineering drawings or three-dimensional computer models of manufactured vehicles, on which this method appears to rely.

[83] Paine, M., Macbeth, A., and Henderson, M. (2003). The Danger to Young Pedestrians from Reversing Motor Vehicles. 18th International Technical Conference on the Enhanced Safety of Vehicles. Paper Number 466.

[84] Consumer Reports (August, 2006). Blind-zone measurements. *http://www.consumerreports.org/cro/cars/safety-recalls/mind-that-blind-spot-1005/blindspot-measurements/index.htm.*

[85] The heights of the subject drivers were 68 inches (approximate height for a 50th percentile adult male) and 61 inches (approximate height for a 5th percentile small female).

NHTSA's Human-Based Rear Visibility Measurements

In 2007, NHTSA measured the rear visibility characteristics of 44 vehicles using human drivers to report the actual area around a vehicle where they could detect a 29.4-inch-tall test object.[86] During the test procedure, the visual target was moved behind the vehicle over a grid of 1-foot squares spanning 110 feet longitudinally (including 90 feet behind the vehicle's rear bumper) and 70 feet laterally (i.e., 35 feet to either side of the vehicle's centerline). Points on the grid where the entire 3-inch reflector (comprising the top portion of the test object) was visible were recorded and combined to produce a graphical rear field of view representation for the vehicle. Visible areas around the vehicle were assessed for a 50th percentile male and 5th percentile female driver. These driver sizes were chosen to acquire a range of visibility data in relation to driver height and because they have been used by other organizations[87] [88] in similar visibility tests.

NHTSA observed that physical characteristics among drivers can affect rear visibility. These characteristics include the occupant's torso breadth, physical flexibility (e.g., torso and neck rotational range), peripheral visual ability, visual acuity, and the presence of eye glasses.[89] Additional differences relating to driver positioning while backing (e.g., raising the body up from the seat pan to achieve a higher vantage point), driver preferences regarding seat adjustment, and mirror positioning may also affect rear visibility. For example, based on a review of test data, it appears that the particular 5th percentile female driver involved in this testing may have been less restricted in her body movement (i.e., leaned or ''craned'' body more) when attempting to view the visual target. This resulted in a situation that for some vehicles, the measured minimum sight distance and average sight distance values were better for the shorter driver than for the taller driver.

NHTSA's Laser-Based Rear Visibility Measurement Procedure

NHTSA's rear visibility research conducted in 2008 began with an effort to improve upon the previously used human-based rear visibility measurement procedure. Since any compliance test for the Federal motor vehicle safety standards is required by law to be repeatable and reproducible, enhancements were focused on improving this aspect of the measurement procedure. The agency considered known rear visibility measurement procedures, built upon the work by Paine *et al.,*[90] and developed an enhanced version of that procedure that replaced the human driver previously used in rear visibility measurements with a laser-based fixture. The enhanced procedure approximated the direct rear visibility of a vehicle for a 50th percentile male driver using a fixture that incorporated two laser pointing devices to simulate a driver's line of sight. One laser pointing device was positioned at the midpoint of a 50th percentile male's eyes when looking rearward over his left shoulder and the other device was placed at the midpoint of a 50th percentile male's eyes when looking rearward over his right shoulder during backing.

The use of a laser pointing device to simulate driver sight line was also used by Paine, *et al.*[91] However, they used only a single eye point that was approximately at the side of a 50th percentile male driver's head. In addition, ISO 7397–2,[92] which outlines a procedure for verifying the driver's 180-degree forward direct field of view for passenger cars, also uses a laser-based measurement technique. The use of two representative eye points and a wider measurement area have been proven to correlate well with backing crash risk[93] and therefore may result in a more valid measurement method.

More details of NHTSA's revised rear visibility measurement procedure using lasers are provided below.

1. Size of Rear Visibility Measurement Field

The size of the field over which rear visibility is measured should encompass those areas critical to the avoidance of backover crashes. To evaluate the dimensions of this field, NHTSA measured rear blind zone area data for a variety of vehicles and compared these results with backing crash data for those vehicles. In addition, a Monte Carlo simulation analysis of relative backing crash risk as a function of pedestrian location was performed. The results of these analyses are summarized below.

Data analysis was performed to assess the correlation between vehicles' rear blind zone areas measured using a 50th percentile male driver and the backing crash data for 21 vehicles.[94] Results of this analysis for a portion of the field sizes assessed are summarized in Table 10 (Appendix D contains a table summarizing the complete set of areas assessed). Evidence of good correlation in this analysis is given by high correlation coefficient values and a low probability of occurrence by chance. All measurement field dimension combinations listed in Table 10 show good correlation with backing crashes. A similar preliminary analysis recently conducted by NHTSA using laser-based rear blind zone areas measured for 60 vehicles over various measurement field sizes showed a 50 feet square field to be better correlated with backing crashes than narrower field size of the same longitudinal dimension.

[86] Mazzae, E.N., Light Vehicle Rear Visibility Assessment, DOT HS 810 909, September 2008. NHTSA's visual target for this test was a traffic cone with a reflector atop; its height is representative of a 1-year-old child.

[87] See also Consumer Reports (August, 2006). Blind-zone measurements. *http://www.consumerreports.org/cro/cars/safety-recalls/mind-that-blind-spot-1005/blindspot-measurements/index.htm.* Accessed 3/1/2006.

[88] See also Paine, M., Macbeth, A., and Henderson, M. (2003). The Danger to Young Pedestrians from Reversing Motor Vehicles. 18th International Technical Conference on the Enhanced Safety of Vehicles. Paper Number 466.

[89] Note that when a driver wearing eye glasses turns to look over their right shoulder to see behind their vehicle, there is a point at which the line of sight can pass beyond the perimeter of the lens, at which point the driver loses the aid of the corrective lens.

[90] Paine, M., Macbeth, A., and Henderson, M. (2003). The Danger to Young Pedestrians from Reversing Motor Vehicles. 18th International Technical Conference on the Enhanced Safety of Vehicles. Paper Number 466.

[91] Id.

[92] ISO 7397–2, Passenger cars—Verification of driver's direct field of view—Part 2: Test method, first edition, 1993–07–01.

[93] Partyka, S., Direct-View Rear Visibility and Backing Risk for Light Passenger Vehicles, (2008).

[94] Mazzae, E.N., Light Vehicle Rear Visibility Assessment, DOT HS 810 909, September 2008. NHTSA's visual target for this test was a traffic cone with a reflector atop; its height is representative of a 1-year-old child.

TABLE 10—CORRELATION BETWEEN HUMAN-BASED REAR BLIND ZONE AREA MEASURED OVER VARIOUS FIELD SIZES AND BACKING CRASHES (SORTED BY CORRELATION COEFFICIENT)

Measurement field dimensions (width by length)	Correlation coefficient	Probability occurred by chance
50W x 10L	0.60117	0.0039
40W x 10L	0.60117	0.0039
30W x 10L	0.58233	0.0056
30W x 50L	0.55212	0.0095
40W x 40L	0.54681	0.0103
30W x 40L	0.53635	0.0122
20W x 40L	0.52621	0.0143
50W x 50L*	0.52375	0.0148
20W x 50L	0.52367	0.0148

* Blind zone area measured over a field this size was found by preliminary analysis of laser-based measurement data to be well correlated with backing crashes.

Considering the assessment of backover crash risk by pedestrian location described in Section IV.E of this notice, the results presented in Figure 1 suggest that a measurement field centered behind the vehicle and approximately 12 feet wide by 36 feet long would address pedestrian locations having relative crash risks of 0.15 and higher. Given that the analysis described in Appendix A suggests that backover crash risk extends a fair distance (38 ft or more) out from the vehicle, it may result in a more valid characterization of rear visibility if a range similar to this were used for a rear visibility measurement field.

For NHTSA's 2008 rear visibility measurement effort, a measurement field of 50 feet long by 50 feet wide test area was used to ensure that sufficient data were available for use in subsequent correlation analyses relating measurement field and backing crashes. However, based on a combination of the results of the three analyses summarized above, a field size centered behind the vehicle and having the dimensions of 40 feet square or 50 feet is used on the analyses discussed in this section.

2. Coarseness of the Rear Visibility Measurement Field's Test Grid

A measurement field covered by a test grid consisting of 1-foot squares was used. This level of grid detail has provided meaningful rear visibility data in past NHTSA testing, and has been used to produce rear blind zone area data that have been successfully correlated with backing crash risk.

3. Use of an H-Point Machine for Rear Visibility Measurement

To facilitate a repeatable test procedure, an H-Point machine,[95] used by the agency for many other standards and representing a 50th percentile adult male was used in place of a human driver for this measurement effort. The 50th percentile adult male approximates the midpoint for driver height, and has been used by other organizations [96, 97] conducting similar visibility measurement research. An H-Point machine was selected to provide a standardized representation of the seated posture of an adult male driver. The H-point machine's standard configuration was modified to incorporate a fixture mounted in place of the device's neck to hold the laser pointing devices in specific positions to correspond to selected eye points for a 50th percentile adult male driver (as described below).

4. Rear Visibility Measurement Test Object Height

NHTSA's rear visibility tests to date have been based on a test object height representing the approximate height of a 1-year-old child. As indicated earlier in this notice, 1-year-old children are the most frequent (approximately 26 percent of all backovers) victims of fatal backover incidents. The height chosen to represent a 1-year-old child in NHTSA's tests to date was determined by averaging standing height values from the Center for Disease Control's (CDC) growth chart [98] (see Table 11 below) for a male and female 1-year-old child. The average height value obtained was 29.4 inches.

TABLE 11—50TH PERCENTILE CHILD HEIGHT

Age	1	2	3	4	5	6	7	8	9	10
Height—Girl	29.125	33.5	37.2	39.5	42.5	45.25	47.75	50.25	52.2	54.5
Height—Boy	29.6	34	37.5	40.25	43	45.5	48	50.5	52.5	54.5

Source: CDC, 2000.

5. Laser Detector (in Lieu of a Visual Target)

To improve the efficiency of our test procedure, NHTSA's rear visibility measurement effort in 2008 used a different test object than used in prior measurements. This new test object incorporates a laser beam detector that automatically produces an audible signal when the laser beam, simulating the driver's line of sight, intersects with the laser detector. Since laser beams can

[95] SAE J826, Devices for Use in Defining and Measuring Vehicle Seating Accommodation, Rev. JUL95.

[96] See also Consumer Reports (August, 2006). Blind-zone measurements. *http://www.consumerreports.org/cro/cars/safety-recalls/mind-that-blind-spot-1005/blindspot-measurements/index.htm.* Accessed 3/1/2006.

[97] See also Paine, M., Macbeth, A., and Henderson, M. (2003). The Danger to Young Pedestrians from Reversing Motor Vehicles. 18th International Technical Conference on the Enhanced Safety of Vehicles. Paper Number 466.

[98] CDC, Clinical Growth Charts. Birth to 36 months: Boys; Length-for-age and Weight-for-age percentiles. Published May 30, 2000 (modified 4/20/2001) CDC, Clinical Growth Charts. Birth to 36 months: Girls; Length-for-age and Weight-for-age percentiles. Published May 30, 2000 (modified 4/20/2001).

be difficult to detect with the human eye, even in low light conditions, use of a laser beam detector would improve both the accuracy and speed of test conduct.

The laser detector target was constructed with a commercial laser detector mounted vertically on a post. The base of the post was a 12-inch square of wood used to stabilize the fixture and center it within a 1-foot grid square. The target's detection field was horizontally centered with respect to the post and base. The bottom of the laser detector's approximately 2-inch tall detection field was aligned at a vertical height of 28 inches, to simulate a 30-inch overall detection height.

For this approach to be usable and accommodate the 50 feet long test grid and all possible lengths of vehicles to be measured, the particular laser pointing device and laser beam detector were required to have performance ranges of at least 70 feet.

An alternative approach, without a laser detector device, would be to rely on a test operator to visually confirm that the laser beam contacted the test object within the detection area while the test object was positioned within a particular location on the test grid.

6. Eye Midpoint Locations for Use in Positioning Laser Pointing Devices

NHTSA researchers experimentally determined the most appropriate locations for the lasers used to represent the line of sight for a driver glancing over the right and left shoulder. Human eye locations for three male drivers of 50th percentile height were determined using photometric measurements while these drivers glanced at a cone positioned 25 feet behind a vehicle and approximately at its centerline and while looking directly (i.e., 90 degrees from forward) out the left and right sides of the vehicle. Photographs were taken from the rear and right (passenger) side of the vehicle for each of the three drivers and three vehicles. Driver eye positions for each vehicle were determined for both rear-looking glancing postures (rearward over the left and right shoulders) and both side-looking glancing postures (left and right). These eye positions were determined with respect to the vehicles' seats using a scale of rigid rulers. Researchers calculated an average left and right eye point locations to determine a midpoint between the left and right eye for each of the four postures. These midpoint values, which were used to identify locations of the laser pointing device to simulate a driver's line of sight, are provided in Table 12 below. NHTSA welcomes comments on the validity and appropriateness of these eye points for use in evaluating a vehicle's rear visibility for a 50th percentile male driver.

TABLE 12—LEFT-RIGHT EYE MIDPOINT LOCATIONS FOR POSTURE OF DRIVER GLANCING REARWARD AND TO EITHER SIDE

Glancing rearward over the:	Longitudinal (distance forward of the head restraint's vertical face) (in.) (x)	Lateral offset from the vertical centerline of the seat (in.) (y)	Vertical with respect to H-Point (in.) (z)
Left shoulder	3.5	5.5	26.5*
Right shoulder	5.3	7.0	26.5*
Left window (−90 degrees from forward)	7.6	−5.5	26.5*
Right window (90 degrees from forward)	7.6	5.0	26.5*

* Note: These measurements assume that the distance from the seat pan to the H-Point is 3.6 inches.

7. Vehicle Setup

Vehicle setup conditions may be an important part of a repeatable visibility measurement procedure. Considerations which we used for our recent, laser-based measurements are detailed below.

Fuel Tank—Ensure that the vehicle's fuel tank is filled to capacity, to provide a consistent fuel level (can affect vehicle pitch).

Vehicle Tires—The vehicle's tires should be set to their recommended inflation pressures (can affect vehicle pitch).

Vehicle Position on Test Grid—Position the vehicle on a flat, level test grid such that it is properly aligned (i.e., rear bumper flush with the '0' foot line, vehicle centered on the '0' longitudinal axis of the test grid).

Vehicle Windows—The vehicle's windows should be closed, clean, and clear of obstructions (e.g., window stickers).

H-Point Device Configuration—Place the H-Point device in the driver's seat and adjust the seat as follows:

- Install the H-Point machine in the vehicle per the installation procedure outlined in SAE J826.[99]
- Adjust the driver's seat to the longitudinal adjustment position recommended by the manufacturer for a 50th percentile adult male as specified in FMVSS Nos. 208,[100] 212,[101] 219 (partial),[102] and 301 [103] compliance testing. If this recommended adjustment setting is not available, position the seat at the midpoint of the longitudinal adjustment range. If no midpoint is selectable, then position the seat at the first notch rearward of the midpoint.
- Adjust the driver's seat to the vertical adjustment position recommended by the manufacturer for a 50th percentile adult male as specified in FMVSS Nos. 208, 212, 219 (partial), and 301 compliance testing. If this recommended adjustment setting is not available, position the seat at the lowest point of all vertical adjustment ranges present.
- Use the H-Point machine to adjust the driver's seat back angle at the vertical portion of the H-Point machine's torso weight hanger to that recommended by the manufacturer for a 50th percentile adult male as specified in FMVSS 208, 212, 219 (partial), and 301 compliance testing. If this recommended adjustment setting is not available, adjust the seat back angle to 25 degrees, as specified in SAE J826.
- Adjust the driver's seat head restraint such that the distance from the H-Point to the topmost point of the head restraint, as measured along a line parallel to the seat back, is 32.5 inches.[104] If a distance of 32.5 inches is not attainable given the adjustment range of the head restraint or detent

[99] SAE J826, Devices for Use in Defining and Measuring Vehicle Seating Accommodation, Rev. JUL95.

[100] 49 CFR 571.208, Standard No. 208; Occupant crash protection.

[101] 49 CFR 571.212, Standard No. 212; Windshield mounting.

[102] 49 CFR 571.219, Standard No. 219; Windshield zone intrusion.

[103] 49 CFR 571.301, Standard No. 301; Fuel system integrity.

[104] This 32.5 inch measurement is based on sitting height of 36.3 inches for 50th percentile adult males aged 20 and over. See CDC Web site at: *http://www.cdc.gov/nchs/about/major/nhanes/anthropometric_measures.htm.*

positions, the closest detent position to that height should be used.

- For any head restraints with longitudinal adjustment, the restraint should be positioned fully forward.

Vehicle Seat Positioning—Adjust all seats in positions other than the driver's as follows:

- Vehicles with standard stowable second or third row seats should have all seats in an upright, occupant-ready position. This configuration provides a consistent approach for rear seat positioning to avoid vehicle-to-vehicle test differences. If a vehicle is offered with an optional original equipment third row seat, the vehicle should be measured in this seating configuration to assess the vehicle's rear visibility characteristics in this worst-case condition.

- For seats with longitudinally adjustable head restraints, the restraint should be positioned at the midpoint of longitudinal adjustment

- For seats with vertically adjustable head restraints, the restraint should be positioned in the lowest possible position. This configuration provides a consistent approach for head restraint positioning to avoid vehicle-to-vehicle test differences.

- For seats with an adjustable seat back angle, adjust the seat back angle to that recommended by the manufacturer for a driver's seat back angle position for a 50th percentile adult male as specified in FMVSS 208, 212, 219 (partial), and 301 compliance testing. If this recommended driver's seat back angle setting is not available, adjust the seat back angle to 25 degrees.

- Any rear seating position shoulder belts originating from the headliner (e.g., for use in rear center seating positions) should be latched into their receivers at the seat bite.

8. Measurement Procedure

Once the vehicle has been properly set and the laser fixture has been set up, the laser devices are turned on and a pre-test is performed. To ensure that the laser device and laser detector are capable of performing the test, the laser device shall be properly mounted at the required driver eye point position (as indicated in Table 12), and aimed at the laser detector test object which shall be centered at a distance of 50 feet aft of the vehicle's bumper to determine whether the laser detector is able to sense the laser beam. This confirmation pre-test shall also be performed for the laser detector test object positioned at a distance of 50 feet from the rear bumper and 25 feet laterally to either side of the vehicle. If the laser detector detects the laser beam (e.g., as indicated by a ''beep'' or other confirming signal) in each of these three locations, then the equipment is considered to perform at an acceptable level for use in this test procedure.

To complete the rear visibility measurements, the laser devices while maintaining the x, y, z coordinates may be manually or automatically maneuvered to pan the area behind the vehicle in both the vertical and horizontal directions. The vertical extent of the laser beam movement shall extend from the lower edge of the rear window to the horizon. The horizontal range of laser motion shall permit the evaluation of the direct visibility of the test object as positioned within 1 foot of the rear bumper and 25 feet to both sides of the vehicle's centerline.

The test object is placed on the grid one time in each 1-foot square behind the vehicle. The test observer listens to determine whether the laser detector beeps (or otherwise signals) to indicate that the detector field has been contacted by a laser beam. The test object is considered visible if the laser detector beeps when a laser beam intersects with the test object. An operator records this measurement and repeats the prior steps for all positions in the grid.

Observations About Available Rear Visibility Measurement Procedures

The above descriptions summarize NHTSA's knowledge of existing procedures for measuring vehicles' rear visibility. NHTSA seeks comments on the utility of these methods as objective rear visibility assessment methods.

While the noted laser-based measurement method appears to provide a robust, objective test method, the repeatability of the method must be confirmed. Therefore, to further assess the utility of our laser-based rear visibility measurement procedure, we also assessed the repeatability of the test method as described in the following section.

B. Rear Visibility Measurement Method Variability

To assess the variability of NHTSA's improved rear visibility test method using laser pointing devices, four test vehicles were measured using the laser-based rear visibility measurement protocol. The measurement procedure was completed four times for each vehicle, including repositioning of the vehicle on the test grid. Results of these measurements are illustrated in Figure 13. As indicated in Table 13, the rear blind zone area data varied less than 3.2 percent of the measured value. This variability is believed to be due to the test vehicle's alignment of the rear bumper with respect to the lateral grid axis. More carefully aligning the vehicle on the test grid to ensure that the vehicle's centerline is aligned with the test grid's longitudinal axis will likely reduce variation to 2 percent or less.

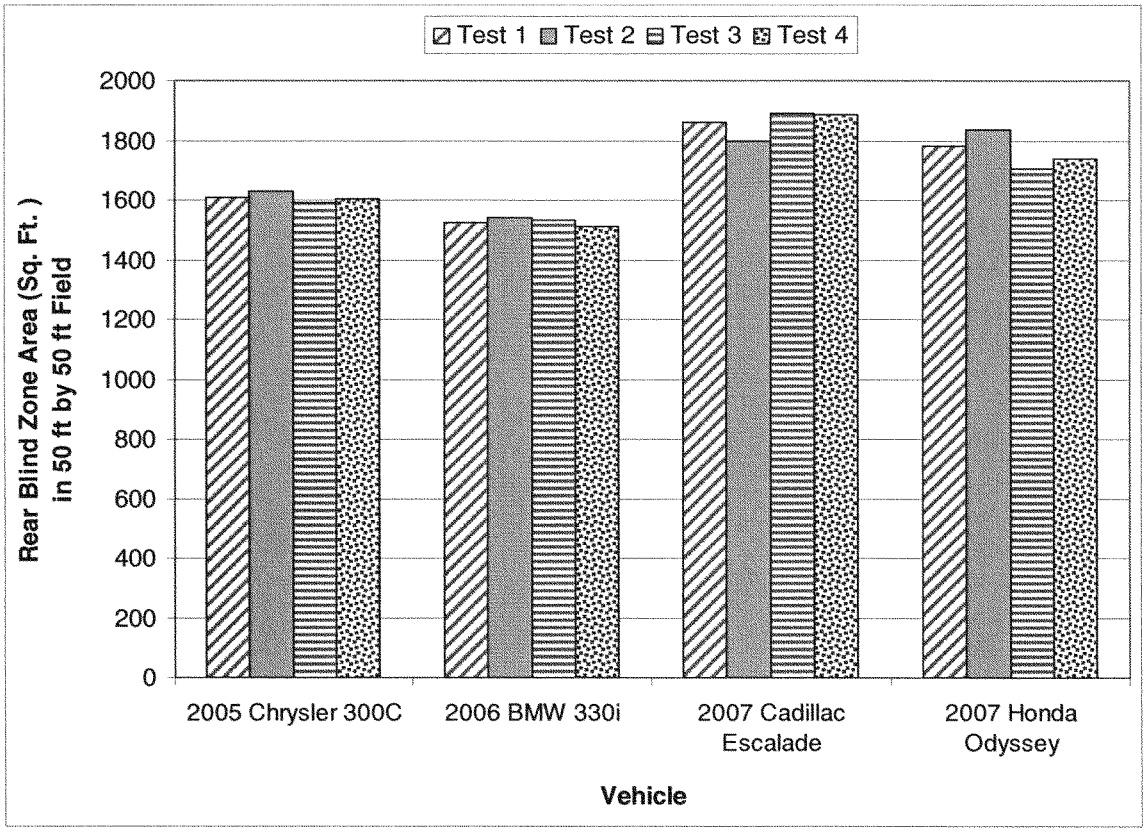

Figure 13. Rear Blind Zone Area Measurement Repeatability Results

TABLE 13—REAR BLIND ZONE AREA MEASUREMENT REPEATABILITY RESULTS AND ANALYSIS

Vehicle	Test 1	Test 2	Test 3	Test 4	Avg	Std. dev.	Min	Max	Range (max-min)	Std dev/ avg (percent)
2005 Chrysler 300C	1608	1631	1590	1604	1608	17.0	1590	1631	41	1.1
2006 BMW 330i	1523	1542	1533	1513	1528	12.5	1513	1542	29	0.8
2007 Cadillac Escalade	1863	1800	1889	1887	1860	41.5	1800	1889	89	2.2
2007 Honda Odyssey	1783	1834	1705	1739	1765	55.9	1705	1834	129	3.2

In summary, this rear visibility measurement procedure seems to provide for a controlled vehicle setup (for test consistency and repeatability) by its use of an automated test object, and dynamic laser movement.

C. Comparison of Human-Based Versus Laser-Based Rear Visibility Measurement Protocols

NHTSA compared rear visibility data for 18 vehicles that were measured using both the human-based and laser-based rear visibility measurement procedures to assess the results (i.e., similar vehicle rankings, etc.) of the test procedure under consideration. This comparison found data from the two measurement methods to be different but correlated to a statistically significant degree.

D. Input From Industry Regarding Rear Visibility Measurement

NHTSA received input from the Alliance for Automotive Manufacturers regarding the method for assessment for the purposes of assessing the need for a rear visibility enhancement countermeasure. The Alliance suggested a protocol similar to that used in FMVSS No. 111 for the measurement of the field of view of the interior rear mirror.[105] This protocol would use a 95th percentile male driver. No additional details regarding a rear visibility measurement procedure were provided by the Alliance or any other group.

[105] Presentation to NHTSA, January 28, 2009 meeting; Alliance for Automotive Manufacturers. Available at Docket Number 2009–0041.

E. Questions

(1) While a 50th percentile male body size was used for the rear visibility measurements outlined here, we note that FMVSS No. 111 currently requires that the driver's eye reference point be at a nominal location appropriate for any 95th percentile male driver for the assessment of rearview mirror field of view compliance. We further note that under FMVSS No. 111 the driver's eye location for school bus mirror compliance testing is the eye location of a 25th percentile female driver. NHTSA requests comment on the use of the 50th percentile male driver size as a midpoint in terms of driver height and whether using multiple driver heights for these tests would cause undue hardship relative to the safety value of assessing different driver heights. Specific information regarding

additional cost, if any, that would be incurred by vehicle manufacturers due to the use of different driver sizes for these different portions of FMVSS No. 111 is requested.

(2) NHTSA has been using seating position settings recommended by the vehicle manufacturers for agency crash tests. For most vehicles, the vertical seat position setting recommended for seats with vertical adjustability is the lowest position. NHTSA seeks comment on whether this setting is the most suitable position for a 50th percentile male, or if a midpoint setting would be more appropriate for measuring rear visibility. NHTSA also seeks comment on whether the specific crash test seating specifications used are the most appropriate for this context.

(3) NHTSA seeks comment on the placements of head restraints. For example, would our test procedure result in the elimination of rear head restraints or a reduction in their size? If so, please identify the affected vehicles and explain why the rear head restraints particularly impair visibility in those vehicles. Similarly, NHTSA seeks comment on the approach to setting the longitudinal position of all adjustable head restraints for rear visibility measurements. While longitudinally adjustable head restraints positioned fully forward may minimize the chance of whiplash, a more reasonable option for this test may be to position the head restraint at the midpoint of the longitudinal adjustment range.

(4) In our testing, we found that the laser beam is difficult to detect visually. Therefore, we used the laser detector. NHTSA invites comment on the availability of other options for detecting the laser beam as used in this test that does not involve the use of an electronic laser detector.

(5) For locating the laser devices at the selected driver eye points, is there another device besides the H-point device which can be utilized for this purpose or should the agency? For simplicity, should eye points be indicated in a similar fashion as is currently in FMVSS No. 111 for school bus testing in which a single eye point is located at a specified distance from the seat cushion/seat back intersection and within a 6-inch semi-circular area?

XI. Options for Assessing the Performance of Rear Visibility Countermeasures

To assess the minimum performance of a required rear visibility enhancement countermeasure, a compliance test would need to be developed. This test would serve to assess whether the system permits obstacles and standing children in the path of a backing vehicle to be detected over a minimum required area. Considerations that the agency has identified which may be necessary for this new compliance test are described below.

A. Countermeasure Performance Test Object

A test object may be needed to assess whether the countermeasure functions over a specified area. Based on the crash data and our testing to date, we have used a test object with an approximate height of 30 inches (0.762 meters). As indicated earlier, this height corresponds to the average height of a 1-year-old child. To further simulate the appearance of a 1-year-old child, some have suggested other dimensional characteristics. Based on our research we have found that that the object would need to be cylindrical in shape with a diameter of 5 inches, to represent the breadth of the average 1-year-old child's head.[106]

Depending on the type of countermeasure, the composition of the test object may be important. For example, rearview video systems would display images of objects of all possible material types, but ultrasonic and radar sensors are better at detecting some materials than others. NHTSA is aware of the requirement detailed in ISO 17386[107] for use of a cylinder composed of polyvinyl chloride (PVC) pipe to test the detection performance of ultrasonic parking aids. NHTSA welcomes input regarding all aspects of the test object.

The Alliance for Automotive Manufacturers has indicated to NHTSA that their suggestion is to use a cylindrical test object with a height of 1 meter (39.37 inches) and a diameter of 0.3 meters (11.3 inches).[108] No requirements for material composition of the test object were suggested by the Alliance.

B. Countermeasure Performance Test Area

One possible compliance test area can be identified using the results of the Monte Carlo simulation (illustrated in Figure 1 and described in Appendix A) that examined backover crash risk as a function of a pedestrian's location behind a vehicle.[109] NHTSA used these results to define an area behind a vehicle that must be visible to the driver. Based on these results, an area over which the test object should be visible could be defined to include an area 8 feet wide at the vehicle's rear bumper that widens symmetrically along diagonal lines of 45 degrees with respect to the vertical plane of the vehicle's rear bumper and extending outward from the vehicle's rear corners. The maximum longitudinal range of this required visible area is 40 feet, as shown in Figure 14.

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[106] Henry Dreyfuss Associates (2002). The Measure of Man and Woman; Human Factors in Design (rev.). New York: John Wiley & Sons.

[107] ISO 17386:2004 Transport information and control systems—Manoeuvring Aids for Low Speed Operation (MALSO)—Performance requirements and test procedures.

[108] Presentation to NHTSA, January 28, 2009 meeting; Alliance for Automotive Manufacturers. Available at Docket Number 2009–0041.

[109] See Appendix B, Method for Assessment of Backover Crash Risk by Pedestrian Location.

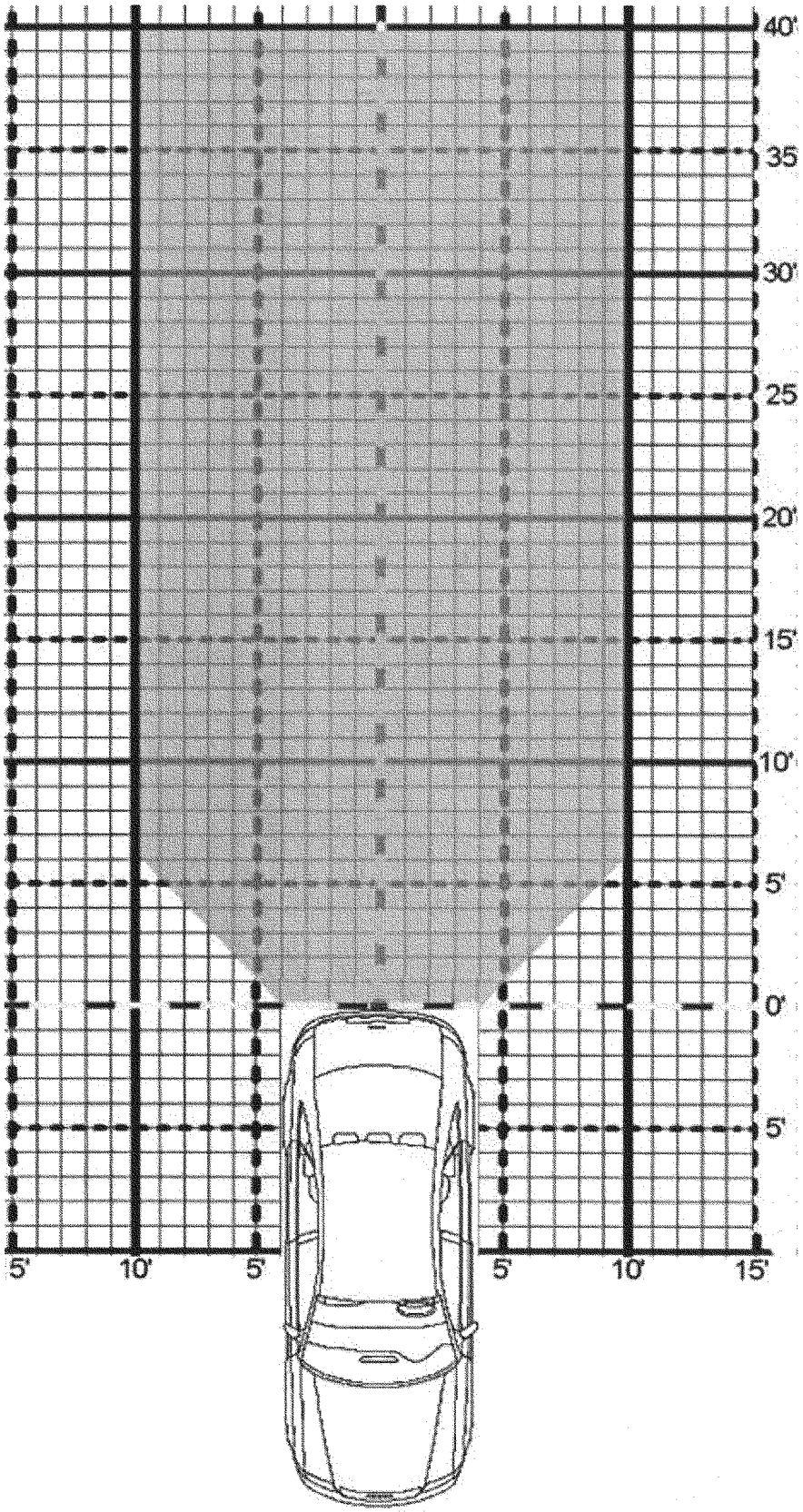

Figure 14. Countermeasure Performance Test Area Illustration

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Alternatively, the test area could be defined based on the results of the above mentioned Monte Carlo analysis, as well as the assessments of the correlation between vehicles' rear blind zone areas and backing crash data. The test area suggested by the combination of results of these three analyses is one that is centered behind the vehicle and having the dimensions of 40 feet square or 50 feet square.

