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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. APHIS–2006–0079]

RIN 0579–AC30

Viruses, Serums, Toxins, and Analogous Products; Standard Requirements for Live Vaccines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Virus-Serum-Toxin Act regulations for certain live bacterial and viral vaccines by removing the requirement to retest the Master Seeds for immunogenicity 3 years after the initial qualifying immunogenicity test. In addition, we are amending the requirement concerning mouse safety tests prescribed for a biological product recommended for animals other than poultry. These changes update the standard requirements by eliminating unnecessary testing of Master Seed bacteria and viruses and other forms of bulk or completed biological product.

DATES: Effective Date: *January 22, 2008.*

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, APHIS, USDA, 4700 River Road, Unit 148, Riverdale, MD 20737–1228; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The Virus-Serum-Toxin Act regulations in 9 CFR part 113 (referred to below as the regulations) contain standard procedures and requirements that are used to establish the purity, safety, potency, and efficacy of veterinary biological products. Current standard requirements for certain live bacterial and viral vaccines require that each Master Seed be retested for immunogenicity 3 years after the initial immunogenicity test.

The requirement to confirm the immunogenicity of a Master Seed at 3 years has been in place since the master seed concept for vaccine production was established, and had been considered necessary until such time that an accumulation of data derived from such confirmatory testing established the antigenic stability of Master Seed bacteria and viruses over extended periods of storage. Data accumulated by veterinary biologics licensees over several years have shown that the immunogenicity of the Master Seed is not adversely affected over extended periods of storage.

On January 31, 2007, we published in the **Federal Register** (72 FR 4470–4472, Docket No. APHIS–2006–0079) a proposal[1] to amend the Virus-Serum-Toxin Act regulations for certain live bacterial and viral vaccines by removing the requirement to retest the Master Seeds for immunogenicity 3 years after the initial qualifying immunogenicity test. We also proposed to amend the requirement concerning mouse safety tests prescribed for biological products recommended for animals other than poultry.

We solicited comments concerning our proposal for 60 days ending April 2, 2007. We received two comments by that date, from a trade association representing veterinary biologics manufacturers and a representative of a State animal health commission.

One commenter supported the elimination of unnecessary testing/retesting from the regulations and noted that such action would decrease duplicative testing in animals. With regard to using the subcutaneous route of inoculation when conducting the mouse safety test, that same commenter recommended that proposed § 113.33(a)(1) should provide the option to split the injection volume among more than one injection site. The commenter pointed out that this recommendation was consistent with the ''good practice'' guidelines for subcutaneous injections recommended by the Association for Assessment and Accreditation of Laboratory Animal Care.

We agree with the commenter's recommendation and have amended § 113.33(a)(1) in this final rule to allow the option of dividing the 0.5 mL inoculation volume among more than one injection site.

The second commenter expressed concern that adverse local reactions may be missed if intraperitoneal inoculation is the only route used for the mouse safety test, and suggested that such test be conducted by inoculating mice using both the subcutaneous and intraperitoneal routes instead of by only one route as had been proposed.

In response to the commenter's concern that adverse local reactions may be missed if only one route is used, we wish to point out that § 113.300(b) of the regulations requires final container samples from each serial of product to be tested for safety in at least one species for which the vaccine is intended; the purpose of such test is to ensure freedom from undue adverse local reactions. Accordingly, we are not making any changes in this final rule in response to the comment.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the regulations for certain live bacterial and viral vaccines to eliminate the requirement to retest the Master Seed for immunogenicity 3 years after the initial qualifying immunogenicity test. In addition, this amendment updates the regulations concerning mouse safety tests by requiring either intraperitoneal or subcutaneous inoculation of mice, but not both, in such tests. The primary effect of this rule will be to update the standard requirements by eliminating unnecessary testing of Master Seed bacteria and viruses and other forms of bulk or completed product in animals.

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0079.*

There are approximately 125 veterinary biologics establishments, including licensees and permittees that may be affected by this rule. According to the standards of the Small Business Administration, most veterinary biologics establishments would be classified as small entities.

It is anticipated that no increased recordkeeping burden will be added to licensees or permittees since the amended regulations actually will mean that fewer tests will be needed and fewer reports required to be submitted. We further anticipate that licensees and permittees may benefit economically from the cost savings associated with the reduction in the amount of required animal testing. The overall effect of this amendment will be to reduce the costs associated with producing and testing veterinary biological products.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Virus-Serum-Toxin Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 113 as follows:

PART 113—STANDARD REQUIREMENTS

■ 1. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

§ 113.8 [Amended]

■ 2. In § 113.8, paragraph (d) is amended as follows:

■ a. In the heading by removing the words ''*Repeat immunogenicity tests*'' and adding the words ''*Extending the dating of a reference*'' in their place.

■ b. By removing paragraph (d)(1).

■ c. By removing the paragraph designation ''(2)''.

■ 3. In § 113.33, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 113.33 Mouse safety tests.

* * * * *

(a) * * *

(1) Vaccine prepared for use as recommended on the label shall be tested by inoculating eight mice intraperitoneally or subcutaneously with 0.5 mL (the inoculation volume may be divided among more than one injection site), and the animals observed for 7 days.

(2) If unfavorable reactions attributable to the product occur in any of the mice during the observation period, the serial or subserial is unsatisfactory. If unfavorable reactions which are not attributable to the product occur, the test shall be declared inconclusive and may be repeated: *Provided,* That, if the test is not repeated, the serial or subserial shall be declared unsatisfactory.

* * * * *

§§ 113.66, 113.68, and 113.69 [Amended]

■ 4. In §§ 113.66, 113.68, and 113.69, paragraph (b)(6) is removed and paragraph (b)(7) is redesignated as paragraph (b)(6).

§ 113.67 [Amended]

■ 5. In § 113.67, paragraph (b)(7) is removed and paragraph (b)(8) is redesignated as paragraph (b)(7).

§ 113.70 [Amended]

■ 6. In § 113.70, paragraph (b)(5) is removed.

§§ 113.71, 113.306, and 113.318 [Amended]

■ 7. In §§ 113.71, 113.306, and 113.318, paragraph (b)(4) is removed and paragraph (b)(5) is redesignated as paragraph (b)(4).

§ 113.303 [Amended]

■ 8. In § 113.303, paragraph (c)(6) is removed.

§ 113.302, 113.304, 113.314, 113.315, 113.317, 113.327, 113.331, and 113.332 [Amended]

■ 9. In §§ 113.302, 113.304, 113.314, 113.315, 113.317, 113.327, 113.331, and 113.332, paragraph (c)(4) is removed and paragraph (c)(5) is redesignated as paragraph (c)(4).

§ 113.305 [Amended]

■ 10. In § 113.305, paragraphs (b)(1)(iii) and (b)(2)(iii) are removed and paragraph (b)(2)(iv) is redesignated as paragraph (b)(2)(iii).

§§ 113.308 and 113.316 [Amended]

■ 11. In §§ 113.308 and 113.316, paragraph (b)(5) is removed and paragraph (b)(6) is redesignated as paragraph (b)(5).

§ 113.309 [Amended]

■ 12. In § 113.309, paragraph (c)(9) is removed and paragraph (c)(10) is redesignated as paragraph (c)(9).

§ 113.310 [Amended]

■ 13. In § 113.310, paragraph (c)(8) is removed and paragraph (c)(9) is redesignated as paragraph (c)(8).

§ 113.311 [Amended]

■ 14. In § 113.311, paragraph (c)(7) is removed and paragraph (c)(8) is redesignated as paragraph (c)(7).

§ 113.312 [Amended]

■ 15. In § 113.312, paragraphs (b)(5) and(b)(6) are removed and paragraph (b)(7) is redesignated as paragraph (b)(5).

§§ 113.313 and 113.328 [Amended]

■ 16. In §§ 113.313 and 113.328, paragraph (c)(6) is removed and paragraph (c)(7) is redesignated as paragraph (c)(6).

§§ 113.325 and 113.326 [Amended]

■ 17. In §§ 113.325 and 113.326, paragraph (c)(5) is removed and paragraph (c)(6) is redesignated as paragraph (c)(5).

§ 113.329 [Amended]

■ 18. In § 113.329, paragraph (c)(5) is removed and paragraphs (c)(6) and (c)(7) are redesignated as paragraphs (c)(5) and (c)(6), respectively.

Done in Washington, DC, this 13th day of December 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–24649 Filed 12–20–07; 8:45 am]

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Parts 433, 434, and 435

[Docket No. EE–RM/STD–02–112]

RIN 1904–AB13

Energy Conservation Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings and New Federal Low-Rise Residential Buildings

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is adopting with changes the interim final rule published on December 4, 2006 (71 FR 70275) that implemented provisions in the Energy Policy Act of 2005 that require DOE to establish revised energy efficiency performance standards for the construction of all new Federal buildings. The standards in today's final rule apply to commercial and multi-family high-rise residential buildings and low-rise residential buildings, as designed and constructed.

DATES: This rule is effective January 22, 2008.

FOR FURTHER INFORMATION CONTACT: For technical issues contact Cyrus Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Federal Energy Management Program, EE–2L, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9138, e-mail: *cyrus.nasseri@ee.doe.gov*. For legal issues contact Chris Calamita, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1777, e-mail: *Christopher.Calamita@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction
A. Background
B. Interim Final Rule
C. Summary of the Final Rule
II. Discussion of Comments and Changes to the Interim Final Rule
III. Regulatory Analyses
IV. Congressional Notification
V. Approval of the Office of the Secretary

I. Introduction

A. Background

Section 305 of the Energy Conservation and Production Act (ECPA), as amended by the Energy Policy Act of 1992 (Pub. L. 102–486) requires DOE to establish building energy efficiency standards for all new Federal buildings. (42 U.S.C. 6834) Section 305(a)(1) requires standards that contain energy efficiency measures that are technologically feasible and economically justified but, at a minimum, require the subject buildings to meet the energy saving and renewable energy specifications in the applicable voluntary consensus energy code specified in section 305(a)(2). (42 U.S.C. 6834(a)(1) and (2))

Until amended by the Energy Policy Act of 2005 (EPAct 2005; Pub. L. 109–58), section 305(a)(2) set the minimum or baseline standards as the CABO (Council of American Building Officials) Model Energy Code, 1992 (for residential buildings) and ASHRAE (American Society of Heating, Refrigerating, and Air-Conditioning Engineers) Standard 90.1–1989 (for commercial and multi-family high rise residential buildings). Section 305(a)(2)(C) of ECPA requires that DOE consider, in consultation with the Environmental Protection Agency and other Federal agencies, and where appropriate, measures regarding radon and other indoor air pollutants.

Section 306(a)(1) of ECPA provides that each Federal agency must adopt procedures to ensure that new Federal buildings will meet or exceed the Federal building energy efficiency standards established under section 305. (42 U.S.C. 6835(a)(1)) Additionally, section 306(a)(2) extends the requirements for new Federal buildings established under section 305 to buildings under the jurisdiction of the Architect of the Capitol. (42 U.S.C. 6835(a)(2)) Section 306(b) bars the head of a Federal agency from expending Federal funds for the construction of a new Federal building unless the building meets or exceeds the applicable Federal building energy standards established under section 305. (42 U.S.C. 6835(b))

DOE established Federal building standards under ECPA and initially placed both the commercial and residential standards in Part 435 of Title 10 of the Code of Federal Regulations (CFR). In a final rule published on October 6, 2000, DOE established new energy efficiency standards for new Federal commercial and multi-family high-rise residential buildings. 65 FR 59999. DOE placed the revised Federal commercial and multi-family high-rise residential building standards in a new 10 CFR part 434, entitled ''Energy Code for New Federal Commercial and Multi-Family High Rise Residential Buildings.'' The standards for Federal low-rise residential buildings remain in 10 CFR part 435.