The Alliance for Automotive Manufacturers has indicated to NHTSA that their suggestion is to use a test area composed of 9 test object locations behind the vehicle.[110] The 9 test object locations would consist of 3 rows of 3 locations. The 3 rows would be positioned with one at the rear bumper, and two others positioned 1.5 meters and 3.0 meters aft of the rear bumper. The 3 lateral locations would consist of one at each lateral edge of the vehicle and the third at the vehicle's longitudinal centerline. By this scheme, the test area size would be based on each vehicle model's individual width, and therefore may be different for all vehicle models.

C. Countermeasure Performance Test Procedure

The test procedure currently used for school bus mirrors (section 13, ''School bus mirror test procedures'' of FMVSS No. 111, ''Rearview mirrors'') [111] could be modified and used to determine countermeasure performance. For example, a still photography camera placed with the imaging sensor located at a midpoint eye location for a 50th percentile male (rather than a 95th percentile male), could be used to photograph the test objects as they are displayed in the countermeasure system's visual display. As is done now with cones in rear visibility measurements, for all specified locations of the test object on the test grid, at least a 3-inch tall by 3-inch wide portion of the test object would be required to be visible in order for the rear visibility enhancement system to be deemed compliant. This minimum detection area would represent the area that would need to be visible to adequately identify the test object.

D. Questions

(1) NHTSA invites comments on the need for and adequacy of the described area which rear visibility countermeasure systems may be required to detect obstacles. NHTSA is particularly interested in any available data that may suggest an alternative area behind the vehicle over which a rear visibility enhancement countermeasure should be effective? Is the described area of coverage unrealistically large? Is it adequate to mimic real world angles at which children may approach vehicles?

(2) Is it reasonable to define the limits of the test zone such that it begins immediately behind the rear bumper for the test object defined here or should a gap be permitted before the visibility zone begins? What additional factors should the agency consider in defining the zone?

(3) NHTSA requests comments on potentially requiring only the perimeter of the specified area to be tested for rear visibility enhancement systems. For video-based rear visibility countermeasure systems, NHTSA assumes that confirming the visibility of the test object over the perimeter of the required area is sufficient, since a system able to display the object at the perimeter of the required area should also be able to display the object at all points in between the extremities. Is this a reasonable assumption?

(4) Would vehicles with rearview video cameras mounted away from the vehicle centerline have the ability to detect the test object over the area under consideration? Is there flexibility to relocate such off-center cameras to meet the requirements under consideration, if necessary?

(5) NHTSA seeks comment as to the availability of any mirrors that may have a field of view that encompasses a range of 50 feet, as well as the quality of image that might be provided over such a range. How different is the image size and resolution, and how significant are the differences to the mirrors' potential effectiveness?

(6) If a gap is permitted behind the vehicle before the visibility zone begins, how will systems prevent children who may be immediately behind a vehicle from being backed over?

(7) NHTSA seeks input on what level of ambient lighting would be appropriate to specify for conduct of this compliance test. What other environmental and ambient conditions, if any, should the agency include in the test procedure?

(8) NHTSA invites input regarding the composition of the countermeasure compliance test object and the types of technologies that are likely to be able to provide coverage of the related test area.

XII. Options for Characterizing Rear Visibility Countermeasures

Existing rear visibility technologies, which formed the basis for NHTSA's effectiveness estimates, already contain certain performance levels specified by vehicle manufacturers. Some of these specifications may be necessary to ensure that our effectiveness estimates will be applicable to real-world crashes and to prevent for inferior systems from entering the fleet. However, NHTSA is not aware of consensus industry specifications (*e.g.*, SAE standards) or published recommended practices for rear visibility enhancement systems other than mirrors that may serve this purpose. While FMVSS No. 111 contains performance specifications for convex mirrors, the mirror specifications contained therein may not be adequate for this application. As such, certain performance specifications may be necessary in order to ensure adequate system effectiveness. NHTSA solicits comment on whether the performance aspects we have identified are appropriate or whether additional specifications, particularly for electronic image-based visual displays, should be considered. NHTSA has not evaluated these performance specifications nor have we developed possible compliance tests for them.

A. Options for Display Characteristics

Given that a particular rear visibility countermeasure technology has not been specified, the type of visual display associated with a rear visibility countermeasure has the potential to take a variety of forms. Such visual displays may include mirrors, flashing lights from sensor-based rear object detection system, or a video-based image display. Some characteristics relevant to possible visual display types are described below.

Performance Criteria Which May be Needed for All Rear Visibility Enhancement Countermeasure Displays (e.g., Rearview Video System Displays, Mirrors, and Electronic Warning Displays)

Overall display size—The minimum overall image size should be defined to ensure that drivers will be able to detect small children in the visual display. If the image size is too small, the effectiveness of the system may be impacted by a driver's inability to identify a child or other object.

Image resolution—It may be necessary to define the minimum image resolution so that drivers will be able to identify objects in the display.

Image distortion—A maximum allowable distortion parameter may be

[110] Presentation to NHTSA, January 28, 2009 meeting; Alliance for Automotive Manufacturers. Available at Docket Number 2009–0041.

[111] 49 CFR 571.111, Standard No. 111, Rearview Mirrors.

necessary to ensure that image quality is sufficient to allow drivers to accurately identify objects located behind the vehicle.

Image minification—To ensure that objects behind the vehicle appear in the image of the area behind the vehicle as presented by the countermeasure's display with sufficient size to allow them to be identified by drivers, a maximum allowable minification level may be necessary.

Environmental performance—It may be necessary to specify minimum environmental requirements under which systems would be expected to operate in common real world conditions.

Additional Performance Criteria Which May be Needed for Electronic Visual Displays (e.g., Rearview Video Systems, Electronic Warning Displays)

Display location—In order to facilitate a driver's effective use of an electronic visual display, it may be beneficial to specify a permitted location for the display unit and image. For example, a rearview video image present in the interior rearview mirror must be displayed on the left side of the mirror so that the distance between the driver and image is not too large.

Overall display size—For electronic, rearview video system displays, NHTSA is considering specifying a minimum image size of 3.25 inches measured diagonally for an electronic visual display with aspect ratio of 4:3 [112] (or approximately 4-inch diagonal size for 16:9 aspect ratio displays).

Brightness—A minimum brightness value [113] may be necessary to ensure that the display image can be seen by drivers in a wide variety of ambient conditions, such as glare from sunlight or ambient light.

Contrast ratio—Minimum contrast ratio may be necessary to ensure that the display image can be seen by drivers in a wide variety of ambient conditions.

Image response time—A minimum response time for the system to display an image of the area behind the vehicle may be necessary to enable a driver to engage the system while backing. NHTSA is considering a maximum of 1.25 seconds based on our research to date.[114]

Image "linger" time—To limit unintended distraction to drivers, the maximum image linger time (i.e., the time that the visual display remains on after the vehicle's transmission has been shifted out of reverse gear), may be specified. Some linger time is desirable for situations where frequent transitions from reverse to forward gear are needed to adjust a vehicle's position (e.g., parallel parking and hitching). NHTSA is considering a minimum of 4 seconds but not more than 8 seconds of linger time is appropriate after the vehicle is shifted from the reverse position.

Options for Other Display Characteristics

NHTSA does not believe that a malfunction telltale is necessary for rearview video systems, since video camera or visual display failure would be indicated by the apparent lack of image presented in the visual display. We invite comments on this point and any evidence that would suggest that such an indicator may be necessary.

B. Options for Rearview Video System Camera Characteristics

Currently, NHTSA does not have data which could be used to establish minimum specifications for a rearview video system's camera. However, based upon our knowledge of the current technology the agency believes that requirements for the following categories might be necessary: Low light performance requirements; resolution; and environmental performance limits/ranges.

C. Questions

(1) Are there any existing industry consensus standards for rear visibility enhancement systems which address the parameters outlined in this section? Are there any ongoing efforts to develop such industry consensus standards? If so, when will the standards be published?

(2) Are there additional parameters which should be specified to define a rear visibility enhancement system? What should the minimum specified performance be for each parameter?

(3) Are future rear visibility systems anticipated which may have significantly different visual display types that may require other display specification parameters?

XIII. Conclusion

In developing this notice, NHTSA tried to address the concerns of all stakeholders. Your comments will help us develop a rearward visibility standard to be included as part of FMVSS No. 111. We invite you to provide different views on the questions we ask, new approaches and technologies about which we did not ask, new data, insight as to how this notice may affect you, or other relevant information. We welcome your views on all aspects of this notice but we especially request comments on the specific questions articulated throughout this document.

XIV. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html*. DOT's guidelines may be accessed at *http://dms.dot.gov*.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential

[112] General Motors, SAE Government and Industry Meeting, May 2008, oral presentation.

[113] Measured in cd/m^2.

[114] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

XV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

We have considered the potential impact of this ANPRM under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. As discussed above, there are a number of considerations and technologies that can be applied to address the issue of backovers and the agency lacks the necessary information to develop a proposal at this time. Based on the information we have, we developed this notice and placed in the docket a Preliminary Regulatory Impact Analysis to facilitate public input. Therefore, we have not yet determined whether or not this rulemaking will be economically significant under Executive Order 12866. However, this rulemaking action has been determined to be ''significant'' under the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, no analysis is required for an ANPRM. However, vehicle manufacturers and equipment manufacturers are encouraged to comment if they identify any aspects of the potential rulemaking that may apply to them.

Executive Order 13132 (Federalism)

NHTSA has examined today's ANPRM pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process at this time. The agency has concluded that the document at issue does not have federalism implications because it does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

NHTSA's safety standards can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1). It is this statutory command that would unavoidably preempt State legislative and administrative law, not today's rulemaking, so consultation would be unnecessary.

We are aware that, depending on the nature of the proposal ultimately adopted, federalism implications could arise. Currently, there is no Federal requirement regarding visibility of the area directly behind a passenger vehicle. As a result, any State laws or regulations that seek to regulate this aspect of performance would not currently be preempted by Federal law. However, if NHTSA issues a standard on the same aspect of performance, those State laws and regulations would be preempted if they differed from the Federal requirements. Thus, the possibility of statutory preemption of State laws and regulations does exist. At this time, we do not know of any State laws or regulations that currently exist that are potentially at risk of being preempted, but in this document do request comment on any existing or planned laws or regulations that would fall into this category.

Second, the Supreme Court has recognized the possibility of implied preemption: State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. *See Geier* v. *American Honda Motor Co.*, 529 U.S. 861 (2000). NHTSA has considered today's ANPRM and does not currently foresee any potential State requirements that might conflict with it. Without any conflict, there could not be any implied preemption.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation,

section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this document is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

While this document does not make any changes with regard to the standard at issue, the rulemaking is intended, in large part, to address a safety concern that is particularly applicable to young children. In response to the executive order and in alignment with the agency's policies, we have tailored our research efforts addressed in this document to be particularly sensitive to the needs of children. These steps have included, but are not limited to, analyzing accident cases that involve children and designing testing procedures and performance criteria with particular emphasis on the ultimate goal of detecting and preventing accidents involving the youngest children.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is not any information collection requirement associated with this ANPRM.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this ANPRM.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This ANPRM would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually. However, given the cost estimates of some of the technologies at issue, most relevantly RV video systems, it is very possible that the total cost of a proposed rule could substantially exceed $100 million. Given that, the agency has prepared a preliminary assessment of some of the possible costs of the technologies investigated in this ANPRM.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this ANPRM.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume

65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov*.

Issued on: February 26, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

Appendix A—Methodology for Assessing Backover Crash Risk by Pedestrian Location

Monte Carlo simulation was used to calculate a probability-based risk weighting for each square in a grid of 30-cm squares behind the vehicle. The grid of 30-cm squares extended 27 m back from the rear edge of the rear bumper of the vehicle, 6 m forward of the rear bumper, and 10.5 m to the left and to the right of the longitudinal centerline of the vehicle, resulting in a total of 7,700 30-cm grid squares. The probability-based risk weightings for each grid square were based on the number of pedestrian-vehicle backing crashes predicted by the simulation for trials for which the pedestrian was initially (i.e., at the time that the vehicle began to back up) in the center of one square of the grid of 30-cm squares. For each Monte Carlo simulation trial, the pedestrian was initially placed in the center of one square of the grid of 30-cm squares. A total of 1,000,000 Monte Carlo simulation trials were run with the pedestrian initially in the center of each square. Since the Monte Carlo simulation used had left-right symmetry, mirroring was used to increase the effective number of simulation trials to 2,000,000 for each grid square.

Important assumptions were made about the behavior of the driver and the pedestrian for this analysis. The vehicle and pedestrian were assuming to begin moving at the same time and were assumed to be completely unaware of each other. Therefore, the motions of the vehicle and pedestrian were totally independent of the each other. Note that it was possible for the pedestrian to walk or run into the vehicle. If the impact was with the rear of the vehicle, a back-over incident was considered to have resulted. If the impact was with the side or front of the vehicle, the crash was not counted as a backing crash for the purposes of this analysis.

Vehicle Descriptors

Four descriptors were used to define the simulated vehicle in this analysis. The width of the vehicle was assumed to be 6.0 feet for this analysis. The distance that the vehicle backed up during each backing trial was determined by a random draw from a three-parameter Weibull probability distribution for distance backed that was based on data from the ''On-Road Study of Drivers' Use of Rearview Video Systems'' study.[115] To simplify the analysis this simulation assumed that the vehicle backed up at a constant speed based on a random draw from a three-parameter Weibull probability distribution also based on NHTSA's research data.[116]

Since backing maneuvers frequently involve turning, any backing trial more than 25 feet long was assumed to possibly include a turn. To determine whether the vehicle turned to the left, went straight, or turned to the right during each backing trial, a uniformly distributed random number was drawn. There was a 40 percent probability of a left turn, a 40 percent probability of a right turn, and a 20 percent probability of a no turn. The turn, if there was one, did not commence until after 25 feet of backing or 30 feet from the end of the back, whichever was greater. Once turning commenced the rear bumper of the vehicle traveled around a 20 foot radius circle. Since the maximum distance in the turn was 30 feet, the angle which the vehicle turned through ranged from 0 to 85.9 degrees (1.5 radians).

Pedestrian Descriptors

The pedestrian was modeled in the horizontal plane as a circle of radius 0.375 feet. To simplify the analysis, the pedestrian was assumed to move at constant speed and direction. The angle of pedestrian travel was determined by a random draw from a uniform probability distribution extending from −180.0 to +180.0 degrees. Walking speed was determined by a random draw from a triangular probability distribution ranging from 0.0 to 5.0 mph.

To define the position of the pedestrian behind the vehicle, axes were assigned to the grid. An X axis was set up pointing straight back along the longitudinal centerline of the vehicle with its origin at the rear bumper of the vehicle. A Y axis was set up pointing along the (assumed straight) rear edge of the rear bumper with its origin at the center of the rear bumper. Positive Y values were on the driver's side of the vehicle. The pedestrian was always started at the center of one of the 1-foot grid squares. Therefore, the initial positions of the pedestrian, in both X and Y, were always at a half foot mark. All possible initial pedestrian positions were simulated. Therefore, the initial pedestrian X positions ranged from 0.5 to 49.5 feet in 1.0-foot increments. Similarly, the initial pedestrian Y positions ranged from −9.5 to 9.5 feet also in 1.0-foot increments.

Additional Simulation Information

As was previously mentioned, a total of 1,000,000 Monte Carlo simulation trials were run with the pedestrian initially in the center of each square. Each trial simulated 60.0 seconds of time unless the pedestrian collided with the vehicle or the vehicle completed its movement first. Actual backing events do not last for 60.0 or more seconds. The longest backing event out of the 6,185 in the ''On-Road Study of Drivers' Use of Rearview Video Systems'' study[117] data set was 52.8 seconds long. However, for the simulation, both the backing distance and average backing speed were determined independently of each other from Weibull probability distributions. This is actually not correct; statistical analyses of the ''On-Road Study of Drivers' Use of Rearview Video Systems'' study[118] data set indicates that for real driving, as backing distance increases so does average backing speed. However, it was decided to accept the independence of the backing distance and average backing speed so as to simplify the simulation. As a result, 1.1 percent of all simulated backing trials had not been completed after 60.0 seconds of simulation. For the purposes of this analysis it was decided that the normalization process would probably adequately account for not otherwise dealing with this issue.

A count was made of all trials for which the pedestrian collided with the rear bumper of the vehicle. If the pedestrian collided first with either the front or sides of the vehicle, then this was not counted as a backing collision.

After completion of the simulation for all grid squares, a normalization of the backing crash counts for each grid square was performed. The normalization converted each grid square's crash count into its probability of crash relative to the probability of crash for the grid squares for which a crash was most likely to occur. The grid squares for which a crash was most likely to occur were the two directly behind the bumper in the center of the vehicle, i.e., the grid squares at (0.5 ft, 0.5 ft) and at (0.5 ft, −0.5 ft). The relative probability of crash for these two grid squares was set to 1.0. For all other grid squares, the crash count was divided by the crash count for grid square (0.5, 0.5). Note that due to left-right mirroring, the grid squares at (0.5, 0.5) and at (0.5, −0.5) both had the same crash counts. This resulted in a probability of crash relative to the probability of crash for the grid squares at (0.5, 0.5) and at (0.5, −0.5). Since all grid squares were subjected to the same simulation imperfections, this first normalization was expected to reduce the impact of these imperfections of the simulation results.

Figure 1 of this notice summarizes the calculated relative crash risk for each grid square. Note that the white shaded area does not have a zero backover risk; it merely has a low (less than 12.5 percent of the maximum) risk.

This analysis shows that the probability of crash decreases rapidly as the pedestrian's initial location is moved back, further away, from the rear bumper of the vehicle. There are substantial side lobes, giving pedestrians a reasonable chance of being hit even though they were not initially directly behind the vehicle.

Appendix B—Method for On-Road Study of Drivers' Use of Rearview Video Systems

Drivers' use of rearview video systems was observed during staged and naturalistic backing maneuvers to determine whether

[115] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

[116] Id.

[117] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

[118] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

drivers look at the RV display during backing and whether use of the system affects backing behavior.[119] Thirty-seven test participants, aged 25 to 60 years, were comprised of twelve drivers of RV-equipped vehicles, thirteen drivers of vehicles equipped with an RV system and a rear parking sensor system, and twelve drivers of vehicles with no backing aid system. All three system conditions were presented using original equipment configurations of the 2007 Honda Odyssey minivan. All participants had driven and owned a 2007 Honda Odyssey minivan as their primary vehicle for at least 6 months. Participants were not aware that the focus of the study was on their behavior and performance during backing maneuvers.

Participants visited a test lab to have unobtrusive video and other data recording equipment installed in their personal vehicles, and for a brief test drive. Participants then drove their vehicles for a period of 4 weeks in their normal daily activities while backing maneuvers were recorded. At the end of 4 weeks, participants returned to the research lab to have the recording equipment removed. Then, participants took a second test drive, identical to the first, except that when backing out of the garage bay, an unexpected 36-inch-tall obstacle consisting of a two-dimensional photograph of a child appeared behind the vehicle.

Appendix C—Details Regarding Development of a Possible Countermeasure Application Threshold Based on Rear Blind Zone Area

To begin to investigate what this threshold value might be, NHTSA plotted the average backing and backover rates versus the direct-view rear blind zone areas for 28 vehicles, as shown in Figure C–1. Several options for setting a threshold were examined. One option could be to choose the natural break point on the plotted curve at which the slope dramatically increases for crash rate as a function of direct-view rear blind zone area. This option results in vehicles with the poorest rear visibilities that contribute disproportionately to backover crashes being affected. One observation with this option is that the worst offenders for rear visibility would be captured, but a large percentage of overall backover crashes would not be addressed, such as those involving small pickups.

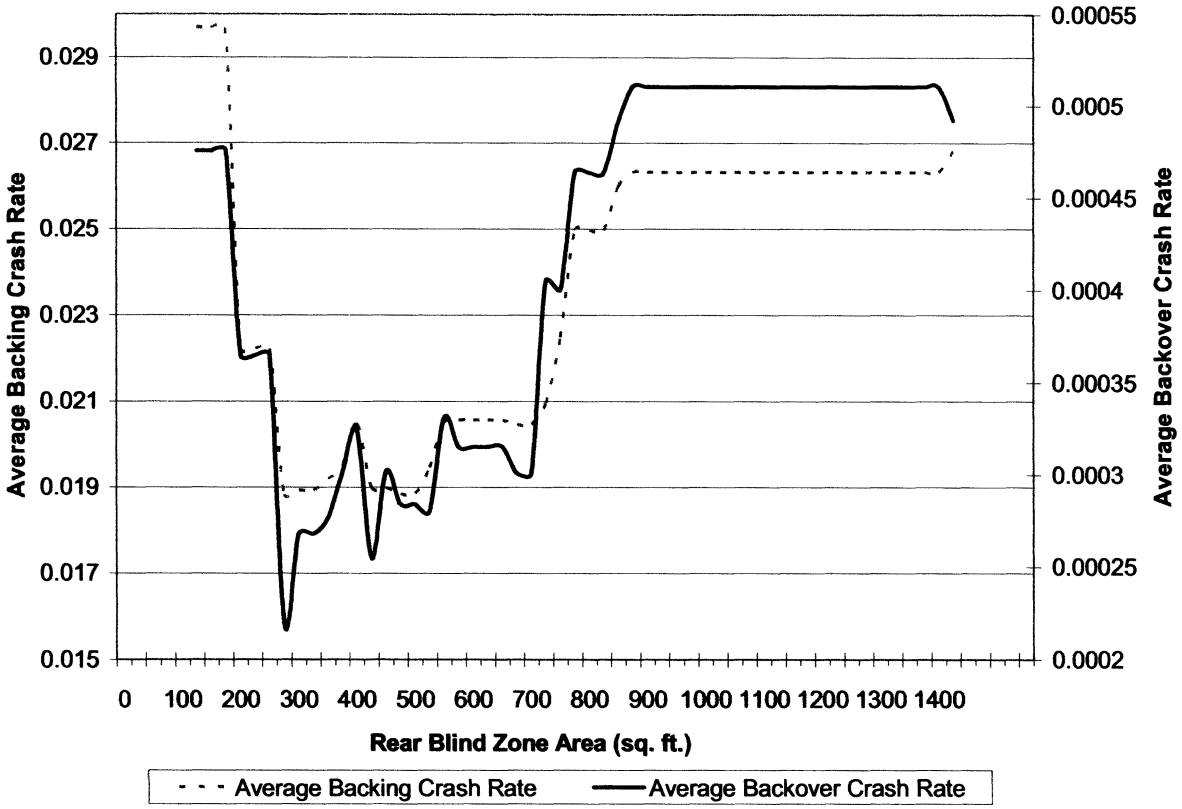

Figure C-1. Backing and Backover Crash Rates as a Function of Rear Blind Zone Area

Appendix D—Results for Analysis of Correlation Between Rear Blind Zone Area Measurement Field Size and Backing Crashes

To support the determination of the dimensions of the rear visibility measurement field, NHTSA's measured rear blind zone area data for a variety of vehicles were compared with backing crashes for those vehicles. Data analysis was performed to assess the correlation between vehicles' rear blind zone areas measured using a 50th percentile male driver and backing crash data for 21 vehicles.[120] Complete results of this analysis for a portion of the field sizes assessed are summarized in Table D–1.

[119] Mazzae, E.N., Barickman, F.S., Baldwin, G.H.S., and Ranney, T.A. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS). National Highway Traffic Safety Administration, DOT 811 024.

[120] Mazzae, E.N., Light Vehicle Rear Visibility Assessment, DOT HS 810 909, September 2008. NHTSA's visual target for this test was a traffic cone with a reflector atop; its height is representative of a 1-year-old child.

TABLE D–1—CORRELATION BETWEEN HUMAN-BASED REAR BLIND ZONE AREA MEASURED OVER VARIOUS FIELD SIZES AND BACKING CRASHES

[Sorted by correlation coefficient]

Measurement field dimensions (width by length)	Correlation coefficient	Probability occurred by chance
50W × 10L	0.60117	0.0039
40W × 10L	0.60117	0.0039
30W × 10L	0.58233	0.0056
30W × 50L	0.55212	0.0095
40W × 40L	0.54681	0.0103
30W × 40L	0.53635	0.0122
50W × 40L	0.53113	0.0132
20W × 40L*	0.52621	0.0143
50W × 50L**	0.52375	0.0148
20W × 50L	0.52367	0.0148
40W × 30L	0.52341	0.0149
50W × 60L	0.51360	0.0172
30W × 30L	0.51227	0.0176
60W × 50L	0.51891	0.0159
50W × 30L	0.50641	0.0192
60W × 60L	0.50403	0.0198
40W × 20L	0.48513	0.0258
20W × 30L	0.48117	0.0272
50W × 20L	0.47920	0.0280
70W × 70L	0.47331	0.0302
70W × 80L	0.45159	0.0399
70W × 90L	0.43665	0.0478
20W × 20L	0.39522	0.0762
10W × 40L	0.35315	0.1163
10W × 10L	0.27903	0.2206

* This measurement field size was indicated by pedestrian backover crash risk simulation as encompassing pedestrian locations at which risk of a backing crash was 20 percent or higher.

** Blind zone area measured over a field this size was found by preliminary analysis of laser-based measurement data to be well correlated with backing crashes.

[FR Doc. E9–4500 Filed 2–27–09; 11:15 am]

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Wednesday,
March 4, 2009

Part III

Federal Deposit Insurance Corporation

12 CFR Parts 327 and 370

Federal Deposit Insurance Corporation Amended Restoration Plan; Assessments; Modification of Temporary Liquidity Guarantee Program; Notice, Interim Final Rule, and Final Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064–AD37

Modification of Temporary Liquidity Guarantee Program

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim rule with request for comments.

SUMMARY: The FDIC is issuing this Interim Rule to make a minor modification to the Temporary Liquidity Guarantee Program (TLGP) to include certain issuances of mandatory convertible debt (MCD) under the TLGP debt guarantee program.

DATES: The Interim Rule becomes effective February 27, 2009. Comments on the Interim Rule must be received by March 19, 2009.

ADDRESSES: You may submit comments on the Interim Rule, by any of the following methods:

- *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal/notices.html.* Follow instructions for submitting comments on the Agency Web site.
- *E-mail: Comments@FDIC.gov.* Include RIN # 3064–AD37 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Munsell St. Clair, Chief, Bank and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967 or *mstclair@fdic.gov;* Robert C. Fick, Counsel, Legal Division, (202) 898–8962 or *rfick@*fdic.gov; A. Ann Johnson, Counsel, Legal Division (202) 898–3573 or *aajohnson@fdic.gov;* Mark L. Handzlik, Attorney, Legal Division, (202) 898–3990 or *mhandzlik@*fdic.gov; Gail Patelunas, Deputy Director, Division of Resolutions and Receiverships, (202) 898–6779 or *gpatelunas@fdic.gov;* (*for questions or comments related to MCD applications*): Lisa D. Arquette, Associate Director, Division of Supervision and Consumer Protection, (202) 898–8633 or *larquette@fdic.gov* or Donna Saulnier, Manager, Assessment Policy Section, Division of Finance, (703) 562–6167 or *dsaulnier@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In October 2008 the FDIC adopted the TLGP as part of a coordinated effort by the FDIC, the U.S. Department of the Treasury, and the Board of Governors of the Federal Reserve System (Federal Reserve) to address unprecedented disruptions in credit markets and the resultant effects on the ability of financial institutions to fund themselves and to make loans to creditworthy borrowers. The TLGP and other programs have had favorable effects, but experience has indicated that further improvements to the TLGP can be made. In this Interim Rule, the FDIC is making a very narrow targeted improvement to the TLGP.

By extending its guarantee to certain new issues of mandatory convertible debt, the FDIC will offer more flexibility for entities currently participating in the debt guarantee program. Specifically, the FDIC's guarantee of certain mandatory convertible debt will give issuing entities more flexibility to obtain funding from investors that may have a longer-term investment horizon. At the same time, including certain mandatory convertible debt under the TLGP program will reduce the amount of FDIC-guaranteed debt likely to require rollover in mid-2012 by providing a built-in ''exit strategy'' of having the debt convert to common stock rather than being rolled over.[1]

II. The Interim Rule

Amendment To Allow FDIC Guarantees of Mandatory Convertible Debt

As currently written, the TLGP regulation, at Section 370.2(e)(5), precludes an FDIC guarantee for any ''convertible debt.'' The FDIC has decided to amend the regulation to allow eligible entities to apply to have the FDIC guarantee newly issued senior unsecured debt with a feature that mandates conversion of the debt into common shares of the issuing entity at a specified date no later than the expiration date of the FDIC's guarantee. No FDIC-guaranteed mandatory convertible debt may be issued without the FDIC's prior written approval.

The intent of the mandatory convertible debt amendment to the TLGP is to give eligible entities additional flexibility to obtain funding from investors with longer-term investment horizons. Further, MCD issuances could reduce the concentration of FDIC-guaranteed debt maturing in mid-2012, which debt might otherwise have to be rolled into new debt.

To be eligible for the FDIC's guarantee, MCD must meet the definition of senior unsecured debt in Section 370.2(e) of the final rule; must be newly issued on or after February 27, 2009; and must provide in the debt instrument for the mandatory conversion of the debt into common shares of the issuing entity on a specified date that is on or before June 30, 2012 (unless the issuing entity fails to timely make any payment required under the debt instrument, or merges or consolidates with any other entity and is not the surviving or resulting entity.) In addition, the proposed Interim Rule provides for a number of disclosures relative to the MCD aspect of the TLGP.

This amendment will not result in a change to an eligible entity's existing debt guarantee cap.

The Interim Rule requires a participating entity to file a written application with the FDIC and its appropriate Federal banking agency, and to obtain the FDIC's prior written approval, before issuing MCD.

Like other applications described in the TLGP, an eligible entity that wishes to issue MCD must include the details of the request, a summary of the applicant's strategic operating plan, and a description of the proposed use of the debt proceeds. In addition, an application to issue FDIC-guaranteed MCD must include the proposed date of issuance, the amount of MCD to be issued, the mandatory conversion date, and the conversion rate (as described in Section 370.3(h)). Finally, since the issuance of debt that will convert into stock could raise control issues, an applicant seeking to issue FDIC-guaranteed MCD must provide confirmation that the applicant has submitted to its appropriate Federal banking agency all applications and all notices required under the Bank Holding Company Act of 1956, as amended, the Home Owners' Loan Act, as amended, or the Change in Bank Control Act, as amended in order to issue the debt.

The amount of the assessment fee for the FDIC's guarantee of MCD will be

[1] This extension of the TLGP is supported by the rationale for establishing the existing TLGP and is consistent with the determination of systemic risk made on October 14, 2008, pursuant to 12 U.S.C. section 1823(c)(4)(G), by the Secretary of the Treasury (after consultation with the President) following receipt of the written recommendation dated October 13, 2008, of the FDIC's Board of Directors (Board) and the similar written recommendation of the Federal Reserve.

based on the time period from issuance of the MCD until its mandatory conversion date.

III. Request for Comments

The FDIC invites comments on all aspects of the MCD feature of the TLGP as described in the Interim Rule and seeks suggestions for its implementation.

IV. Regulatory Analysis and Procedure

A. Administrative Procedure Act

The process of amending Part 370 by means of this Interim Rule is governed by the Administrative Procedure Act (APA). Pursuant to Section 553(b)(B) of the APA, general notice and opportunity for public comment are not required with respect to a rule making when an agency for good cause finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Similarly, Section 553(d)(3) of the APA provides that the publication of a rule shall be made not less than 30 days before its effective date, except ''* * * (3) as otherwise provided by the agency for good cause found and published with the rule.''

Consistent with Section 553(b)(B) of the APA, the FDIC finds that good cause exists for a finding that general notice and opportunity for public comment are impracticable and contrary to the public interest. The TLGP was announced by the FDIC on October 14, 2008 as an initiative to counter the system-wide crisis in the nation's financial sector, and was preceded by a determination of systemic risk by the Secretary of the Treasury after consultation with the President. The systemic risk determination allowed the FDIC to take certain actions to avoid or mitigate serious adverse effects on economic conditions and financial stability. The purpose of the TLGP is to promote financial stability by preserving confidence in the banking system and encouraging liquidity in order to ease lending to creditworthy businesses and consumers, favorably impacting both the availability and cost of credit. This Interim Rule is a modification of the TLGP and permits the FDIC to guarantee senior debt that converts into common stock. Immediate issuance of this Interim Rule furthers the public interest by addressing unprecedented disruption in credit markets. For these same reasons, the FDIC finds good cause to publish this Interim Rule with an immediate effective date. See 5 U.S.C. 553(d)(3).

Although general notice and opportunity for public comment are not required prior to the effective date, the FDIC invites comments on all aspects of the Interim Rule, which the FDIC may revise if necessary or appropriate in light of the comments received.

B. Riegle Community Development and Regulatory Improvement Act

The Riegle Community Development and Regulatory Improvement Act (RCDRIA) provides that any new regulations or amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form, unless the agency determines, for good cause published with the rule, that the rule should become effective before such time.[2] For the same reasons discussed above, the FDIC finds that good cause exists for an immediate effective date for the Interim Rule.

C. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has previously determined that the Interim Rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA), 5 U.S.C. 801 *et seq.* As required by SBREFA, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the Interim Rule may be reviewed.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354, Sept. 19, 1980) (RFA) applies only to rules for which an agency publishes a general notice of proposed rule making pursuant to 5 U.S.C. 553(b). As discussed above, consistent with Section 553(b)(B) of the APA, the FDIC has determined for good cause that general notice and opportunity for public comment would be impracticable and contrary to the public interest. Therefore, the RFA, pursuant to 5 U.S.C. 601(2), does not apply.

E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This Interim Rule establishes an application requirement for institutions wishing to issue FDIC-guaranteed mandatory convertible debt. This new collection of information would modify the FDIC's existing collection of information entitled, ''Temporary Liquidity Guarantee Program'' (OMB Control No. 3064–0166). Specifically, sections 370.3(h)(1)(v) and 370.3(h)(2) contain the new collection of information that was submitted to OMB under emergency clearance procedures, with a request for clearance by February 27, 2009. The use of emergency clearance procedures is necessary because of the sudden, unanticipated systemic risks posed to the nation's financial system by recent economic conditions and because public harm is reasonably likely to result if liquidity is not restored to financial markets. This new collection of information is necessary for implementation of the FDIC guarantee of mandatory convertible debt under the Debt Guarantee component of the TLG program.

The proposed burden estimate for the application to issue FDIC-guaranteed mandatory convertible debt is as follows:

Title: Temporary Liquidity Guarantee Program.

OMB Number: 3064–0166.

Frequency of Response: 5.

Estimated Number of Respondents: 25.

Average Time for Response: 1 hour.

Estimated Annual Burden: 125 hours

Previous Annual Burden: 2,201,500 hours

Total New Burden: 2,201,625 hours

If the FDIC obtains OMB approval of its emergency clearance request, it will be followed by a request for clearance under normal procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. In accordance with normal clearance procedures, public comment will be invited for an initial 60-day comment period and a subsequent 30-day comment period on: (1) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (2) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (5) estimates of capital or start up costs, and

[2] 12 U.S.C. 4802.

costs of operation, maintenance and purchase of services to provide the information. In the interim, interested parties are invited to submit written comments by any of the following methods.

All comments should refer to the name and number of the collection:

• *http://www.FDIC.gov/regulations/laws/federal/propose.html.*

• *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.

• *Mail:* Leneta Gregorie (202–898–3719), Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comment may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

List of Subjects in 12 CFR Part 370

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Reporting and recordkeeping requirements, Savings associations.

■ For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends part 370 of chapter III of Title 12 of the Code of Federal Regulations to read as follows:

PART 370—TEMPORARY LIQUIDITY GUARANTEE PROGRAM

■ 1. The authority citation for part 370 shall continue to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818, 1819(a)(Tenth), 1820(f), 1821(a), 1821(c), 1821(d), 1823(c)(4).

■ 2. In part 370, amend § 370.2 as follows:

■ a. Add a new paragraph (e)(1)(iii);

■ b. Revise the first sentence of paragraph (e)(3) and the first sentence of paragraph (e)(5); and

■ c. Add new paragraph (m), as follows:

§ 370.2 Definitions.

* * * * *

(e) * * *

(1) * * *

(iii) After February 27, 2009, unsecured borrowing that satisfies the criteria listed in paragraphs (e)(1)(i)(A) through (e)(1)(i)(D) of this section, that has a stated maturity of more than 30 days, and that includes, without limitation, mandatory convertible debt.

* * * * *

(3) Senior unsecured debt may include, for example, the following debt, provided it meets the requirements of paragraph (e)(1) of this section: mandatory convertible debt as described in paragraph (m) of this section, federal funds purchased, promissory notes, commercial paper, unsubordinated unsecured notes, including zero-coupon bonds, U.S. dollar denominated certificates of deposit owed to an insured depository institution, an insured credit union as defined in the Federal Credit Union Act, or a foreign bank, U.S. dollar denominated deposits in an international banking facility (IBF) of an insured depository institution owed to an insured depository institution or a foreign bank, and U.S. dollar denominated deposits on the books and records of foreign branches of U.S. insured depository institutions that are owed to an insured depository institution or a foreign bank. * *

* * * * *

(5) Senior unsecured debt excludes, for example, any obligation that has a stated maturity of ''one month'' [1] obligations from guarantees or other contingent liabilities, derivatives, derivative-linked products, debts that are paired or bundled with other securities, convertible debt other than mandatory convertible debt described in paragraph (m) of this section, capital notes, the unsecured portion of otherwise secured debt, negotiable certificates of deposit, deposits denominated in a foreign currency or other foreign deposits (except as allowed under paragraph (e)(3) of this section), revolving credit agreements, structured notes, instruments that are used for trade credit, retail debt securities, and any funds regardless of form that are swept from individual, partnership, or corporate accounts held at depository institutions.

* * *

* * * * *

(m) *Mandatory convertible debt.* The term ''mandatory convertible debt'' means senior unsecured debt that is required by the terms of the debt instrument to convert into common shares of the issuing entity on a fixed and specified date, on or before June 30, 2012, unless the issuing entity

(1) Fails to timely make any payment required under the debt instrument, or

(2) Merges or consolidates with any other entity and is not the surviving or resulting entity.

■ 3. In part 370, amend § 370.3 as follows:

■ a. Revise paragraph (b)(1) and (d);

■ b. In paragraph (h):

■ i. Revise the heading for paragraph (h)

■ ii. Add new paragraph (h)(1)(v),

■ iv. Revise paragraph (h)(2);

■ v. Revise the first sentence of paragraph (h)(3); and

■ vi. Add a new sentence at the end of paragraph (h)(4); as follows:

§ 370.3 Debt Guarantee Program.

* * * * *

(b) * * *

(1) Except as provided in paragraphs (b)(2) through (b)(6) of this section, the maximum amount of outstanding debt that is guaranteed under the debt guarantee program for each participating entity at any time is limited to 125 percent of the par value of the participating entity's senior unsecured debt, as that term is defined in § 370.2(e)(1)(i) (excluding mandatory convertible debt), that was outstanding as of the close of business September 30, 2008 and that was scheduled to mature on or before June 30, 2009.

* * * * *

(d) *Duration of Guarantee.*

For guaranteed debt issued on or before June 30, 2009, the guarantee expires on the earliest of the date of the entity's opt-out, if any, the mandatory conversion date for mandatory convertible debt, the maturity of the debt, or June 30, 2012.

* * * * *

(h) *Applications for exceptions, eligibility, and issuance of certain debt.*

(1) * * *

(v) A request by a participating entity to issue FDIC-guaranteed mandatory convertible debt.

(2) Each letter application must describe the details of the request, provide a summary of the applicant's strategic operating plan, describe the proposed use of the debt proceeds, and in the case of an application for approval of the issuance of

(i) Mandatory convertible debt, must also include:

(A) the proposed date of issuance;

(B) the total amount of the mandatory convertible debt to be issued;

(C) the mandatory conversion date,

(D) the conversion rate (*i.e.*, the total number of shares of common stock that will result from the conversion divided by the total dollar amount of the mandatory convertible debt to be issued),

(E) confirmation that all applications and all notices required under the Bank

[1] This recognizes that certain instruments have stated maturities of ''one month,'' but have a term of up to 35 days because of weekends, holidays, and calendar issues.

Holding Company Act of 1956, as amended, the Home Owners' Loan Act, as amended, or the Change in Bank Control Act, as amended, have been submitted to the applicant's appropriate Federal banking agency in connection with the proposed issuance; and

(F) any other relevant information that the FDIC deems appropriate.

(3) The factors to be considered by the FDIC in evaluating applications filed pursuant to paragraphs (h)(1)(i) through (h)(1)(iii) and (h)(1)(v) of this section include: the financial condition and supervisory history of the eligible/surviving entity. * * *

(4) * * * Applications made pursuant to paragraph (h)(1)(v) of this section must be filed with the FDIC no later than June 30, 2009.

* * * * *

■ 4. In part 370, amend § 370.5 as follows:

■ a. At the end of paragraph (h)(2), remove the last italicized sentence and add in its place two new sentences; and

■ b. Add new paragraph (j) as follows:

§ 370.5 Participation.

* * * * *

(h) * * *

(2) * * * [If the debt being issued is mandatory convertible debt, add: *The expiration date of the FDIC's guarantee is the earlier of the mandatory conversion date or June 30, 2012*]. [If the debt being issued is any other senior unsecured debt, add: *The expiration date of the FDIC's guarantee is the earlier of the maturity date of the debt or June 30, 2012.*]

* * * * *

(j) No mandatory convertible debt may be issued without obtaining the FDIC's prior written approval.

■ 5. In part 370, amend § 370.6 as follows:

■ a. Revise paragraphs (d)(1).

■ b. Revise the first sentence of (d)(3).

■ c. Revise (d)(5) as follows:

§ 370.6 Assessments under the Debt Guarantee Program.

* * * * *

(d) * * *

(1) *Calculation of assessment.* Except as provided in paragraph (d)(3) of this section, the amount of assessment will be determined by multiplying the amount of FDIC-guaranteed debt times the term of the debt or, in the case of mandatory convertible debt, the time period from issuance to the mandatory conversion date, times an annualized assessment rate determined in accordance with the following table.

For debt with a maturity or time period to conversion date of—	The annualized assessment rate (in basis points) is—
180 days or less (excluding overnight debt)	50
181–364 days	75
365 days or greater	100

* * * * *

(3) The amount of assessment for an eligible entity, other than an insured depository institution, that controls, directly or indirectly, or is otherwise affiliated with, at least one insured depository institution will be determined by multiplying the amount of FDIC-guaranteed debt times the term of the debt or, in the case of mandatory convertible debt, the time period from issuance to the mandatory conversion date, times an annualized assessment rate determined in accordance with the rates set forth in the table in paragraph (d)(1) of this section, except that each such rate shall be increased by 10 basis points, if the combined assets of all insured depository institutions affiliated with such entity constitute less than 50 percent of consolidated holding company assets. * * *

* * * * *

(5) *No assessment reduction for early retirement of guaranteed debt.* A participating entity's assessment shall not be reduced if guaranteed debt is retired prior to its scheduled maturity date or conversion date.

* * * * *

■ 6. In part 370, amend § 370.12 to add a new sentence immediately after the first sentence in paragraph (b)(2); as follows:

§ 370.12 Payment on the guarantee.

* * * * *

(b) * * *

(2) * * * For purposes of mandatory convertible debt, principal payment shall be limited to amounts paid by holders under the issuance. * * *

* * * * *

[FR Doc. E9–4586 Filed 2–27–09; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD35

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending our regulation to alter the way in which it differentiates for risk in the risk-based assessment system; revise deposit insurance assessment rates, including base assessment rates; and make technical and other changes to the rules governing the risk-based assessment system.

DATES: *Effective Date:* April 1, 2009.

FOR FURTHER INFORMATION CONTACT: Munsell W. St. Clair, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967; and Christopher Bellotto, Counsel, Legal Division, (202) 898–3801.

SUPPLEMENTARY INFORMATION:

I. Background

The Reform Act

On February 8, 2006, the President signed the Federal Deposit Insurance Reform Act of 2005 into law; on February 15, 2006, he signed the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (collectively, the Reform Act).[1] The Reform Act enacted the bulk of the reform recommendations made by the FDIC in 2001.[2] The Reform Act, among other things, required that the FDIC, ''prescribe final regulations, after notice and opportunity for comment * * * providing for assessments under section 7(b) of the Federal Deposit Insurance Act, as amended * * *,'' thus giving the FDIC, through its rulemaking authority, the opportunity to better price deposit insurance for risk.[3]

The Federal Deposit Insurance Act, as amended by the Reform Act, continues to require that the assessment system be risk-based and allows the FDIC to define risk broadly. It defines a risk-based system as one based on an institution's probability of causing a loss to the deposit insurance fund due to the composition and concentration of the institution's assets and liabilities, the amount of loss given failure, and revenue needs of the Deposit Insurance Fund (the fund or DIF).[4]

[1] Federal Deposit Insurance Reform Act of 2005, Public Law 109–171, 120 Stat. 9; Federal Deposit Insurance Conforming Amendments Act of 2005, Public Law 109–173, 119 Stat. 3601.

[2] After a year long review of the deposit insurance system, the FDIC made several recommendations to Congress to reform the deposit insurance system. See *http://www.fdic.gov/deposit/insurance/initiative/direcommendations.html* for details.

[3] Section 2109(a)(5) of the Reform Act. Section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)).

[4] 12 Section 7(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(C)). The Reform Act merged the former Bank Insurance Fund and Savings Association Insurance Fund into the Deposit Insurance Fund.

Before passage of the Reform Act, the deposit insurance funds' target reserve ratio—the designated reserve ratio (DRR)—was generally set at 1.25 percent. Under the Reform Act, however, the FDIC may set the DRR within a range of 1.15 percent to 1.50 percent of estimated insured deposits. If the reserve ratio drops below 1.15 percent—or if the FDIC expects it to do so within six months—the FDIC must, within 90 days, establish and implement a plan to restore the DIF to 1.15 percent within five years (absent extraordinary circumstances).[5]

The Reform Act also restored to the FDIC's Board of Directors the discretion to price deposit insurance according to risk for all insured institutions regardless of the level of the fund reserve ratio.[6]

The Reform Act left in place the existing statutory provision allowing the FDIC to ''establish separate risk-based assessment systems for large and small members of the Deposit Insurance Fund.'' [7] Under the Reform Act, however, separate systems are subject to a new requirement that ''[n]o insured depository institution shall be barred from the lowest-risk category solely because of size.'' [8]

The 2006 Assessments Rule

Overview

On November 30, 2006, pursuant to the requirements of the Reform Act, the FDIC published in the **Federal Register** a final rule on the risk-based assessment system (the 2006 assessments rule).[9] The rule became effective on January 1, 2007.

The 2006 assessments rule created four risk categories and named them Risk Categories I, II, III and IV. These four categories are based on two criteria: capital levels and supervisory ratings. Three capital groups—well capitalized, adequately capitalized, and undercapitalized—are based on the leverage ratio and risk-based capital ratios for regulatory capital purposes. Three supervisory groups, termed A, B, and C, are based upon the FDIC's consideration of evaluations provided by the institution's primary federal regulator and other information the FDIC deems relevant.[10] Group A consists of financially sound institutions with only a few minor weaknesses; Group B consists of institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased risk of loss to the insurance fund; and Group C consists of institutions that pose a substantial probability of loss to the insurance fund unless effective corrective action is taken.[11] Under the 2006 assessments rule, an institution's capital and supervisory groups determine its risk category as set forth in Table 1 below. (Risk categories appear in Roman numerals.)

TABLE 1—DETERMINATION OF RISK CATEGORY

Capital category	Supervisory group		
	A	B	C
Well Capitalized	I		III
Adequately Capitalized	II		
Undercapitalized	III		IV

The 2006 assessments rule established the following base rate schedule and allowed the FDIC Board to adjust rates uniformly from one quarter to the next up to three basis points above or below the base schedule without further notice-and-comment rulemaking, provided that no single change from one quarter to the next can exceed three basis points.[12] Base assessment rates within Risk Category I varied from 2 to 4 basis points, as set forth in Table 2 below.

TABLE 2—2007–08 BASE ASSESSMENT RATES

	Risk category				
	I*		II	III	IV
	Minimum	Maximum			
Annual Rates (in basis points)	2	4	7	25	40

* Rates for institutions that do not pay the minimum or maximum rate vary between these rates.

[5] Section 7(b)(3)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)(E)).

[6] The Reform Act eliminated the prohibition against charging well-managed and well-capitalized institutions when the deposit insurance fund is at or above, and is expected to remain at or above, the designated reserve ratio (DRR). This prohibition was included as part of the Deposit Insurance Funds Act of 1996. Public Law 104–208, 110 Stat. 3009, 3009–479. However, while the Reform Act allows the DRR to be set between 1.15 percent and 1.50 percent, it also generally requires dividends of one-half of any amount in the fund in excess of the amount required to maintain the reserve ratio at 1.35 percent when the insurance fund reserve ratio exceeds 1.35 percent at the end of any year. The Board can suspend these dividends under certain circumstances. The Reform Act also requires dividends of all of the amount in excess of the amount needed to maintain the reserve ratio at 1.50 when the insurance fund reserve ratio exceeds 1.50 percent at the end of any year. 12 U.S.C. 1817(e)(2).

[7] Section 7(b)(1)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(D)).

[8] Section 2104(a)(2) of the Reform Act amending Section 7(b)(2)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(D)).

[9] 71 FR 69282. The FDIC also adopted several other final rules implementing the Reform Act, including a final rule on operational changes to part 327. 71 FR 69270.

[10] The term ''primary federal regulator'' is synonymous with the statutory term ''appropriate federal banking agency.'' Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

[11] The capital groups and the supervisory groups have been in effect since 1993. In practice, the supervisory group evaluations are based on an institution's composite CAMELS rating, a rating assigned by the institution's supervisor at the end of a bank examination, with 1 being the best rating and 5 being the lowest. CAMELS is an acronym for component ratings assigned in a bank examination: Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk. A composite CAMELS rating combines these component ratings, which also range from 1 (best) to 5 (worst). Generally, institutions with a CAMELS rating of 1 or 2 are assigned to supervisory group A, those with a CAMELS rating of 3 to group B, and those with a CAMELS rating of 4 or 5 to group C.

[12] The Board cannot adjust rates more than 2 basis points below the base rate schedule because rates cannot be less than zero.

TABLE 2—2007–08 BASE ASSESSMENT RATES

	Risk category				
	I*		II	III	IV
	Minimum	Maximum			
Annual Rates (in basis points)	2	4	7	25	40

* Rates for institutions that do not pay the minimum or maximum rate vary between these rates.

The 2006 assessments rule set actual rates beginning January 1, 2007, as set out in Table 3 below.

TABLE 3—2007–08 ACTUAL ASSESSMENT RATES

	Risk category				
	I*		II	III	IV
	Minimum	Maximum			
Annual Rates (in basis points)	5	7	10	28	43

* Rates for institutions that do not pay the minimum or maximum rate vary between these rates.

Risk Category I

Within Risk Category I, the 2006 assessments rule charges those institutions that pose the least risk a minimum assessment rate and those that pose the greatest risk a maximum assessment rate two basis points higher than the minimum rate. The rule charges other institutions within Risk Category I a rate that varies incrementally by institution between the minimum and maximum.

Within Risk Category I, the 2006 assessments rule combines supervisory ratings with other risk measures to further differentiate risk and determine assessment rates. The *financial ratios method* determines the assessment rates for most institutions in Risk Category I using a combination of weighted CAMELS component ratings and the following financial ratios:

- The Tier 1 Leverage Ratio;
- Loans past due 30–89 days/gross assets;
- Nonperforming assets/gross assets;
- Net loan charge-offs/gross assets; and
- Net income before taxes/risk-weighted assets.

The weighted CAMELS components and financial ratios are multiplied by statistically derived pricing multipliers and the products, along with a uniform amount applicable to all institutions subject to the financial ratios method, are summed to derive the assessment rate under the base rate schedule. If the rate derived is below the minimum for Risk Category I, however, the institution will pay the minimum assessment rate for the risk category; if the rate derived is above the maximum rate for Risk Category I, then the institution will pay the maximum rate for the risk category.

The multipliers and uniform amount were derived in such a way to ensure that, as of June 30, 2006, 45 percent of small Risk Category I institutions (other than institutions less than 5 years old) would have been charged the minimum rate and approximately 5 percent would have been charged the maximum rate. While the FDIC has not changed the multipliers and uniform amount since adoption of the 2006 assessments rule, the percentages of institutions that have been charged the minimum and maximum rates have changed over time as institutions' CAMELS component ratings and financial ratios have changed. Based upon June 30, 2008 data, approximately 28 percent of small Risk Category I institutions (other than institutions less than 5 years old) were charged the minimum rate and approximately 19 percent were charged the maximum rate.[13]

The *supervisory and debt ratings method* (or *debt ratings method*) determines the assessment rate for large institutions that have a long-term debt issuer rating.[14] Long-term debt issuer ratings are converted to numerical values between 1 and 3 and averaged. The weighted average of an institution's CAMELS components and the average converted value of its long-term debt issuer ratings are multiplied by a common multiplier and added to a uniform amount applicable to all institutions subject to the supervisory and debt ratings method to derive the assessment rate under the base rate schedule. Again, if the rate derived is below the minimum for Risk Category I, the institution will pay the minimum assessment rate for the risk category; if the rate derived is above the maximum for Risk Category I, then the institution will pay the maximum rate for the risk category.

The multipliers and uniform amount were derived in such a way to ensure that, as of June 30, 2006, about 45 percent of Risk Category I large institutions (other than institutions less than 5 years old) would have been charged the minimum rate and approximately 5 percent would have been charged the maximum rate. These percentages have changed little from quarter to quarter thereafter even though industry conditions have changed. Based upon June 30, 2008, data, and ignoring the large bank adjustment (described below), approximately 45

[13] Based upon September 30, 2008 data, approximately 26 percent of small Risk Category I institutions (other than institutions less than 5 years old) were charged the minimum rate and approximately 23 percent were charged the maximum rate.

[14] The final rule defined a large institution as an institution (other than an insured branch of a foreign bank) that has $10 billion or more in assets as of December 31, 2006 (although an institution with at least $5 billion in assets may also request treatment as a large institution). If, after December 31, 2006, an institution classified as small reports assets of $10 billion or more in its reports of condition for four consecutive quarters, the FDIC will reclassify the institution as large beginning the following quarter. If, after December 31, 2006, an institution classified as large reports assets of less than $10 billion in its reports of condition for four consecutive quarters, the FDIC will reclassify the institution as small beginning the following quarter. 12 CFR 327.8(g) and (h) and 327.9(d)(6).

percent of Risk Category I large institutions (other than institutions less than 5 years old) were charged the minimum rate and approximately 11 percent were charged the maximum rate.[15]

Assessment rates for insured branches of foreign banks in Risk Category I are determined using ROCA components.[16]

For any Risk Category I large institution or insured branch of a foreign bank, initial assessment rate determinations may be modified up to half a basis point upon review of additional relevant information (the large bank adjustment).[17]

With certain exceptions, beginning in 2010, the 2006 assessments rule charges new institutions in Risk Category I (those established for less than five years), regardless of size, the maximum rate applicable to Risk Category I institutions. Until then, new institutions are treated like all others, except that a well-capitalized institution that has not yet received CAMELS component ratings is assessed at one basis point above the minimum rate applicable to Risk Category I institutions until it receives CAMELS component ratings.

The Need for a Restoration Plan

As part of a separate rule making in November 2006, the FDIC also set the DRR at 1.25 percent, effective January 1, 2007.[18] In November 2006, the FDIC projected that the assessment rate schedule established by the 2006 assessments rule would raise the reserve ratio from 1.23 percent at the end of the second quarter of 2006 to 1.25 percent by 2009. At the time, insured institution failures were at historic lows (no insured institution had failed in almost two-and-a-half years prior to the rulemaking, the longest period in the FDIC's history without a failure) and industry returns on assets (ROAs) were near all time highs. The FDIC's projection assumed the continued strength of the industry. By March 2008, the condition of the industry had deteriorated, and FDIC projected higher insurance losses compared to recent years. However, even with this increase in projected failures and losses, the reserve ratio was still estimated to reach the Board's target of 1.25 percent in 2009. Therefore, the Board voted in March 2008 to maintain the then existing assessment rate schedule.

Recent failures of FDIC-insured institutions caused the reserve ratio of the Deposit Insurance Fund (DIF) to decline from 1.19 percent as of March 30, 2008, to 1.01 percent as of June 30, 0.76 percent as of September 30, and 0.40 percent (preliminary) as of December 31. Twenty-five institutions failed in 2008, and the FDIC expects a substantially higher rate of institution failures in the next few years, leading to a further decline in the reserve ratio. Already, 14 institutions have failed in 2009. Because the fund reserve ratio fell below 1.15 percent as of June 30, 2008, and was expected to remain below 1.15 percent, the Reform Act required the FDIC to establish and implement a Restoration Plan to restore the reserve ratio to at least 1.15 percent within five years.

The Proposed Rule

On October 7, 2008, the FDIC established a Restoration Plan for the DIF.[19] In the FDIC's view, restoring the reserve ratio to at least 1.15 percent within five years required an increase in assessment rates. Since rates were already three basis points above the base rate schedule, a new rulemaking was required. Consequently, on October 7, 2008, the FDIC Board of Directors also adopted a notice of proposed rulemaking with request for comments on revisions to the FDIC's assessment regulations (the proposed rule or NPR).[20] The NPR proposed that, effective January 1, 2009, assessment rates would increase uniformly by seven basis points for the first quarter 2009 assessment period. Effective April 1, 2009, the NPR proposed to alter the way in which the FDIC's risk-based assessment system differentiates for risk and set new deposit insurance assessment rates. Also effective on April 1, 2009, the NPR proposed to make technical and other changes to the rules governing the risk-based assessment system. The proposed rule was published concurrently with the Restoration Plan on October 16, 2008, with a comment period scheduled to end on November 17, 2008.[21]

On November 7, 2008, the FDIC Board approved an extension of the comment period until December 17, 2008, on the parts of the proposed rulemaking that would become effective on April 1, 2009. The comment period for the proposed 7 basis point rate increase for the first quarter of 2009, with its separate proposed effective date of January 1, 2009, was not extended and expired on November 17, 2008. The final rule on the rate increase for the first quarter of 2009 was approved as proposed by the FDIC Board on December 16, 2008.[22]

The FDIC received almost 5,000 comments on the parts of the proposed rule that would become effective on April 1, 2009, including proposed changes in how the FDIC's risk-based assessment system differentiates for risk and corresponding new assessment rates. This final rule implements the remaining changes that the FDIC proposed in the October notice of proposed rulemaking, with some alteration.

II. Overview of the Final Rule

In this rulemaking, the FDIC seeks to improve the way the assessment system differentiates risk among insured institutions by drawing upon measures of risk that were not included when the FDIC first revised its assessment system pursuant to the Reform Act. The FDIC believes that the rulemaking will make the assessment system more sensitive to risk. The rulemaking should also make the risk-based assessment system fairer, by limiting the subsidization of riskier institutions by safer ones. The assessment rate schedule established in this rule should provide sufficient revenue to cover losses resulting from a large volume of institution failures and raise the insurance fund's reserve ratio over time. However, as explained below, the FDIC is simultaneously issuing an interim rule to impose a 20 basis point special assessment (and possible additional special assessments of up to 10 basis points thereafter). The final rule, which differs in several ways from the proposed rule, is set out in detail in ensuing sections, but is briefly summarized here. The final rule will take effect April 1, 2009, and will apply to assessments for the second quarter of 2009 (which will be collected in September 2009) and thereafter.

[15] Based upon September 30, 2008, data, and ignoring the large bank adjustment (described below), approximately 41 percent of Risk Category I large institutions (other than institutions less than 5 years old) were charged the minimum rate and approximately 11 percent were charged the maximum rate.

[16] ROCA stands for Risk Management, Operational Controls, Compliance, and Asset Quality. Like CAMELS components, ROCA component ratings range from 1 (best rating) to a 5 rating (worst rating). Risk Category 1 insured branches of foreign banks generally have a ROCA composite rating of 1 or 2 and component ratings ranging from 1 to 3.

[17] The FDIC has issued additional Guidelines for Large Institutions and Insured Foreign Branches in Risk Category I (the large bank guidelines) governing the large bank adjustment. 72 FR 27122 (May 14, 2007).

[18] In November 2007 and October 2008, the Board again voted to maintain the DRR at 1.25 percent for 2008 and 2009, respectively. 71 FR 69325 (Nov. 30, 2006) and 72 FR 65576 (Nov. 21, 2007).

[19] 73 FR 61,598 (Oct. 16, 2008).

[20] 12 CFR 327.

[21] See 73 FR 61,560 (Oct. 16, 2008).

[22] 73 FR 78,155 (Dec. 22, 2008).

Risk Category I

The final rule introduces a new financial ratio into the financial ratios method. This new ratio will capture certain brokered deposits (in excess of 10 percent of domestic deposits) that are used to fund rapid asset growth. The new financial ratio in the final rule differs from the one proposed in the NPR in two ways. It excludes deposits that an insured depository institution receives through a deposit placement network on a reciprocal basis, such that: (1) For any deposit received, the institution (as agent for depositors) places the same amount with other insured depository institutions through the network; and (2) each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members (henceforth referred to as reciprocal deposits). It also raises the asset growth threshold from that proposed in the NPR. The final rule also updates the uniform amount and the pricing multipliers for the weighted average CAMELS component ratings and financial ratios.

The final rule provides that the assessment rate for a large institution with a long-term debt issuer rating will be determined using a combination of the institution's weighted average CAMELS component ratings, its long-term debt issuer ratings (converted to numbers and averaged) and the financial ratios method assessment rate, each equally weighted. The new method will be known as the large bank method.

Under the final rule, the financial ratios method or the large bank method, whichever is applicable, will determine a Risk Category I institution's *initial* base assessment rate. The final rule will broaden the spread between minimum and maximum initial base assessment rates in Risk Category I from 2 basis points to an initial range of 4 basis points and adjust the percentage of institutions subject to these initial minimum and maximum rates.

Adjustments

Under the final rule, an institution's total base assessment rate can vary from the initial base rate as the result of possible adjustments. The final rule also increases the maximum possible Risk Category I large bank adjustment from one-half basis point to one basis point. Any such adjustment up or down will be made before any other adjustment and will be subject to certain limits, which are described in detail below.

Under the final rule, an institution's unsecured debt adjustment—the institution's ratio of long-term unsecured debt (and, for small institutions, certain amounts of its Tier 1 capital) to domestic deposits—will lower the institution's base assessment rate.[23] Any decrease in base assessment rates will be limited to five basis points. The unsecured debt adjustment differs from the adjustment proposed in the NPR in several ways. The adjustment is larger for a given amount of unsecured debt (and, for small institutions, Tier 1 capital) and the maximum adjustment of five basis points is larger than the proposed maximum of two basis points in the NPR. The adjustment excludes senior unsecured debt that the FDIC has guaranteed under its Temporary Liquidity Guarantee Program. Finally, the adjustment lowers the threshold for inclusion of a small institution's Tier 1 capital.

Also, under the final rule, an institution's secured liability adjustment—which is based on the institution's ratio of secured liabilities to domestic deposits—will raise its base assessment rate. An institution's ratio of secured liabilities to domestic deposits (if greater than 25 percent), will increase its assessment rate, but the resulting base assessment rate after any such increase can be no more than 50 percent greater than it was before the adjustment. The secured liability adjustment will be made after any large bank adjustment or unsecured debt adjustment. This adjustment also differs from the adjustment proposed in the NPR in that an institution's ratio of secured liabilities to domestic deposits must be greater than 25 percent for an adjustment to exist, rather than 15 percent as proposed in the NPR.

Institutions in all risk categories will be subject to the unsecured debt adjustment and secured liability adjustment. In addition, the final rule makes a final adjustment for brokered deposits (the brokered deposit adjustment) for institutions in Risk Category II, III or IV. An institution's ratio of brokered deposits to domestic deposits (if greater than 10 percent) will increase its assessment rate, but any increase will be limited to no more than 10 basis points. The brokered deposit adjustment is as proposed in the NPR and will *include* reciprocal deposits.

Insured Branches of Foreign Banks

The final rule makes conforming changes to the pricing multipliers and uniform amount for insured branches of foreign banks in Risk Category I. The insured branch of a foreign bank's initial base assessment rate will be subject to any large bank adjustment, but not to the unsecured debt adjustment or secured liability adjustment. In fact, no insured branch of a foreign bank in any risk category will be subject to the unsecured debt adjustment, secured liability adjustment or brokered deposit adjustment.

New Institutions

The final rule makes conforming changes in the treatment of new insured depository institutions.[24] For assessment periods beginning on or after January 1, 2010, any new institutions in Risk Category I will be assessed at the maximum initial base assessment rate applicable to Risk Category I institutions.

For assessments for the last three quarters of 2009, until a Risk Category I new institution received CAMELS component ratings, it will have an initial base assessment rate that is two basis points above the minimum initial base assessment rate applicable to Risk Category I institutions, rather than one basis point above the minimum rate, as under the final rule adopted in 2006. For these three quarters, all other new institutions in Risk Category I will be treated as established institutions, except as provided in the next paragraph.

Either before or after January 1, 2010: no new institution, regardless of risk category, will be subject to the unsecured debt adjustment; any new institution, regardless of risk category, will be subject to the secured liability adjustment; and a new institution in Risk Categories II, III or IV will be subject to the brokered deposit adjustment. After January 1, 2010, no new institution in Risk Category I will be subject to the large bank adjustment.

Assessment Rates

As explained below, estimated losses from projected institution failures have risen considerably since the NPR was published last fall. Consequently, initial base assessment rates as of April 1, 2009, which are set forth in Table 4 below, are slightly higher than proposed in the NPR.

[23] Long-term unsecured debt includes senior unsecured and subordinated debt.

[24] As discussed below, subject to exceptions, the final rule defines a new insured depository institution as a bank or thirft that has not been federally insured for at least five years as of the last day of any quarter for which it is being assessed.

TABLE 4—INITIAL BASE ASSESSMENT RATES AS OF APRIL 1, 2009

	Risk category				
	I*		II	III	IV
	Minimum	Maximum			
Annual Rates (in basis points)	12	16	22	32	45

* Initial base rates that were not the minimum or maximum rate will vary between these rates.

After applying all possible adjustments, minimum and maximum total base assessment rates for each risk category will be as set out in Table 5 below.

TABLE 5—TOTAL BASE ASSESSMENT RATES

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial base assessment rate	12–16	22	32	45
Unsecured debt adjustment	−5–0	−5–0	−5–0	−5–0
Secured liability adjustment	0–8	0–11	0–16	0–22.5
Brokered deposit adjustment	.....	0–10	0–10	0–10
Total base assessment rate	7–24.0	17–43.0	27–58.0	40–77.5

* All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

These rates and other revisions to the assessment rules take effect for the quarter beginning April 1, 2009, and will be reflected in the fund balance as of June 30, 2009, and assessments due September 30, 2009 and thereafter.

Because the outlook for losses to the insurance fund has deteriorated significantly since publication of the NPR last fall, the FDIC is simultaneously issuing an interim rule that provides for a 20 basis point special assessment on June 30, 2009. The interim rule also provides that the Board may impose additional special assessments of up to 10 basis points thereafter if the reserve ratio of the DIF is estimated to fall to a level that that the Board believes would adversely affect public confidence or to a level which shall be close to zero or negative at the end of a calendar quarter.