Section 109 of EPAct 2005 amended section 305 of ECPA. (42 U.S.C. 6835) Section 109 replaced the minimum standards referenced in section 305(a)(2)(A) with references to updated building codes that are widely used today. For residential buildings, CABO Model Energy Code, 1992, was replaced with the 2004 International Energy Conservation Code (IECC). For commercial and multi-family high rise buildings, ASHRAE Standard 90.1–1989 was replaced with ASHRAE Standard 90.1–2004.

Section 109 of EPAct 2005 also added a new section 305(a)(3)(A) that requires DOE, by rule, to establish revised Federal building energy efficiency performance standards not later than August 8, 2006. (42 U.S.C. 6834(a)(3)(A)) Under the revised standards, new Federal buildings must be designed to achieve energy consumption levels that are at least 30 percent below the updated minimum standards referenced in section 305(a)(2), if life-cycle cost-effective. (42 U.S.C. 6834(a)(3)(A)(i)(I))

B. Interim Final Rule

On December 4, 2006, the Department published an interim final rule establishing energy conservation standards for the design and construction of new Federal commercial and multi-family high rise residential buildings (10 CFR part 433) and the design and construction of new Federal low-rise residential buildings (10 CFR part 435, subpart A). 71 FR 70275. DOE determined that establishing these requirements through an interim final rule offered the best opportunity to achieve the energy efficiency goals of section 109 of the EPAct 2005 as soon as possible. Further, the standards are applicable only to the design and construction of Federal buildings, which are public property. Regulations applicable only to public property are exempted from the Administrative Procedure Act's prior notice and comment requirements. (5 U.S.C. 553(a)(2)) Additionally, the explicitness of the direction provided to DOE for this rule in section 109 of the EPAct 2005 supported the issuance of an interim final rule, as a matter of policy.

The interim final rule established an energy efficiency baseline for new Federal commercial and multi-family high rise residential buildings and new Federal low-rise residential buildings based on referencing ASHRAE Standard 90.1–2004 and the 2004 IECC, respectively. These standards establish requirements for the structure and major

systems of a building and are mandatory for new Federal buildings. The interim final rule established a requirement for new Federal buildings to achieve a level of energy efficiency 30 percent greater than that of the ANSI/ASHRAE/IESNA or the 2004 IECC levels, as appropriate, when life-cycle cost-effective, again as directed by the statute.

The standards established in the interim final rule do not take a prescriptive approach as to how the 30 percent reduction is to be obtained. The baseline standards contain a limited set of mandatory requirements, such as sealing leaks in the building envelope and air duct systems. Beyond this, there are no restrictions on how a Federal agency is to achieve cost-effective energy savings. DOE believes that Federal agencies should be given the flexibility necessary to determine the most effective ways to achieve energy savings above that of the incorporated standards, rather than relying on prescriptive requirements that may not be appropriate in all cases.

The interim final rule became effective January 3, 2007. All new Federal buildings for which design for construction began on or after that date must comply with the requirements established in this rule. Again, the interim final rule applied to the design and construction of Federal buildings, as opposed to the operation of Federal buildings following construction. All new Federal buildings for which design for construction began prior to that date must comply with the requirements in 10 CFR part 434 or subpart C of part 435, as applicable.

DOE provided a list of resources to help Federal agencies achieve building energy efficiency levels of at least 30 percent below that of ASHRAE Standard 90.1–2004 or the 2004 IECC. 71 FR 70278–70279. The resources were provided in three categories—for all buildings, specifically for commercial and high-rise multi-family residential buildings, and specifically for low-rise residential buildings.

C. Summary of the Final Rule

In today's final rule, the Department makes a number of minor changes to the interim final rule. These changes are described in Section II below.

II. Discussion of Comments and Changes to the Interim Final Rule

DOE received a variety of comments from twenty different parties in response to the interim final rule. The comments covered a variety of topics. There were comments and questions on scope and timing of new Federal standards, such as what energy end-uses the rules cover, and whether they should apply to major retrofits and leased buildings. Some comments suggested changes or alternatives to the baseline minimum standards. In particular, several commenters requested an update to the 2006 IECC in place of 2004 IECC for low-rise residential buildings. A number of comments suggested that the rules require more than 30 percent energy savings if cost effective. Some commenters wanted DOE to actively enforce that Federal agencies comply with the standards and/or provide support and guidance for implementing the standards. DOE received two comments (United States Postal Service, No. 15; Edison Electric Institute No. 18 [1]) that simply expressed support for the content of the new Federal standards. Comments are discussed and addressed in greater detail below.

Questions on Scope and Timing of New Federal Standards

As stated above, the interim final rule applies to Federal buildings for which design for construction began on or after January 3, 2007. Los Alamos National Laboratory (Comment No. 6) and the Department of Veterans Affairs (Comment No. 20) requested clarification of when ''design for construction'' begins as this establishes the applicable stage when the new rule applies. The rule becomes effective at the design stage when the impact of the rule needs to be accounted for in the procurement process. Specifically, this is the stage when the energy efficiency and sustainability details (such as insulation levels, HVAC systems, water-using systems, etc.) are either explicitly determined or implicitly included in a project cost specification. If prior to January 3, 2007, energy efficiency and sustainability details were incorporated into a building design, and thus a costly redesign would be required to meet this rule, the new rule is not applicable. Today's final rule clarifies the applicability of the new Federal building standards.

Four comments questioned if the standards apply to leased buildings (Naval Facilities Engineering Command, No. 3; The Alliance to Save Energy, No. 9; The American Institute of Architects; No. 10 and No. 14). The last three comments recommended that the scope of the interim rule be expanded to apply to leased buildings.

ECPA specifically defines ''Federal building'' to mean any building to be ''constructed by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements.'' (42 U.S.C. 6832(6)) DOE applied the statutory definition to define ''new Federal buildings'' for the purpose of 10 CFR 433.2 and 435.2. A building being constructed for lease by a Federal agency would be for the use of the Federal agency and therefore would be a ''new Federal building'' subject to the requirements established in the interim final rule if it is not legally subject to State or local building codes.

Four comments suggested the rule should apply to additions and/or major renovations. (Comments No. 6; No. 9; No. 10; No. 14). Commenters noted that the previous building standards applied to major renovations.

Section 305 of ECPA specifies that the rule shall apply to only new buildings. Today's final rule provides additional clarity on the distinction between a ''new'' building and a major renovation. Under today's final rule the definition of ''new Federal building'' specifies that a building is a new building if it is completely replaced from the foundation up. DOE notes that the recent Executive Order 13423, *Strengthening Federal Environmental, Energy, and Transportation Management*, includes mandatory energy efficiency requirements for major renovations to Federal buildings. 72 FR 3919 (January 24, 2007).

Request for Use of the 2006 IECC Instead of the 2004 IECC for Low-Rise Residential Buildings

Five commenters (Birch Point Consulting, No. 1; American Architectural Manufacturers Association, No. 4; Pilkington North America No. 5; APA-The Engineered Wood Association No. 12; and a combined comment from Icynene, Nu-Wool Co., Inc., and Building Quality, No. 13) requested that the residential standards be updated from the 2004 IECC Edition to the 2006 IECC. These commenters stated that the 2004 IECC is what is referred to as a ''supplement edition'' that is published at the midpoint between the three year cycles when stand-alone editions of the IECC are published. Some of the commenters further stated that the 2004 IECC is ''not a code.'' Comments stated that the 2006 IECC is the most current version of the IECC and the 2004 Supplement is now an older version. Additionally, several commenters objected to requirements in the 2004 IECC and stated a preference for the alterations to these requirements

[1] The number accompanying an identified commenter indicates the location of the comment with in the docket for this rulemaking. There were 20 comments received in total. All comments can be reviewed at *http://www2.eere.energy.gov/femp/pdfs/ee_rm_std_02_112.pdf*.

in the 2006 IECC. Conversely, one commenter believes the Department was correct to use the 2004 IECC (Responsible Energy Codes Alliance, No. 11)

Several commenters observed that ECPA requires that the Department determine whether the Federal standards should be updated within one year after approval of revisions to the IECC (or ASHRAE Standard 90.1). These commenters requested that consistent with this provision of EPCA DOE incorporate the 2006 version of the IECC.

The interim final rule reflected Congress's specific instruction as to which voluntary consensus standard DOE is to incorporate into the requirements as the baseline for Federal residential buildings, 2004 IECC. Further, the 2004 IECC is code language that is fully sanctioned by the International Code Council. As directed by ECPA, DOE will consider updating to the 2006 IECC based on the cost effectiveness of the revisions contained in the 2006 IECC. However, at this time DOE has not completed the analysis necessary to determine if the standard should be updated to cite the 2006 IECC.

Suggestions for Use of Alternative Baseline Standards

DOE received a number of comments suggesting the use of alternative baseline standards to the 2004 IECC (for low-rise residential buildings) and ASHRAE Standard 90.1–2004 (for commercial and high-rise residential buildings). Suggestions included the use of the IECC for commercial and high-rise residential buildings (Comment No. 1; Responsible Energy Codes Alliance, No. 11) and use of the IRC (Comment No. 1) or ASHRAE Standard 90.2–2004 (Comment No. 14; No. 18) for low-rise residential buildings.

Today's final rule does not amend the use of ASHRAE Standard 90.1–2004 and the 2004 IECC as the baselines for the requirement. As stated above, section 109 of EPAct 2005 is explicit in the voluntary standards that are to be incorporated as the baseline.

Comments Requesting Clarification of Requirements

Under the requirements established in the interim final rule, Federal buildings must exceed the energy efficiency level of the appropriate consensus standard by 30 percent if life-cycle cost effective. 10 CFR 433.4(a)(2) and 435.4(a)(2). DOE received several comments on the 30 percent level specified in the standards and the reliance on ''life-cycle cost effective.''

Regarding the energy savings target, four commenters suggested that DOE require the maximum cost-effective energy efficiency, even if it is beyond 30% (Comments No. 9; No. 10; No. 14; and Natural Resources Defense Council, No. 17). These commenters interpreted the direction in EPAct 2005 to be to achieve the maximum level of energy efficiency that is cost-effective relative to the baseline standards, not just to achieve at least 30 percent savings.

As stated in the preamble to the interim final rule, Congress expressly specified a minimum performance requirement of a 30 percent improvement, if life-cycle cost effective. 71 FR 70277. Although the statute requires DOE to establish performance standards that are ''at least'' 30 percent below the levels in the incorporated ASHRAE and IECC standards, the standards that DOE established in the interim final rule do not require Federal agencies to consider the life-cycle cost effectiveness of improvements beyond the 30 percent level.

It is DOE's view that had Congress sought to require improvements at a maximum energy savings with the condition that it has an equal or lower life-cycle cost relative to the baseline standard, it would have mandated designs to achieve that level and would not have specified the 30 percent minimum. The rule uses the same language in EPAct—that at least 30 percent savings be achieved if cost-effective. Federal agencies are not precluded from designing buildings to achieve greater improvements, and DOE encourages agencies to design new Federal buildings to achieve lower energy consumption levels if life-cycle cost effective. Further, DOE has made a minor modification to Sections 433.4(c) and 435.4(c) of the final rule to permit energy efficient better than the maximum level that is cost effective. This allows Federal agencies the flexibility to pursue additional energy efficiency for demonstration projects, such as zero energy buildings.

One commenter objected to the performance based nature of the 30 percent requirements. The commenter stated that DOE should establish more prescriptive standards (Comment No. 17). The standards established in the interim final rule allow Federal designers flexibility in choosing a compliant design and assign the responsibility of ensuring compliance to the Federal agencies. The commenter's statements suggest a preference for prescriptive standards to achieve the additional 30 percent savings compared to the reference national standards, with explicit minimum requirements for individual building components (such as walls, windows, and floors) and systems (such as lighting and mechanical systems).