The final rule continues to allow the FDIC Board to adopt actual rates that are higher or lower than total base assessment rates without the necessity of further notice and comment rulemaking, provided that: (1) the Board cannot increase or decrease total rates from one quarter to the next by more than three basis points without further notice-and-comment rulemaking; and (2) cumulative increases and decreases cannot be more than three basis points higher or lower than the total base rates without further notice-and-comment rulemaking.

Technical and Other Changes

The final rule also makes technical changes and one minor non-technical change to the assessments rules. These changes are detailed below.

III. Risk Category I: Financial Ratios Method

Brokered Deposits and Asset Growth

The final rule adds a new financial measure to the financial ratios method. This new financial measure, the adjusted brokered deposit ratio, will measure the extent to which brokered deposits are funding rapid asset growth. The adjusted brokered deposit ratio will affect only those established Risk Category I institutions whose total gross assets are more than 40 percent greater than they were four years previously, after adjusting for mergers and acquisitions, rather than 20 percent greater as proposed in the NPR, and whose brokered deposits (less reciprocal deposits) make up more than 10 percent of domestic deposits.[25] [26] [27] Generally speaking, the greater an institution's asset growth and the greater its percentage of brokered deposits, the greater will be the increase in its initial base assessment rate. Small changes in asset growth rate or brokered deposits as a percentage of domestic deposits will lead to small changes in assessment rates.

If an institution's ratio of brokered deposits to domestic deposits is 10 percent *or* less or if the institution's asset growth over the previous four years is less than 40 percent, the adjusted brokered deposit ratio will be zero and will have no effect on the institution's assessment rate. If an institution's ratio of brokered deposits to domestic deposits exceeds 10 percent and its asset growth over the previous four years is more than 70 percent (rather than 40 percent as proposed in the NPR), the adjusted brokered deposit ratio will equal the institution's ratio of brokered deposits to domestic deposits less the 10 percent threshold. If an institution's ratio of brokered deposits to domestic deposits exceeds 10 percent but its asset growth over the previous four years is between 40 percent and 70 percent, overall asset growth rates will be converted into an asset growth rate factor ranging between 0 and 1, so that the adjusted brokered deposit ratio will equal a gradually increasing fraction of the ratio of brokered deposits to domestic deposits (minus the 10 percent threshold). The asset growth rate factor is derived by multiplying by 3⅓ an

[25] As discussed below, subject to exceptions, the final rule defines an established depository institution as a bank or thrift that has been federally insured for at least five years as of the last day of any quarter for which it is being assessed.

[26] An institution that four years previously had filed no report of condition or had reported no assets would be treated as having no growth unless it was a participant in a merger or acquisition (either as the acquiring or acquired institution) with an institution that had reported assets four years previously.

[27] References hereafter to ''asset growth'' or ''growth in assets'' refer to growth in gross assets.

amount equal to the overall rate of growth minus 40 percent and expressing the result as a decimal fraction rather than as a percentage (so that, for example, 3⅓ times 10 percent equals 0.33 * * *).[28] The adjusted brokered deposit ratio will never be less than zero. Appendix A contains a detailed mathematical definition of the ratio. Table 6 gives examples of how the adjusted brokered deposit ratio would be determined.

TABLE 6—ADJUSTED BROKERED DEPOSIT RATIO

A	B	C	D	E	F
Example	Ratio of brokered deposits to domestic deposits	Ratio of brokered deposits to domestic deposits minus 10 percent threshold (column B minus 10 percent)	Cumulative asset growth rate over four years	Asset growth rate factor	Adjusted brokered deposit ratio (column C times column E)
1	5.0%	0.0%	5.0%		0.0%
2	15.0%	5.0%	5.0%		0.0%
3	5.0%	0.0%	35.0%		0.0%
4	35.0%	25.0%	55.0%	0.500	12.5%
5	25.0%	15.0%	80.0%	1.000	15.0%

In Examples 1, 2 and 3, either the institution has a ratio of brokered deposits to domestic deposits that is less than 10 percent (Column B) or its four-year asset growth rate is less than 40 percent (Column D). Consequently, the adjusted brokered deposit ratio is zero (Column F). In Example 4, the institution has a ratio of brokered deposits to domestic deposits of 35 percent (Column B), which, after subtracting the 10 percent threshold, leaves 25 percent (Column C). Its assets are 55 percent greater than they were four years previously (Column D), so the fraction applied to obtain the adjusted brokered deposit ratio is 0.5 (Column E) (calculated as 3⅓ (55 percent—40 percent, with the result expressed as a decimal fraction rather than as a percentage)). Its adjusted brokered deposit ratio is, therefore, 12.5 percent (Column F) (which is 0.5 times 25 percent). In Example 5, the institution has a lower ratio of brokered deposits to domestic deposits (25 percent in Column B) than in Example 4 (35 percent). However, its adjusted brokered deposit ratio (15 percent in Column F) is larger than in Example 4 (12.5 percent) because its assets are more than 70 percent greater than they were four years previously (Column D). Therefore, its adjusted brokered deposit ratio is equal to its ratio of brokered deposits to domestic deposits of 25 percent minus the 10 percent threshold (Column F).

The FDIC is adding this new risk measure for a couple of reasons. A number of costly institution failures, including some recent failures, involved rapid asset growth funded through brokered deposits. Moreover, statistical analysis reveals a significant correlation between rapid asset growth funded by brokered deposits and the probability of an institution's being downgraded from a CAMELS composite 1 or 2 rating to a CAMELS composite 3, 4 or 5 rating within a year. A significant correlation is the standard the FDIC used when it adopted the financial ratios method in the 2006 assessments rule.

The adjusted brokered deposit ratio generally will include brokered deposits as defined in Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f), and as implemented in 12 CFR 337.6, which is the definition used in banks' quarterly Reports of Condition and Income (Call Reports) and thrifts' quarterly Thrift Financial Reports (TFRs). However, for assessment purposes in Risk Category I, the ratio will not include reciprocal deposits (that is, deposits that an insured depository institution receives through a deposit placement network on a reciprocal basis, such that: (1) for any deposit received, the institution (as agent for depositors) places the same amount with other insured depository institutions through the network; and (2) each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members. All other brokered deposits will be included in an institution's ratio of brokered deposits to domestic deposits used to determine its adjusted brokered deposit ratio, including brokered deposits that consist of balances swept into an insured institution by another institution, such as balances swept from a brokerage account.

Based on data as of September 30, 2008, approximately 8.7 percent of institutions in Risk Category I would have exceeded both the 10 percent brokered deposit threshold and 40 percent minimum 4-year cumulative asset growth threshold, so that their adjusted brokered deposit ratio would be greater than zero. A smaller percentage of institutions would actually have been charged a higher rate solely due to the adjusted brokered deposit ratio because the minimum or maximum initial rates applicable to Risk Category I would continue to apply to some institutions both before and after accounting for the effect of this ratio. Only 1.1 percent of Risk Category I institutions would have had an initial base assessment rate more than 1 basis point higher as a result of the adjusted brokered deposit ratio.[29]

Comments

The FDIC received many comments arguing that brokered deposits should not increase assessment rates for Risk Category I institutions and that the brokered deposit provisions in the NPR do not account for the use to which institutions put these deposits. The FDIC is not persuaded by the arguments. Recent data show that institutions with a combination of brokered deposit reliance and robust asset growth tend to

[28] The ratio of brokered deposits to domestic deposits and four-year asset growth rate would remain unrounded (to the extent of computer capabilities) when calculating the adjusted brokered deposit ratio. The adjusted brokered deposit ratio itself (expressed as a percentage) would be rounded to three digits after the decimal point prior to being used to calculate the assessment rate.

[29] These estimates do not exclude deposits that an institution receives through a deposit placement network on a reciprocal basis and, thus, might overstate the effects on assessment rates for some institutions.

have a greater concentration in higher risk assets. In addition, there is a statistically significant correlation between the adjusted brokered deposit ratio, on the one hand, and the probability that an institution will be downgraded to a CAMELS rating of 3, 4, or 5 within a year, on the other, independent of the other measures of asset quality contained in the financial ratios method.

The FDIC received several comments, including comments from several industry trade groups, arguing that institutions should be able to have a ratio of brokered deposits to domestic deposits greater than 10 percent without triggering the adjusted brokered deposit ratio and that the minimum asset growth rate required to trigger the adjusted brokered deposit ratio should be greater than 20 percent. The comments disputed the characterization of 20 percent cumulative asset growth over four years as ''rapid.'' One trade association noted that the proposed minimum growth rate (20 percent) was lower than the nominal GDP growth between third quarter 2004 and third quarter 2007.

The FDIC is persuaded in part. The final rule raises the minimum 4-year asset growth rate required to trigger the adjusted brokered deposit ratio from 20 percent to 40 percent. The final rule also increases from 40 percent to 70 percent the asset growth rate required to make an institution's adjusted brokered deposit ratio equal to its institution's ratio of brokered deposits to domestic deposits less the 10 percent threshold. Additional analysis has revealed that these growth rates are as predictive of downgrade probabilities as those originally proposed and are more consistent with the intent of the ratio, which was to capture only those institutions with rapid asset growth.

However, in the FDIC's view, a ratio of brokered deposits to domestic deposits greater than 10 percent is a significant amount of brokered deposits. Still, for institutions in Risk Category I, brokered deposits alone will not trigger higher rates, but must be combined with significant asset growth.

The FDIC received over 3,300 comment letters arguing that certain reciprocal deposits should not be included in the adjusted brokered deposit ratio.[30] Most of the comments were form letters. Commenters argued that these reciprocal deposits are a stable source of funding. According to the comments, most customers (83 percent) are not seeking the highest rate of interest available and choose to keep their deposit at the same institution when it matures. The commenters also argued that these deposits are local deposits and not out-of-market funds and stated that 80 percent of these deposits are placed with an insured institution within 25 miles of a branch location of the relationship bank. The commenters further argued that the interest rate on these deposits reflects that of local markets since the insured institution that originates the deposit sets the interest rate, rather than a third-party broker. Commenters also argued that these deposits may have franchise value in the event of a bank failure.

The FDIC is persuaded that reciprocal deposits like those described in the comment letters should not be included in the adjusted brokered deposit ratio applicable to institutions in Risk Category I.[31] (However, as discussed below, reciprocal deposits will be included in the brokered deposits adjustment applicable to institutions in Risk Categories II, III and IV.) The FDIC recognizes that reciprocal deposits may be a more stable source of funding for healthy banks than other types of brokered deposits and that they may not be as readily used to fund rapid asset growth.

The FDIC also received several comments arguing that brokered deposits that consist of balances swept into an insured institution by a nondepository institution, such as balances swept into an insured institution from a brokerage account at a broker-dealer, should be excluded from the adjusted brokered deposit ratio.[32] Commenters argued that these sweep accounts are stable, relationship-based accounts. Commenters also stated that the aggregate flows in and out of the sweep accounts tend to offset one another and are thus predictable. Some commenters differentiated between sweeps from affiliated brokerage firms and those from non-affiliated firms. These commenters argued that broker-dealer affiliated sweeps are not rate-sensitive accounts and are not designed to compete with the high rates of interest paid by other insured institutions and, therefore, do not raise the same concerns as other brokered deposits about the high cost of funding of risky banks. The commenters maintained that these accounts are typically used for idle investment funds or as a safe investment and are designed to better manage excess cash. Some commenters suggested that bankers would be willing to separately report sweep balances from an affiliated brokerage.

Some commenters supported excluding brokered deposits swept from *unaffiliated* brokerages through a sweep program, since the deposits have the characteristics of core deposits and are not driven by yield. According to the commenters, there is no price competition; deposits from unaffiliated brokerages are used for the convenience and safety of the customer.

The FDIC is not persuaded by these arguments. In the FDIC's view, deposits swept from broker-dealers can and have contributed to high rates of insured depository institution asset growth and, thus, fall squarely within the type of brokered deposits that the adjusted brokered deposit ratio was meant to capture. In addition, as noted in the NPR, many sweep programs can be structured so that swept balances are not brokered deposits.

Pricing Multipliers, the Uniform Amount, and the Range of Rates

The final rule contains a recalculated uniform amount and recalculated pricing multipliers for the weighted average CAMELS component rating and financial ratios. The uniform amount and pricing multipliers under the final rule adopted in 2006 were derived from a statistical estimate of the probability that an institution will be downgraded to CAMELS 3, 4 or 5 at its next examination using data from the end of the years 1984 to 2004.[33] These probabilities were then converted to pricing multipliers for each risk measure. The new pricing multipliers were derived using essentially the same statistical techniques, but based upon data from the end of the years 1988 to 2006.[34] The new pricing multipliers are set out in Table 7 below.

[30] When an institution receives a deposit through a network on a reciprocal basis, it must place the same amount (but owed to a different depositor) with another institution through the network. Many of the comment letters also argued that these reciprocal deposits should not be included in the brokered deposit adjustment applicable to institutions in Risk Categories II, III and IV. The brokered deposit adjustment applicable to these risk categories is discussed below.

[31] Excluding these deposits from the Call Report and TFR will require changes to these forms. The FDIC anticipates that the necessary changes will be made beginning with the June 30, 2009 reports of condition.

[32] Many of these comment letters also argued that these swept deposits should not be included in the brokered deposit adjustment applicable to institutions in Risk Categories II, III and IV. The brokered deposit adjustment for these risk categories is discussed below.

[33] Data on downgrades to CAMELS 3, 4 or 5 is from the years 1985 to 2005. The ''S'' component rating was first assigned in 1997. Because the statistical analysis relies on data from before 1997, the ''S'' component rating was excluded from the analysis.

[34] For the adjusted brokered deposit ratio, assets at the end of each year are compared to assets at

TABLE 7—NEW PRICING MULTIPLIERS—Continued

Risk measures *	Pricing multipliers **
Loans Past Due 30–89 Days/Gross Assets	0.575
Nonperforming Assets/Gross Assets	1.074
Net Loan Charge-Offs/Gross Assets	1.210
Net Income before Taxes/Risk-Weighted Assets	(0.764)
Adjusted brokered deposit ratio	0.065
Weighted Average CAMELS Component Rating	1.095

* Ratios are expressed as percentages.
** Multipliers are rounded to three decimal places.

To determine an institution's initial assessment rate under the base assessment rate schedule, each of these risk measures (that is, each institution's financial measures and weighted average CAMELS component rating) will continue to be multiplied by the corresponding pricing multipliers. The sum of these products will be added to a new uniform amount, 11.861.[35] The new uniform amount is also derived from the same statistical analysis.[36] As under the final rule adopted in 2006, no initial base assessment rate within Risk Category I will be less than the minimum initial base assessment rate applicable to the category or higher than the initial base maximum assessment rate applicable to the category. The final rule sets the initial minimum base assessment rate for Risk Category I at 12 basis points and the maximum initial base assessment rate for Risk Category I at 16 basis points.

To compute the values of the uniform amount and pricing multipliers shown above, the FDIC chose cutoff values for the predicted probabilities of downgrade such that, using June 30, 2008 Call Report and TFR data: (1) 25 percent of small institutions in Risk Category I (other than institutions less than 5 years old) would have been charged the minimum initial assessment rate; and (2) 15 percent of small institutions in Risk Category I (other than institutions less than 5 years old) would have been charged the maximum initial assessment rate.[37] These cutoff values will be used in future periods, which could lead to different percentages of institutions being charged the minimum and maximum rates.

In comparison, under the system in place on June 30, 2008: (1) Approximately 28 percent of small institutions in Risk Category I (other than institutions less than 5 years old) were charged the existing minimum assessment rate; and (2) approximately 19 percent of small institutions in Risk Category I (other than institutions less than 5 years old) were charged the existing maximum assessment rate based on June 30, 2008 data.[38]

Table 8 gives initial base assessment rates for three institutions with varying characteristics, given the new pricing multipliers above, using initial base assessment rates for institutions in Risk Category I of 12 basis points to 16 basis points.[39]

TABLE 8—INITIAL BASE ASSESSMENT RATES FOR THREE INSTITUTIONS *

A	B	C	D	E	F	G	H
			Institution 1		Institution 2		Institution 3
	Pricing multiplier	Risk measure value	Contribution to assessment rate	Risk measure value	Contribution to assessment rate	Risk measure value	Contribution to assessment rate
Uniform Amount	11.861		11.861		11.861		11.861
Tier 1 Leverage Ratio (%)	(0.056)	9.590	(0.537)	8.570	(0.480)	7.500	(0.420)
Loans Past Due 30–89 Days/Gross Assets (%)	0.575	0.400	0.230	0.600	0.345	1.000	0.575
Nonperforming Loans/Gross Assets (%)	1.074	0.200	0.215	0.400	0.430	1.500	1.611
Net Loan Charge-Offs/Gross Asset (%)	1.210	0.147	0.177	0.079	0.096	0.300	0.363
Net Income before Taxes/Risk-Weighted Assets (%)	(0.764)	2.500	(1.910)	1.951	(1.491)	0.518	(0.396)
Adjusted Brokered Deposit Ratio (%)	0.065	0.000	0.000	12.827	0.834	24.355	1.583
Weighted Average CAMELS Component Ratings	1.095	1.200	1.314	1.450	1.588	2.100	2.300
Sum of Contributions			11.35		13.18		17.48
Initial Base Assessment Rate			12.00		13.18		16.00

*Figures may not multiply or add to totals due to rounding.[40]

[35] Appendix A provides the derivation of the pricing multipliers and the uniform amount to be added to compute an assessment rate. The rate derived will be an annual rate, but will be determined every quarter.

[36] The uniform amount would be the same for all institutions in Risk Category I (other than large institutions that have long-term debt issuer ratings, insured branches of foreign banks and, beginning in 2010, new institutions).

[37] The cutoff value for the minimum assessment rate is a predicted probability of downgrade of approximately 2 percent. The cutoff value for the maximum assessment rate is approximately 15 percent.

[38] For the assessment period ending September 30, 2008, approximately 26 percent of small Risk Category I institutions (other than institutions less than 5 years old) were charged the minimum rate and approximately 23 percent were charged the maximum rate.

[39] These are the initial base rates for Risk Category I proposed below.

[40] Under the proposed rule, pricing multipliers, the uniform amount, and financial ratios will continue to be rounded to three digits after the decimal point. Resulting assessment rates will be rounded to the nearest one-hundredth (1/100th) of a basis point.

TABLE 8—INITIAL BASE ASSESSMENT RATES FOR THREE INSTITUTIONS *—Continued

A	B	C	D	E	F	G	H
			Institution 1		Institution 2		Institution 3
	Pricing multiplier	Risk measure value	Contribution to assessment rate	Risk measure value	Contribution to assessment rate	Risk measure value	Contribution to assessment rate
Initial Base Assessment Rate	.....	.....	12.00	.....	13.18	.....	16.00

*Figures may not multiply or add to totals due to rounding.[40]

The initial base assessment rate for an institution in the table is calculated by multiplying the pricing multipliers (Column B) by the risk measure values (Column C, E or G) to produce each measure's contribution to the assessment rate. The sum of the products (Column D, F or H) plus the uniform amount (the first item in Column D, F and H) yields the initial base assessment rate. For Institution 1 in the table, this sum actually equals 11.35 basis points, but the table reflects the initial base minimum assessment rate of 12 basis points. For Institution 3 in the table, the sum actually equals 17.48 basis points, but the table reflects the initial base maximum assessment rate of 16 basis points.

Under the final rule, the FDIC will continue to have the flexibility to update the pricing multipliers and the uniform amount annually, without further notice-and-comment rulemaking. In particular, the FDIC will be able to add data from each new year to its analysis and could, from time to time, exclude some earlier years from its analysis. Because the analysis will continue to use many earlier years' data as well, pricing multiplier changes from year to year should usually be relatively small.

On the other hand, as a result of the annual review and analysis, the FDIC may conclude, as it has in this rulemaking, that *additional or alternative* financial measures, ratios or other risk factors should be used to determine risk-based assessments or that a new method of differentiating for risk should be used. In any of these events, the FDIC would again make changes through notice-and-comment rulemaking.

Financial measures for any given quarter will continue to be calculated from the report of condition filed by each institution as of the last day of the quarter.[41] CAMELS component rating changes will continue to be effective as of the date that the rating change is transmitted to the institution for purposes of determining assessment rates for all institutions in Risk Category I.[42]

Comments

One industry trade group noted that some banks expressed a concern that the expanded range of rates for Risk Category I, particularly in combination with the proposed adjustment for secured liabilities (discussed below), could result in differences in rates among institutions that are too large compared to differences in risk. This could lead to some institutions bearing disproportionate costs and being competitively disadvantaged. However, another trade group expressed concerns that the range of rates for Risk Category I is too narrow, insufficiently reflecting differences in risk and creating a cross subsidy within the risk category.[43] The FDIC considers the 4-basis point range for the initial base assessment rate in Risk Category I to be appropriate.

IV. Risk Category I: Large Bank Method

For large Risk Category I institutions now subject to the debt ratings method, the final rule derives assessment rates from the financial ratios method as well as long-term debt issuer ratings and CAMELS component ratings. The new method is known as the large bank method. The rate using the financial ratios method is first converted from the range of initial base rates (12 to 16 basis points) to a scale from 1 to 3 (financial ratios score).[44] The financial ratios score is then given a 33⅓ percent weight in determining the large bank method assessment rate, as are both the weighted average CAMELS component rating and debt-agency ratings.

The weights of the CAMELS components remain the same as in the final rule adopted in 2006. The values assigned to the debt issuer ratings also remain the same. The weighted CAMELS components and debt issuer ratings will continue to be converted to a scale from 1 to 3.

The initial base assessment rate under the large bank method will be derived as follows: (1) An assessment rate computed using the financial ratios method will be converted to a financial ratios score; (2) the weighted average CAMELS rating, converted long-term debt issuer ratings, and the financial ratios score will each be multiplied by a pricing multiplier and the products summed; and (3) a uniform amount will be added to the result. The resulting initial base assessment rate will be subject to a minimum and a maximum assessment rate. The pricing multiplier for the weighted average CAMELS ratings, converted long-term debt issuer rating and financial ratios score is 1.692, and the uniform amount is 3.873.[45]

In recent periods, assessment rates for some large institutions have not responded in a timely manner to rapid changes in these institutions' financial conditions. For the assessment period ending June 30, 2008, under the assessment system then in place: (1) 45 percent of large institutions in Risk Category I (other than institutions less than 5 years old) were charged the minimum assessment rate (ignoring large bank adjustments), compared with 28 percent of small institutions; and (2) 11 percent of large institutions in Risk Category I (other than institutions less than 5 years old) were charged the maximum assessment rate (ignoring

[41] Reports of condition include Reports of Income and Condition and Thrift Financial Reports.

[42] Pursuant to existing supervisory practice, the FDIC does not assign a different component rating from that assigned by an institution's primary federal regulator, even if the FDIC disagrees with a CAMELS component rating assigned by an institution's primary federal regulator, unless: (1) The disagreement over the component rating also involves a disagreement over a CAMELS composite rating; and (2) the disagreement over the CAMELS composite rating is not a disagreement over whether the CAMELS composite rating should be a 1 or a 2. The FDIC has no plans to alter this practice.

[43] The same trade group argued that rates for Risk Categories III and IV should be higher than proposed.

[44] The assessment rate computed using the financial ratios method would be converted to a financial ratios score by first subtracting 10 from the financial ratios method assessment rate and then multiplying the result by one-half. For example, if an institution had an initial base assessment rate of 13, 10 would be subtracted from 13 and the result would be multiplied by one-half to produce a financial ratios score of 1.5.

[45] Appendix 1 provides the derivation of the pricing multipliers and the uniform amount.

large bank adjustments), compared with 19 percent of small institutions.[46] The FDIC's proposed values for pricing multipliers and the uniform amount are such that, using June 30, 2008, data, the percentages of large institutions in Risk Category I (other than new institutions less than 5 years old) that would have been charged the minimum and maximum initial base assessment rates would be the same as the percentages of small institutions that would have been charged these rates (25 percent at the minimum rate and 15 percent at the maximum rate).[47] [48] These cutoff values would be used in future periods, which could lead to different percentages of institutions being charged the minimum and maximum rates.

Under the final rule adopted in 2006, large institutions that lack a long-term debt issuer rating are assessed using the financial ratios method by itself, subject to the large bank adjustment. This will continue under the final rule.

Under the final rule, the initial base assessment rate for an institution with a weighted average CAMELS converted value of 1.70, a debt issuer ratings converted value of 1.65 and a financial ratios method assessment rate of 13.50 basis points would be computed as follows:

- The financial ratios method assessment rate less 10 basis points would be multiplied by one-half (calculated as (13.5 basis points—10 basis points) $\times$ 0.5) to produce a financial ratios score of 1.75.
- The weighted average CAMELS score, debt ratings score and financial ratios score will each be multiplied by 1.692 and summed (calculated as $1.70 \times 1.692 + 1.65 \times 1.692 + 1.75 \times 1.692$) to produce 8.629.
- A uniform amount of 3.873 would be added, resulting in an initial base assessment rate of 12.50 basis points.

The FDIC anticipates that incorporating the financial ratios score into the large bank method assessment rate will result in a more accurate distribution of initial assessment rates and in timelier assessment rate responses to changing risk profiles, while retaining the market and supervisory perspectives that debt and CAMELS ratings provide. While the number of potential discretionary adjustments under this revised large bank method cannot be known with certainty, the revised method should create a more accurate distribution of initial rates and, thus, should minimize the number of necessary discretionary adjustments.[49]

Comments

One trade group supported the proposal and specifically noted that the FDIC should move away from the debt rating method. Other comments, including comments from trade groups, argued that the proposed rule would make it harder for a large bank to be eligible for the lowest assessment rates. A commenting bank argued that:

> Structuring the rules with a goal to maintain parity between large and small banks would be in violation of [12 U.S.C. 1817(b)(2)(D)]. Arbitrarily establishing targets for percentages of institutions that fall into a given assessment rate is inconsistent with not only the governing statute but the whole concept of risk-based pricing. * * * The fact that, under objective criteria, large banks may have a greater percentage of institutions that qualify for the lowest rate is not an indication that the rule is flawed and needs to change, but may just be a factual representation of the strength of large banks.[50]

The FDIC disagrees with the commenting bank. The purpose of the new large bank method is to create an assessment system for large Risk Category I institutions that will respond more timely to changing risk profiles, will improve the accuracy of initial assessment rates, relative risk rankings, and will create a greater parity between small and large Risk Category I institutions. The recalibration of the percentages of large institutions that would have been charged the minimum and maximum rates applicable to Risk Category I is intended to better reflect the actual risk posed by large institutions. Under the debt ratings method, the percentage of large Risk Category I institutions that were charged the minimum assessment rate changed little over time despite deteriorating financial conditions. If the financial ratios method, which is based on a combination of objective financial ratios and supervisory ratings, were applied to large Risk Category I institutions, only about 19 percent would have been charged the minimum assessment rate. While the FDIC continues to believe that the financial ratios method alone does not adequately provide the appropriate risk ranking for large and complex institutions, the deterioration in financial ratios is highly indicative of rapidly changing risk profiles, which are not fully reflected in the debt ratings method on a timely basis.

Furthermore, 12 U.S.C. 1817(b)(2)(D) does not prohibit the FDIC from calibrating a risk-based assessment system so that, at a given point in time, an equal percentage of small and large institutions would have been charged the minimum assessment rate, provided that the risks posed were equal, as, in the FDIC's view, they were.

V. Adjustment for Large Institutions and Insured Branches of Foreign Banks in Risk Category I

Under the final rule adopted in 2006, within Risk Category I, large institutions and insured branches of foreign banks are subject to an assessment rate adjustment (the large bank adjustment). In determining whether to make such an adjustment for a large institution or an insured branch of a foreign bank, the FDIC may consider such information as financial performance and condition information, other market or supervisory information, potential loss severity, and stress considerations. Any large bank adjustment is limited to a change in assessment rate of up to 0.5 basis points higher or lower than the rate determined using the supervisory ratings and financial ratios method, the supervisory and debt ratings method, or the weighted average ROCA component rating method, whichever is applicable. Adjustments are meant to preserve consistency in the orderings of risk indicated by assessment rates, to ensure fairness among all large institutions, and to ensure that assessment rates take into account all available information that is relevant to the FDIC's risk-based assessment decision.

The final rule will increase the maximum possible large bank adjustment to one basis point. The adjustment will be made to an institution's initial base assessment rate before any other adjustments are made.

[46] For the assessment period ending September 30, 2008, under the assessment system then in place: (1) 41 percent of large institutions in Risk Category I (other than institutions less than 5 years old) were charged the minimum assessment rate (again ignoring large bank adjustments), compared with 26 percent of small institutions; and (2) 11 percent of large institutions in Risk Category I (other than institutions less than 5 years old) were charged the maximum assessment rate (ignoring large bank adjustments), compared with 23 percent of small institutions.

[47] The cutoff value for the minimum assessment rate is an average score of approximately 1.601. The cutoff value for the maximum assessment rate is approximately 2.389.

[48] A ''new'' institution, as defined in 12 CFR 327.8(l), is generally one that is less than 5 years old, but there are several exceptions, including, for example, an exception for certain otherwise new institutions in certain holding company structures. 12 CFR 327.9(d)(7). The calculation of percentages of small institutions, however, was determined strictly by excluding institutions less than 5 years old, rather than by using the definition of a ''new'' institution and its regulatory exceptions, since determination of whether an institution meets an exception to the definition of ''new'' requires a case-by-case investigation.

[49] The FDIC has issued additional Guidelines for Large Institutions and Insured Foreign Branches in Risk Category I (the large bank guidelines) governing these large bank adjustments. 72 FR 27122 (May 14, 2007).

[50] 12 U.S.C. 1817(b)(2)(D) provides that, ''No insured depository institution shall be barred from the lowest-risk category solely because of size.''

The adjustment cannot: (1) Decrease any rate so that the resulting rate would be less than the minimum initial base assessment rate; or (2) increase any rate above the maximum initial base assessment rate.

The FDIC is amending the maximum size of the adjustment for two primary reasons. First, under the final rule adopted in 2006, the difference between the minimum and maximum base assessment rates in Risk Category I is two basis points. The maximum one-half basis point large bank adjustment represents 25 percent of the difference between the minimum and maximum rates. While an adjustment of this size is generally sufficient to preserve consistency in the orderings of risk indicated by assessment rates and to ensure fairness, there have been circumstances where more than a half a basis point adjustment would have been warranted. The difference between the minimum and maximum base assessment rates will increase from two basis points to four basis points under the final rule. A half basis point large bank adjustment would represent only 12.5 percent of the difference between the minimum and maximum rates and would not be sufficient to preserve consistency in the orderings of risk indicated by assessment rates or to ensure fairness. The increase in the maximum possible large bank adjustment will continue to represent 25 percent of the difference between the minimum and maximum rates, minimizing the potential number of instances where the large bank adjustment is insufficient to fully and accurately reflect the risk that an institution poses.

The purpose of the large bank adjustment is to improve the relative risk ranking of large Risk Category I institutions with respect to their initial assessment rates, not total assessment rates. The FDIC expects that, under the final rule, large bank adjustments will continue to be made infrequently and for a limited number of institutions.[51] The FDIC's view is that the use of supervisory ratings, financial ratios and agency ratings (when available) will sufficiently reflect the risk profile and rank orderings of risk in large Risk Category I institutions in most (but not all) cases.

The FDIC expects to further clarify its *Assessment Rate Adjustment Guidelines for Large Institutions and Insured Foreign Branches in Risk Category I* (the Guidelines).[52] The Guidelines will discuss in detail the quantitative and qualitative factors that the FDIC will rely upon when deciding whether to make a large bank adjustment. Until then, the Guidelines will be applied taking into account the changes resulting from this rulemaking.

Comments

An industry trade group and a bank objected to the increase in the large bank adjustment, arguing that the adjustment is arbitrary and subjective. The FDIC disagrees. The large bank method appropriately recognizes the need for subjective, expert judgment-based risk assessments for large banks. Because large institutions are usually complex and often have unique operations, an entirely formulaic approach, while objective, has yielded a distribution of assessment rates that is not sufficiently reflective of the risk. When the FDIC decides to increase or decrease a large institution's assessment rate based upon the large bank adjustment, it does so after reviewing a large set of financial and performance data in addition to making qualitative assessments. While the decision to apply an adjustment cannot be reduced to a formula, the set of data that the FDIC reviews is consistent from one institution to the next and the FDIC strives to make its decisions based on the data as consistent as possible and the reasons for the decisions as clear as possible for the institutions affected. As stated above, the FDIC intends to publish revised Guidelines to further clarify the large bank adjustment process.

Despite the existence of a long-established appeals process for assessment rates, one industry trade group stated that ''[B]ankers felt that they were not allowed to effectively challenge the adjustments through the FDIC's appeals process.'' The FDIC notes, however, that no institution has yet appealed an adjustment (or the lack thereof) to the Assessment Appeals Committee.[53]

VI. Adjustment for Unsecured Debt for all Risk Categories

Under the final rule, an institution's base assessment rate (after making any large bank adjustment) will be reduced from the initial rate using the institution's ratio of long-term unsecured debt (and, for small institutions, certain amounts of Tier 1 capital) to domestic deposits.[54] Any decrease in base assessment rates as a result of this unsecured debt adjustment will be limited to five basis points (rather than two basis points as proposed in the NPR). Unsecured debt will not include any senior unsecured debt that the FDIC has guaranteed under the Temporary Liquidity Guarantee Program.

The unsecured debt adjustment will be determined by multiplying an institution's long-term unsecured debt (plus, if the institution is a small institution, ''qualified'' amounts of Tier 1 capital as explained below) as a percentage of domestic deposits by 40 basis points (rather than 20 basis points as proposed in the NPR). For example, an institution with a ratio of long-term unsecured debt (plus, if the institution is small, qualified amounts of Tier 1 capital) to domestic deposits of 3.0 percent will see its initial base assessment rate reduced by 1.20 basis points (calculated as 40 basis points × 0.03). An institution with a ratio of long-term unsecured debt (plus, if the institution is small, qualified amounts of Tier 1 capital) to domestic deposits of 13.0 percent will have its assessment rate reduced by five basis points, since the maximum possible reduction will be five basis points. (40 basis points × 0.13 = 5.20 basis points, which exceeds the maximum possible reduction.)