Previous standards for Federal buildings were generally prescriptive in nature. However, given the complexity of developing a set of prescriptive requirements that meet both the energy efficiency and cost-effectiveness goals of section 109 of the EPAct 2005 for all Federal buildings of all types, DOE established a performance-based approach, utilizing the prescriptive requirements of the private sector standards as the absolute minimum if higher levels are not cost-effective. This approach permits the applicable construction costs and fuel costs for any given project to be accounted for, allowing for most cost-effective solution, which may indeed result in a greater than 30 percent savings over the minimum reference standards.

One commenter (Comment No. 3) stated that ''life-cycle cost-effectiveness'' had not been adequately defined. The definition in the interim final rule specifies that life cycle cost-effectiveness is determined in accordance with 10 CFR part 436. The definition of ''life-cycle cost effective'' in 10 CFR part 436 provides agencies a choice of 4 methods of showing life cycle cost effectiveness, including lowest life cycle costs (10 CFR 436.19), positive net savings (10 CFR 436.20), a saving-to-investment ratio greater than one (10 CFR 436.21), or an internal rate of return higher than the discount rate published by OMB (10 CFR 436.22). The methodologies specified in 10 CFR 436 have been widely established in Federal projects, with the National Institute of Standards and Technology (NIST) responsible for providing support for implementing 10 CFR 436 (*http://www.bfrl.nist.gov/oae/projects/04ps75.html*).

Comments Related to the Handling of Receptacle and Process Loads

DOE received five comments about addressing plug and process loads in Federal buildings. Two of the comments (Environmental Protection Agency, No. 7; Department of Interior, No. 19) objected to the fact that receptacle and process loads were exempted from calculation of the savings for the 30 percent requirement for commercial and high-rise residential buildings in the interim final rule. Laclede Gas (Comment No. 16) urged the Department to keep food service ventilation classified as process load. Conversely, the Department of Veterans Affairs (Comment No. 20) asked that medical equipment loads be exempt from the

energy consumption savings requirements. Another comment (Los Alamos National Laboratory, No. 6) suggested that it be recognized that there are situations that should be excluded from the evaluation of energy savings such as industrial, manufacturing, or commercial processes.

The energy efficiency of many receptacle loads (anything that is plugged in, such as a personal computer) is addressed through a separate section of EPAct 2005. Section 104 of EPAct 2005 requires Federal agencies to purchase energy efficient appliances and equipment. (42 U.S.C 8259b). Additionally, today's final rule applies to buildings as designed and constructed and it is often not possible to identify all receptacle loads when a building is designed or constructed as the occupants will to some degree establish what is plugged in. As equipment is replaced over time the initial savings from receptacle loads may diminish. As such DOE is maintaining the exclusion of receptacle loads for the purpose of calculating energy savings under the Federal building standards.

With respect to process loads (for example, medical or industrial equipment), the Department is excluding these energy end-uses from the energy savings metric. Process loads typically involve specialized equipment for which improvements in energy efficiency may affect the functionality of the equipment or where improvements are not available at all. Some Federal buildings use most of their energy serving process loads, and application of the energy savings requirement to these buildings would likely place an undo burden on the rest of the building if the 30 percent savings is to be achieved.

In order to provide additional clarity, DOE is establishing definitions of ''receptacle load'' and ''process load.''

Suggestion to Use Source Energy Instead of Site Energy

DOE received a comment from the American Gas Association (Comment No. 8) suggesting the use of source energy instead of site energy as the energy metric to be used for determining energy consumption in the new Federal standards. Site energy is the energy used at the building. Source energy is the site energy and all energy used to produce and deliver the energy to the site. ECPA as modified by EPAct 2005 specifies the use of ASHRAE Standard 90.1 and the IECC as the reference standards. The procedures for calculating energy efficiency performance in these reference standards are annual energy cost. These procedures are adopted in this rulemaking. Energy costs implicitly account for the complete process of producing energy.

Comments on Implementation and Enforcement of the Rules

DOE received a number of comments requesting that additional actions be taken to implement and enforce the rule. Two commenters (Comments No. 10 and No. 14) urged the Department to issue rulemakings with provisions for sustainable design principles and water conservation technologies as required by EPCA, as amended by section 109 of EPACT 2005. DOE is currently preparing a notice of proposed rulemaking to address these provisions.

Three commenters (The Polyisocyanurate Insulating Manufacturers Association, No. 2; Comments No. 9; and No. 14) suggested the Department take actions to ensure that agencies are complying with the standards. DOE again notes that today's final rule applies to the design and construction of new Federal buildings. Section 109 of EPAct 2005 assigns the responsibility of reporting compliance to the individual agencies as part of their annual budget request. Agencies are required to submit a list of all new Federal buildings owned, operated, or controlled by the Federal agency, and a statement specifying whether the Federal buildings have been constructed (or designed to be constructed) to meet or exceed the standards adopted in this notice. (42 U.S.C. 6834(a)(3)(C)) DOE has determined that the existing reporting requirement is sufficient to identify agency compliance.

The interim final rule provided a list of resources to provide guidance on compliance with the requirements. 71 FR 70278–70279. Additionally, DOE, through its Federal Energy Management Program, is preparing training for federal agencies on how to comply with today's final rule.

The Alliance to Save Energy commented that DOE should add requirements for commissioning and energy metering (Comment No. 9). DOE notes that section 103 of EPAct 2005 amended EPCA to require that all Federal buildings be metered. (42 U.S.C. 8253) The rule does not contain requirements for commissioning as the applicable Federal agencies are responsible for ensuring that the energy efficiency measures be properly installed.

The Alliance to Save Energy commented that the Department should consider innovative provisions to make buildings more adaptable to new and emerging technologies (Comment No. 9). DOE notes that it participates in the development of new energy-efficient technologies for buildings and does promote the use of new energy-efficient technologies in buildings. Private sector standards and codes (ASHRAE Standard 90.1–2004 and the 2004 IECC) are typically ''technology-neutral.'' Particular technologies may be used to set the level of performance for energy codes or standards, but it would be this level of performance and not the specific technology that would be embodied in the code or standard. As stated above, the 30-percent requirement is a performance based requirement. Federal agencies are free to rely on a variety of technologies that they determine to be appropriate for their specific applications.

The Alliance to Save Energy suggested that the provisions of section 104 of EPAct 2005 for building equipment to meet Energy Star and FEMP-designated efficiency criteria be included in this rule (Comment No. 9). As discussed above, DOE does not believe that it is appropriate to address receptacle loads in the Federal building standards. DOE is addressing the procurement requirements of section 104 in a separate rulemaking. 72 FR 33696 (June 19, 2007).

Comments Requesting Support in Implementing the Rule

One commenter (No. 2; 2) requested that the Department develop a comprehensive database of energy-efficiency features. FEMP maintains a database on high performance Federal buildings. (*http://www.eere.energy.gov/femp/highperformance/*) Three commenters (Comments No. 2; No. 10; and No. 14) requested that DOE provide support for education and training. FEMP intends to provide training and education on the new Federal standards, beginning in late 2007.

DOE received a comment (Comment No. 10) suggesting that DOE implement the requirements of the new Federal standards in design specifications and model contract language that could be used by all agencies. The Department believes this is a good suggestion and will take this under consideration for action.

Suggestion To Remove a Single Reference From the Preamble

DOE received a comment from the American Gas Association (Comment No. 8) requesting that the references to the ASHRAE Advanced Energy Design Guide (AEDG) be removed from the preamble because it ''encourages more buildings to use electric resistance.''

DOE notes that the references provided in the preamble of the interim final rule are for informational purposes only and the AEDG is approved by ASHRAE, a leading national technical society. The references are not intended to promote any single method for achieving compliance with the requirements.

III. Regulatory Analyses

A. Review Under Executive Order 12866, ''Regulatory Planning and Review''

Today's final rule is a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB). OMB has completed its review.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). The Department has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

Today's rule amending standards on energy efficiency performance standards for the design and construction of new Federal buildings is a rule relating to public property, and therefore, is not subject to any legal requirement to publish a general notice of proposed rulemaking. The Regulatory Flexibility Act does not apply.

C. Review Under the Paperwork Reduction Act of 1995

This rulemaking will impose no new information or record keeping requirements. Accordingly, Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

DOE prepared an Environmental Assessment (EA) (DOE/EA–1463) entitled, Draft Environmental Assessment for Interim Final Rule, 10 CFR Part 433, ''Energy Efficiency Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings,'' and 10 CFR Part 435, ''Energy Efficiency Standards for New Federal Low-Rise Residential Buildings,'' pursuant to the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Parts 1500–1508), the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and DOE's NEPA Implementing Procedures (10 CFR Part 1021).

The EA addresses the possible environmental effects attributable to the implementation of the interim final rule. The only projected impact is a decrease in outdoor air pollutants resulting from decreased fossil fuel burning for energy use in Federal buildings. Today's minor changes to the interim final rule do not affect the findings of the EA or the discussion of those findings in the preamble to the interim final rule. 71 FR 70280.

E. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. (65 FR 13735). DOE examined this rule and determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of Government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law: this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal

governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements under the Unfunded Mandates Reform Act do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This final rule would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

IV . Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Parts 433, 434, and 435

Buildings, Energy conservation, Engineers, Federal buildings and facilities, Housing, Incorporation by reference.

Issued in Washington, DC, on December 4, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ Accordingly, the interim final rule amending 10 CFR parts 433, 434 and 435, which was published at 71 FR 70275 on December 4, 2006, is adopted as a final rule with the following changes:

PART 433—ENERGY EFFICIENCY STANDARDS FOR THE DESIGN AND CONSTRUCTION OF NEW FEDERAL COMMERCIAL AND MULTI-FAMILY HIGH-RISE RESIDENTIAL BUILDINGS

■ 1. The authority citation for part 433 continues to read as follows:

Authority: 42 U.S.C. 6831–6832, 6834–6835; 42 U.S.C. 7101 *et seq.*

■ 2. Amend § 433.2 by adding in alphabetical order definitions of ''Design for construction,'' ''Process load'' and ''Receptacle load'' and revise the definition of ''New Federal building'' to read as follows:

§ 433.2 Definitions.

* * * * *

Design for construction means the stage when the energy efficiency and sustainability details (such as insulation levels, HVAC systems, water-using systems, etc.) are either explicitly determined or implicitly included in a project cost specification.

* * * * *

New Federal building means any building to be constructed on a site that previously did not have a building or a complete replacement of an existing building from the foundation up, by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements.

* * * * *

Process load means the load on a building resulting from energy consumed in support of a manufacturing, industrial, or commercial process. Process loads do not include energy consumed maintaining comfort and amenities for the occupants of the building (including space conditioning for human comfort).

Receptacle load means the load on a building resulting from energy consumed by any equipment plugged into electrical outlets.

* * * * *

■ 3. Revise paragraph (c) of § 433.4 to read as follows:

§ 433.4 Energy efficiency performance standard.

* * * * *

(c) If a 30 percent reduction is not life-cycle cost-effective, the design of the proposed building shall be modified so as to achieve an energy consumption level at or better than the maximum level of energy efficiency that is life-cycle cost-effective, but at a minimum

complies with paragraph (a) of this section.

PART 434—ENERGY CODE FOR NEW FEDERAL COMMERCIAL AND MULTI-FAMILY HIGH-RISE RESIDENTIAL BUILDINGS

■ 4. The authority citation for part 434 continues to read as follows:

Authority: 42 U.S.C. 6831–6832, 6834–6836; 42 U.S.C. 8253–54; 42 U.S.C. 7101 *et seq.*

■ 5. In § 434.101, paragraph 101.1.1, paragraphs (a)(2) and (3) are revised to read as follows:

§ 434.101 Scope.

* * * * *

101.1.1 (a) * * *

(2) An addition for which design for construction began before January 3, 2007, that adds new space with provision for a heating or cooling system, or both, or for a hot water system; or

(3) A substantial renovation of a building for which design for construction began before January 3, 2007, involving replacement of a heating or cooling system, or both, or hot water system, that is either in service or has been in service.

* * * * *

PART 435—ENERGY EFFICIENCY STANDARDS FOR NEW FEDERAL LOW-RISE RESIDENTIAL BUILDINGS

■ 6. The authority citation for part 435 continues to read as follows:

Authority: 42 U.S.C. 6831–6832, 6834–6835; 42 U.S.C. 8253–54; 42 U.S.C. 7101 *et seq.*

■ 6a. Amend part 435 by revising the part heading to read as set forth above.

■ 7. Amend § 435.2 by adding in alphabetical order a definition of ''Design for construction'' and revise the definition of ''New Federal building'' to read as follows:

§ 435.2 Definitions.

* * * * *

Design for construction means the stage when the energy efficiency and sustainability details (such as insulation levels, HVAC systems, water-using systems, etc.) are either explicitly determined or implicitly included in a project cost specification.

* * * * *

New Federal building means any building to be constructed by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements. A new building is a building constructed on a site that previously did not have a building or a complete replacement of an existing building from the foundation up.

* * * * *

■ 8. Revise paragraph (c) of § 435.4 to read as follows:

§ 435.4 Energy efficiency performance standard.

* * * * *

(c) If a 30 percent reduction is not life-cycle cost-effective, the design of the proposed building shall be modified so as to achieve an energy consumption level at or better than the maximum level of energy efficiency that is life-cycle cost-effective, but at a minimum complies with paragraph (a) of this section.

[FR Doc. E7–24615 Filed 12–20–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket ID OCC–2007–0021]

RIN 1557–AD05

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1302]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AD24

DEPARTMENT OF TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket ID OTS–2007–0024]

RIN 1550–AC18

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS).

ACTION: Joint final rule; technical correction.

SUMMARY: The OCC, the Board, the FDIC, and the OTS (collectively, the ''agencies'') are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define ''small bank'' or ''small savings association'' and ''intermediate small bank'' or ''intermediate small savings association.'' As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index. The agencies are also correcting a paragraph heading that is inaccurate as a result of annual revisions to the small institution threshold.

DATE: Effective January 1, 2008.

FOR FURTHER INFORMATION CONTACT:

OCC: Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750; or Karen Tucker, National Bank Examiner, Compliance Policy Division, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Anjanette M. Kichline, Senior Supervisory Consumer Financial Services Analyst, (202) 785–6054; or Brett Lattin, Attorney, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Deirdre Foley, Senior Policy Analyst, Compliance Policy Section, (202) 898–6612, and Faye Murphy, Review Examiner, Compliance Examination Support, (202) 898–6613, Division of Supervision and Consumer Protection; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Celeste Anderson, Senior Project Manager, Compliance and Consumer Protection, (202) 906–7990; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background and Description of the Joint Final Rule

The agencies' CRA regulations establish CRA performance standards for small and intermediate small banks and savings associations. The regulations define small and intermediate small institutions by reference to asset-size criteria expressed in dollar amounts, and they further require the agencies to publish annual adjustments to these dollar figures based

on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million. 12 CFR 25.12(u)(2), 228.12(u)(2), 345.12(u)(2), and 563e.12(u)(2).

The threshold for small banks was revised most recently for the OCC, the Board, and the FDIC effective January 1, 2007 (71 FR 78335 (Dec. 29, 2006)). These agencies' CRA regulations, as revised on December 29, 2006, provide that banks that, as of December 31 of either of the prior two calendar years, had assets of less than $1.033 billion are ''small banks.'' Small banks with assets of at least $258 million as of December 31 of both of the prior two calendar years and less than $1.033 billion as of December 31 of either of the prior two calendar years are ''intermediate small banks.'' 12 CFR 25.12(u)(1), 228.12(u)(1), 345.12(u)(1). The threshold for small savings associations was revised in the same way and the same threshold for intermediate small savings associations was established by OTS effective July 1, 2007 (72 FR 13435 (Mar. 22, 2007). 12 CFR 563e.12(u)(1). This joint final rule further revises these thresholds.

During the period ending November 2007, the CPIW increased by 2.7 percent. As a result, the agencies are revising 12 CFR 25.12(u)(1), 228.12(u)(1), 345.12(u)(1), and 563e.12(u)(1) to make this annual adjustment. Beginning January 1, 2008, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.061 billion are ''small banks'' or ''small savings associations.'' Small banks or small savings associations with assets of at least $265 million as of December 31 of both of the prior two calendar years and less than $1.061 billion as of December 31 of either of the prior two calendar years are ''intermediate small banks'' or ''intermediate small savings associations.'' The agencies also publish current and historical asset-size thresholds on the website of the Federal Financial Institutions Examination Council at *http://www.ffiec.gov/cra/*.

The agencies also are amending their CRA regulations to make a technical correction to revise a paragraph heading that is inaccurate as a result of annual small institution threshold adjustments. The technical correction revises the paragraph headings found at 12 CFR 25.26(a)(1), 228.26(a)(1), and 345.26(a)(1) (''Small banks with assets of less than $250 million'') and 12 CFR 563e.26(a)(1) (''Small savings associations with assets of less than $250 million''). As a result of the agencies' annual adjustments to the dollar amount threshold for small institutions, the threshold of $250 million described in the paragraph heading is inaccurate. The agencies are revising the headings so that they do not reference the dollar amount of the small bank or small savings association asset threshold.

Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The amendments to the regulations to adjust the asset-size thresholds for small and intermediate small banks and savings associations result from the application of a formula established by a provision in the CRA regulations that the agencies previously published for comment. *See* 70 FR 12148 (Mar. 11, 2005), 70 FR 44256 (Aug. 2, 2005), 71 FR 67826 (Nov. 24, 2006), and 72 FR 13429 (Mar. 22, 2007). Sections 25.12(u)(1), 228.12(u)(1), 345.12(u)(1), and 563e.12(u)(1) are amended by adjusting the asset threshold as provided for in §§ 25.12(u)(2), 228.12(u)(2), 345.12(u)(2), and 563e.12(u)(2).

Accordingly, since the agencies' rules provide no discretion as to the computation or timing of the revisions to the asset-size criteria, the agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

With regard to the revision amending the paragraph heading, as a result of the annual adjustment required by the regulations, the heading describing ''small banks'' or ''small savings associations'' as those with assets of less than $250 million is inaccurate. The revision merely amends the heading to correct this inaccuracy and prevent further inaccuracies when annual adjustments are made in the future. For this reason, the agencies, for good cause, find that the notice and comment procedures prescribed by the APA are unnecessary because the joint final rule is making a technical correction without substantive change to the provisions of parts 25, 228, 345, and 563e.

This joint final rule takes effect January 1, 2008. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. The agencies find that there is good cause for shortened notice because their current rules already provide notice that the small and intermediate asset-size thresholds will be adjusted as of December 31 based on twelve-month data as of the end of November each year. Moreover, the revisions to the headings in the agencies' rules are minor, nonsubstantive, and technical.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the agencies have determined that it is unnecessary to publish a notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act of 1995

There are no collection of information requirements in this joint final rule.

Executive Order 12866

The OCC and OTS have each determined that its portion of this joint final rule is not a significant regulatory action as defined in Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency must prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS have each determined that its portion of this joint final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this joint final rule is not subject to section 202 of the Unfunded Mandates Act.

Executive Order 13132

The OCC and OTS have each determined that its portion of this joint final rule does not have any Federalism implications as required by Executive Order 13132.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

■ For the reasons discussed in the joint preamble, 12 CFR part 25 is amended as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

■ 2. Revise § 25.12(u)(1) to read as follows:

§ 25.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.061 billion. Intermediate small bank means a small bank with assets of at least $265 million as of December 31 of both of the prior two calendar years and less than $1.061 billion as of December 31 of either of the prior two calendar years.

* * * * *

■ 3. Revise the paragraph heading to § 25.26(a)(1) to read as follows:

§ 25.26 Small bank performance standards.

(a) *Performance criteria*—(1) *Small banks that are not intermediate small banks.* * * *

* * * * *

Federal Reserve System

12 CFR Chapter II

■ For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 2. Revise § 228.12(u)(1) to read as follows:

§ 228.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.061 billion. Intermediate small bank means a small bank with assets of at least $265 million as of December 31 of both of the prior two calendar years and less than $1.061 billion as of December 31 of either of the prior two calendar years.

* * * * *

■ 3. Revise the paragraph heading to § 228.26(a)(1) to read as follows:

§ 228.26 Small bank performance standards.

(a) *Performance criteria*—(1) *Small banks that are not intermediate small banks.* * * *

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 1. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

■ 2. Revise § 345.12(u)(1) to read as follows:

§ 345.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.061 billion. Intermediate small bank means a small bank with assets of at least $265 million as of December 31 of both of the prior two calendar years and less than $1.061 billion as of December 31 of either of the prior two calendar years.

* * * * *

■ 3. Revise the paragraph heading to § 345.26(a)(1) to read as follows:

§ 345.26 Small bank performance standards.

(a) *Performance criteria*—(1) *Small banks that are not intermediate small banks.* * * *

* * * * *

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

■ For the reasons discussed in the joint preamble, 12 CFR part 563e is amended as follows:

PART 563e—COMMUNITY REINVESTMENT

■ 1. The authority citation for part 563e continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

■ 2. Revise § 563e.12(u)(1) to read as follows:

§ 563e.12 Definitions.

* * * * *

(u) *Small savings association*—(1) *Definition. Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1.061 billion. *Intermediate small savings association* means a small savings association with assets of at least $265 million as of December 31 of both of the prior two calendar years and less than $1.061 billion as of December 31 of either of the prior two calendar years.

* * * * *

■ 3. Revise the paragraph heading to § 563e.26(a)(1) to read as follows:

§ 563e.26 Small savings association performance standards.

(a) *Performance criteria*—(1) *Small savings associations that are not intermediate small savings associations.* * * *

* * * * *

Dated: December 5, 2007.

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

By order of the Board of Governors of the Federal Reserve System.

Dated: December 14, 2007.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 10th day of December, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: December 14, 2007.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E7–24719 Filed 12–20–07; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2003–15149]

RIN 2125–AE98

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Maintaining Traffic Sign Retroreflectivity

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Manual on Uniform Traffic Control Devices (MUTCD) is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administration, and recognized as the national standard for traffic control devices used on all public roads. The purpose of this final rule is to revise standards, guidance, options, and supporting information relating to maintaining minimum levels of retroreflectivity for traffic signs on all roads open to public travel.

EFFECTIVE DATE: This final rule is effective January 22, 2008. The incorporation by reference of the publication listed in this regulation is approved by the Director of the Office of the Federal Register as of January 22, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Mary McDonough, Office of Safety Design, (202) 366–2175, or Mr. Raymond W. Cuprill, Office of the Chief Counsel, (202) 366–0791, U.S. Department of Transportation, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

This document, the notice of proposed amendments (NPA), the supplemental notice of proposed amendments (SNPA), and all comments received may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov.* Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the **Federal Register's** home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

On July 30, 2004, at 69 FR 45623, the FHWA published in the **Federal Register** a NPA proposing to amend the MUTCD to include methods to maintain traffic sign retroreflectivity. The NPA was issued in response to section 406 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (Pub. L. 102–388; October 6, 1992). Section 406 of this Act directed the Secretary of Transportation to revise the MUTCD to include a standard for minimum levels of retroreflectivity that must be maintained for traffic signs and pavement markings, which apply to all roads open to public travel. The FHWA is currently conducting research to develop a standard for minimum levels of pavement marking retroreflectivity. The FHWA expects to initiate the pavement marking retroreflectivity rulemaking process once the research is concluded and the results are analyzed and considered.