For a small institution, the amount of qualified Tier 1 capital that will be added to long-term unsecured debt will be a portion of the amount of Tier 1 capital that exceeds a ratio of Tier 1 capital to adjusted average assets of 5.0%.[55] The percentage of Tier 1 capital that is qualified increases as the amount of Tier 1 capital held by a small institution increases. The qualified amount is set forth in Table 9.

[51] In the seven quarters for which institutions have been assessed since the 2006 assessment rule went into effect, the total number of adjustments in any one quarter has ranged from 2 to 16. For the third quarter of 2008, the FDIC continued or implemented assessment rate adjustments for 16 large Risk Category I institutions, 14 to increase an institution's assessment rate, and 2 to decrease an institution's assessment rate. Additionally, the FDIC sent 2 institutions advance notification of a potential upward adjustment in their assessment rate.

[52] 72 FR 27,122 (May 14, 2007).

[53] Only one institution has requested review of its assessment rate; it asked for an adjustment when the FDIC had not given one. However, this institution did not appeal the denial of its request for review to the Assessment Appeals Committee. The FDIC has also received 9 responses to the 29 advance notices of intent to increase an assessment rate using the large bank adjustment that the FDIC has sent out.

[54] For this purpose, an institution would be ''small'' if it met the definition of a small institution in 12 CFR 327.8(g)—generally, an institution with less than $10 billion in assets—except that it would not include an institution that would otherwise meet the definition for which the FDIC had granted a request to be treated as a large institution pursuant to 12 CFR 327.9(d)(6).

[55] Adjusted average assets will be used for Call Report filers; adjusted total assets will be used for TFR filers.

TABLE 9—AMOUNT OF QUALIFIED TIER 1 CAPITAL

Range of Tier 1 capital to adjusted average assets	Amount of Tier 1 capital within range which is qualified (percent)
≤ 5%	0
> 5% and ≤ 6%	10
> 6% and ≤ 7%	20
> 7% and ≤ 8%	30
> 8% and ≤ 9%	40
> 9% and ≤ 10%	50
> 10% and ≤ 11%	60
> 11% and ≤ 12%	70
> 12% and ≤ 13%	80
> 13% and ≤ 14%	90
> 14%	100

The amount of qualified Tier 1 capital within each of the ranges is summed to determine the total amount of qualified Tier 1 capital for this institution. The sum of qualified Tier 1 capital and long-term unsecured debt as a percentage of domestic deposits will be multiplied by 40 basis points to produce the unsecured debt adjustment.[56]

To illustrate the calculation of qualified Tier 1 capital, consider a small institution with a Tier 1 leverage ratio of 20.0 percent and Tier 1 capital of $2.0 million. The amount of qualified Tier 1 capital is illustrated in Table 10.

TABLE 10—EXAMPLE OF QUALIFIED TIER 1 CAPITAL FOR THE UNSECURED DEBT ADJUSTMENT

Leverage ratio band	Tier 1 capital within band ($000)	×	Qualified percentage of Tier 1 capital (percent)	=	Qualified Tier 1 capital ($000)
0–5%	500		0		0
5%–6%	100		10		10
6%–7%	100		20		20
7%–8%	100		30		30
8%–9%	100		40		40
9%–10%	100		50		50
10%–11%	100		60		60
11%–12%	100		70		70
12%–13%	100		80		80
13%–14%	100		90		90
> 14%	600		100		600
Total	2,000				1,050

As can be seen in Table 10, each band of the Tier 1 leverage ratio (up to the last band) contains $100,000 in Tier 1 capital and the qualified percentage increases linearly until it reaches 100 percent for amounts over 14.0 percent. The total qualified Tier 1 capital for this small institution is $1.05 million, which will be added to any long-term unsecured debt to calculate the institution's unsecured debt adjustment.

The final rule includes more Tier 1 capital in qualified Tier 1 capital than proposed in the NPR. The NPR proposed including the sum of one-half of the amount of Tier 1 capital between 10 percent and 15 percent of adjusted average assets and the full amount of Tier 1 capital exceeding 15 percent of adjusted average assets. The FDIC has concluded, based in part on comments, that the proposal did not give small institutions sufficient credit for Tier 1 capital.

Ratios for any given quarter will be calculated from the report of condition filed by each institution as of the last day of the quarter.

Unsecured debt will consist of senior unsecured liabilities and subordinated debt. A senior unsecured liability is defined as the unsecured portion of other borrowed money.[57] Subordinated debt is defined in the report of condition for the reporting period.[58] Long-term unsecured debt is defined as unsecured debt with at least one year remaining until maturity. However, unsecured debt will not include any debt that the FDIC has guaranteed pursuant to the Temporary Liquidity Guarantee Program, since this kind of debt will not decrease FDIC losses in the event an institution fails.

At present, institutions separately report neither long-term senior unsecured liabilities nor long-term subordinated debt in the report of condition. In a separate notice of proposed rulemaking, the Federal Financial Institution Examination Council has proposed revising the Call Report to report separately long-term senior unsecured liabilities and subordinated debt that meet this definition. The Office of Thrift Supervision (OTS) has also published a

[56] The percentage of qualified Tier 1 capital and long-term unsecured debt to domestic deposits will remain unrounded (to the extent of computer capabilities). The unsecured debt adjustment will be rounded to two digits after the decimal point prior to being applied to the base assessment rate. Appendix 2 describes the unsecured debt adjustment for a small institution mathematically.

[57] Other borrowed money is reported on the Call Report in Schedule RC, item 16 and on the Thrift Financial Report as the sum of items SC720, SC740, and SC760.

[58] The definition of ''subordinated debt'' in the Call Report is contained in the Glossary under ''Subordinated Notes and Debentures.'' For the June 30, 2008 Call Report, the definition read, in pertinent part, as follows:

Subordinated Notes and Debentures: A subordinated note or debenture is a form of debt issued by a bank or a consolidated subsidiary. When issued by a bank, a subordinated note or debenture is not insured by a federal agency, is subordinated to the claims of depositors, and has an original weighted average maturity of five years or more. Such debt shall be issued by a bank with the approval of, or under the rules and regulations of, the appropriate federal bank supervisory agency. * * *

When issued by a subsidiary, a note or debenture may or may not be explicitly subordinated to the deposits of the parent bank. * * *

For purposes of the final rule, subordinated debt would also include limited-life preferred stock as defined in the report of condition for the reporting period. The definition of ''limited-life preferred stock'' in the Call Report is contained in the Glossary under ''Preferred Stock.'' For the June 30, 2008 Call Report, the definition read, in pertinent part, as follows:

Limited-life preferred stock is preferred stock that has a stated maturity date or that can be redeemed at the option of the holder. It excludes those issues of preferred stock that automatically convert into perpetual preferred stock or common stock at a stated date.

notice of proposed rulemaking that would adopt similar reporting requirements. The FDIC anticipates that these revisions will be made beginning with the June 30, 2009 Call Report and TFR. However, if they are not, until banks separately report these amounts in the Call Report, the FDIC will use subordinated debt included in Tier 2 capital and will not include any amount of senior unsecured liabilities. These adjustments will also be made for TFR filers until thrifts separately report these amounts in the TFR.

At present, institutions also do not report debt that the FDIC has guaranteed pursuant to the Temporary Liquidity Guarantee Program.[59] The FDIC is pursuing the necessary changes to the Call Report and TFR to ensure that these amounts are excluded from the separate report of long-term senior unsecured liabilities and subordinated debt beginning with the June 30, 2009 Call Report and TFR.

When an institution fails, holders of unsecured claims, including subordinated debt, receive distributions from the receivership estate only if all secured claims, administrative claims and deposit claims have been paid in full. Consequently, greater amounts of long-term unsecured claims provide a cushion that can reduce the FDIC's loss in the event of failure.

For small institutions (but not large ones), the unsecured debt adjustment includes a portion of Tier 1 capital for two primary reasons. First, cost concerns and lack of demand generally make it difficult for small institutions to issue unsecured debt in the market. For reasons of fairness, the FDIC believes that small institutions that have large amounts of Tier 1 capital should receive an equivalent benefit for that capital. Second, the FDIC does not want to create an incentive for small institutions to convert existing Tier 1 capital into subordinated debt, for example, by having a shareholder in a closely held corporation redeem shares and receive subordinated debt.

Comments

The FDIC received several comments on the proposed unsecured debt adjustment. One commenter found the proposal fair and appropriate.

Another commenter, however, claimed that the proposal would penalize institutions that do not issue long-term unsecured debt. A commenter recommended that the FDIC abandon the separate risk adjustment for unsecured debt. A commenter argued that the proposal uses arbitrary measures when adjusting for risk and ignores the probability of default. The FDIC disagrees with these comments. As noted earlier, greater amounts of long-term unsecured debt provide a cushion that can reduce the FDIC's loss in the event of failure, thus reducing the FDIC's risk.

The FDIC specifically sought comments on the size of the unsecured debt adjustment and whether it should be larger or smaller. Several commenters argued that the proposed two basis point reduction in base assessment rates, which was the maximum reduction possible under the proposal, was arbitrary and too low. Some also argued that the proposed 20 basis point multiplier should be increased. Several noted that the maximum proposed unsecured debt adjustment was much smaller than the maximum proposed secured liability adjustment.

The FDIC has concluded that the proposed 20 basis point multiplier and two basis point maximum reduction were too small. Spreads on depository institution unsecured debt have, on average, approximately doubled since the NPR was published. The FDIC has, therefore, doubled the size of the multiplier, partly to reflect the recent increase in debt spreads and partly to create greater parity between the size of the unsecured debt adjustment and the size of the secured liability adjustment. The FDIC has more than doubled the maximum possible unsecured debt adjustment to ensure that institutions will retain an incentive to issue unsecured debt and, again, to create greater parity between the unsecured debt adjustment and the secured liability adjustment.

Under the final rule, the FDIC estimates that the reduction in industry average assessments arising from the unsecured debt adjustment will exceed the industry average increase in assessments arising from the secured liability adjustment and (for Risk Categories II, III, and IV) the brokered deposit adjustment.

An industry trade group recommended that the unsecured debt adjustment for small institutions include larger amounts of Tier 1 capital. The trade group argued that small institutions should be rewarded for their additional capital and that the proposal did not sufficiently reward them. The trade group suggested that the adjustment include the sum of one-half of the amount of Tier 1 capital between 8 percent and 12 percent of adjusted average assets and the full amount of Tier 1 capital exceeding 12 percent of adjusted average assets. The FDIC agrees that small institutions should receive more credit for Tier 1 capital and, and discussed above, has so provided in the final rule.

Another industry trade group suggested that institutions subject to the large bank method should also be given credit for capital in the unsecured debt adjustment. However, in the FDIC's view, doing so would undo the one of the purposes of including a portion of Tier 1 capital in the unsecured debt adjustment for small banks, which was to give small banks, which generally do not (and generally cannot) issue much unsecured debt, a benefit equivalent to that of large banks. If a large institution's assessment rate does not appropriately factor its capital, the FDIC can use the large bank adjustment to alter the rate (although the FDIC anticipates that the need to do so will seldom arise).

Some comments suggested that the FDIC include all unsecured and subordinated debt in the unsecured debt adjustment, regardless of maturity. One suggested using all unencumbered assets. The FDIC disagrees. Short-term debt is likely to be paid prior to failure and, thus, is unlikely to provide a cushion against FDIC losses.

Some commenters argued that it would be more appropriate to use a ratio of long-term unsecured debt (or unencumbered debt) to *insured* deposits, since insured deposits are the true proxy for the FDIC's risk. The FDIC disagrees. Numerous studies have shown that, as an institution approaches failure, uninsured depositors tend to demand payment. In effect, these uninsured depositors receive full payment on their claims (as if they were insured depositors at failure), leaving the failed institution with fewer assets to satisfy the FDIC's claims.

VII. Adjustment for Secured Liabilities for All Risk Categories

Under the final rule, an institution's base assessment rate may increase depending upon its ratio of secured liabilities to domestic deposits (the secured liability adjustment). An institution's ratio of secured liabilities to domestic deposits, if greater than 25 percent (rather than 15 percent as proposed in the NPR), will increase its assessment rate, but the resulting base assessment rate after any such increase will be no more than 50 percent greater

[59] Institutions report this debt to the FDIC shortly after issuing it and also file monthly reports on the amount of this debt outstanding as of the end of each month. However, neither of these reports contains all of the information the FDIC needs to deduct this debt from the unsecured debt adjustment, since neither uses the definition of ''unsecured debt'' contained in the text. In addition, the monthly report does not contain maturity information.

than it was before the adjustment. The secured liability adjustment will be made after any large bank adjustment or unsecured debt adjustment.

Specifically, for an institution that has a ratio of secured liabilities to domestic deposits of greater than 25 percent, the secured liability adjustment will be the institution's base assessment rate (after taking into account previous adjustments) multiplied by the ratio of its secured liabilities to domestic deposits minus 0.25. However, the resulting adjustment cannot be more than 50 percent of the institution's base assessment rate (after taking into account previous adjustments). For example, if an institution had a ratio of secured liabilities to domestic deposits of 35 percent, and a base assessment rate before the secured liability adjustment of 14 basis points, the secured liability adjustment would be the base rate multiplied by 0.10 (calculated as 0.35 − 0.25), resulting in an adjustment of 1.4 basis points. However, if the institution had a ratio of secured liabilities to domestic deposits of 80 percent, its base rate before the secured liability adjustment of 14 basis points would be multiplied by 0.50 rather than 0.55 (calculated as 0.80 − 0.25), since the resulting adjustment can be no greater than 50 percent of the base assessment rate before the secured liability adjustment.[60]

Ratios of secured liabilities to domestic deposits for any given quarter will be calculated from the report of condition filed by each institution as of the last day of the quarter. For banks, secured liabilities include Federal Home Loan Bank advances, securities sold under repurchase agreements, secured Federal funds purchased and ''other secured borrowings,'' as reported in banks' quarterly Call Reports. Thrifts also report Federal Home Loan Bank advances in their quarterly TFR, but, at present, do not separately report securities sold under repurchase agreements, secured Federal funds purchased or ''other secured borrowings.'' The OTS has published a notice of proposed rulemaking to revise the TFR so that thrifts will separately report these items and the FDIC anticipates that this revision will be effective for the June 30, 2009 TFR. Until the TFR is revised, however, any of these secured amounts not reported separately from unsecured or other liabilities by a thrift in its TFR will be imputed based on simple averages for Call Report filers as of June 30, 2008. As of that date, on average, 63.0 percent of the sum of Federal funds purchased and securities sold under repurchase agreements reported by Call Report filers were secured, and 49.4 percent of other borrowings were secured.

Under the final rule adopted in 2006, an institution's secured liabilities do not directly affect its assessments. The exclusion of secured liabilities can lead to inequity. An institution with secured liabilities in place of another's deposits pays a smaller deposit insurance assessment, even if both pose the same risk of failure and would cause the same losses to the FDIC in the event of failure.

To illustrate with a simple example, assume that Bank A has $100 million in insured deposits, while Bank B has $50 million in insured deposits and $50 million in secured liabilities. Each poses the same risk of failure and is charged the same assessment rate. At failure, each has assets with a market value of $80 million. The loss to the DIF would be identical for Bank A and Bank B ($20 million each). The total assessments paid by Bank A and Bank B, however, would not be identical. Because secured liabilities do not figure into an institution's assessment under the final rule adopted in 2006, the DIF would receive twice as much assessment revenue from Bank A as from Bank B over a given period (despite identical FDIC losses at failure).

In general, under the final rule adopted in 2006, substituting secured liabilities for unsecured liabilities (including subordinated debt) raises the FDIC's loss in the event of failure without providing increased assessment revenue. Substituting secured liabilities for deposits can also lower an institution's franchise value in the event of failure, which increases the FDIC's losses, all else equal.[61]

Comments

The vast majority of commenters were opposed to the secured liability adjustment. The few commenters that supported the FDIC's proposal called the secured liability adjustment fair and appropriate, and viewed the logic for the increased charge as clear and compelling. One of the supportive commenters stated that core deposits are more advantageous to an institution than secured liabilities, as they are cheaper and allow cross-selling of products. As a result, prudent institutions show a preference for core funding. The commenter found the proposed threshold to be reasonable.

Many of the commenters opposed to the adjustment suggested that the NPR gave too much weight to risk adjustments based on arbitrary measures, and ignored the probability of default. Commenters argued that the true risk of a bank lies in the quality of its assets, rather than how the assets are funded. Some noted that the presence of unsecured liabilities (as opposed to secured liabilities) is no guarantee of the quality of a bank's assets or that the assets would be sufficient to cover a bank's deposit liabilities in case of bank failure. Commenters believe that the FDIC should abandon the proposed approach of targeting certain funding sources.

Some commenters argued that the proposed secured liability adjustment appears to run contrary to established programs that have implied government support, including borrowings from the Federal Reserve through the Term Auction Facility. Commenters viewed the secured liability adjustment as unfair to institutions that have limited options for funding.

Many of the comments (over 1,100) were particularly concerned about the effect the FDIC's proposal would have on Federal Home Loan Bank (FHLB) advances. Commenters argued that FHLB advances are a stable, reliable source of liquidity, and a key tool for asset/liability management, interest rate risk and net interest margin maintenance. Many commenters suggested that the secured liability adjustment was counterproductive since banks benefit from FHLB dividend income. Many commenters cautioned that deterring the use of FHLB advances (and other secured liabilities) will lead to increased use of riskier funding sources, higher funding costs, and decreased lending. Most of the commenters viewed the proposal as unfairly penalizing institutions that use FHLB advances prudently. Several commenters suggested that FHLB advances should be excluded from any secured liability adjustment for at least five years since some FHLB advances do not mature before the effective date of the proposal.

Many commenters argued against the proposal because they believe it would impair the mission of the FHLB system. The commenters asserted that because the proposal discourages the use of FHLB advances, it would lead to a decline in FHLB earnings. Commenters representing community service groups

[60] Under the final rule, the ratio of secured liabilities to domestic deposits will be rounded to three digits after the decimal point. The resulting amount and adjusted assessment rate will be rounded to the nearest one-hundredth (1/100th) of a basis point.

[61] Overall, whether substituting secured liabilities for deposits increases, decreases, or leaves unchanged the FDIC's loss given failure also depends on how the substitution affects the proportion of insured and uninsured deposits, but FDIC's assessment revenue will always decline with a substitution.

expressed concern that any decline in FHLB earnings would undermine FHLB contributions to community down payment and closing cost assistance programs, community investment programs, affordable housing programs, and foreclosure prevention programs. Commenters also noted that FHLBs already regulate the use of their advances.

Commenters also noted the effect the proposal would have on the use of repurchase agreements (repos). Many commenters argued that repos are a safe and effective source to manage liquidity. Others remarked that repos are an important tool used to attract commercial deposits, which can neither be secured nor bear interest. One commenter suggested that the definition of secured liabilities used in the proposal, exclude repos with state and local governments where the securities sold are federal government or agency securities. In addition, the commenter expressed concern that the proposal would put banks at a competitive disadvantage to non-depository institutions.

Commenters also expressed concern that the proposed secured liability adjustment would harm the covered bond market at a time when additional sources of mortgage funding are needed and when bank regulatory agencies have supported development of this market.

Many commenters argued that the 15 percent threshold is arbitrary and simplistic. One commenter suggested raising the threshold to 30 percent. Some comments suggested adjusting the threshold by subtracting the balance that is secured by agency bonds or investment grade securities or by subtracting long-term advances. Other commenters recommended eliminating the secured liability adjustment if the bank has capital above a certain amount.

The FDIC remains generally unpersuaded by these comments, which do not respond to the reasons for the secured liability adjustment. The FDIC has not argued that secured liability funding makes a bank more likely to fail. Rather, as noted above, the primary purpose of the secured liability adjustment is to remedy an inequity. An institution with secured liabilities in place of another's deposits pays a smaller deposit insurance assessment, even if both pose the same risk of failure and would cause the same losses to the FDIC in the event of failure. This result is not fair to institutions that do not rely heavily on secured funding. Substituting secured liabilities for deposits can also lower an institution's franchise value in the event of failure, which increases the FDIC's losses, all else equal. A risk-based system should take this likelihood into account. These arguments apply equally whether an institution's secured liabilities consist of FHLB advances, repurchase agreements or other forms of secured borrowing.

The FDIC intended the secured liability adjustment to apply only to those institutions that rely heavily on secured funding. The revenue loss to the DIF is relatively small until reliance on secured funding becomes significant. To ensure that the adjustment applies only to those institutions that rely heavily on secured funding and impose a significant revenue loss on the DIF, the final rule raises the ratio of secured liabilities to domestic deposits that will trigger the adjustment to 25 percent. As Table 11 demonstrates, as of September 30, 2008, only 10 percent of insured institutions would have had a secured liability adjustment and only 5 percent would have had an increase in assessment rate of greater than 10 percent. Consequently, the adjustment should have no effect on funding choices for the vast majority of institutions and is unlikely to have a significant overall effect on secured borrowing, the FHLB system, affordable housing or foreclosure prevention.

TABLE 11—PERCENTAGE OF INSTITUTIONS SUBJECT TO THE SECURED LIABILITY ADJUSTMENT USING DIFFERENT THRESHOLDS

[As of September 30, 2008]

	Minimum ratio of secured liabilities to domestic	
	15%	25%
Percentage of all institutions that would have been subject to the secured liability adjustment	24%	10%
Percentage of all institutions that would have had more than a 10% increase in assessment rate due to the secured liability adjustment	10%	5%

Some commenters noted that many states require that banks collateralize any public funds they have on deposit; since public funds pose no additional risk to the DIF, banks should not be penalized by the secured liability adjustment when pledging collateral for the public funds. The FDIC agrees. The FDIC did not, and did not intend to, include collateralized public funds among secured liabilities for purposes of the adjustment. For purposes of the secured liability adjustment, deposits, regardless of whether they are collateralized, are not considered a secured liability.

Many comments focused on the timing of the proposal. Most commenters noted that discouraging alternate funding sources would hurt bank liquidity and tighten credit availability, which is inconsistent with market realities in the current economic downturn. Comments on the general timing of the proposal suggested that it should be delayed until at least the beginning of 2010; others commented that a phase-in schedule for the secured liability adjustment should be used. Commenters thought that a delay in the proposal would decrease the likelihood that the secured liability adjustment would conflict with other policy measures currently being used to increase liquidity. Additionally, commenters asserted that the proposal does not give institutions an opportunity to adjust their funding mix to account for the new assessment rate structure.

In the FDIC's view, the secured liability adjustment will not have any material effect on liquidity and will not conflict with other measures intended to increase liquidity. As noted above, the secured liability adjustment will affect only about 10 percent of the industry and will cause more than a 10 percent increase in assessment rates for only about 5 percent of the industry. The FDIC also sees no reason to delay implementation to allow institutions to adjust their funding mix. The NPR was published in October 2008 and the secured liability adjustment will be based upon data submitted as of June 30, 2009, which allows institutions over eight months to adjust their funding mix.

Some commenters were concerned that the proposed secured liability adjustment would result in sharp increases in assessments when amendments take effect to the Statement of Financial Accounting Standards No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities (FAS 140) in 2010. FAS 140 will require banks to report assets in special-purpose vehicles and variable-interest entities, which often include securitized assets, on their balance sheets. These assets are presently accounted for off-balance sheet. As a result, commenters argue that the adoption of both FAS 140 and the proposed secured liability adjustment would result in an unintended increase in assessments to certain insured institutions.

FAS 140 has not yet been adopted. As proposed, it would not take effect until 2010. If and when FAS 140 is adopted in final form, the FDIC can then consider whether the secured liability adjustment needs to be modified.

VIII. Adjustment for Brokered Deposits for Risk Categories II, III and IV

In addition to the unsecured debt adjustment and the secured liability adjustment, the final rule states that an institution in Risk Category II, III, or IV will also be subject to an assessment rate adjustment for brokered deposits (the brokered deposit adjustment). This adjustment will be limited to those institutions whose ratio of brokered deposits to domestic deposits is greater than 10 percent; asset growth rates will not affect the adjustment. The adjustment will be determined by multiplying 25 basis points times the difference between an institution's ratio of brokered deposits to domestic deposits and 0.10.[62] However, the adjustment will never be more than 10 basis points. The adjustment will be added to the base assessment rate after all other adjustments had been made. Ratios for any given quarter will be calculated from the Call Reports or TFRs filed by each institution as of the last day of the quarter.

Significant reliance on brokered deposits tends to increase an institution's risk profile, particularly as the institution's financial condition weakens. Insured institutions—particularly weaker ones—typically pay higher rates of interest on brokered deposits. When an institution becomes noticeably weaker or its capital declines, the market or statutory restrictions may limit its ability to attract, renew or roll over these deposits, which can create significant liquidity challenges.[63]

Also, significant reliance on brokered deposits tends to decrease greatly the franchise value of a failed institution. In a typical failure, the FDIC seeks to find a buyer for a failed institution's branches among the institutions located in or around the service area of the failed institution. A potential buyer usually seeks to increase its market share in the service area of the failed institution through the acquisition of the failed institution and its assets and deposits, but most brokered deposits originate from outside an institution's market area. The more core deposits that the buyer can obtain through the acquisition of the failed institution, the greater the market share of deposits (and the loans and other products that typically follow the core deposits) it can capture. Furthermore, brokered deposits may not be part of many potential buyers' business plans, limiting the field of buyers. Thus, the lower franchise value of the failed institution created by its reliance on brokered deposits leads to a lower price for the failed institution, which increases the FDIC's losses upon failure.

In addition, as noted earlier, several institutions that have recently failed have experienced rapid asset growth before failure and have funded this growth through brokered deposits. The FDIC believes that these reasons warrant the additional charge for significant levels of brokered deposits.

The brokered deposit adjustment, unlike the adjusted brokered deposit ratio applicable to Risk Category I, will include *all* brokered deposits as defined in Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f), and implemented by 12 CFR 337.6, which is the definition used in banks' quarterly Reports of Condition and Income (Call Reports) and thrifts' quarterly Thrift Financial Reports (TFRs), above 10 percent of an institution's assets. The adjustment will include reciprocal deposits, as well as brokered deposits that consist of balances swept into an insured institution by another institution, such as balances swept from a brokerage account.

The statutory restrictions on accepting, renewing or rolling over brokered deposits when an institution becomes less than well capitalized apply to *all* brokered deposits, including reciprocal deposits. Market restrictions may also apply to these reciprocal deposits when an institution's condition declines. For these reasons, the final rule includes these reciprocal brokered deposits in the brokered deposit adjustment.

To illustrate the brokered deposit adjustment with a simple example, take a Risk Category II institution with an initial base assessment rate of 22 basis points and a ratio of brokered deposits to domestic deposits of 40 percent. Multiplying 25 basis points times the difference between the institution's ratio of brokered deposits to domestic deposits and 10 percent yields 7.5 basis points (calculated as 25 basis points · (0.4 − 0.1)). Because this amount is less than the maximum possible brokered deposit adjustment of 10 basis points, the brokered deposit adjustment will be as calculated, 7.5 basis points. Assuming that the secured liability adjustment for this institution is 2 basis points and that the institution has no other assessment rate adjustments, the total base assessment rate will be 31.5 basis points (calculated as (22 basis points + 2 basis points + 7.5 basis points)).

Comments

Most of the comments on the proposed adjusted brokered deposit ratio (applicable to Risk Category I) also applied to the proposed brokered deposit adjustment (applicable to the other risk categories). The FDIC's response to these comments is as set out in the discussion of the comments on the adjusted brokered deposit ratio, with one major exception. The FDIC has decided to include reciprocal deposits in the brokered deposit adjustment, unlike the adjusted brokered deposit ratio, applicable to Risk Category I, which excludes them. When an institution's condition declines and it falls out of Risk Category I, the statutory and market restrictions on brokered deposits become much more relevant. Even if such an institution remains well capitalized (and the statutory restrictions do not apply), the risk that an institution will become less than well capitalized has increased. These statutory restrictions can cause severe liquidity problems for institutions that rely heavily on brokered deposits. For this reason, the FDIC has decided to include all brokered deposits above 10 percent of an institution's assets in the brokered deposit adjustment.

[62] Under the final rule, the ratio of brokered deposits to domestic deposits will be rounded to three digits after the decimal point. The resulting brokered deposit charge will be rounded to the nearest one-hundredth (1/100th) of a basis point.

[63] An adequately capitalized institution can accept, renew and rollover brokered deposits only by obtaining a waiver from the FDIC. Even then, interest rate restrictions apply. An undercapitalized institution may not accept, renew or rollover brokered deposits at all. Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f).

IX. Insured Branches of Foreign Banks

Because base assessment rates will be higher and the difference between the minimum and maximum initial base assessment rates will increase from two to four basis points under the final rule, the FDIC is making a conforming change for insured branches of foreign banks in Risk Category I. Under the final rule, an insured branch of a foreign bank's weighted average of ROCA component ratings will be multiplied by 5.076 (which will be the pricing multiplier) and 3.873 (which will be a uniform amount for all insured branches of foreign banks) will be added to the product.[64] The resulting sum will equal a Risk Category I insured branch of a foreign bank's initial base assessment rate, provided that the amount cannot be less than the minimum initial base assessment rate or greater than the maximum initial assessment rate. A Risk Category I insured branch of a foreign bank's initial base assessment rate will be subject to any large bank adjustment, but total base assessment rates cannot be less than the minimum initial base assessment rate applicable to Risk Category I institutions nor greater than the maximum initial base assessment rate applicable to Risk Category I institutions. Insured branches of a foreign bank not in Risk Category I will be charged the initial base assessment rate for the risk category in which they are assigned.

No insured branch of a foreign bank in any risk category will be subject to the unsecured debt adjustment, secured liability adjustment or brokered deposit adjustment. Insured branches of foreign banks are branches, not independent depository institutions. In the event of failure, the FDIC would not necessarily have access to the institution's capital or be protected by its subordinated debt or unsecured liabilities. Consequently, an unsecured debt adjustment appears to be inappropriate. At present, these branches do not report comprehensively on secured liabilities. In the FDIC's view, the burden of increased reporting on secured liabilities would outweigh any benefit.

X. New Institutions

The FDIC also making conforming changes in the treatment of new insured depository institutions.[65] For assessment periods beginning on or after January 1, 2010, new institutions in Risk Category I will be assessed at the maximum initial base assessment rate applicable to Risk Category I institutions, as under the final rule adopted in 2006.

Effective for assessment periods beginning before January 1, 2010, until a Risk Category I new institution receives CAMELS component ratings, it will have an initial base assessment rate that is two basis points above the minimum initial base assessment rate applicable to Risk Category I institutions, rather than one basis point above the minimum rate, as under the final rule adopted in 2006.[66] All other new institutions in Risk Category I will be treated as established institutions, except as provided in the next paragraph.

Either before or after January 1, 2010: no new institution, regardless of risk category, will be subject to the unsecured debt adjustment; any new institution, regardless of risk category, will be subject to the secured liability adjustment; and a new institution in Risk Categories II, III or IV will be subject to the brokered deposit adjustment. After January 1, 2010, no new institution in Risk Category I will be subject to the large bank adjustment.

XI. Assessment Rate Schedule

As explained in the next section, estimated losses from projected institution failures have risen considerably since the NPR was published last fall. Furthermore, certain changes from the NPR made in response to public comments would have the effect of reducing total assessment revenue generated under the proposed rates. Consequently, initial base assessment rates as of April 1, 2009, which are set forth in Table 12 below, are slightly higher than proposed in the NPR.[67]

TABLE 12—INITIAL BASE ASSESSMENT RATES

	Risk category				
	I*		II	III	IV
	Minimum	Maximum			
Annual Rates (in basis points)	12	16	22	32	45

* Rates for institutions that do not pay the minimum or maximum rate will vary between these rates.

The FDIC projects that the minimum initial assessment rate would have to be 20 basis points beginning in the second quarter to increase the reserve ratio to 1.15 percent within 5 years (by the end of 2013). Under the rates shown in table 12 and adopted in this rule, the year-end 2013 reserve ratio is projected to be 0.58 percent. After making all possible adjustments under the final rule, total base assessment rates for each risk

[64] An insured branch of a foreign bank's weighted average ROCA component rating will continue to equal the sum of the products that result from multiplying ROCA component ratings by the following percentages: Risk Management—35%, Operational Controls—25%, Compliance—25%, and Asset Quality—15%. The uniform amount for insured branches is identical to the uniform amount under the large bank method. The pricing multiplier for insured branches is three times the amount of the pricing multiplier under the large bank method, since the initial base rate for an insured branch depends only on one factor (weighted average ROCA ratings), while the initial base rate under the large bank method depends on three factors, each equally weighted.

[65] As discussed below, subject to exceptions, the final rule defines a new insured depository institution as a bank or thrift that has not been federally insured for at least five years as of the last day of any quarter for which it is being assessed.

[66] Certain credit unions that convert to a bank or thrift charter and certain otherwise new insured institutions in a holding company structure may be considered established institutions. Both before and after January 1, 2010, any such institution that is well capitalized but has not yet received CAMELS component ratings will be assessed at two basis points above the minimum initial base assessment rate applicable to Risk Category I institutions.

[67] In the NPR, the FDIC noted that:

[A]t the time of the issuance of the final rule, the FDIC may need to set a higher base rate schedule based on information available at that time, including any intervening institution failures and updated failure and loss projections. A higher base rate schedule may also be necessary because of changes to the proposal in the final rule, if these changes have the overall effect of changing revenue for a given rate schedule. In order to fulfill the statutory requirement to return the fund reserve ratio to 1.15 percent, the base rate schedule in the final rule could be substantially higher than the proposed base assessment rate schedule (for example, if projected or actual losses at the time of the final rule greatly exceed the FDIC's current estimates).