The FHWA has led a significant effort toward establishing minimum-maintained levels of sign retroreflectivity since the statute was issued in 1993. Three national workshops were held in 1995 to educate State and local highway agency personnel and solicit their input regarding an initial set of minimum maintained sign retroreflectivity levels. In 1998, FHWA published revisions to initial research recommendations on minimum sign retroreflectivity levels [1] noting that additional work would be needed because the National Highway Traffic Safety Administration was also revising the Federal Motor Vehicle Safety Standard Number 108 Lamps, Reflective Devices, and Associated Equipment (FMVSS 108). The additional research was completed in 2003, at which time FHWA began preparing the NPA for traffic sign retroreflectivity for the MUTCD, which was published in 2004.

After considering and analyzing the comments on the NPA for minimum levels of retroreflectivity for traffic signs, FHWA decided to publish a supplemental notice of proposed amendments (SNPA). In particular, the SNPA was developed to address comments to the docket that: (1) Expressed concern that the NPA proposal did not meet the intent of the 1993 statute, (2) suggested that the table of minimum retroreflectivity levels should be placed in the MUTCD, (3) requested clarification of the compliance period, and (4) expressed concern about the resource requirements for complying with the rulemaking. The proposed MUTCD text in the SNPA included a STANDARD statement that required that a method be used to manage and maintain retroreflectivity and required that sign retroreflectivity be maintained at minimum levels. It also included the table of minimum retroreflectivity levels in the MUTCD. These changes were significant enough to warrant an SNPA to allow FHWA to obtain and assess additional public comments. The SNPA was published on May 8, 2006, at 71 FR 26711. The comment period for the SNPA ended on November 6, 2006.

Based on the comments received and its own experience, FHWA is issuing this final rule establishing the minimum levels of retroreflectivity that must be maintained for traffic signs. The FHWA is designating the MUTCD, with these changes incorporated, as Revision 2 of the 2003 Edition of the MUTCD.

The text of this Revision No. 2 and the text of the 2003 Edition of the MUTCD with Revision No. 2 final text incorporated are available for inspection and copying as prescribed in 49 CFR

[1] A copy of ''An Implementation Guide For Minimum Retroreflectivity Requirements for Traffic Signs,'' dated April 1, 1998, can be found on the Docket Management System (FHWA–2003–15149–229) for this ruling at the following Web address: *http://dms.dot.gov/search/document.cfm?documentid=467771&docketid=15149.*

part 7 at the FHWA Office of Transportation Operations. Furthermore, final Revision No. 2 changes are available on the official MUTCD Web site at *http://mutcd.fhwa.dot.gov.* The entire MUTCD text with final Revision No. 2 text incorporated is also available on this Web site.

Summary of Comments

The FHWA received 121 letters submitted to the docket in response to the SNPA containing approximately 550 individual comments. The FHWA received comments from the National Committee on Uniform Traffic Control Devices (NCUTCD), the American Association of State Highway and Transportation Officials (AASHTO) and 20 State Departments of Transportation (DOT) members of AASHTO, the National Association of County Engineers (NACE) and seven county association members of NACE, city and county governmental agencies, consulting firms, private industry, associations, other organizations, and individual private citizens. The FHWA has considered all these comments. Docket comments and summaries of FHWA's analyses and determinations are discussed below. General comments are discussed first, followed by discussion of major issues and adopted changes, and finally, discussion of other comments.

Discussion of General Comments

Many respondents agreed with the intent and the concepts proposed in both the NPA and the SNPA. In analyzing the comments to the SNPA, FHWA decided that additional clarification should be provided in the MUTCD text and in the explanations provided in the final rule in order to address the following five major issues:

(1) Clarification of compliance period;

(2) Resource burdens on public agencies;

(3) Statutory requirements;

(4) Table of minimum retroreflectivity levels in the MUTCD; and

(5) Impacts of sign retroreflectivity on safety.

Discussion of Major Issues

This section provides a discussion of each of the five major issues raised by commenters in response to the SNPA, along with FHWA's analysis and resolution.

(1) Clarification of the compliance period.

Several county associations and many county and local officials requested an extension from 2 to 4 years for the compliance period for the establishment and implementation of a method to maintain sign retroreflectivity, in order to accommodate their programs within their 2-year budget cycles. There were also a few requests to extend the 7 and 10 year compliance periods for the signs themselves.

Considering the comments regarding budget cycles, particularly budget cycles for local agencies, FHWA has extended to 4 years the compliance period for establishing and implementing a sign assessment or management method to maintain minimum levels of sign retroreflectivity. This extended compliance period will allow transportation agencies to make allowances for budgets (including working with the States or regional organizations) to access funds and/or partnerships to achieve the minimum levels of sign retroreflectivity.

The 7 and 10 year compliance dates for minimum levels for sign retroreflectivity will remain 7 years for regulatory, warning, and ground-mounted guide signs and 10 years for street name and overhead guide signs, because these compliance target dates correspond to the normal expected service life of sign sheeting and will allow highway agencies to make the proper accommodations in their efforts to maintain minimum retroreflectivity levels. The 7 and 10 year compliance dates are counted from the effective date of this rule and are not in addition to the 4-year period for establishing the methods.

(2) Resource burdens on public agencies.

While the Minnesota DOT (MNDOT) recognized that the proposed language would impose additional time and resource burdens on public agencies, it did not perceive this rule as an ''unmanageable burden.'' Several sign manufacturers and some private citizens appreciated the FHWA's effort to point out that Federal funds are available for up to 100 percent funding of ''replacement of signs in this program.'' In addition, the American Traffic Safety Services Association (ATSSA), the American Automobile Association (AAA), the American Association of Retired People (AARP), the American Highway Users Alliance (AHUA), and several private citizens agree that the benefits from this rulemaking will outweigh the costs that agencies may experience. However, AASHTO, NACE, and several State and local DOTs believe that the requirements, as proposed in the SNPA, are an unfunded mandate with serious financial implications to their agencies.

The FHWA conducted a study to determine if unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995), would be imposed by including requirements in the MUTCD for minimum maintained traffic sign retroreflectivity levels.[2] Based on the analysis, this rulemaking effort does not impose an unfunded mandate. Additionally, because Federal-aid highway dollars are often provided to States to use for these types of sign replacements, this requirement does not rise to the level of an unfunded mandate.

One commenter reviewed the FHWA's report ''Maintaining Traffic Sign Retroreflectivity: Impacts on State and Local Agencies (DRAFT)'' (1994—15149–06), and suggested that perhaps there was a mathematical error in that report that would mean that the costs incurred by agencies when replacing signs would be above those that can be required from agencies without funding. The FHWA has updated the 1994 draft report with a 2007 version (see footnote # 2). The updated report now includes the costs of overhead and street name signs, which the 1994 version excluded. The updated report concludes that the national impact of including the minimum maintained traffic sign retroreflectivity levels in the MUTCD is approximately $37.5 million over a 10-year implementation period, with a maximum annual impact of $4.5 million in years 1 through 7. This is below the annual $128.1 million unfunded mandate level.

The FHWA has also provided ample phase-in time for agencies to comply. Agencies are already required to have a highway safety program that includes provisions for the upgrading of substandard traffic control devices and installations to achieve conformity with the MUTCD, so this rulemaking does not create additional burdens.

While many counties believe that FHWA should consider a funding stream directly to local jurisdictions for rulemaking activities such as minimum retroreflectivity standards, such funding stream discussions are outside the scope of this rulemaking. Signing programs remain eligible for Federal-aid highway dollars.

(3) Statutory requirements:

Several organizations representing highway users from a safety perspective agree that the language proposed in the SNPA satisfied the statutory requirements to establish a standard for the minimum levels of sign

[2] ''Maintaining Traffic Sign Retroreflectivity: Impacts on State and Local Agencies,'' Publication No. FHWA–HRT–07–042, dated April 2007, is available at the following Web address: *http://www.tfhrc.gov/safety/pubs/07042/index.htm.*

retroreflectivity; however, AASHTO, and several States, commented that Congress did not explicitly indicate that the minimum values for maintaining sign retroreflectivity had to be included in the MUTCD as a Standard. Alternatively, the Advocates for Highway and Auto Safety (AHAS) believe that the language proposed in the SNPA still did not fully satisfy the statutory requirements, which AHAS interprets as requiring the establishment of specific and mandatory minimum levels of retroreflectivity for signs and pavement markings in the MUTCD and an obligation on State and local authorities to maintain those specific minimum values of retroreflectivity. AHAS stated that the intent can only be met by including such requirements in a ''standard'' statement in the MUTCD, which is defined as one of the ''required, mandatory, or specifically prohibitive practice regarding a traffic control device.''

The FHWA includes the reference to minimum levels for sign retroreflectivity in a Standard statement because the statute requires the Secretary to revise the MUTCD to include a standard for minimum levels of retroreflectivity that must be maintained for traffic signs. Under the MUTCD's current organization, the best way to do this is by including it in a STANDARD statement, because Standards represent requirements.[3] In addition, the congressional reference to a standard did not exclude the use of GUIDANCE, OPTION, and SUPPORT statements to help clarify the STANDARD statement of required minimum levels of retroreflectivity that must be maintained, similar to the other sections of the MUTCD.

The FHWA also received comments from the city of Plano, Texas, and the Illinois County Engineers expressing a concern and/or confusion that the language proposed in the SNPA ''imbedded'' a GUIDANCE statement within a STANDARD, because the STANDARD statement referenced the GUIDANCE statement for minimum retroreflectivity levels.

Based on this concern, and to clarify FHWA's intent, FHWA revises the STANDARD statement to explicitly reference Table 2A–3 Minimum Maintained Retroreflectivity Levels, which contains minimum-maintained retroreflectivity levels for various sign color combinations and types of sign sheeting.

The National Association of Counties (NACo) and NACE suggested adding ''recommended'' before ''minimum level'' in describing the retroreflectivity levels shown in Table 2A–3. The FHWA retains the wording ''minimum level'' in describing the levels shown in Table 2A–3, because the word ''recommended'' is not appropriate when referencing a Standard.

(4) Table of minimum retroreflectivity levels in the MUTCD.

The ATSSA, AAA, AARP, AHUA, Minnesota and Virginia DOTs, the city of Plano, Texas, sign manufacturers, and many private citizens were in favor of including the table of minimum retroreflectivity levels in the MUTCD. However, many organizations, such as AASHTO, NACo, NACE, and numerous State DOTs, as well as county and local agencies were opposed to the inclusion of the table. Those who opposed including the table in the MUTCD expressed concern over potential litigation that could be brought against public agencies if an individual sign within their jurisdiction was to fall below the minimum maintained levels in the table. The NCUTCD also commented that before any table is inserted into the MUTCD, FHWA should provide substantial clarification regarding the process and frequency for updating or changing the table of retroreflectivity values.

The FHWA believes that including this table in the MUTCD is necessary to satisfy the statutory requirement that the MUTCD be amended to include minimum retroreflectivity levels. Therefore, the FHWA includes Table 2A–3, titled ''Minimum Maintained Retroreflectivity Levels'' in the MUTCD. The FHWA also believes inclusion of the table will provide clarity and convenience to the users of the MUTCD. In response to the request by the NCUTCD that FHWA clarify the process for updating or changing values in the table, we note that updates or changes to the table would be subject to a public rulemaking process before FHWA could adopt changes to the values of the table in the MUTCD. This process will include notice and opportunity for comment by the public.

Table 2A–3 will be included in the MUTCD as follows (note that the values in this table have not changed during the rulemaking process):

[3] In the context of this final rule, the definitions of STANDARD and GUIDANCE are identical to the definitions provided in the Introduction of the MUTCD (*http://mutcd.fhwa.dot.gov*). Specifically, a STANDARD is a statement of required, mandatory or specifically prohibitive practice regarding a traffic control device, while a GUIDANCE is a statement of recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate.

Table 2A-3. Minimum Maintained Retroreflectivity Levels①

Sign Color	Sheeting Type (ASTM D4956-04)				Additional Criteria
	Beaded Sheeting			Prismatic Sheeting	
	I	II	III	III, IV, VI, VII, VIII, IX, X	
White on Green	W*; G ≥ 7	W*; G ≥ 15	W*; G ≥ 25	W ≥ 250; G ≥ 25	Overhead
	W*; G ≥ 7	W ≥ 120; G ≥ 15			Ground-mounted
Black on Yellow or Black on Orange	Y*; O*	Y ≥ 50; O ≥ 50			②
	Y*; O*	Y ≥ 75; O ≥ 75			③
White on Red	W ≥ 35; R ≥ 7				④
Black on White	W ≥ 50				—

① The minimum maintained retroreflectivity levels shown in this table are in units of cd/lx/m^2 measured at an observation angle of 0.2° and an entrance angle of -4.0°.
② For text and fine symbol signs measuring at least 1200 mm (48 in) and for all sizes of bold symbol signs
③ For text and fine symbol signs measuring less than 1200 mm (48 in)
④ Minimum Sign Contrast Ratio ≥ 3:1 (white retroreflectivity ÷ red retroreflectivity)
* This sheeting type should not be used for this color for this application.

Bold Symbol Signs

- W1-1, -2 – Turn and Curve
- W1-3, -4 – Reverse Turn and Curve
- W1-5 – Winding Road
- W1-6, -7 – Large Arrow
- W1-8 – Chevron
- W1-10 – Intersection in Curve
- W1-11 – Hairpin Curve
- W1-15 – 270 Degree Loop
- W2-1 – Cross Road
- W2-2, -3 – Side Road
- W2-4, -5 – T and Y Intersection
- W2-6 – Circular Intersection
- W3-1 – Stop Ahead
- W3-2 – Yield Ahead
- W3-3 – Signal Ahead
- W4-1 – Merge
- W4-2 – Lane Ends
- W4-3 – Added Lane
- W4-5 – Entering Roadway Merge
- W4-6 – Entering Roadway Added Lane
- W6-1, -2 – Divided Highway Begins and Ends
- W6-3 – Two-Way Traffic
- W10-1, -2, -3, -4, -11, -12 – Highway-Railroad Advance Warning
- W11-2 – Pedestrian Crossing
- W11-3 – Deer Crossing
- W11-4 – Cattle Crossing
- W11-5 – Farm Equipment
- W11-6 – Snowmobile Crossing
- W11-7 – Equestrian Crossing
- W11-8 – Fire Station
- W11-10 – Truck Crossing
- W12-1 – Double Arrow
- W16-5p, -6p, -7p – Pointing Arrow Plaques
- W20-7a – Flagger
- W21-1a – Worker

Fine Symbol Signs – Symbol signs not listed as Bold Symbol Signs.

Special Cases

- W3-1 – Stop Ahead: Red retroreflectivity ≥ 7
- W3-2 – Yield Ahead: Red retroreflectivity ≥ 7; White retroreflectivity ≥ 35
- W3-3 – Signal Ahead: Red retroreflectivity ≥ 7; Green retroreflectivity ≥ 7
- W3-5 – Speed Reduction: White retroreflectivity ≥ 50
- For non-diamond shaped signs such W14-3 (No Passing Zone), W4-4p (Cross Traffic Does Not Stop), or W13-1, -2, -3, -5 (Speed Advisory Plaques), use largest sign dimension to determine proper minimum retroreflectivity level.

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The FHWA received comments from NACo, NACE and several local agencies that suggested adding a statement clarifying that all signs need not meet the minimum retroreflectivity values at every point in time.

Considering these comments in conjunction with FHWA's understanding that there will be cases where vandalism, weather, or damage due to a crash influences the visibility of a sign, the FHWA clarified the SUPPORT statement in Section 2A.09. The revised statement clarifies that an agency or an official having jurisdiction would be in compliance with the Standard even if there are some individual signs that do not meet the minimum retroreflectivity levels at a particular point in time, provided that an assessment or management method implemented in accordance with Section 2A.09 of the MUTCD is being used.

The FHWA also received comments from NACo, NACE and several local agencies stating specific concerns that the establishment of specific retroreflectivity values within Table 2A–3 will become ''the de-facto standard'' that will be used against highway agencies in tort claims and lawsuits.

The FHWA believes that the selection of a reasonable method for maintaining sign retroreflectivity and strict adherence to the same might serve to defend highway agencies in tort liability claims and litigation. Public agencies and officials that implement and follow a reasonable method in conformance with the national MUTCD would appear to be in a better position to successfully defend tort litigation involving claims of improper sign retroreflectivity than jurisdictions that lack any method. In addition, as a result of adding clarifying language to the Support statement indicating that once an assessment or management method is used by an agency or official having jurisdiction, agencies would be in compliance with the STANDARD even if some individual signs do not meet the minimum retroreflectivity levels at a point in time.

Including Table 2A–3 in the MUTCD does not imply that an agency needs to measure the retroreflectivity of every sign in its jurisdiction. Instead, agencies must implement methods designed to provide options on how to maintain the minimum retroreflectivity levels, using the criteria in Table 2A–3.

(5) Impacts of sign retroreflectivity on safety.

The ATSSA and several sign manufacturers believe there is a proven link between maintained sign retroreflectivity and safety, especially as it relates to older drivers. In addition, several citizens believe that improved retroreflectivity will lead to safer roads. One citizen who worked for several years in the field of nighttime visibility stated that his research with actual drivers on the road showed conclusive results that greater levels of retroreflectivity increase a driver's ability to be warned well in advance of a traffic situation or pedestrian encounter. The North Carolina DOT (NCDOT) and the AHAS, however, recommend that further FHWA studies be done to demonstrate that retroreflective improvements translate into safety improvements.

The FHWA believes that improving sign retroreflectivity will be a benefit to all drivers, including older drivers. All drivers need legible signs in order to make important decisions at key locations, such as intersections and exit ramps on high speed facilities. This is particularly true for regulatory and warning signs. This is fundamental to safe driving, and the lack of uniform retroreflectivity standards has led to wide variations in maintenance levels of these critical signs. As discussed in the SNPA, there have been some investigations that demonstrate potential safety benefits of upgrading sign materials.[4] More importantly, maintaining sign retroreflectivity is consistent with one of FHWA's primary goals, which is to improve safety on the Nation's streets and highways. Improvements in sign visibility will also support FHWA's efforts to be responsive to the needs of older drivers, which is important because the number of older drivers is expected to increase significantly in the next 30 years.

Discussion of Other Comments

In addition to the five major issues discussed in the previous section, FHWA also received comments that can be grouped into the following three topics:

(6) Assessment methods;

(7) Blue and brown signs; and

(8) Minimum retroreflectivity levels.

This section contains a discussion of each of these topics.

(6) Assessment methods:

The FHWA received comments from the AASHTO, NCUTCD, ATSSA, AHAS, AAA, AARP, AHUA, ARTBA, Maryland and Wisconsin DOTs, and several counties in Illinois regarding the assessment and management methods for maintaining sign retroreflectivity as proposed in the GUIDANCE statement of the SNPA. The AASHTO and several State DOTs did not support actual measurement of signs as one of the methods, but supported visual nighttime inspections, blanket replacement, control signs, and expected sign life methods.

The city of Plano, Texas and a private citizen suggested that the numerical values in Table 2A–3 should only apply to Method B: Measured Sign Retroreflectivity. Those commenters suggested that for all other methods where subjective judgment is used, such as visual nighttime inspection, the table should serve as guidance for local offices to reject and accept signs.

Finally, the NCUTCD, the Illinois Association of County Engineers, and the DeWitt County, Illinois Highway Department suggested adding additional language to the GUIDANCE statement to explicitly, rather than implicitly, state that other assessment methods based on engineering study can be used to assess sign retroreflectivity.

The FHWA believes that the final rule provides several assessment or management methods that agencies can choose from, based on the method that best fits the agencies' resources and needs. An agency can choose to use either assessment methods or management methods, or a combination; however, agencies should develop a method in such a way that it corresponds to the values in Table 2A–3. The methods have been developed to provide flexibility for agencies for addressing their local conditions. To address the comments received regarding the types of assessment methods that should be used, FHWA clarifies the GUIDANCE statement by adding a sixth method to the list of assessment or management methods titled ''Other Methods,'' which explicitly states that other methods developed based on engineering studies can be used.[5]

(7) Blue and brown signs:

In the SNPA, FHWA asked for comments on the need for retroreflectivity levels to be developed for signs with blue and brown

[4] Supplemental Notice of Proposed Amendments, page 26717. The SNPA was published on May 8, 2006, at 71 FR 26711. This notice can be found at: *http://www.gpoaccess.gov/fr/retrieve.html* and on the Docket Management System (FHWA–2003–15149–229) for this ruling at the following Internet Web site: *http://dms.dot.gov.*

[5] As defined in the MUTCD, an engineering study shall be performed by an engineer, or by an individual working under the supervision of an engineer, through the application of procedures and criteria established by the engineer. An engineering study shall be documented. In accordance with the text heading GUIDANCE in the MUTCD, deviations to a recommended practice are allowed if engineering study indicates the deviation to be appropriate.

backgrounds.[6] The Maryland State Highway Administration suggested that recommended minimum retroreflectivity levels be established for blue-background signs and that those levels apply to certain signs such as Hospital, EMS, Ambulance Station, and Emergency Medical Care signs, whose nighttime readability can be important. The combined letter from a representative of AAA, AARP, and AHUA, and one comment letter from a sign manufacturer stated that blue and brown signs are intended for use both day and night, and that motorist safety, particularly for older drivers, would be enhanced by including minimum retroreflectivity levels for blue and brown signs. The commenters acknowledged that if blue and brown signs are being excluded because there is a lack of data on which to base a requirement, a ''placeholder'' could be included in the MUTCD until more data is available and the table of minimum levels can be updated.

The FHWA is currently studying blue and brown minimum sign retroreflectivity levels. Because the study has not been finalized and FHWA did not analyze the costs associated with the sign retroreflectivity of blue and brown signs in the economic impacts study, minimum retroreflectivity levels for blue and brown signs are not included in the MUTCD at this time. At the conclusion of FHWA's study on this topic, the results may indicate a need to pursue such a requirement. If so, updates or changes to Table 2A–3 would be subject to the public rulemaking process before FHWA could add blue and brown minimum retroreflectivity levels.

(8) Minimum retroreflectivity levels:

Several of the commenters, including AASHTO, NACE, the Illinois and Indiana Associations of County Engineers, DeWitt County, Illinois Highway Department, the North Carolina DOT and the Maryland State Highway Administration suggested that the data within the table were not precise, and reflected data that were developed based on assumptions and varying characteristics.

The FHWA acknowledges that the data are based on some assumptions and varying characteristics; however, they are based on the latest science and empirical-based research emphasizing older drivers.[7] The supporting research reflects the best information at this time. One of the key aspects to the research supporting the minimum retroreflectivity levels is that it was based on field studies under conditions on a closed course facility that represented real roadway scenarios to the maximum extent possible without jeopardizing safety. Research subjects were recruited and participated in the research, which ultimately developed cumulative distribution profiles for luminance levels needed to accommodate the legibility of older drivers. These luminance levels were then used in conjunction with computer modeling to determine the retroreflectivity needed under a variety of roadway conditions. The computer modeling allows analyses of an infinite set of roadway scenarios, but is based on the luminance levels derived through the human factors research supported by FHWA.

After the research was completed, FHWA held national workshops, which included nighttime inspections of signs at various retroreflectivity levels. The participants of the workshops evaluated the signs at night using a visual inspection technique. The results of this effort helped confirm that the minimum retroreflectivity levels in Table 2A–3 are appropriate.

The NCDOT suggested that a tiered system be applied to the retroreflectivity levels, similar to the tiered system used for letter heights and sign sizes based on roadway classification.[8] The NCDOT commented that retroreflective sign applications for lower speed, lower volume roads should be coordinated with lower retroreflectivity values.