FR 61,560, 61,572–61,573 (Oct. 16, 2008).

category will be within the ranges set forth in Table 13 below.[68]

TABLE 13—TOTAL BASE ASSESSMENT RATES AFTER ADJUSTMENTS*

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial base assessment rate	12–16	22	32	45
Unsecured debt adjustment	−5–0	−5–0	−5–0	−5–0
Secured liability adjustment	0–8	0–11	0–16	0–22.5
Brokered deposit adjustment	.....	0–10	0–10	0–10
Total base assessment rate	7–24.0	17–43.0	27–58.0	40–77.5

* All amounts for all risk categories are in basis points annually. Rates for institutions that do not pay the minimum or maximum rate will vary between these rates. Adjustments will be applied in the order listed in the table. The large bank adjustment will be made before any other adjustment.

The new base rate schedule is intended to improve the way the assessment system differentiates risk among insured institutions and make the risk-based assessment system fairer, by limiting the subsidization of riskier institutions by safer ones. They are also intended to increase assessment revenue while the Restoration Plan is in effect.

However, given the FDIC's estimated losses from projected institution failures, the assessment rates adopted in the final rule raise make it likely that the DIF balance and reserve ratio will fall to zero or below this year. The FDIC believes that it is important that the fund not decline to a level that could undermine public confidence in federal deposit insurance. Therefore, the FDIC is simultaneously issuing an interim rule to impose a 20 basis point special assessment on June 30, 2009.[69] The interim rule also provides that the Board may impose additional special assessments of up to 10 basis points thereafter, if the reserve ratio of the Deposit Insurance Fund is estimated to fall to a level that that the Board believes would adversely affect public confidence or to a level which shall be close to zero or negative at the end of a calendar quarter.

Actual Rate Schedule, Ability To Adjust Rates and Effective Date

The final rule sets actual rates at the total base assessment rate schedule effective April 1, 2009. The FDIC projects an overall average assessment rate of 15.4 basis points beginning in April 2009. As of September 30, 2008, the average assessment rate (before accounting for credit use) was 6.4 basis points for all institutions and 5.5 basis points for institutions in Risk Category I.

The rate schedule and the other revisions to the assessment rules will take effect for the quarter beginning April 1, 2009, and will be reflected in the June 30, 2009 fund balance and the invoices for assessments due September 30, 2009.

The final rule continues to allow the FDIC Board to adopt actual rates that are higher or lower than total base assessment rates without the necessity of further notice-and-comment rulemaking, provided that: (1) the Board cannot increase or decrease rates from one quarter to the next by more than three basis points; and (2) cumulative increases and decreases can not be more than three basis points higher or lower than the adjusted base rates. Continued retention of this flexibility will enable the Board to act in a timely manner to fulfill its mandate to raise the reserve ratio to at least 1.15 percent within the 5-year timeframe.

Comments

The FDIC received comments from several industry trade groups and many banks regarding the proposed increases in assessment rates. Two comments supported the proposal to increase risk-based assessments. Many other letters were critical. Several trade groups and other commenters argued that the proposed assessment rates are too high. Many commenters urged the FDIC to take advantage of the flexibility that Congress provided to extend the restoration period beyond five years under ''extraordinary circumstances.'' Among other things, commenters argued that the FDIC's invocation of its systemic risk authority to provide additional guarantees on non-interest bearing transaction deposits and senior unsecured debt is evidence of ''extraordinary circumstances.'' Commenters argued that rates should be lower on the grounds that current economic conditions are severe, that lower rates would be consistent with the government's efforts to restore stability to the markets and the financial sector and would make more funds available to lend in local communities to small businesses and consumers. One trade group argued that the FDIC should assume slower insured deposit growth, which would support lower rates.

Several commenters urged the FDIC to withdraw the proposed rule and delay increasing assessment rates and overhauling the assessment system until the end of 2009. They argued that the delay would allow time for a thorough evaluation of the effectiveness of measures recently taken by the federal government to restore stability to the banking system.

The FDIC agrees that significant increases in deposit insurance premium rates in times of economic and financial stress are not desirable. However, the FDIC believes that it is important that the fund not decline to a level that could undermine public confidence in federal deposit insurance. The rates that the FDIC has set in this final rule, combined with the 20 basis point special assessment that the FDIC will impose on June 30, 2009 (and possible additional special assessments of up to 10 basis points thereafter), pursuant to

[68] These rates would be in addition to the approximately 1 to 1.2 basis point annual rates that institutions are assessed to pay the interest on Financing Corporation (FICO) bonds.

[69] 12 U.S.C. 1817(b)(5) provides:

Emergency special assessments.—In addition to the other assessments imposed on insured depository institutions under this subsection, the Corporation may impose 1 or more special assessments on insured depository institutions in an amount determined by the Corporation if the amount of any such assessment is necessary—

(A) To provide sufficient assessment income to repay amounts borrowed from the Secretary of the Treasury under [12 U.S.C. 1824(a)] in accordance with the repayment schedule in effect under [12 U.S.C. 1824(c)] during the period with respect to which such assessment is imposed;

(B) To provide sufficient assessment income to repay obligations issued to and other amounts borrowed from insured depository institutions under [12 U.S.C. 1824(d)]; or

(C) For any other purpose that the Corporation may deem necessary.

the interim rule that the FDIC is also adopting, balance these goals.

A few comments asserted that the Restoration Plan penalizes safe and well-run community banks and urged the FDIC to require the largest institutions to recapitalize the DIF. In the FDIC's view, the final rule equitably balances assessments from small and large institutions.

One industry trade group called for assessments to be calculated on an individual institution basis for Risk Categories II, III, and IV. Implementing this suggestion would require considerable further investigation, but might be considered in a future rulemaking.

One trade group argued that rates for Risk Categories III and IV should be higher. Under the final rule, the highest possible assessment rate (after adjustments) applicable to Risk Category IV is 77.5 basis points. The FDIC believes that rates for these risk categories are appropriate.

XII. Assessment Revenue Needs Under the Restoration Plan

Summary

The FDIC projected last fall that adoption of a rate schedule with a minimum initial rate of 10 basis points would increase the reserve ratio to above 1.25 percent by the end of 2013. However, a deepening recession and continued severe problems in the housing and construction sectors, financial markets and commercial real estate, contribute to the FDIC's expectation of significantly higher losses for the insurance fund compared to the projections of last October included in the proposed rule. The insurance fund balance and reserve ratio are likely to decline significantly in 2009 before beginning a gradual recovery in subsequent years from the effects of new revenue and a declining rate of bank failures. Even under the rates adopted in the final rule, the FDIC projects that the reserve ratio may decline to close to zero—or may turn negative—by or before the end of 2009. The 20 basis point special assessment to be imposed under the interim rule on June 30, 2009 (and possible additional special assessments of up to 10 basis points thereafter) are intended to ensure that the reserve ratio does not decline to a level that could undermine public confidence in federal deposit insurance.

The FDIC's best estimate is that institution failures could cost the insurance fund approximately $65 billion from 2009 to 2013, after incurring approximately $18 billion in estimated costs for failures in 2008. The FDIC bases its loss projections on: analysis of specific troubled institutions and risk factors that may adversely affect other institutions; analysis of recent and expected loss rates given failure; stress analyses of the effects of further housing price declines and a significant economic downturn in specific geographic areas on loan losses and bank capital; and recent and historic supervisory rating downgrade and failure rates.

The FDIC also assumes that insured deposits would increase by 7 percent in 2009 and by 5 percent thereafter. The annual average growth rate in insured deposits was almost 7 percent over the past 5 years and just over 5 percent over the past 10 years.

The FDIC recognizes that there is considerable uncertainty about its projections for losses and insured deposit growth, and that changes in assumptions about these and other factors could lead to different assessment revenue needs and rates. Under the terms of the Restoration Plan, the FDIC must update its projections for the insurance fund balance and reserve ratio at least semiannually while the Restoration Plan is in effect and adjust rates as necessary. In the event that losses exceed or fall below the FDIC's best estimate or insured deposit growth is more or less rapid than expected, the Board will be able to adjust assessment rates.

Factors Considered in Setting the Level of Assessment Rates

In setting assessment rates, the FDIC's Board of Directors has considered the following factors required by statute:

(i) The estimated operating expenses of the Deposit Insurance Fund.

(ii) The estimated case resolution expenses and income of the Deposit Insurance Fund.

(iii) The projected effects of the payment of assessments on the capital and earnings of insured depository institutions.

(iv) The risk factors and other factors taken into account pursuant to section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. Section 1817(b)(1)) under the risk-based assessment system, including the requirement under section 7(b)(1)(A) of the Federal Deposit Insurance Act (12 U.S.C. Section 1817(b)(1)(A)) to maintain a risk-based system.

(v) Other factors the Board of Directors has determined to be appropriate.[70]

The factors considered in setting assessment rates are discussed in more detail below.

Case Resolution Expenses (Insurance Fund Losses)

Insurance fund losses from recent insured institution failures and an expected higher rate of failures over the next few years will significantly reduce the fund balance and reserve ratio.

The financial market disruptions over the past year have increased the likelihood that the recession will be severe and prolonged. Declining housing and equity prices, financial market turmoil, and deteriorating economic conditions will continue to exert significant stress on banking industry earnings and credit quality, most notably in residential real estate and construction and development portfolios. Accelerating job losses and declining household wealth may weaken consumer credit performance, while slowing business activity increases the risks in commercial loan portfolios. Significant uncertainty remains about the outlook for recovery in securitization markets and the return of confidence to financial markets. Regional disparities in housing markets and economic conditions have led to variation in prospects among banks. Institutions most at risk include those with large volumes of subprime and nontraditional mortgages, particularly those heavily reliant on securitization, and those with heavy concentrations of residential real estate and construction and development loans in markets with the greatest housing price declines. Institutions that are heavily reliant on non-core funding are exposed to additional risks.

In developing its projections of losses to the insurance fund, the FDIC drew from several sources. First, the FDIC relied heavily on supervisory analysis of troubled institutions. Supervisors also identified risk factors present in currently troubled institutions (or that were present in institutions that recently failed) to help analyze the

[70] Section 2104 of the Reform Act (amending section 7(b)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b)(2)(B)). The risk factors referred to in factor (iv) include:

(i) The probability that the Deposit Insurance Fund will incur a loss with respect to the institution, taking into consideration the risks attributable to—

(I) Different categories and concentrations of assets;

(II) Different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent; and

(III) Any other factors the Corporation determines are relevant to assessing such probability;

(ii) The likely amount of any such loss; and

(iii) The revenue needs of the Deposit Insurance Fund.

Section 7(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(C)).

potential for other institutions with those risk factors to cause losses to the insurance fund. Second, the FDIC drew on its analysis of losses to the fund in the event of failure. Current financial market and economic difficulties make simple reliance on the historical average or model estimates based on historical data inappropriate for projecting loss rates given failure, particularly in the near term.

The FDIC also relied on an analysis of the expected widespread further decline in housing prices and deterioration in overall economic conditions on the capital positions and earnings of insured institutions. The analysis simulated high and rising loan loss rates due to increased non-current loan rates, rising unemployment rates, and falling collateral values, especially for loans backed by real estate. As the result of recent and expected deterioration in the U.S. economy and banking conditions, the projected loss rates have risen substantially from those contained in the NPR.

The FDIC projects that the costs of institution failures from 2009 through 2013 may total $65 billion. These losses are in addition to the $18 billion for the estimated costs of failures for 2008. The FDIC recognizes the considerable degree of uncertainty surrounding these projections and its analyses reveal that either higher or lower losses are plausible. This uncertainty underscores the need to update the outlook for insurance fund losses on a regular basis—at least semiannually—while the Restoration Plan is in effect and to consider adjustments to assessment rates.

Operating Expenses and Investment Income

The FDIC estimates that its operating expenses in 2009 will be $1.1 billion. Thereafter, the FDIC projects that operating expenses will increase on average by 5 percent annually.

The FDIC projects that its investment contributions (investment income plus or minus unrealized gains or losses on available-for-sale securities) in 2008 will total $4.7 billion, or 9 percent of the start-of-year fund balance. A one-time unrealized gain of $1.6 billion from reclassifying the fund's held-to-maturity securities as available for sale on June 30, 2008, bolsters this figure. Near-term projections of investment income reflect the current outlook of constant to slightly rising Treasury yields.[71] In addition, the FDIC expects that it will invest new funds in short-term securities (primarily overnight investments) to accommodate increased bank failure activity. These investments are expected to earn lower rates than the longer-term securities that they are replacing and will therefore result in less interest income to the fund. The FDIC projects investments to contribute an amount equal to 1.3 percent of the starting fund balance in 2009. The FDIC projects that investment contributions as a percent of the fund balance will rise gradually in later years.

Assessment Revenue, Credit Use, and the Distribution of Assessments

Assessment revenue in 2008 totaled $3.0 billion: $4.4 billion in gross assessments charged less $1.4 billion in credits used. At the end of 2008, only 4 percent of the original $4.7 billion in credits remained. As part of the Restoration Plan, the FDIC has the authority to restrict credit use while the plan is in effect, providing that institutions may still apply credits against their assessments equal to the lesser of their assessment or 3 basis points.[72] The FDIC has decided not to restrict credit use in the Restoration Plan. The FDIC projects that the amount of credits remaining at the time that the new rates go into effect will be very small and that their continued use will have very little effect on the assessment revenue necessary to meet the requirements of the plan.[73]

Accounting for the use of remaining credits, the uniform increase to rates for the first quarter of 2009, and assuming that the assessment rates adopted in this rule were to remain in effect for the remainder of this year, the FDIC projects that the fund will earn assessment revenue of $11.6 billion for all of 2009.[74]

For the quarter beginning April 1, 2009, the FDIC has derived gross assessment revenue (i.e., before applying any remaining credits) by assigning each insured institution an assessment rate based on the proposed rate schedule and factors described above. Table 16 shows the distribution of institutions and domestic deposits by risk category (divided into four parts for Risk Category I) under the *initial* base rate schedule (effective April 1, 2009) based on data as of September 30, 2008; Table 17 shows the distribution of institutions and domestic deposits by bands of *total* base assessment rates.[75] For purposes of assessment revenue projections beginning in April, the FDIC relied on the data reflected in Table 17, but also accounted for projected migration of institutions across risk categories as supervisory ratings change.

[71] Future interest rate assumptions are based on consideration of recent Blue Chip Financial Forecasts as well as recent forward rate curves. Forward rates are expected yields on securities of varying maturities for specific future points in time that are derived from the term structure of interest rates. (The term structure of interest rates refers to the relationship between current yields on comparable securities with different maturities.)

[72] Section 7(b)(3)(E)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)(E)(iv)).

[73] For 2009 and 2010, credits may not offset more than 90 percent of an institution's assessment. Section 7(e)(3)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1817(e)(3)(D)(ii)).

[74] The projection assumes 7 percent annual growth in the assessment base (which is approximately domestic deposits) in 2009.

[75] The assessment base is almost equal to total domestic deposits.

TABLE 16—DISTRIBUTION OF INITIAL BASE ASSESSMENT RATES AND DOMESTIC DEPOSITS* DATA AS OF SEPTEMBER 30, 2008

Risk category	Initial assessment rate	Number of institutions	Percent of institutions	Domestic deposits (in billions of $)	Percent of domestic deposits
	12	1,577	19	860.1	12
I	12.01–14	2,637	31	2,863.4	40
	14.01–15.99	1,815	22	1,765.2	24
	16	1,476	18	812.4	11
II	22	672	8	818.8	11
III	32	185	2	83.5	1
IV	45	21	0	18.8	0

* This table and the following two tables exclude insured branches of foreign banks.

TABLE 17—DISTRIBUTION OF TOTAL BASE ASSESSMENT RATES AND DOMESTIC DEPOSITS* DATA AS OF SEPTEMBER 30, 2008

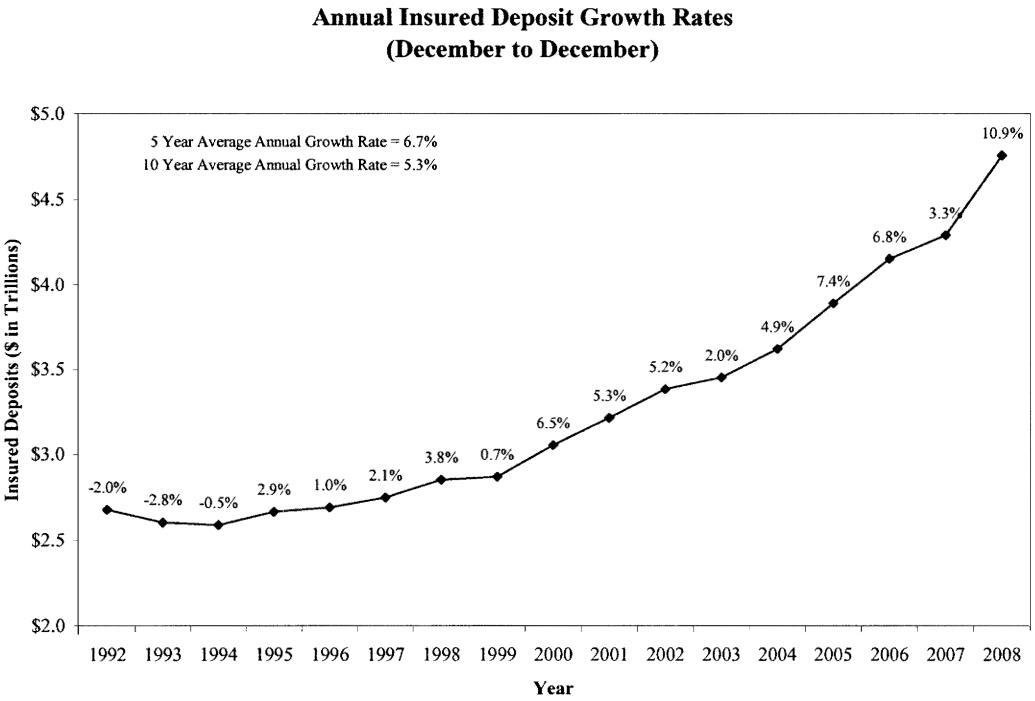
Risk category	Total base assessment	Number of institutions	Percent of institutions	Domestic deposits (in billions of $)	Percent of domestic deposits
	7–12	2,649	32	3,381.4	47
I	12.01–14	2,248	27	1,295.8	18
	14.01–16	2,367	28	1,177.2	16
	16.01–24	241	3	446.7	6
II	17–22	435	5	519.7	7
	22.01–43	237	3	299.0	4
III	27–32	107	1	44.3	1
	32.01–58	78	1	39.2	1
IV	40–45	9	0	1.2	0
	45.01–77.5	12	0	17.6	0

* Because of data limitations, secured liability adjustments for TFR filers are estimated using imputed values based on simple averages of Call Report filers as of September 30, 2008 (discussed above). Unsecured debt adjustments are estimated using reported subordinated debt and a portion of non-FHLB other borrowings.

Estimated Insured Deposits

The FDIC believes that it is reasonable to plan for annual insured deposit growth of 7 percent in 2009 and 5 percent in subsequent years. During 2008, insured deposits increased by about 11 percent, with the troubles in the economy and financial markets making the safety of federally insured deposits an attractive option. The most recent five year average growth rate was 6.7 percent and the ten year average growth rate was 5.3 percent. Chart 1 depicts insured deposit growth since 1992.

Chart 1



Projections of insured deposits are subject to considerable uncertainty.[76] Insured deposit growth over the near term could continue to rise more rapidly due to a ''flight to quality'' attributable to financial and economic uncertainties. On the other hand, as the experience of the late 1980s and early 1990s demonstrated, lower overall growth in the banking industry and the economy could depress rates of growth of total domestic and insured deposits. A one percentage point increase or decrease in average annual insured deposit growth rates will not have a significant effect on the assessment rates necessary to meet the requirements of the Restoration Plan, other factors equal.

Effect on Capital and Earnings

Appendix 2 contains an analysis of the effect of the rates adopted in this rule on the capital and earnings of insured institutions based on a range of projected industry earnings. Given the assumptions in the analysis, for the industry as a whole, projected total assessments in 2009 would result in capital that would be 0.4 to 0.5 percent lower than if the FDIC did not charge assessments. Based on the range of projected industry earnings, the proposed assessments would cause 8 to 12 institutions whose equity-to-assets ratio would have exceeded 4 percent in the absence of assessments to fall below that percentage and 6 to 9 institutions to fall below 2 percent.

For profitable institutions, assessments in 2009 would result in pre-tax income that would be between 6 and 8 percent lower than if the FDIC did not charge assessments. For unprofitable institutions, pre-tax losses would increase by an average of 3 to 5 percent. Appendix 2 also provides an analysis of the range of effects on capital and earnings for these groups of institutions.

Other Factors that the Board May Consider

In its consideration of proposed rates, the FDIC Board has considered another factor that it deems appropriate, as permitted by law.

Updating projections regularly. The FDIC recognizes that there is considerable uncertainty about its projections for losses and insured deposit growth, and that changes in assumptions about these and other factors could lead to different assessment revenue needs and rates. The FDIC projects that, under these rates, the reserve ratio will increase to 0.58 percent by year-end 2013. Nonetheless, the FDIC expects to update its projections for the insurance fund balance and reserve ratio at least semiannually while the Restoration Plan is in effect and adjust rates as necessary.

XIII. Additional Comments

One large bank recommended that, in setting assessment rates, most weight should be given to probability of default, with particular emphasis on the liquidity strength of the bank, as reflected in its CAMELS. The commenter argued that if a bank has a low probability of default, assessments should be low and risk adjustments based on potential FDIC losses are not justified. The FDIC was urged to reconsider whether risk adjustments beyond the core measures (debt ratings, CAMELS, and capital ratios) should be used at all. Additionally, the writer criticized the FDIC for using proxies for unencumbered assets that are flawed substitutes.

In the FDIC's view, probability of default is just one element of the risk posed by an institution. Loss given default is equally important. For the reasons given above, the FDIC is convinced of the need for the adjustments contained in the final rule.

[76] The FDIC estimates of insured deposits and projections do not consider the effect of the temporary increase in the deposit insurance coverage limit to $250,000 or the guarantee of certain deposits under the Temporary Liquidity Guarantee Program.

XIV. Technical and Other Changes

The final rule will change the way assessment rates are determined for a large institution that is subject to the large bank method (or an insured branch of a foreign bank) when it moves from Risk Category I to Risk Category II, III or IV during a quarter.

Under the final rule adopted in 2006, if, during a quarter, a CAMELS (or ROCA) rating change occurs that results in a large institution that is subject to the supervisory and debt ratings method or an insured branch of a foreign bank moving from Risk Category I to Risk Category II, III or IV, the institution's assessment rate for the portion of the quarter that it was in Risk Category I is based upon its assessment rate at the end of the prior quarter. No new Risk Category I assessment rate is developed for the quarter in which the institution moves to Risk Category II, III or IV.[77]

The opposite holds true for a small institution or a large institution subject to the financial ratios method when it moves from Risk Category I to Risk Category II, III or IV during a quarter. A new Risk Category I assessment rate is developed for the quarter in which the institution moves to Risk Category II, III or IV.[78]

The final rule states that when a large institution subject to the large bank method or an insured branch of a foreign bank moves from Risk Category I to Risk Category II, III or IV during a quarter, a new Risk Category I assessment rate be developed for that quarter. That rate for the portion of the quarter that the institution was in Risk Category I will be determined as for any other institution in Risk Category I subject to the same pricing method, except that the rate will only apply for the portion of the quarter that the institution was actually in Risk Category I.

Since implementation of the 2006 assessments rule in 2007, several large institutions that were subject to the supervisory and debt ratings method have moved from Risk Category I to a Risk Category II or III. More than once, changes occurred in these institutions' debt ratings or CAMELS component ratings while the institution was in Risk Category I, but the institutions' assessment rates for the quarter did not reflect these changes. In one case, an institution received a debt rating downgrade early in the quarter, but, because it fell to Risk Category II on the 89th day of the quarter, this debt rating downgrade did not affect its assessment rate. The final rule is intended to correct these outcomes and better ensure that an institution's assessment rate reflects the risk that it poses.

The FDIC is also amending its assessment regulations to correct technical errors and make clarifications to the regulatory language in several sections of Part 327 for the reasons set forth below.

The final rule makes a technical correction to the language of 12 CFR 327.3(a), the regulatory requirement that each depository institution pay an assessment to the Corporation. Language creating an exception ''as provided in paragraph (b) of this section'' was inadvertently retained in the initial clause of section 327.3(a) when the assessment regulations were amended in 2006. Formerly, paragraph (b) excepted newly insured institutions from payment of assessments for the semiannual period in which they became insured institutions; that exception was eliminated in 2006. Paragraph (b) now addresses quarterly certified statement invoices and payment dates. Accordingly, the final rule amends section 327.3(a) to eliminate the reference to paragraph (b).

Section 327.6(b)(1) addresses assessments for the quarter in which a terminating transfer occurs when the acquiring institution uses average daily balances to calculate its assessment base. In that situation, section 327.6(b)(1) provides that the terminating institution's assessment for that quarter is reduced by the percentage of the quarter remaining after the terminating transfer occurred, and calculated at the acquiring institution's assessment rate. Although it can be inferred that the terminating institution's assessment base for that quarter is to be used in the reduction calculation, the section is not explicit. Accordingly, the final rule amends the section to clarify that the reduction calculation is accomplished by applying the acquirer's rate to the terminating institution's assessment base for that quarter.

Section 327.8(i) defines *Long Term Debt Issuer Rating* as the ''current rating'' of an insured institution's long-term debt obligations by one of the named ratings companies. ''Current rating'' is defined in section 327.8(i) as ''one that has been confirmed or assigned within 12 months before the end of the quarter for which the assessment rate is being determined.'' The section also provides: ''If no current rating is available, the institution will be deemed to have no long-term debt issuer rating.'' The language of section 327.8(i) requires the FDIC to disregard a long-term debt issuer rating that is still in effect—that is, it has not been withdrawn and replaced by another rating—if it is greater than 12 months old when the FDIC calculates an institution's assessment rate. To remedy this, the FDIC is amending section 327.8(i) to read as follows:

(i) *Long-Term Debt Issuer Rating.* A long-term debt issuer rating shall mean a rating of an insured depository institution's long-term debt obligations by Moody's Investor Services, Standard & Poor's, or Fitch Ratings that has not been withdrawn before the end of the quarter being assessed. A withdrawn rating shall mean one that has been withdrawn by the rating agency and not replaced with another rating by the same agency. A long-term debt issuer rating does not include a rating of a company that controls an insured depository institution, or an affiliate or subsidiary of the institution.

Consistent with this amendment, the final rule amends two references to long-term debt issuer rating, as defined in § 327.8(i), ''*in effect at the end of the quarter being assessed*'' that appear in 12 CFR 327.9(d) and 12 CFR 327.9(d)(2). The final rule amends these sections by deleting the phrase ''in effect at the end of the quarter being assessed'' and to add ''as defined in § 327.8(i)'' to section 327.9(d)(2) so that its construction parallels section 327.9(d).

Sections 327.8(*l*) and (m) define ''*New depository institution*'' and ''*Established depository institution*.'' The former is ''a bank or thrift that has not been chartered for at least five years as of the last day of any quarter for which it is being assessed''; the latter is ''a bank or thrift that has been chartered for at least five years as of the last day of any quarter for which it is being assigned.'' In the FDIC's view, this regulatory language could allow a previously uninsured institution to be treated as an established institution based on charter date. To remedy this, the final rule amends sections 327.8(*l*) and (m) to read as follows:

(l) *New depository institution.* A new insured depository institution is a bank or thrift that has been federally insured for less than five years as of the last day of any quarter for which it is being assessed.

(m) *Established depository institution.* An established insured depository institution is a bank or thrift that has

[77] 12 CFR 327.9(d)(5).

[78] 12 CFR 327.9(d)(1)(ii). In fact, the FDIC had provided in the preamble to the 2006 assessments rule that no new Risk Category I assessment rate would be determined for any large institution for the quarter in which it moved to Risk Category II, III or IV, but, as the result of a drafting inconsistency, this intention was not realized in the regulatory text. 71 FR 69,282, 69,293 (Nov. 30, 2006). The FDIC now believes that a new Risk Category I assessment rate should be determined for any large institution for the quarter in which it moves to Risk Category II, III or IV.

been federally insured for at least five years as of the last day of any quarter for which it is being assessed.

Section 327.9(d)(7)(viii), which addresses rates applicable to institutions subject to the subsidiary or credit union exception, contains language making the section applicable ''[o]n or after January 1, 2010. * * *'' This language is redundant of language in section 327.9(d)(7)(i)(A) and the final rule deletes it.

XV. Effective Date

This final rule will become effective on April 1, 2009.

XVI. Regulatory Analysis and Procedure

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invited comments on how to make this proposal easier to understand and received one response. The comment stated that the proposal was too complicated and should have included an executive summary in bullet point format. Making the risk-based assessment system more responsive to risk entailed some complexity, which we tried to minimize.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that each federal agency either certify that a final rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment.[79] Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of ''rule'' for purposes of the RFA.[80] The final rule relates directly to the rates imposed on insured depository institutions for deposit insurance, and to the risk-based assessment system components that measure risk and weigh that risk in determining each institution's assessment rate, and includes technical and other changes to the FDIC's assessment regulations. Nonetheless, the FDIC is voluntarily undertaking an initial regulatory flexibility analysis of the final rule for publication.

As of December 31, 2008, of the 8,305 insured commercial banks and savings associations, there were 4,567 small insured depository institutions as that term is defined for purposes of the RFA (*i.e.*, those with $165 million or less in assets).

For purposes of this analysis, whether the FDIC were to collect needed assessments under the existing rule or under the final rule, the total amount of assessments collected would be the same. The FDIC's total assessment needs are driven by the statutory requirement that the FDIC adopt a restoration plan and by the FDIC's aggregate insurance losses, expenses, investment income, and insured deposit growth, among other factors. Given the FDIC's total assessment needs, the final rule would merely alter the distribution of assessments among insured institutions. Using the data as of December 31, 2008, the FDIC calculated the total assessments that would be collected under the base rate schedule in the final rule.

The economic impact of the final rule on each small institution for RFA purposes (*i.e.*, institutions with assets of $165 million or less) was then calculated as the difference in annual assessments under the final rule compared to the existing rule as a percentage of the institution's annual revenue and annual profits, assuming the same total assessments collected by the FDIC from the banking industry.[81] [82]

Based on the December 2008 data, under the final rule, for more than 75 percent of small institutions, the change in the assessment system would result in assessment changes (up or down) totaling five percent or less of annual revenue. Of the total of 4,567 small institutions, only eight percent would have experienced an increase equal to five percent or greater of their total revenue. These figures do not indicate a significant economic impact on revenues for a substantial number of small insured institutions. Table 18 below sets forth the results of the analysis in more detail.

TABLE 18—CHANGE IN ASSESSMENTS UNDER THE FINAL RULE AS A PERCENTAGE OF TOTAL REVENUE

Change in assessments as a percentage of total revenue	Number of institutions	Percent of institutions
More than 10 percent lower	240	5.26
5 to 10 percent lower	545	11.93
0 to 5 percent lower	2.306	50.49
0 to 5 percent higher	1,120	24.52
5 to 10 percent higher	239	5.23
More than 10 percent higher	117	2.56
Total	4,567	100.00

The FDIC performed a similar analysis to determine the impact on profits for small institutions. Based on December 2008 data, under the final rule, 81 percent of the small institutions with reported profits would have experienced a change in their annual profits of 5 percent or less. Table 19 sets forth the results of the analysis in more detail.

[79] See 5 U.S.C. 603, 604 and 605.

[80] 5 U.S.C. 601.

[81] Throughout this regulatory flexibility analysis (unlike the rest of the final rule), a ''small institution'' refers to an institution with assets of $165 million or less.

[82] An institution's total revenue is defined as the sum of its annual net interest income and non-interest income. An institution's profit is defined as income before taxes and extraordinary items, gross of loan loss provisions.

TABLE 19—CHANGE IN ASSESSMENTS UNDER THE PROPOSAL AS A PERCENTAGE OF PROFIT *

Change in assessments as a percentage of profit	Number of institutions	Percent of institutions
More than 30 percent lower	451	14.77
20 to 30 percent lower	266	8.71
10 to 20 percent lower	616	20.18
5 to 10 percent lower	654	21.42
0 to 5 percent lower	477	15.62
0 to 10 percent more	276	9.04
Greater than 10 percent	313	10.25
Total	3,053	100.00

* Institutions with negative or no profit were excluded. These institutions are shown separately in Table 20.

Of those small institutions with reported profits, only 10 percent would have experienced a decrease in their total profits of 10 percent or greater. 65 percent of these small institutions would have a greater than five percent increase in their profits. Again, these figures do not indicate a significant economic impact on profits for a substantial number of small insured institutions.

Table 19 excludes small institutions that either show no profit or show a loss, because a percentage cannot be calculated. The FDIC analyzed the effect of the final rule on these institutions by determining the annual assessment change that would result. Table 20 below shows that only 17 percent (256) of the 1,514 small insured institutions in this category would have experienced an increase in annual assessments of $10,000 or more. 14% of these institutions would have experienced a decrease of $10,000 or more.

TABLE 20—CHANGE IN ASSESSMENTS UNDER THE FINAL RULE FOR INSTITUTIONS WITH NEGATIVE OR NO REPORTED PROFIT

Change in assessments	Number of institutions	Percent of institutions
$20,000 decrease or more	97	6.40
$10,000–$20,000 decrease	108	7.13
$5,000–$10,000 decrease	131	8.65
$1,000–$5,000 decrease	203	13.41
$0–$1,000 decrease	78	5.15
$0–$10,000 increase	641	42.43
$10,000–$20,000 increase	124	8.19
$20,000 increase or more	132	8.72
Total	1,514	100.0

The final rule does not directly impose any ''reporting'' or ''recordkeeping'' requirements within the meaning of the Paperwork Reduction Act. The compliance requirements for the final rule would not exceed existing compliance requirements for the present system of FDIC deposit insurance assessments, which, in any event, are governed by separate regulations.

The FDIC is unaware of any duplicative, overlapping or conflicting federal rules.

The initial regulatory flexibility analysis set forth above demonstrates that the final rule would not have a significant economic impact on a substantial number of small institutions within the meaning of those terms as used in the RFA.[83]

[83] 5 U.S.C. 605.

C. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule.

D. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA) Public Law No. 110–28 (1996). As required by law, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

E. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations.

■ For the reasons set forth in the preamble, the FDIC amends chapter III of title 12 of the Code of Federal Regulations as follows:

PART 327—ASSESSMENTS

■ 1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1813, 1815, 1817–1819, 1821; Sec. 2101–2109, Public Law 109–171, 120 Stat. 9–21, and Sec. 3, Public Law 109–173, 119 Stat. 3605.

■ 2. Revise § 327.3(a)(1) to read as follows:

§ 327.3 Payment of assessments.

(a) *Required.* (1) *In general.* Each insured depository institution shall pay to the Corporation for each assessment period an assessment determined in accordance with this part 327.

* * * * *

■ 3. Revise § 327.6(b)(1) to read as follows:

§ 327.6 Terminating transfers; other terminations of insurance.

* * * * *

(b) *Assessment for quarter in which the terminating transfer occurs*—(1) *Acquirer using Average Daily Balances.* If an acquiring institution's assessment base is computed using average daily balances pursuant to § 327.5, the terminating institution's assessment for the quarter in which the terminating transfer occurs shall be reduced by the percentage of the quarter remaining after the terminating transfer and calculated at the acquiring institution's rate and using the assessment base reported in the terminating institution's quarterly report of condition for that quarter.

* * * * *

■ 4. In § 327.8, revise paragraphs (g), (h), (i), (*l*) and (m) and add paragraphs (o), (p), (q), (r) and (s) to read as follows:

§ 327.8 Definitions.

* * * * *

(g) *Small Institution.* An insured depository institution with assets of less than $10 billion as of December 31, 2006 (other than an insured branch of a foreign bank or an institution classified as large for purposes of § 327.9(d)(8)) shall be classified as a small institution. If, after December 31, 2006, an institution classified as large under paragraph (h) of this section (other than an institution classified as large for purposes of § 327.9(d)(8)) reports assets of less than $10 billion in its quarterly reports of condition for four consecutive quarters, the FDIC will reclassify the institution as small beginning the following quarter.

(h) *Large Institution.* An institution classified as large for purposes of § 327.9(d)(8) or an insured depository institution with assets of $10 billion or more as of December 31, 2006 (other than an insured branch of a foreign bank) shall be classified as a large institution. If, after December 31, 2006, an institution classified as small under paragraph (g) of this section reports assets of $10 billion or more in its quarterly reports of condition for four consecutive quarters, the FDIC will reclassify the institution as large beginning the following quarter.

(i) *Long-Term Debt Issuer Rating.* A long-term debt issuer rating shall mean a rating of an insured depository institution's long-term debt obligations by Moody's Investor Services, Standard & Poor's, or Fitch Ratings that has not been withdrawn before the end of the quarter being assessed. A withdrawn rating shall mean one that has been withdrawn by the rating agency and not replaced with another rating by the same agency. A long-term debt issuer rating does not include a rating of a company that controls an insured depository institution, or an affiliate or subsidiary of the institution.

* * * * *

(*l*) *New depository institution.* A new insured depository institution is a bank or savings association that has been federally insured for less than five years as of the last day of any quarter for which it is being assessed.

(m) *Established depository institution.* An established insured depository institution is a bank or savings association that has been federally insured for at least five years as of the last day of any quarter for which it is being assessed.

(1) *Merger or consolidation involving new and established institution(s).* Subject to paragraphs (m)(2), (3), (4), and (5) of this section and § 327.9(d)(10)(ii), (iii), when an established institution merges into or consolidates with a new institution, the resulting institution is a new institution unless:

(i) The assets of the established institution, as reported in its report of condition for the quarter ending immediately before the merger, exceeded the assets of the new institution, as reported in its report of condition for the quarter ending immediately before the merger; and

(ii) Substantially all of the management of the established institution continued as management of the resulting or surviving institution.

(2) *Consolidation involving established institutions.* When established institutions consolidate, the resulting institution is an established institution.

(3) *Grandfather exception.* If a new institution merges into an established institution, and the merger agreement was entered into on or before July 11, 2006, the resulting institution shall be deemed to be an established institution for purposes of this part.

(4) *Subsidiary exception.* Subject to paragraph (m)(5) of this section, a new institution will be considered established if it is a wholly owned subsidiary of:

(i) A company that is a bank holding company under the Bank Holding Company Act of 1956 or a savings and loan holding company under the Home Owners' Loan Act, and:

(A) At least one eligible depository institution (as defined in 12 CFR 303.2(r)) that is owned by the holding company has been chartered as a bank or savings association for at least five years as of the date that the otherwise new institution was established; and

(B) The holding company has a composite rating of at least ''2'' for bank holding companies or an above average or ''A'' rating for savings and loan holding companies and at least 75 percent of its insured depository institution assets are assets of eligible depository institutions, as defined in 12 CFR 303.2(r); or

(ii) An eligible depository institution, as defined in 12 CFR 303.2(r), that has been chartered as a bank or savings association for at least five years as of the date that the otherwise new institution was established.

(5) *Effect of credit union conversion.* In determining whether an insured depository institution is new or established, the FDIC will include any period of time that the institution was a federally insured credit union.

* * * * *

(o) *Unsecured debt*—For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(5), unsecured debt shall include senior unsecured liabilities and subordinated debt.

(p) *Senior unsecured liability*—For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(5), senior unsecured liabilities shall be the unsecured portion of other borrowed money as defined in the quarterly report of condition for the reporting period as defined in paragraph (b)), but shall not include any senior unsecured debt that the FDIC has guaranteed under the Temporary Liquidity Guarantee Program, 12 CFR Part 370.

(q) *Subordinated debt*—For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(5), subordinated debt shall be as defined in the quarterly report of condition for the reporting period; however, subordinated debt shall also include limited-life preferred stock as defined in the quarterly report of condition for the reporting period.

(r) *Long-term unsecured debt*—For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(5), long-term unsecured debt shall be unsecured debt with at least one year remaining until maturity.

(s) *Reciprocal deposits*—Deposits that an insured depository institution receives through a deposit placement network on a reciprocal basis, such that:

(1) for any deposit received, the institution (as agent for depositors) places the same amount with other insured depository institutions through the network; and (2) each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

■ 7. Revise § 327.9 to read as follows:

§ 327.9 Assessment risk categories and pricing methods.

(a) *Risk Categories.*—Each insured depository institution shall be assigned to one of the following four Risk Categories based upon the institution's capital evaluation and supervisory evaluation as defined in this section.

(1) *Risk Category I.* All institutions in Supervisory Group A that are Well Capitalized;

(2) *Risk Category II.* All institutions in Supervisory Group A that are Adequately Capitalized, and all institutions in Supervisory Group B that are either Well Capitalized or Adequately Capitalized;

(3) *Risk Category III.* All institutions in Supervisory Groups A and B that are Undercapitalized, and all institutions in Supervisory Group C that are Well Capitalized or Adequately Capitalized; and

(4) *Risk Category IV.* All institutions in Supervisory Group C that are Undercapitalized.

(b) *Capital evaluations.* An institution will receive one of the following three capital evaluations on the basis of data reported in the institution's Consolidated Reports of Condition and Income, Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, or Thrift Financial Report dated as of March 31 for the assessment period beginning the preceding January 1; dated as of June 30 for the assessment period beginning the preceding April 1; dated as of September 30 for the assessment period beginning the preceding July 1; and dated as of December 31 for the assessment period beginning the preceding October 1.

(1) *Well Capitalized.* (i) Except as provided in paragraph (b)(1)(ii) of this section, a Well Capitalized institution is one that satisfies each of the following capital ratio standards: Total risk-based ratio, 10.0 percent or greater; Tier 1 risk-based ratio, 6.0 percent or greater; and Tier 1 leverage ratio, 5.0 percent or greater.

(ii) For purposes of this section, an insured branch of a foreign bank will be deemed to be Well Capitalized if the insured branch:

(A) Maintains the pledge of assets required under § 347.209 of this chapter; and

(B) Maintains the eligible assets prescribed under § 347.210 of this chapter at 108 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (b) of this section.

(2) *Adequately Capitalized.* (i) Except as provided in paragraph (b)(2)(ii) of this section, an Adequately Capitalized institution is one that does not satisfy the standards of Well Capitalized under this paragraph but satisfies each of the following capital ratio standards: Total risk-based ratio, 8.0 percent or greater; Tier 1 risk-based ratio, 4.0 percent or greater; and Tier 1 leverage ratio, 4.0 percent or greater.

(ii) For purposes of this section, an insured branch of a foreign bank will be deemed to be Adequately Capitalized if the insured branch:

(A) Maintains the pledge of assets required under § 347.209 of this chapter; and

(B) Maintains the eligible assets prescribed under § 347.210 of this chapter at 106 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (b) of this section; and

(C) Does not meet the definition of a Well Capitalized insured branch of a foreign bank.

(3) *Undercapitalized.* An undercapitalized institution is one that does not qualify as either Well Capitalized or Adequately Capitalized under paragraphs (b)(1) and (b)(2) of this section.

(c) *Supervisory evaluations.* Each institution will be assigned to one of three Supervisory Groups based on the Corporation's consideration of supervisory evaluations provided by the institution's primary federal regulator. The supervisory evaluations include the results of examination findings by the primary federal regulator, as well as other information that the primary federal regulator determines to be relevant. In addition, the Corporation will take into consideration such other information (such as state examination findings, as appropriate) as it determines to be relevant to the institution's financial condition and the risk posed to the Deposit Insurance Fund. The three Supervisory Groups are:

(1) *Supervisory Group ''A.''* This Supervisory Group consists of financially sound institutions with only a few minor weaknesses;

(2) *Supervisory Group ''B.''* This Supervisory Group consists of institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased risk of loss to the Deposit Insurance Fund; and

(3) *Supervisory Group ''C.''* This Supervisory Group consists of institutions that pose a substantial probability of loss to the Deposit Insurance Fund unless effective corrective action is taken.

(d) *Determining Initial Base Assessment Rates for Risk Category I Institutions.* Subject to paragraphs (d)(2), (4), (5), (6), (8), (9) and (10) of this section, an insured depository institution in Risk Category I, except for a large institution that has at least one long-term debt issuer rating, as defined in § 327.8(i), shall have its initial base assessment rate determined using the financial ratios method set forth in paragraph (d)(1) of this section. A large insured depository institution in Risk Category I that has at least one long-term debt issuer rating shall have its initial base assessment rate determined using the large bank method set forth in paragraph (d)(2) of this section (subject to paragraphs (d)(2), (4), (5), (6), (8), (9) and (10) of this section). The initial base assessment rate for a large institution whose assessment rate in the prior quarter was determined using the large bank method, but which no longer has a long-term debt issuer rating, shall be determined using the financial ratios method.

(1) *Financial ratios method.* Under the financial ratios method for Risk Category I institutions, each of six financial ratios and a weighted average of CAMELS component ratings will be multiplied by a corresponding pricing multiplier. The sum of these products will be added to or subtracted from a uniform amount. The resulting sum shall equal the institution's initial base assessment rate; provided, however, that no institution's initial base assessment rate shall be less than the minimum initial base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum initial base assessment rate in effect for Risk Category I institutions for that quarter. An institution's initial base assessment rate, subject to adjustment pursuant to paragraphs (d)(4), (5) and (6) of this section, as appropriate (which will produce the total base assessment rate), and adjusted for the actual assessment rates set by the Board under § 327.10(c), will equal an institution's assessment rate. The six financial ratios

are: Tier 1 Leverage Ratio; Loans past due 30–89 days/gross assets; Nonperforming assets/gross assets; Net loan charge-offs/gross assets; Net income before taxes/risk-weighted assets; and the Adjusted brokered deposit ratio. The ratios are defined in Table A.1 of Appendix A to this subpart. The ratios will be determined for an assessment period based upon information contained in an institution's report of condition filed as of the last day of the assessment period as set out in § 327.9(b). The weighted average of CAMELS component ratings is created by multiplying each component by the following percentages and adding the products: Capital adequacy—25%, Asset quality—20%, Management—25%, Earnings—10%, Liquidity—10%, and Sensitivity to market risk—10%. The following table sets forth the initial values of the pricing multipliers:

Risk measures *	Pricing multipliers **
Tier 1 Leverage Ratio	(0.056)
Loans Past Due 30–89 Days/Gross Assets	0.575
Nonperforming Assets/Gross Assets	1.074
Net Loan Charge-Offs/Gross Assets	1.210
Net Income before Taxes/Risk-Weighted Assets	(0.764)
Adjusted brokered deposit ratio	0.065
Weighted Average CAMELS Component Rating	1.095

* Ratios are expressed as percentages.
** Multipliers are rounded to three decimal places.

The six financial ratios and the weighted average CAMELS component rating will be multiplied by the respective pricing multiplier, and the products will be summed. To this result will be added the uniform amount of 11.861. The resulting sum shall equal the institution's initial base assessment rate; provided, however, that no institution's initial base assessment rate shall be less than the minimum initial base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum initial base assessment rate in effect for Risk Category I institutions for that quarter. Appendix A to this subpart describes the derivation of the pricing multipliers and uniform amount and explains how they will be periodically updated.

(i) *Publication and uniform amount and pricing multipliers.* The FDIC will publish notice in the **Federal Register** whenever a change is made to the uniform amount or the pricing multipliers for the financial ratios method.

(ii) *Implementation of CAMELS rating changes*—(A) *Changes between risk categories.* If, during a quarter, a CAMELS composite rating change occurs that results in an institution whose Risk Category I assessment rate is determined using the financial ratios method moving from Risk Category I to Risk Category II, III or IV, the institution's initial base assessment rate for the portion of the quarter that it was in Risk Category I shall be determined using the supervisory ratings in effect before the change and the financial ratios as of the end of the quarter, subject to adjustment pursuant to paragraphs (d)(4), (5), and (6) of this section, as appropriate, and adjusted for the actual assessment rates set by the Board under § 327.10(c). For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate, which shall be subject to adjustment pursuant to paragraphs (d)(5), (6) and (7), shall be determined under the assessment schedule for the appropriate Risk Category. If, during a quarter, a CAMELS composite rating change occurs that results in an institution moving from Risk Category II, III or IV to Risk Category I, and its initial base assessment rate would be determined using the financial ratios method, then that method shall apply for the portion of the quarter that it was in Risk Category I, subject to adjustment pursuant to paragraphs (d)(4), (5), and (6) of this section, as appropriate, and adjusted for the actual assessment rates set by the Board under § 327.10(c). For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate, which shall be subject to adjustment pursuant to paragraphs (d)(5), (6) and (7), shall be determined under the assessment schedule for the appropriate Risk Category.

(*B*) *Changes within Risk Category I.* If, during a quarter, an institution's CAMELS component ratings change in a way that would change the institution's initial base assessment rate within Risk Category I, the initial base assessment rate for the period before the change shall be determined under the financial ratios method using the CAMELS component ratings in effect before the change, subject to adjustment pursuant to paragraphs (d)(4), (5), and (6) of this section, as appropriate. Beginning on the date of the CAMELS component ratings change, the initial base assessment rate for the remainder of the quarter shall be determined using the CAMELS component ratings in effect after the change, again subject to adjustment pursuant to paragraphs (d)(4), (5), and (6) of this section, as appropriate.

(2) *Large bank method.* A large insured depository institution in Risk Category I that has at least one long-term debt issuer rating, as defined in § 327.8(i), shall have its initial base assessment rate determined using the large bank method. The initial base assessment rate under the large bank method shall be derived from three components, each given a 33⅓ percent weight: a component derived using the financial ratios method, a component derived using long-term debt issuer ratings, and a component derived using CAMELS component ratings. The institution's assessment rate computed using the financial ratios method shall be converted to a financial ratios score by first subtracting 10 from the financial ratios method assessment rate and then multiplying the result by ½. The result will equal an institution's financial ratios score. Its CAMELS component ratings will be weighted to derive a weighted average CAMELS rating using the same weights applied in the financial ratios method as set forth under paragraph (d)(1) of this section. Long-term debt issuer ratings will be converted to numerical values between 1 and 3 as provided in Appendix B to this subpart and the converted values will be averaged. The financial ratios score, the weighted average CAMELS rating and the average of converted long-term debt issuer ratings each will be multiplied by 1.692 (which shall be the pricing multiplier), and the products will be summed. To this result will be added 3.873 (which shall be a uniform

amount for all institutions subject to the large bank method). The resulting sum shall equal the institution's initial base assessment rate; provided, however, that no institution's initial base assessment rate shall be less than the minimum initial base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum initial base assessment rate in effect for Risk Category I institutions for that quarter. An institution's initial base assessment rate, subject to adjustment pursuant to paragraphs (d)(4), (5), and (6) of this section, as appropriate (which will produce the total base assessment rate), and adjusted for the actual assessment rates set by the Board pursuant to § 327.10(c), will equal an institution's assessment rate.

(i) *Implementation of Large Bank Method Changes between Risk Categories.* If, during a quarter, a CAMELS or ROCA rating change occurs that results in an institution whose Risk Category I initial base assessment rate is determined using the large bank method or an insured branch of a foreign bank moving from Risk Category I to Risk Category II, III or IV, the institution's initial base assessment rate for the portion of the quarter that it was in Risk Category I shall be determined as for any other institution in Risk Category I whose initial base assessment rate is determined using the large bank method, subject to adjustments pursuant to paragraph (d)(4), (5), and (6) of this section, as appropriate or, if the institution is an insured branch of a foreign bank, using the weighted average ROCA component rating, subject to adjustment pursuant to paragraph (d)(4). For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate, which, unless the institution is an insured branch of a foreign bank, shall be subject to adjustment pursuant to paragraphs (d)(5), (6) and (7), shall be determined under the assessment schedule for the appropriate Risk Category. If, during a quarter, a CAMELS or ROCA rating change occurs that results in a large institution with a long-term debt issuer rating or an insured branch of a foreign bank moving from Risk Category II, III or IV to Risk Category I, the institution's assessment rate for the portion of the quarter that it was in Risk Category I shall equal the rate determined under paragraphs (d)(2) (and (d)(4), (5), and (6)) or (d)(3) (and (d)(4), (5), and (6)) of this section, as appropriate. For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate, which shall be subject to adjustment pursuant to paragraphs (d)(5), (6) and (7), shall be determined under the assessment schedule for the appropriate Risk Category.

(ii) *Implementation of Large Bank Method Changes within Risk Category I.* If, during a quarter, an institution whose Risk Category I initial base assessment rate is determined using the large bank method remains in Risk Category I, but the financial ratios score, a CAMELS component or a long-term debt issuer rating changes that would affect the institution's initial base assessment rate, or if, during a quarter, an insured branch of a foreign bank remains in Risk Category I, but a ROCA component rating changes that would affect the institution's initial base assessment rate, separate assessment rates for the portion(s) of the quarter before and after the change(s) shall be determined under paragraphs (d)(2) (and (d)(4), (5), and (6)) or (d)(3) (and (d)(4)) of this section, as appropriate.

(3) *Assessment rate for insured branches of foreign banks*—(i) *Insured branches of foreign banks in Risk Category I.* Insured branches of foreign banks in Risk Category I shall be assessed using the weighted average ROCA component rating, as determined under paragraph (d)(3)(ii) of this section.

(ii) *Weighted average ROCA component rating.* The weighted average ROCA component rating shall equal the sum of the products that result from multiplying ROCA component ratings by the following percentages: Risk Management—35%, Operational Controls—25%, Compliance—25%, and Asset Quality—15%. The weighted average ROCA rating will be multiplied by 5.076 (which shall be the pricing multiplier). To this result will be added 3.873 (which shall be a uniform amount for all insured branches of foreign banks). The resulting sum—the initial base assessment rate—subject to adjustments pursuant to paragraph (d)(4) of this section will equal an institution's total base assessment rate; provided, however, that no institution's total base assessment rate will be less than the minimum total base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum total base assessment rate in effect for Risk Category I institutions for that quarter.

(iii) No insured branch of a foreign bank in any risk category shall be subject to the unsecured debt adjustment, the secured liability adjustment, or the brokered deposit adjustment.

(4) *Adjustment for large banks or insured branches of foreign banks*—(i) *Basis for and size of adjustment.* Within Risk Category I, large institutions and insured branches of foreign banks except new institutions as provided under paragraph (d)(9)(i)(A) of this section, are subject to adjustment of their initial base assessment rate. Any such large bank adjustment shall be limited to a change in the initial base assessment rate of up to one basis point higher or lower than the rate determined using the financial ratios method, the large bank method, or the weighted average ROCA component rating method, whichever is applicable. In determining whether to make this initial base assessment rate adjustment for a large institution or an insured branch of a foreign bank, the FDIC may consider other relevant information in addition to the factors used to derive the risk assignment under paragraphs (d)(1), (2), or (3) of this section. Relevant information includes financial performance and condition information, other market or supervisory information, potential loss severity, and stress considerations, as described in Appendix C to this subpart.

(ii) *Adjustment subject to maximum and minimum rates.* No adjustment to the initial base assessment rate for large banks shall decrease any rate so that the resulting rate would be less than the minimum initial base assessment rate, or increase any rate above the maximum initial base assessment rate.

(iii) *Prior notice of adjustments*—(A) *Prior notice of upward adjustment.* Prior to making any upward large bank adjustment to an institution's initial base assessment rate because of considerations of additional risk information, the FDIC will formally notify the institution and its primary federal regulator and provide an opportunity to respond. This notification will include the reasons for the adjustment and when the adjustment will take effect.

(B) *Prior notice of downward adjustment.* Prior to making any downward large bank adjustment to an institution's initial base assessment rate because of considerations of additional risk information, the FDIC will formally notify the institution's primary federal regulator and provide an opportunity to respond.

(iv) *Determination whether to adjust upward; effective period of adjustment.* After considering an institution's and the primary federal regulator's responses to the notice, the FDIC will determine whether the large bank adjustment to an institution's initial base assessment rate is warranted,

taking into account any revisions to weighted average CAMELS component ratings, long-term debt issuer ratings, and financial ratios, as well as any actions taken by the institution to address the FDIC's concerns described in the notice. The FDIC will evaluate the need for the adjustment each subsequent assessment period, until it determines that an adjustment is no longer warranted. The amount of adjustment will in no event be larger than that contained in the initial notice without further notice to, and consideration of, responses from the primary federal regulator and the institution.

(v) *Determination whether to adjust downward; effective period of adjustment.* After considering the primary federal regulator's responses to the notice, the FDIC will determine whether the large bank adjustment to an institution's initial base assessment rate is warranted, taking into account any revisions to weighted average CAMELS component ratings, long-term debt issuer ratings, and financial ratios, as well as any actions taken by the institution to address the FDIC's concerns described in the notice. Any downward adjustment in an institution's initial base assessment rate will remain in effect for subsequent assessment periods until the FDIC determines that an adjustment is no longer warranted. Downward adjustments will be made without notification to the institution. However, the FDIC will provide advance notice to an institution and its primary federal regulator and give them an opportunity to respond before removing a downward adjustment.

(vi) *Adjustment without notice.* Notwithstanding the notice provisions set forth above, the FDIC may change an institution's initial base assessment rate without advance notice under this paragraph, if the institution's supervisory or agency ratings or the financial ratios set forth in Appendix A to this subpart deteriorate.

(5) *Unsecured debt adjustment to initial base assessment rate for all institutions.* All institutions within all risk categories, except new institutions as provided under paragraph (d)(9)(i)(C) of this section and insured branches of foreign banks as provided under paragraph (d)(3)(iii) of this section, are subject to downward adjustment of assessment rates for unsecured debt, based on the ratio of long-term unsecured debt (and, for small institutions as defined in paragraph (ii) below, specified amounts of Tier 1 capital) to domestic deposits. Any unsecured debt adjustment shall be made after any adjustment under paragraph (d)(4) of this section.

(i) *Large institutions*—The unsecured debt adjustment for large institutions shall be determined by multiplying the institution's ratio of long-term unsecured debt to domestic deposits by 40 basis points.

(ii) *Small institutions*—The unsecured debt adjustment for small institutions will factor in an amount of Tier 1 capital (qualified Tier 1 capital) in addition to any long-term unsecured debt; the amount of qualified Tier 1 capital will be the sum of the amounts set forth below:

Range of Tier 1 capital to adjusted average assets	Amount of Tier 1 capital within range which is qualified (percent)
≤5%	0
>5% and ≤6%	10
>6% and ≤7%	20
>7% and ≤8%	30
>8% and ≤9%	40
>9% and ≤10%	50
>10% and ≤11%	60
>11% and ≤12%	70
>12% and ≤13%	80
>13% and ≤14%	90
>14%	100

For institutions that file Thrift Financial Reports, adjusted total assets will be used in place of adjusted average assets in the preceding table. The sum of qualified Tier 1 capital and long-term unsecured debt as a percentage of domestic deposits will be multiplied by 40 basis points to produce the unsecured debt adjustment for small institutions.

(iii) *Limitation*—No unsecured debt adjustment for any institution shall exceed five basis points.

(iv) *Applicable quarterly reports of condition*—Ratios for any given quarter shall be calculated from quarterly reports of condition (Call Reports and Thrift Financial Reports) filed by each institution as of the last day of the quarter. Until institutions separately report long-term senior unsecured liabilities and long-term subordinated debt in their quarterly reports of condition, the FDIC will use subordinated debt included in Tier 2 capital and will not include any amount of senior unsecured liabilities in calculating the unsecured debt adjustment.

(6) *Secured liability adjustment for all institutions.* All institutions within all risk categories, except insured branches of foreign banks as provided under paragraph (d)(3)(iii) of this section, are subject to upward adjustment of their assessment rate based upon the ratio of their secured liabilities to domestic deposits. Any such adjustment shall be made after any applicable large bank adjustment or unsecured debt adjustment.

(i) *Secured liabilities for banks*—Secured liabilities for banks include Federal Home Loan Bank advances, securities sold under repurchase agreements, secured Federal funds purchased and other borrowings that are secured as reported in banks' quarterly Call Reports.

(ii) *Secured liabilities for savings associations*—Secured liabilities for savings associations include Federal Home Loan Bank advances as reported in quarterly Thrift Financial Reports (''TFRs''). Secured liabilities for savings associations also include securities sold under repurchase agreements, secured Federal funds purchased or other borrowings that are secured. Any of these secured amounts not reported separately from unsecured or other liabilities in the TFR will be imputed based on simple averages for Call Report filers as of June 30, 2008. As of that date, on average, 63.0 percent of the sum of Federal funds purchased and securities sold under repurchase agreements reported by Call Report filers were secured, and 49.4 percent of other borrowings were secured.

(iii) *Calculation*—An institution's ratio of secured liabilities to domestic deposits will, if greater than 25 percent, increase its assessment rate, but any such increase shall not exceed 50 percent of its assessment rate before the secured liabilities adjustment. For an institution that has a ratio of secured liabilities (as defined in paragraph (ii) above) to domestic deposits of greater than 25 percent, the institution's assessment rate (after taking into account any adjustment under paragraphs (d)(5) or (6) of this section) will be multiplied by the following amount: The ratio of the institution's secured liabilities to domestic deposits minus 0.25. Ratios of secured liabilities to domestic deposits shall be calculated from the report of condition, or similar report, filed by each institution.

(7) *Brokered Deposit Adjustment for Risk Categories II, III, and IV.* All institutions in Risk Categories II, III, and IV, except insured branches of foreign banks as provided under paragraph (d)(3)(iii) of this section, shall be subject to an assessment rate adjustment for brokered deposits. Any such brokered deposit adjustment shall be made after any adjustment under paragraph (d)(5) or (6). The brokered deposit adjustment includes all brokered deposits as defined in Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f),

and 12 CFR 337.6, including reciprocal deposits as defined in § 327.8(r), and brokered deposits that consist of balances swept into an insured institution by another institution. The adjustment under this paragraph is limited to those institutions whose ratio of brokered deposits to domestic deposits is greater than 10 percent; asset growth rates do not affect the adjustment. The adjustment is determined by multiplying by 25 basis points the difference between an institution's ratio of brokered deposits to domestic deposits and 0.10. The maximum brokered deposit adjustment will be 10 basis points. Brokered deposit ratios for any given quarter are calculated from the quarterly reports of condition filed by each institution as of the last day of the quarter.

(8) *Request to be treated as a large institution*—(i) *Procedure.* Any institution in Risk Category I with assets of between $5 billion and $10 billion may request that the FDIC determine its initial base assessment rate as a large institution. The FDIC will grant such a request if it determines that it has sufficient information to do so. The absence of long-term debt issuer ratings alone will not preclude the FDIC from granting a request. The initial base assessment rate for an institution without a long-term debt issuer rating will be derived using the financial ratios method, but will be subject to adjustment as a large institution under paragraph (d)(4) of this section. Any such request must be made to the FDIC's Division of Insurance and Research. Any approved change will become effective within one year from the date of the request. If an institution whose request has been granted subsequently reports assets of less than $5 billion in its report of condition for four consecutive quarters, the FDIC will consider such institution to be a small institution subject to the financial ratios method.

(ii) *Time limit on subsequent request for alternate method.* An institution whose request to be assessed as a large institution is granted by the FDIC shall not be eligible to request that it be assessed as a small institution for a period of three years from the first quarter in which its approved request to be assessed as a large bank became effective. Any request to be assessed as a small institution must be made to the FDIC's Division of Insurance and Research.

(iii) An institution that disagrees with the FDIC's determination that it is a large or small institution may request review of that determination pursuant to § 327.4(c).

(9) *New and established institutions and exceptions*—(i) *New Risk Category I institutions*—(A) *Rule as of January 1, 2010.* Effective for assessment periods beginning on or after January 1, 2010, a new institution that is well capitalized shall be assessed the Risk Category I maximum initial base assessment rate for the relevant assessment period, except as provided in § 327.8(m)(1), (2), (3), (4), (5) and paragraphs (ii) and (iii) below. No new institution in Risk Category I shall be subject to the large bank adjustment as determined under paragraph (d)(4) of this section.

(B) *Rule prior to January 1, 2010.* Prior to January 1, 2010, a new institution's initial base assessment rate shall be determined under paragraph (d)(1) or (2) of this section, as appropriate. Prior to January 1, 2010, a Risk Category I institution that is well capitalized and has no CAMELS component ratings shall be assessed at two basis points above the minimum initial base assessment rate applicable to Risk Category I institutions until it receives CAMELS component ratings. The initial base assessment rate will be determined by annualizing, where appropriate, financial ratios obtained from the quarterly reports of condition that have been filed, until the institution files four such reports. Prior to January 1, 2010, assessment rates for new institutions in Risk Category I shall be subject to the large bank adjustment as determined under paragraph (d)(4) of this section.

(C) *Applicability of adjustments to new institutions prior to and as of January 1, 2010.* No new institution in any risk category shall be subject to the unsecured debt adjustment as determined under paragraph (d)(5) of this section. All new institutions in any Risk Category shall be subject to the secured liability adjustment as determined under paragraph (d)(6) of this section. All new institutions in Risk Categories II, III, and IV shall be subject to the brokered deposit adjustment as determined under paragraph (d)(7) of this section.

(ii) *CAMELS ratings for the surviving institution in a merger or consolidation.* When an established institution merges with or consolidates into a new institution, if the FDIC determines the resulting institution to be an established institution under § 327.8(m)(1), its CAMELS ratings for assessment purposes will be based upon the established institution's ratings prior to the merger or consolidation until new ratings become available.

(iii) *Rate applicable to institutions subject to subsidiary or credit union exception.* If an institution is considered established under § 327.8(m)(4) and (5), but does not have CAMELS component ratings, it shall be assessed at two basis points above the minimum initial base assessment rate applicable to Risk Category I institutions until it receives CAMELS component ratings. Thereafter, the assessment rate will be determined by annualizing, where appropriate, financial ratios obtained from all quarterly reports of condition that have been filed, until the institution files four quarterly reports of condition or it receives a long-term debt issuer rating and it is a large institution.

(iv) *Request for review.* An institution that disagrees with the FDIC's determination that it is a new institution may request review of that determination pursuant to § 327.4(c).

(10) *Assessment rates for bridge depository institutions and conservatorships.* Institutions that are bridge depository institutions under 12 U.S.C. 1821(n) and institutions for which the Corporation has been appointed or serves as conservator shall, in all cases, be assessed at the Risk Category I minimum initial base assessment rate, which shall not be subject to adjustment under paragraphs (d)(4), (5), (6) or (7) of this section.

■ 8. Revise § 327.10 to read as follows:

§ 327.10 Assessment rate schedules.

(a) *Initial Base Assessment Rate Schedule.* The initial base assessment rate for an insured depository institution shall be the rate prescribed in the following schedule:

INITIAL BASE ASSESSMENT RATE SCHEDULE

	Risk category				
	I*		II	III	IV
	Minimum	Maximum			
Annual rates (in basis points)	12	16	22	32	45

*All amounts for all risk categories are in basis points annually. Initial base rates that are not the minimum or maximum rate will vary between these rates.

(1) *Risk Category I Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all institutions in Risk Category I shall range from 12 to 16 basis points.

(2) *Risk Category II, III, and IV Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for Risk Categories II, III, and IV shall be 22, 32, and 45 basis points, respectively.

(3) All institutions in any one risk category, other than Risk Category I, will be charged the same initial base assessment rate, subject to adjustment as appropriate.

(b) *Total Base Assessment Rate Schedule after Adjustments.* The total base assessment rates after adjustments for an insured depository institution shall be the rate prescribed in the following schedule.

TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS)*

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial base assessment rate	12–16	22	32	45
Unsecured debt adjustment	−5–0	−5–0	−5–0	−5–0
Secured liability adjustment	0–8	0–11	0–16	0–22.5
Brokered deposit adjustment		0–10	0–10	0–10
Total base assessment rate	7–24.0	17–43.0	27–58.0	40–77.5

*All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

(1) *Risk Category I Total Base Assessment Rate Schedule.* The annual total base assessment rates for all institutions in Risk Category I shall range from 7 to 24 basis points.

(2) *Risk Category II Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category II shall range from 17 to 43 basis points.

(3) *Risk Category III Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category III shall range from 27 to 58 basis points.