The FHWA believes that the values shown in the table are applicable to all classifications of roads, including lower volume and slower speed roadways. The retroreflectivity levels are based on the legibility design threshold level as specified in Section 2A.14 of the MUTCD (40 feet of legibility per inch of letter height). Therefore, the size of the sign, and the message on the sign, play a key role in the retroreflectivity levels. Smaller signs have smaller messages, which mean drivers need to be closer to the signs to read them. As the distance between the sign and the vehicle decreases, the efficiency of retroreflectivity materials generally decreases, meaning that more retroreflectivity is needed. This often outweighs the increased illumination available from the vehicle headlamps. The minimum retroreflectivity levels were designed to be easy to implement, without added complexities such as a tiered system based on letter heights and sign sizes. However, with the proper support (i.e., an engineering study), and using the values in Table 2A–3 as minimum maintained retroreflectivity levels, there is flexibility in this final rule and the associated MUTCD language that allows for an agency to develop a more complex set of minimum retroreflectivity levels, if it chooses to do so. Such levels cannot be below the minimums in Table 2A–3.

As mentioned in item 3 under Major Issues, a few commenters such as NACE, the NCUTCD and others, believed that Table 2A–3 and its title should be referred to as ''Recommended.'' The FHWA believes that it is inappropriate to include ''Recommended'' in the title of a table that is referenced in a STANDARD statement of the MUTCD. In addition, the word ''Recommended'' implies guidance, rather than a standard, and would therefore be confusing.

ATSSA, the AHAS and the MNDOT agreed with eliminating Type I material for ground-mounted signs, and they also agreed with eliminating Types I, II, and III for overhead guide sign legends. These commenters felt that prohibiting the use of these less efficient retroreflective materials would substantially improve the nighttime driving environments, especially for older drivers with a variety of visual impairments. ATSSA also supported including Type X materials so that all currently defined American Society of Testing Materials (ASTM) Type designations that are used for traffic signs will be included in the MUTCD.

The NCDOT disagrees with any retroreflective requirement for illuminated signs. Their reasoning is that the assessment and management methods used to maintain retroreflectivity do not address signs with illumination and that Section 2A.08 does not require retroreflectivity for illuminated signs.

Illuminated signs do need to meet the minimum retroreflectivity requirements because there are times that the signs may not be illuminated due to power failure. Previous research has shown that overhead signs can be effective

[6] Blue signs are generally described as informational signs, and include evacuation route and road user signs. Examples include hospital, specific service signs (food, gas, lodging, camping, and attraction) and tourist-oriented directional signs. Brown signs, which are also informational signs, are primarily recreational and cultural interest area signs.

[7] Carlson, P.J. and H.G. Hawkins. Minimum Retroreflectivity Levels for Overhead Guide Signs and Street-Name Signs. FHWA–RD–03–082. U.S. Department of Transportation, Federal Highway Administration, Washington, DC. This document is available at the following Web address: *http://www.tfhrc.gov/safety/pubs/03082/index.htm.*

[8] Part 2 of the MUTCD includes a table titled, ''Table 2B–1 Regulatory Sign Sizes'' that includes sign sizes for conventional roads, expressways, freeways, and oversized as well as minimum sign sizes. Generally, sign sizes for conventional roads are smaller than those for expressways or freeways.

without lighting, as long as the appropriate retroreflective sheeting materials are used to fabricate the sign.[9] With this knowledge, many agencies have elected to use more efficient retroreflective sheeting on overhead guide signs without sign lighting, citing adequate visibility and concerns about energy use and light pollution (although sign lighting may continue to be used in areas of complex surroundings and/or roadway geometries). The minimum retroreflectivity levels in Table 2A–3 in the MUTCD prohibit the use of less efficient reflective materials for overhead signs so that agencies do not use them. As a result, agencies are more likely to select appropriate materials to meet nighttime driving requirements.

One supplier of overhead sign lighting systems and 22 citizens suggested that lighting of overhead signs should be mandatory. This final rule does not change the existing MUTCD language recommending lighting for overhead signs. Mandating lighting for overhead signs is outside the scope of this rulemaking.

One sign manufacturer suggested that retroreflectivity levels measured at 0.5 degree observation angle be included. As discussed in item #12 of the SNPA, research has been completed that supports moving toward the 0.5-degree concept and the ASTM has started working toward a revision to its specifications to describe 0.5-degree measurements.[10] The FHWA believes that it is not practical to implement minimum retroreflectivity levels based on an observation angle of 0.5 degrees until measuring devices become more readily available, and the ASTM completes its work developing a standard measurement specification. At that time there may be a need for an alternative table and a transition period established while the 0.2-degree measurement geometries and devices are phased out. If so, these changes will be introduced through public rulemaking procedures described earlier for MUTCD changes or additions.

[9] Carlson, P.J. and H.G. Hawkins. Minimum Retroreflectivity Levels for Overhead Guide Signs and Street-Name Signs. FHWA–RD–03–082. U.S. Department of Transportation, Federal Highway Administration, Washington, DC. This document is available at the following Web address: *http://www.tfhrc.gov/safety/pubs/03082/index.htm.*

[10] The ASTM E12 committee is working to develop a standard measurement specification for 0.5 degree instruments. The committee is using ASTM E1709 as a template (ASTM E1709 is the standard measurement specification for 0.2 degree instruments). More information is available at *http://www.astm.org.*

Conclusion

To address the comments to the docket, the FHWA adopts the following key changes to Section 2A.09 Maintaining Minimum Retroreflectivity in the MUTCD from what was proposed in the SNPA:

(A) In the STANDARD statement, a reference to Table 2A–3 was added to clarify that the levels contained in Table 2A–3 are the minimum levels that are to be used by public agencies or officials having jurisdiction when they develop an assessment or management method that is designed to maintain sign retroreflectivity.

(B) The 2nd SUPPORT statement was clarified to indicate that once an assessment or management method is used, an agency or official having jurisdiction would be in compliance with the STANDARD even if some individual signs do not meet the minimum retroreflectivity levels at a particular point in time.

(C) The GUIDANCE statement was modified by adding a sixth method to the list of assessment or management methods that should be used to maintain sign retroreflectivity titled ''Other Methods,'' which explicitly states that other methods developed based on engineering studies can be used.

In addition, FHWA adopts a 4-year compliance date (instead of the proposed 2-year compliance date) for implementation and continued use of an assessment or management method that is designed to maintain traffic sign retroreflectivity at or above the established minimum levels.

The final rule meets statutory requirements, provides clarity where needed, and provides flexibility for compliance.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or under the regulatory policies and procedures of the U.S. Department of Transportation. While the FHWA had preliminarily designated this rulemaking as significant during the NPRM and SNPRM stages, the FHWA has determined that this rulemaking does not meet the criteria for a ''significant regulatory action'' under Executive Order 12866. This rule will not adversely affect, in a material way, any sector of the economy. Additionally, this rulemaking will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees or loan programs.

It is anticipated that the economic impact of this rulemaking would cause minimal additional expenses to public agencies. In 2007, FHWA updated its analysis of the cost impacts to State and local agencies to reflect higher material costs due to inflation, an increase in the proportion of signs that would be replaced with higher-level sign sheeting material, and changes in the overall mileage of State and local roads.[11] The findings of the 2007 analysis show that the costs of the proposed action to State and local agencies would be less than $128.1 million per year.[12] The 7-year implementation period for ground-mounted signs will allow State and local agencies to delay replacement of recently installed Type I signs until they have reached their commonly accepted 7-year service life. The 10-year compliance period for overhead signs would allow an extended period of time because of the longer service life typically used for those signs. The final rule does not affect the impacts assessments described above.

Currently, the MUTCD requires that traffic signs be illuminated or retroreflective to enhance nighttime visibility. In 1993, Congress mandated that the MUTCD contain standards for maintaining minimum traffic sign and pavement marking retroreflectivity.[13] The final rule provides additional guidance, clarification, and flexibility in maintaining traffic sign retroreflectivity that is already required by the MUTCD. The minimum retroreflectivity levels and maintenance methods consider changes in the composition of the vehicle population, vehicle headlamp design, and the demographics of drivers. The FHWA expects that the levels and maintenance methods will help to promote safety and mobility on the Nation's streets and highways.

This rulemaking addresses comments received in response to the Office of Management and Budget's (OMB's) request for regulatory reform nominations from the public. The OMB is required to submit an annual report to Congress on the costs and benefits of Federal regulations. The 2002 report included recommendations for

[11] ''Maintaining Traffic Sign Retroreflectivity: Impacts on State and Local Agencies,'' Publication No. FHWA–HRT–07–042, dated April 2007, is available at the following Web address: *http://www.tfhrc.gov/safety/pubs/07042/index.htm.*

[12] Ibid.

[13] United States Department of Transportation and Related Agencies Act of 1993, Public Law 102–388, 106 Stat. 1520, Section 406.

regulatory reform that OMB requested from the public.[14] One recommendation was that the FHWA should establish standards for minimum levels of brightness of traffic signs.[15] The FHWA has identified this rulemaking as responsive to that recommendation.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this final rule on small entities and has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

This rule would apply to State Departments of Transportation in the execution of their highway programs, specifically with respect to the retroreflectivity of traffic signs. Additionally, sign replacement is often eligible for up to 100 percent Federal-aid funding—this applies to local jurisdictions and tribal governments, pursuant to 23 U.S.C. 120(c). The implementation of this final rule would not affect the economic viability or sustenance of small entities, as States are not included in the definition of a small entity that is set forth in 5 U.S.C. 601.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). The impacts analysis shows that State and local agencies would be likely to incur impacts of roughly $37.5 million. Using a 7-year implementation period for regulatory, warning, and guide signs and a 10-year implementation period for street name and overhead guide signs, the annual impacts are estimated to be approximately $4.5 million for years 1 through 7, and $2.1 million for years 8 through 10. The estimates are based upon the added cost of more efficient performance sign materials. The labor, equipment, and mileage costs for sign replacement were excluded under the assumption that the proposed implementation period was long enough to allow replacement of non-compliant signs under currently planned maintenance cycles. Therefore, this final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year. In addition, sign replacement is often eligible for up to 100 percent Federal-aid funding—this applies to local jurisdictions and tribal governments, pursuant to 23 U.S.C. 120(c). Further, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism)

The FHWA analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and FHWA has determined that this final rule will not have a substantial direct effect or sufficient federalism implications on States and local governments that would limit the policy-making discretion of the States and local governments. Nothing in the MUTCD directly preempts any State law or regulation.

The MUTCD is incorporated by reference in 23 CFR Part 655, subpart F. This final rule is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the Nation's streets and highways.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this is not a significant energy action under that order because, although it is a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain a collection of information requirement for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This is not an economically significant action and does not concern an environmental risk to health or safety that might disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

National Environmental Policy Act

The agency has analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and has determined that it will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory

[14] A copy of the OMB report ''Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulation and Unfunded Mandates on State, Local, and Tribal Entities'' is available at the following Web address: *http://www.whitehouse.gov/omb/inforeg/summaries_nominations_final.pdf.*

[15] 15 A complete compilation of comments received by OMB is available at the following Web address: *http://www.whitehouse.gov/omb/inforeg/key_comments.html.* Comment 93 includes the recommendation concerning the retroreflectivity of traffic signs.

action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—Transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Issued on: December 13, 2007.

J. Richard Capka,

Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 655, subpart F as follows:

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315 and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways—[Amended]

■ 2. Revise § 655.601(a), to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 2003 Edition, including Revision No. 1, FHWA, dated November 2004, and revision No. 2, FHWA, dated January 2008. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the National Archives and Record Administration (NARA). For information on the availability of this material at NARA call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* It is available for inspection at the Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590, as provided in 49 CFR part 7. The text is also available from the FHWA Office of Transportation Operations' Web site at *http://mutcd.fhwa.dot.gov*.