(4) *Risk Category IV Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category IV shall range from 40 to 77.5 basis points.

(c) *Total Base Assessment Rate Schedule adjustments and procedures*—(1) *Board Rate Adjustments.* The Board may increase or decrease the total base assessment rate schedule up to a maximum increase of 3 basis points or a fraction thereof or a maximum decrease of 3 basis points or a fraction thereof (after aggregating increases and decreases), as the Board deems necessary. Any such adjustment shall apply uniformly to each rate in the total base assessment rate schedule. In no case may such Board rate adjustments result in a total base assessment rate that is mathematically less than zero or in a total base assessment rate schedule that, at any time, is more than 3 basis points above or below the total base assessment schedule for the Deposit Insurance Fund, nor may any one such Board adjustment constitute an increase or decrease of more than 3 basis points.

(2) *Amount of revenue.* In setting assessment rates, the Board shall take into consideration the following:

(i) Estimated operating expenses of the Deposit Insurance Fund;

(ii) Case resolution expenditures and income of the Deposit Insurance Fund;

(iii) The projected effects of assessments on the capital and earnings of the institutions paying assessments to the Deposit Insurance Fund;

(iv) The risk factors and other factors taken into account pursuant to 12 U.S.C. 1817(b)(1); and

(v) Any other factors the Board may deem appropriate.

(3) *Adjustment procedure.* Any adjustment adopted by the Board pursuant to this paragraph will be adopted by rulemaking, except that the Corporation may set assessment rates as necessary to manage the reserve ratio, within set parameters not exceeding cumulatively 3 basis points, pursuant to paragraph (c)(1) of this section, without further rulemaking.

(4) *Announcement.* The Board shall announce the assessment schedules and the amount and basis for any adjustment thereto not later than 30 days before the quarterly certified statement invoice date specified in § 327.3(b) of this part for the first assessment period for which the adjustment shall be effective. Once set, rates will remain in effect until changed by the Board.

■ 9. Revise Appendix A to Subpart A of Part 327 to read as follows:

Appendix A to Subpart A

Method to Derive Pricing Multipliers and Uniform Amount

I. Introduction

The uniform amount and pricing multipliers are derived from:

- A model (the Statistical Model) that estimates the probability that a Risk Category I institution will be downgraded to a composite CAMELS rating of 3 or worse within one year;
- Minimum and maximum downgrade probability cutoff values, based on data from June 30, 2008, that will determine which small institutions will be charged the minimum and maximum initial base assessment rates applicable to Risk Category I;
- The minimum initial base assessment rate for Risk Category I, equal to 12 basis points, and

• The maximum initial base assessment rate for Risk Category I, which is four basis points higher than the minimum rate.

II. The Statistical Model

The Statistical Model is defined in equations 1 and 3 below.

Equation 1

Downgrade$(0,1)_{i,t} = \beta_0 + \beta_1$ (Tier 1 Leverage Ratio$_T$) + β_2 (Loans past due 30 to 89 days ratio$_{i,t}$) + β_3 (Nonperforming asset ratio$_{i,t}$) + β_4 (Net loan charge-off ratio$_{i,t}$) + β_5 (Net income before taxes ratio$_{i,t}$) + β_6 (Adjusted brokered deposit ratio$_{i,t}$) + β_7 (Weighted average CAMELS component rating$_{i,t}$) where Downgrade$(01)_{i,t}$ (the dependent variable—the event being explained) is the incidence of downgrade from a composite rating of 1 or 2 to a rating of 3 or worse during an on-site examination for an institution i between 3 and 12 months after time t. Time t is the end of a year within the multi-year period over which the model was estimated (as explained below). The dependent variable takes a value of 1 if a downgrade occurs and 0 if it does not.

The explanatory variables (regressors) in the model are six financial ratios and a weighted average of the ''C,'' ''A,'' ''M,'' ''E'' and ''L'' component ratings. The six financial ratios included in the model are:

• Tier 1 leverage ratio
• Loans past due 30–89 days/Gross assets
• Nonperforming assets/Gross assets
• Net loan charge-offs/Gross assets
• Net income before taxes/Risk-weighted assets
• Brokered deposits/domestic deposits above the 10 percent threshold, adjusted for the asset growth rate factor

Table A.1 defines these six ratios along with the weighted average of CAMELS component ratings. The adjusted brokered deposit ratio ($B_{i,T}$) is calculated by multiplying the ratio of brokered deposits to domestic deposits above the 10 percent threshold by an asset growth rate factor that ranges from 0 to 1 as shown in Equation 2 below. The asset growth rate factor ($A_{i,T}$) is calculated by subtracting 0.4 from the four-year cumulative gross asset growth rate (expressed as a number rather than as a percentage), adjusted for mergers and acquisitions, and multiplying the remainder by 3⅓. The factor cannot be less than 0 or greater than 1.

Equation 2

$$B_{i,T} = \left(\frac{Brokered\ Deposits_{i,T}}{Domestic\ Deposits_{i,T}} - 0.10 \right) * A_{i,T}$$

$$\text{where } A_{i,T} = \left[\left(\frac{GrossAssets_{i,T} - GrossAssets_{i,T-4}}{GrossAssets_{i,T-4}} - 0.4 \right) * \frac{10}{3} \right], \text{ subject to } 0 \le A_{i,T} \le 1 \text{ and } B_{i,T} \ge 0.$$

The component rating for sensitivity to market risk (the ''S'' rating) is not available for years prior to 1997. As a result, and as described in Table A.1, the Statistical Model is estimated using a weighted average of five component ratings excluding the ''S'' component. Delinquency and non-accrual data on government guaranteed loans are not available before 1993 for Call Report filers and before the third quarter of 2005 for TFR filers. As a result, and as also described in Table A.1, the Statistical Model is estimated without deducting delinquent or past-due government guaranteed loans from either the loans past due 30–89 days to gross assets ratio or the nonperforming assets to gross assets ratio. Reciprocal deposits are not presently reported in the Call Report or TFR. As a result, and as also described in Table A.1, the Statistical Model is estimated without deducting reciprocal deposits from brokered deposits in determining the adjusted brokered deposit ratio.

TABLE A.1—DEFINITIONS OF REGRESSORS

Regressor	Description
Tier 1 Leverage Ratio (%)	Tier 1 capital for Prompt Corrective Action (PCA) divided by adjusted average assets based on the definition for prompt corrective action.
Loans Past Due 30–89 Days/Gross Assets (%)	Total loans and lease financing receivables past due 30 through 89 days and still accruing interest divided by gross assets (gross assets equal total assets plus allowance for loan and lease financing receivable losses and allocated transfer risk).
Nonperforming Assets/Gross Assets (%)	Sum of total loans and lease financing receivables past due 90 or more days and still accruing interest, total nonaccrual loans and lease financing receivables, and other real estate owned divided by gross assets.
Net Loan Charge-Offs/Gross Assets (%)	Total charged-off loans and lease financing receivables debited to the allowance for loan and lease losses less total recoveries credited to the allowance to loan and lease losses for the most recent twelve months divided by gross assets.
Net Income before Taxes/Risk-Weighted Assets (%)	Income before income taxes and extraordinary items and other adjustments for the most recent twelve months divided by risk-weighted assets.
Adjusted brokered deposit ratio (%)	Brokered deposits divided by domestic deposits less 0.10 multiplied by the asset growth rate factor (which is the term $A_{i,T}$ as defined in equation 2 above) that ranges between 0 and 1.
Weighted Average of C, A, M, E and L Component Ratings.	The weighted sum of the ''C,'' ''A,'' ''M,'' ''E'' and ''L'' CAMELS components, with weights of 28 percent each for the ''C'' and ''M'' components, 22 percent for the ''A'' component, and 11 percent each for the ''E'' and ''L'' components. (For the regression, the ''S'' component is omitted.)

The financial variable regressors used to estimate the downgrade probabilities are obtained from quarterly reports of condition (Reports of Condition and Income and Thrift Financial Reports). The weighted average of the ''C,'' ''A,'' ''M,'' ''E'' and ''L'' component ratings regressor is based on component ratings obtained from the most recent bank examination conducted within 24 months before the date of the report of condition.

The Statistical Model uses ordinary least squares (OLS) regression to estimate downgrade probabilities. The model is estimated with data from a multi-year period (as explained below) for all institutions in Risk Category I, except for institutions established within five years before the date of the report of condition.

The OLS regression estimates coefficients, β_j for a given regressor j and a constant amount, β_0, as specified in equation 1. As shown in equation 3 below, these coefficients are multiplied by values of risk measures at time T, which is the date of the report of

condition corresponding to the end of the quarter for which the assessment rate is computed. The sum of the products is then added to the constant amount to produce an estimated probability, d_{iT}, that an institution will be downgraded to 3 or worse within 3 to 12 months from time T.

The risk measures are financial ratios as defined in Table A.1, except that: (1) The loans past due 30 to 89 days ratio and the nonperforming asset ratio are adjusted to exclude the maximum amount recoverable from the U.S. Government, its agencies or government-sponsored agencies, under guarantee or insurance provisions; (2) the weighted sum of six CAMELS component ratings is used, with weights of 25 percent each for the ''C'' and ''M'' components, 20 percent for the ''A'' component, and 10 percent each for the ''E,'' ''L,'' and ''S'' components; and (3) reciprocal deposits are deducted from brokered deposits in determining the adjusted brokered deposit ratio.

Equation 3

$d_{iT} = \beta_0 + \beta_1$ (Tier 1 Leverage Ratio_{iT}) + β_2 (Loans past due 30 to 89 days ratio_{iT}) + β_3 (Nonperforming asset ratio_{iT}) + β_4 (Net loan charge-off ratio_{iT}) + β_5 (Net income before taxes ratio_{iT}) + β_6 (Adjusted brokered deposit ratio_{iT}) + β_7 (Weighted average CAMELS component rating_{iT})

III. Minimum and Maximum Downgrade Probability Cutoff Values

The pricing multipliers are also determined by minimum and maximum downgrade probability cutoff values, which will be computed as follows:

- The minimum downgrade probability cutoff value will be the maximum downgrade probability among the twenty-five percent of all small insured institutions in Risk Category I (excluding new institutions) with the lowest estimated downgrade probabilities, computed using values of the risk measures as of June 30, 2008.[1] [2] The minimum downgrade probability cutoff value is 0.0182.
- The maximum downgrade probability cutoff value will be the minimum downgrade probability among the fifteen percent of all small insured institutions in Risk Category I (excluding new institutions) with the highest estimated downgrade probabilities, computed using values of the risk measures as of June 30, 2008. The maximum downgrade probability cutoff value is 0.1506.

IV. Derivation of Uniform Amount and Pricing Multipliers

The uniform amount and pricing multipliers used to compute the annual base assessment rate in basis points, P_{iT}, for any such institution i at a given time T will be determined from the Statistical Model, the minimum and maximum downgrade probability cutoff values, and minimum and maximum initial base assessment rates in Risk Category I as follows:

Equation 4

$P_{iT} = \alpha_0 + \alpha_1 * d_{iT}$ subject to $Min \leq P_{iT} \leq Min + 4$

where α_0 and α_1 are a constant term and a scale factor used to convert d_{iT} (the estimated downgrade probability for institution i at a given time T from the Statistical Model) to an assessment rate, respectively, and *Min* is the minimum initial base assessment rate expressed in basis points. (P_{iT} is expressed as an annual rate, but the actual rate applied in any quarter will be $P_{iT}/4$.) The maximum initial base assessment rate is 4 basis points above the minimum (*Min* + 4)

Solving equation 4 for minimum and maximum initial base assessment rates simultaneously,

$Min = \alpha_0 + \alpha_1 * 0.0182$ and $Min + 4 = \alpha_0 + \alpha_1 * 0.1506$

where 0.0182 is the minimum downgrade probability cutoff value and 0.1506 is the maximum downgrade probability cutoff value, results in values for the constant amount, α_0 and the scale factor, α_1:

Equation 5

$$\alpha_0 = Min - \frac{4 * 0.0182}{(0.1506 - 0.0182)} = Min - 0.550$$

and *Equation 6*

$$\alpha_1 = \frac{4}{(0.1506 - 0.0182)} = 30.211$$

Substituting equations 3, 5 and 6 into equation 4 produces an annual initial base assessment rate for institution i at time T, P_{iT}, in terms of the uniform amount, the pricing multipliers and the ratios and weighted average CAMELS component rating referred to in 12 CFR 327.9(d)(2)(i):

Equation 7

P_{iT} = [(Min − 0.550) + 30.211* β_0] + 30.211 * [β_1 (Tier 1 Leverage Ratio_T)] + 30.211 * [β_2 (Loans past due 30 to 89 days ratio_T)] + 30.211 * [β_3 (Nonperforming asset ratio_T)] + 30.211 * [β_4 (Net loan charge-off ratio_T)] + 30.211 * [β_5 (Net income before taxes ratio_T)] + 30.211 * [β_6 (Adjusted brokered deposit ratio_T)] + 30.211 * [β_7 (Weighted average CAMELS component rating_T)]

again subject to $\text{Min} \leq P_{iT} \leq \text{Min} + 4$

where (Min − 0.550) + 30.211 * β_0 equals the uniform amount, 30.211 * β_j is a pricing multiplier for the associated risk measure j, and T is the date of the report of condition corresponding to the end of the quarter for which the assessment rate is computed.

V. Updating the Statistical Model, Uniform Amount, and Pricing Multipliers

The initial Statistical Model is estimated using year-end financial ratios and the weighted average of the ''C,'' ''A,'' ''M,'' ''E'' and ''L'' component ratings over the 1988 to 2006 period and downgrade data from the 1989 to 2007 period. The FDIC may, from time to time, but no more frequently than annually, re-estimate the Statistical Model with updated data and publish a new formula for determining initial base assessment rates—equation 7—based on updated uniform amounts and pricing multipliers. However, the minimum and maximum downgrade probability cutoff values will not change without additional notice-and-comment rulemaking. The period covered by the analysis will be lengthened by one year each year; however, from time to time, the FDIC may drop some earlier years from its analysis.

■ 10. Revise Appendix B to Subpart A of Part 327 to read as follows:

Appendix B to Subpart A

Numerical Conversion of Long-Term Debt Issuer Ratings

Current long-term debt issuer rating	Converted value
Standard & Poor's:	
AAA	1.00
AA+	1.05
AA	1.15
AA−	1.30
A+	1.50
A	1.80
A−	2.20
BBB+	2.70
BBB or worse	3.00
Moody's:	
Aaa	1.00
Aa1	1.05
Aa2	1.15
Aa3	1.30
A1	1.50
A2	1.80
A3	2.20
Baa1	2.70
Baa2 or worse	3.00
Fitch's:	
AAA	1.00
AA+	1.05
AA	1.15

[1] As used in this context, a ''new institution'' means an institution that has been chartered as a bank or thrift for less than five years.

[2] For purposes of calculating the minimum and maximum downgrade probability cutoff values, institutions that have less than $100,000 in domestic deposits are assumed to have no brokered deposits.

NUMERICAL CONVERSION OF LONG-TERM DEBT ISSUER RATINGS—Continued

Current long-term debt issuer rating	Converted value
AA−	1.30
A+	1.50
A	1.80

NUMERICAL CONVERSION OF LONG-TERM DEBT ISSUER RATINGS—Continued

Current long-term debt issuer rating	Converted value
A−	2.20
BBB+	2.70
BBB or worse	3.00

■ 11. Revise Appendix C to Subpart A of Part 327 to read as follows:

Appendix C to Subpart A

ADDITIONAL RISK CONSIDERATIONS FOR LARGE RISK CATEGORY I INSTITUTIONS

Information source	Examples of associated risk indicators or information
Financial Performance and Condition Information.	*Capital Measures (Level and Trend)* • Regulatory capital ratios. • Capital composition. • Dividend payout ratios. • Internal capital growth rates relative to asset growth. *Profitability Measures (Level and Trend)* • Return on assets and return on risk-adjusted assets. • Net interest margins, funding costs and volumes, earning asset yields and volumes. • Noninterest revenue sources. • Operating expenses. • Loan loss provisions relative to problem loans. • Historical volatility of various earnings sources. *Asset Quality Measures (Level and Trend)* • Loan and securities portfolio composition and volume of higher risk lending activities (e.g., subprime lending). • Loan performance measures (past due, nonaccrual, classified and criticized, and renegotiated loans) and portfolio characteristics such as internal loan rating and credit score distributions, internal estimates of default, internal estimates of loss given default, and internal estimates of exposures in the event of default. • Loan loss reserve trends. • Loan growth and underwriting trends. • Off-balance sheet credit exposure measures (unfunded loan commitments, securitization activities, counterparty derivatives exposures) and hedging activities. *Liquidity and Funding Measures (Level and Trend)* • Composition of deposit and non-deposit funding sources. • Liquid resources relative to short-term obligations, undisbursed credit lines, and contingent liabilities.
Market Information	*Interest Rate Risk and Market Risk (Level and Trend)* • Maturity and repricing information on assets and liabilities, interest rate risk analyses. • Trading book composition and Value-at-Risk information. • Subordinated debt spreads. • Credit default swap spreads. • Parent's debt issuer ratings and equity price volatility. • Market-based measures of default probabilities. • Rating agency watch lists. • Market analyst reports.
Stress Considerations	*Ability to Withstand Stress Conditions* • Internal analyses of portfolio composition and risk concentrations, and vulnerabilities to changing economic and financial conditions. • Stress scenario development and analyses. • Results of stress tests or scenario analyses that show the degree of vulnerability to adverse economic, industry, market, and liquidity events. Examples include: i. an evaluation of credit portfolio performance under varying stress scenarios. ii. an evaluation of non-credit business performance under varying stress scenarios. iii. an analysis of the ability of earnings and capital to absorb losses stemming from unanticipated adverse events. • Contingency or emergency funding strategies and analyses. • Capital adequacy assessments. *Loss Severity Indicators* • Nature of and breadth of an institution's primary business lines and the degree of variability in valuations for firms with similar business lines or similar portfolios. • Ability to identify and describe discreet business units within the banking legal entity. • Funding structure considerations relating to the order of claims in the event of liquidation (including the extent of subordinated claims and priority claims). • Extent of insured institutions assets held in foreign units. • Degree of reliance on affiliates and outsourcing for material mission-critical services, such as management information systems or loan servicing, and products. • Availability of sufficient information, such as information on insured deposits and qualified financial contracts, to resolve an institution in an orderly and cost-efficient manner.

By order of the Board of Directors.

Dated at Washington, DC, this 27th day of February, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

* * * * *

Appendix 1

Uniform Amount and Pricing Multipliers for Large Risk Category I Institutions Where Long-Term Debt Issuer Ratings are Available

The uniform amount and pricing multipliers for large Risk Category I institutions with long-term debt issuer ratings were derived from:

- The average long-term debt issuer rating, converted into a numeric value (the long-term debt score) ranging from 1 to 3;
- The weighted average CAMELS rating, as defined in Appendix A;
- The assessment rate calculated using the financial ratios method described in Appendix A, converted to a value ranging from 1 to 3 (the financial ratios score);
- Minimum and maximum cutoff values for an institution's score (the average of the long-term debt score, weighted average CAMELS rating and financial ratios score), based on data from June 30, 2008, which was used to determine the proportion of large banks charged the minimum and maximum initial base assessment rates applicable to Risk Category I; and
- Minimum and maximum initial base assessment rates for Risk Category I

The financial ratios assessment rate (A_f) calculated using the pricing multipliers and uniform amount described in Appendix A was converted to a financial ratios score (S_f), with a value ranging from 1 to 3 as shown in equation 1:

Equation 1

$$S_f = (A_f - 10) * 0.5$$

Each institution's score (S_i) was calculated by dividing its weighted average CAMELS rating (S_w), long-term issuer score (S_d) and financial ratios score (S_f) by 1/3 each, and summing the resulting values as shown in equation 2:

Equation 2

$$S_i = (1/3) * S_{w,i} + (1/3) * S_{d,i} + (1/3) * S_{f,i}$$

The pricing multipliers were determined by minimum and maximum score cutoff values, which were constructed so that fifteen percent of all large insured institutions in Risk Category I (excluding new institutions) are assessed the maximum base rate, while twenty-five percent are assessed the minimum base rate, when computed as of June 2008. The calculated thresholds are 1.601 for the minimum score cut-off value, and 2.389 for the maximum score cut-off value.

The uniform amount and pricing multipliers used to compute the annual base assessment rate in basis points, P_{iT}, for a large institution $_i$ (with a long-term debt rating) at a given time T were determined based on the minimum and maximum score cut-off values, and the minimum and maximum initial base assessment rates in Risk Category I as follows:

Equation 3

$$P_{i,T} = \alpha_0 + \alpha_1 * S_{i,T} \text{ subject to } Min \le P_{i,T} \le Min + 4$$

where α_0 and α_1 are, respectively, a constant term and a scale factor used to convert $S_{i,T}$ (an institution's score at time T) to an assessment rate, and *Min* is the minimum initial base assessment rate expressed in basis points. (Under the final rule, the minimum initial base assessment rate is 12 basis points, so *Min* equals 12.)

Substituting minimum and maximum score cutoff values (1.601 and 2.389, respectively) for $S_{i,T}$ and minimum and maximum initial base assessment rates (*Min* and *Min + 4*, respectively) for $P_{i,T}$ in equation 3 produces equations 4 and 5 below.

Equation 4

$$Min = \alpha_0 + \alpha_1 * 1.601$$

Equation 5

$$Min + 4 = \alpha_0 + \alpha_1 * 2.389$$

Solving both equations simultaneously results in:

Equation 6

$$\alpha_0 = Min - \frac{4*1.601}{(2.389-1.601)} = Min - 8.127$$

Equation 7

$$\alpha_1 = \frac{4}{(2.389-1.601)} = 5.076$$

Substituting equations 6 and 7 into equation 2 produces the following equation for P_{iT}

Equation 8

$$P_{i,T} = (Min - 8.127) + 5.076 * \lfloor (1/3) * S_{w,iT} + (1/3) * S_{d,iT} + (1/3) * S_{f,iT} \rfloor = (Min - 8.127) + 1.692 * S_{w.iT} + 1.692 * S_{d.iT} + 1.692 * S_{f,iT}$$

where $Min - 8.127$ is the uniform amount and 1.692 is a pricing multiplier. Since *Min* equals 12 under the final rule, the uniform amount equals 3.873.

Appendix 2

Analysis of the Projected Effects of the Payment of Assessments

On the Capital and Earnings of Insured Depository Institutions

I. Introduction

This analysis estimates the effect in 2009 of deposit insurance assessments on the equity capital and profitability of all insured institutions, based on the assessment rates adopted in the final rule. Current economic, financial market, and banking industry conditions lend considerable uncertainty to the outlook for earnings in 2009. Therefore, this analysis considers the following two scenarios for pre-tax, pre-assessment income in 2009: (1) Income in 2009 is equal to income for all of 2008, adjusted for mergers; (2) Income in 2009 is equal to the annualized income over the second half of 2008, also adjusted for mergers. The first scenario would result in an industry pre-tax, pre-assessment loss of $7.5 billion. The second scenario would result in an industry pre-tax, pre-assessment loss of $88.2 billion.

The financial data used in this analysis are the most recent available as of December 31, 2008. However, since each bank's risk-based assessment rate for the fourth quarter has not yet been finalized, each institution's rate under the rate schedule adopted in the final rule is based on data as of September 30, 2008.[1] The projected use of one-time credits authorized under the Reform Act is taken into consideration in determining the effective assessment for an institution.

II. Analysis of the Projected Effects on Capital and Earnings

While deposit insurance assessment rates generally will result in reduced institution profitability and capitalization compared to the absence of assessments, the reduction will not necessarily equal the full amount of the assessment. Two factors can mitigate the effect of assessments on institutions' profits and capital. First, a portion of the assessment may be transferred to customers in the form of higher borrowing rates, increased service fees and lower deposit interest rates. Since information is not readily available on the extent to which institutions are able to share assessment costs with their customers, however, this analysis assumes that institutions bear the full after-tax cost of the assessment. Second, deposit insurance assessments are a tax-deductible operating expense; therefore, the assessment expense can lower taxable income. This analysis considers the effective after-tax cost of assessments in calculating the effect on capital.[2]

An institution's earnings retention and dividend policies also influence the extent to which assessments affect equity levels. If an institution maintains the same *dollar* amount of dividends when it pays a deposit

[1] For purposes of this analysis, the assessment base (like income) is not assumed to increase, but is assumed to remain at December 2008 levels. All income statement items used in this analysis were adjusted for the effect of mergers. Institutions for which four quarters of earnings data were unavailable, including insured branches of foreign banks, were excluded from this analysis.

[2] The analysis does not incorporate any tax effects from an operating loss carry forward or carry back.

insurance assessment as when it does not, equity (retained earnings) will be less by the full amount of the after-tax cost of the assessment. This analysis instead assumes that an institution will maintain its dividend *rate* (that is, dividends as a fraction of net income) unchanged from the weighted average rate reported over the four quarters ending December 31, 2008. In the event that the ratio of equity to assets falls below 4 percent, however, this assumption is modified such that an institution retains the amount necessary to achieve a 4 percent minimum and distributes any remaining funds according to the dividend payout rate.

The equity capital of insured institutions as of December 31, 2008 was $1.3 trillion.[3] Based on the assumptions for earnings and assessments described above, year-end 2009 equity capital is projected to equal between $1.215 trillion and $1.267 trillion. In the absence of an assessment, total equity would be an estimated $6 billion higher.

On an industry weighted average basis, projected total assessments in 2009 would result in capital that is between 0.44 percent and 0.47 percent less than in the absence of assessments. The analysis indicates that assessments would cause 8 to 12 institutions whose equity-to-assets ratio would have exceeded 4 percent in the absence of assessments to fall below that percentage and 6 to 9 institutions to have below 2 percent equity-to-assets that otherwise would not have.

The effect of assessments on institution income is measured by deposit insurance assessments as a percent of income before assessments, taxes, and extraordinary items (hereafter referred to as ''income''). This income measure is used in order to eliminate the potentially transitory effects of extraordinary items and taxes on profitability. In order to facilitate a comparison of the impact of assessments under the two scenarios for earnings, institutions were assigned to one of three groups: those who were profitable under both earnings scenarios, those who were unprofitable under both earnings scenarios, and those who were profitable in one scenario but unprofitable in the other.

Table A.1 shows that approximately 55 percent to 59 percent of profitable institutions are projected to owe assessments that are less than 10 percent of income. Table A.2 shows that profitable institutions facing an assessment of under 10 percent of income hold between 43 and 80 percent of all profitable institution assets, depending on the income scenario. The overall weighted average reduction in income for profitable institutions is between 5.8 percent and 7.7 percent.

TABLE A.1—ASSESSMENTS AS A PERCENT OF INCOME *

[Numbers of profitable institutions]

Assessments as percent of income	2009 income based on:			
	Results for all of 2008		Annualized results for 2nd half of 2008	
	Number of institutions	Percent of institutions	Number of institutions	Percent of institutions
0.0–5.0	1,087	19	1,029	18
5.0–10.0	2,305	40	2,108	37
10.0–20.0	1,493	26	1,441	25
20.0–40.0	534	9	629	11
40.0–100.0	200	4	316	6
>100.0	75	1	171	3
Total	5,694	100	5,694	100

TABLE A.2—ASSESSMENTS AS A PERCENT OF INCOME *

[Assets of profitable institutions]

[$ in billions]

Assessments as percent of income	2009 income based on:			
	Results for all of 2008		Annualized results for 2nd half of 2008	
	Assets of institutions	Percent of assets	Assets of institutions	Percent of assets
0.0–5.0	1,783	28	1,479	23
5.0–10.0	3,303	52	1,295	20
10.0–20.0	936	15	2,297	36
20.0–40.0	223	4	886	14
40.0–100.0	45	1	288	5
> 100.0	65	1	110	2
Total	6,354	100	6,354	100

Notes:

(1) Income is defined as income before taxes, extraordinary items, and deposit insurance assessments. Assessments are adjusted for the use of one-time credits.

(2) Profitable institutions are defined as those having positive merger-adjusted income (as defined above) for all of 2008, the second half of 2008, and, by assumption, in 2009.

(3) 10 insured branches of foreign banks and 59 institutions having less than 4 quarters of reported earnings were excluded from this analysis.

[3] This excludes equity for those mentioned in the note to Tables A.1 and A.2.

Tables A.3 and A.4 provide the same analysis for institutions that were unprofitable under both scenarios. Note that assessments will have a smaller percentage impact on the losses of unprofitable institutions as losses rise, so that such institutions are, in percentage terms, less adversely affected under the scenario based on the results for the second half of 2008. Table A.3 shows that approximately 52 percent to 70 percent of unprofitable institutions are projected to owe assessments that are less than 10 percent of losses. Table A.4 shows the corresponding asset distribution. The overall weighted average increase in losses for unprofitable institutions is between 2.6 and 4.6 percent.

TABLE A.3—ASSESSMENTS AS A PERCENT OF LOSSES *

[Numbers of unprofitable institutions]

Assessments as percent of losses	2009 income based on:			
	Results for all of 2008		Annualized results for 2nd half of 2008	
	Number of institutions	Percent of institutions	Number of institutions	Percent of institutions
0.0–5.0	523	29	801	44
5.0–10.0	411	23	479	26
10.0–20.0	401	22	312	17
20.0–40.0	243	13	111	6
40.0–100.0	147	8	76	4
> 100.0	93	5	39	2
Total	1,818	100	1,818	100

TABLE A.4—ASSESSMENTS AS A PERCENT OF LOSSES *

[Assets of unprofitable institutions]

[$ in billions]

Assessments as percent of income	2009 income based on:			
	Results for all of 2008		Annualized results for 2nd half of 2008	
	Assets of institutions	Percent of assets	Assets of institutions	Percent of assets
0.0–5.0	2,235	48	3,181	68
5.0–10.0	1,316	28	1,350	29
10.0–20.0	626	13	115	2
20.0–40.0	372	8	32	1
40.0–100.0	50	1	14	0
> 100.0	100	2	6	0
Total	4,698	100	4,698	100

Notes:

(1) Income is defined as income before taxes, extraordinary items, and deposit insurance assessments. Assessments are adjusted for the use of one-time credits.

(2) Profitable institutions are defined as those having positive merger-adjusted income (as defined above) for all of 2008, the second half of 2008, and, by assumption, in 2009.

(3) 10 insured branches of foreign banks and 59 institutions having less than 4 quarters of reported earnings were excluded from this analysis.

In addition to those institutions that remained either profitable or unprofitable in both earnings scenarios, there were 734 institutions with $2.79 trillion in assets that changed classification from one scenario to the other. Of these 734 institutions, 634 were profitable when 2009 income equals the results for all 2008 but unprofitable when 2009 income equals the annualized results for the second half of 2008, while 100 were unprofitable under the former scenario and profitable under the latter scenario.

[FR Doc. E9–4584 Filed 2–27–09; 4:15 pm]

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FEDERAL DEPOSIT INSURANCE CORPORATION

Federal Deposit Insurance Corporation Amended Restoration Plan

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Amendment of Federal Deposit Insurance Corporation restoration plan.

On October 7, 2008, the FDIC established a Restoration Plan for the Deposit Insurance Fund (the DIF or the fund), which was implemented immediately. The Restoration Plan called for the FDIC to set assessment rates such that the reserve ratio would return to 1.15 percent within five years, which required an increase in assessment rates. Thus, on October 7, 2008, the Board adopted a notice of proposed rulemaking (NPR) that proposed, among other things, to increase assessment rates uniformly by seven basis points effective January 1, 2009, and substantially revise the assessment system and reset assessment rates effective April 1, 2009.

The FDIC received many comments from industry trade groups and banks regarding the proposed increases in assessment rates. Many of the comments were critical of the proposed assessment rate increases. Several commenters urged the FDIC to take advantage of the flexibility that Congress provided to extend the restoration period beyond five years under ''extraordinary circumstances.'' As the trade groups and many other commenters noted, the law allows the FDIC to take longer than five years for the reserve ratio to reach 1.15 percent due to ''extraordinary circumstances.''

In recognition of the current severe strains on banks and the financial system, the FDIC has concluded that the problems facing the financial services sector and the economy at large constitute such extraordinary circumstances. Since the NPR was published, earnings and capital levels of insured institutions have continued to decline and the credit markets remain under significant stress. Industry losses in the fourth quarter of 2008 were the largest in the 25 years that insured institutions have reported quarterly earnings. Given the enormous stresses on financial institutions and the likelihood of a prolonged and severe economic recession, the FDIC is amending its Restoration Plan to extend the restoration period, as described below. The assessment rates that the FDIC is adopting in the accompanying final rule reflect this extended period.

Therefore, the FDIC amends the Restoration Plan adopted on October 7, 2008, as follows:

1. The period of the Restoration Plan is extended to seven years.

2. The FDIC will have the accompanying final rule published in the **Federal Register** as soon as possible.

3. In addition, the FDIC will also have the accompanying interim rule imposing a special assessment published in the **Federal Register** as soon as possible. Under this interim rule, the FDIC will impose an emergency special assessment equal to 20 basis points of an institution's assessment base on June 30, 2009.

4. The FDIC projects that the rates adopted in the final rule combined with the special assessment should return the fund reserve ratio to 1.15 percent within seven years, that is, by December 31, 2015.

5. At least semiannually hereafter, the FDIC will update its loss and income projections for the fund and, if needed to ensure that the fund reserve ratio reaches 1.15 percent within the seven-year period, will increase assessment rates, following notice-and-comment rulemaking if required. If consistent with the fund reserve ratio reaching 1.15 percent within the seven-year period (or such shorter period as the FDIC may determine), the FDIC may also lower assessment rates, again following notice-and-comment rulemaking if required.

6. Institutions may continue to use assessment credits (for regular quarterly assessments and for special assessments) without additional restriction (other than those imposed by law) during the term of the Restoration Plan, since the few remaining credits should have only a minimal effect on fund revenue.

7. This amended Restoration Plan shall be implemented immediately.

Dated at Washington DC, this 27th day of February, 2009.

By order of the Board of Directors.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–4582 Filed 2–27–09; 4:15 pm]

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