* * * * *

[FR Doc. E7–24683 Filed 12–20–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9368]

RIN 1545–BG55

Reduction of Foreign Tax Credit Limitation Categories Under Section 904(d)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary Income Tax Regulations regarding the reduction of the number of separate foreign tax credit limitation categories under section 904(d) of the Internal Revenue Code (Code). Section 404 of the American Jobs Creation Act of 2004 (AJCA) reduced the number of section 904(d) separate categories from eight to two, effective for taxable years beginning after December 31, 2006. These temporary regulations affect taxpayers claiming foreign tax credits and provide guidance needed to comply with the statutory changes made by the AJCA. The text of these temporary regulations also serves as the text of the proposed regulations (REG–114126–07) set forth in the notice of proposed rulemaking on this subject published elsewhere in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on December 21, 2007.

Applicability Dates: For dates of applicability, see §§ 1.904–2T(i)(3), 1.904–4T(n), 1.904–5T(o)(3), 1.904–7T(g)(6), and 1.904(f)–12T(h)(6). These regulations apply to taxable years of United States taxpayers beginning after December 31, 2006, and ending on or after December 21, 2007, and to taxable years of foreign corporations which end with or within taxable years of their domestic corporate shareholders beginning after December 31, 2006, and ending on or after December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Parry (202) 622–3850 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the regulations under section 904 relating to the application of separate foreign tax credit limitations to certain categories of income under section 904(d), as amended by the AJCA. Prior to the effective date of the AJCA amendments (that is, for taxable years beginning before January 1, 2007 (''pre-2007 taxable years'')), the foreign tax credit limitation applied separately to the following categories of income: passive income, high withholding tax interest, financial services income, shipping income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income, certain distributions from a FSC or former FSC, and any other income not described in this sentence (''general limitation income''). Other provisions of the Code that subject other categories of income to separate foreign tax credit limitations were not amended by the AJCA. See, for example, sections 56(g)(4)(C)(iii)(IV), 245(a)(10), 865(h), 901(j), and 904(h)(10); see also H.R. Rep. No. 108–755, at 383 (October 7, 2004).

Effective for taxable years beginning after December 31, 2006 (''post-2006 taxable years''), the AJCA reduced the number of section 904(d) separate categories to two categories for ''passive category income'' and ''general category income.'' New section 904(d)(2)(A) defines passive category income as passive income and specified passive category income, and general category income as income other than passive category income. In addition, new section 904(d)(2)(C) and (D) provides rules concerning the treatment of financial services income and companies.

These temporary regulations modify the regulations under section 904 to reflect the new separate categories for passive category income and general category income, and provide transition rules for the treatment of earnings and profits and foreign income taxes of controlled foreign corporations and noncontrolled section 902 corporations accumulated in pre-2007 taxable years, overall foreign losses and separate limitation losses under section 904(f), and the carryover and carryback of excess foreign taxes under section 904(c).

Explanation of Provisions

I. Carryovers and Carrybacks of Excess Foreign Taxes Under Section 904(c)

Section 904(d)(2)(K)(i), as added by the AJCA, provides that excess taxes carried from a pre-2007 taxable year to a post-2006 taxable year shall be assigned to the post-2006 separate categories based on where the related income would have been assigned had such taxes been paid or accrued in a post-2006 taxable year.

Consistent with this statutory amendment, § 1.904–2T(i)(1)(i) provides that if a taxpayer carries over to a post-2006 taxable year any excess taxes that

were paid, accrued, or deemed paid with respect to income in any pre-2007 separate category, the excess taxes are assigned to the appropriate post-2006 separate category as if the taxes had been paid or accrued in a post-2006 taxable year. For example, to the extent that any taxes were related to income that would have been treated as high-taxed income under section 904(d)(2)(B)(iii)(II), such taxes will be assigned to the post-2006 separate category for general category income.

Because the IRS and the Treasury Department recognize that taxpayers may face difficulties in reconstructing excess taxes accounts, § 1.904–2T(i)(1)(ii) of the temporary regulations provides a safe harbor. Under the safe harbor, a taxpayer may assign excess taxes in any pre-2007 separate category, except the passive category, to the post-2006 separate category for general category income. The safe harbor provides that excess taxes in the pre-2007 passive category will be assigned to the post-2006 separate category for passive category income.

Section 904(d)(2)(K)(ii), as added by the AJCA, authorizes the Secretary to issue regulations for allocating carrybacks of excess taxes with respect to income from a post-2006 taxable year to a pre-2007 taxable year for purposes of allocating the excess taxes among the separate categories in effect for the taxable year to which carried. The IRS and the Treasury Department believe that it is appropriate to allow a taxpayer to reconstruct separate categories of income earned and excess taxes paid or accrued in its first post-2006 taxable year as if the pre-2007 rules applied. Accordingly, § 1.904–2T(i)(2)(i) provides that if a taxpayer carries back excess taxes paid, accrued, or deemed paid with respect to income in the post-2006 separate category for passive category income or general category income to a pre-2007 taxable year, the excess taxes are assigned to the appropriate pre-2007 separate category or categories as if the taxes had been paid or accrued in a pre-2007 taxable year. Section 1.904–2T(i)(2)(ii) provides that a taxpayer may, in lieu of reconstruction, assign excess taxes in the separate category for general category income to the pre-2007 general category, and excess taxes in the separate category for passive category income to the pre-2007 passive category.

II. Definition of Passive Category Income

New section 904(d)(2)(A)(i) defines passive category income as passive income and specified passive category income. New section 904(d)(2)(B)(i) generally defines passive income as ''any income received or accrued by any person which is of a kind which would be foreign personal holding company income (as defined in section 954(c)).'' Passive income includes amounts includible in gross income under section 1293, except as provided in section 904(d)(3)(H) (providing that look-through treatment applies to an amount included in gross income under section 1293 if the passive foreign investment company is a controlled foreign corporation (CFC) and the taxpayer is a United States shareholder in such CFC) and section 904(d)(2)(E)(ii) (providing that an inclusion under section 1293 with respect to a foreign corporation that is a noncontrolled section 902 corporation with respect to the taxpayer shall be treated as a dividend from such corporation). See section 904(d)(2)(B)(ii). Passive income does not include export financing interest and high-taxed income. See section 904(d)(2)(B)(iii). New section 904(d)(2)(B)(iv) provides that in determining whether income is of a kind which would be foreign personal holding company income, the rules of section 864(d)(6) apply only in the case of income of a CFC.

New section 904(d)(2)(B)(v) defines specified passive category income as dividends from a DISC or former DISC (as defined in section 992(a)) to the extent such dividends are treated as income from sources without the United States, taxable income attributable to foreign trade income (FTI) within the meaning of section 923(b), and distributions from a FSC or former FSC out of earnings and profits attributable to FTI (within the meaning of section 923(b)) or interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in FTI (as defined in section 923(b)).

The temporary regulations reflect the new definitions of passive category income, passive income, and specified passive category income. Section 1.904–4T(b)(3) incorporates the definition of specified passive category income in section 904(d)(2)(B)(v), which includes dividends from DISCs, distributions from FSCs, and FTI. Because these types of income constitute specified passive category income and not passive income, such income can never qualify as financial services income that could be treated as general category income.

The final regulations at § 1.904–5(h)(3) currently provide that gain from the sale of a partnership interest is assigned to the separate category for passive income. Section 954(c)(4), which was enacted by the AJCA, provides a look-through rule for sales of 25-percent-owned partnerships. Because the definition of passive income in section 904(d)(2)(B) refers to section 954(c), these temporary regulations revise § 1.904–5(h)(3) to reflect that gain on the sale of a partnership interest by a 25-percent partner is assigned to the separate category for general category income, to the extent that, under the section 954(c)(4) look-through rule, the gain is not classified as foreign personal holding company income.

III. Definition of Financial Services Income

Section 904(d)(2)(C)(i), as amended by the AJCA, provides that financial services income shall be treated as general category income in the case of a member of a financial services group and any other person predominantly engaged in the active conduct of a banking, insurance, financing or similar business. New section 904(d)(2)(C)(ii) defines a financial services group as ''any affiliated group (as defined in section 1504(a) without regard to paragraphs (2) and (3) of section 1504(b)) which is predominantly engaged in the active conduct of a banking, insurance, financing or similar business.'' In determining whether a group is so engaged, only the income of members of the group that are U.S. corporations or CFCs in which U.S. corporations own, directly or indirectly, at least 80 percent of the vote or value of the stock are taken into account. Section 904(d)(2)(C)(iii) provides that the Secretary ''shall by regulation specify for purposes of this subparagraph the treatment of financial services income received or accrued by partnerships and by other pass-thru entities which are not members of a financial services group.''

Section 904(d)(2)(D), as amended by the AJCA, generally adopts the definition of financial services income of former section 904(d)(2)(C)(i) and (ii), except that it includes neither the rule providing that financial services income includes export financing interest that would be high withholding tax interest, nor the exception in former section 904(d)(2)(C)(iii) for high withholding tax interest and export financing interest that would not be high withholding tax interest. New section 904(d)(2)(D)(i) defines financial services income as ''any income which is received or accrued by any person predominantly engaged in the active conduct of a banking, insurance, financing or similar business,'' and which is either described in section 904(d)(2)(D)(ii) (which provides a general description of financial services income) or is passive income (determined without regard to

whether it is high-taxed). An item of income satisfies the general description of financial services income if such income is (1) derived in the active conduct of a banking, financing, or similar business; (2) derived from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business; or (3) of a kind which would be insurance income as defined in section 953(a) determined without regard to section 953(a)(1)(A), which limits insurance income to income from countries other than the country in which the corporation was created or organized. See section 904(d)(2)(D)(ii).

The final regulations at § 1.904–4(e) provide rules concerning the separate category for financial services income. Section 1.904–4(e)(1) provides a general definition of financial services income. Section 1.904–4(e)(2) provides an exclusive list describing items of income that are treated as active financing income. Section 1.904–4(e)(3)(i) provides that a person is considered to be predominantly engaged in the active financing business for any taxable year if for that year at least 80 percent of its gross income is active financing income, as defined in § 1.904–4(e)(2).

On June 26, 2007, the IRS and the Treasury Department issued Notice 2007–58, 2007–29 IRB 88 (see § 601.601(d)(2)(ii)(*b*)), in which the IRS and the Treasury Department announced that in light of the amendments to the foreign tax credit rules in the AJCA, they were reviewing the provisions relating to financial services income, active financing income, and financial services entities in § 1.904–4(e). The Notice also solicited comments relating to these definitions. The IRS and the Treasury Department received several written comments and are continuing to study this issue. Accordingly, the rules of § 1.904–4(e) of the current final regulations are not being revised at this time.

IV. Pre-2007 Separate Categories

To reflect the reduction of separate categories, §§ 1.904–4(d) (definition of high withholding tax interest), 1.904–4(f) (definition of shipping income), and 1.904–4(g) (treatment of dividends from a noncontrolled section 902 corporation) are reserved.

It should be noted that the separate category for shipping income remained effective for taxable years beginning before January 1, 2007. Section 415 of the AJCA repealed the foreign base company shipping income rules of section 954(f), effective for taxable years of foreign corporations beginning after December 31, 2004, and taxable years of U.S. shareholders in which or with which such taxable years of the foreign corporations end. Notice 2007–13, 2007–5 IRB 410, stated that in light of the repeal of section 954(f), § 1.954–1(e)(4)(i)(A) (providing a trump rule for income that qualifies as foreign base company shipping income) is obsolete, and § 1.954–6 (providing rules for determining foreign base company shipping income) is effective only for purposes of applying the rules for the withdrawal of previously excluded subpart F income from qualified investments. However, a technical correction in the Tax Increase Prevention and Reconciliation Act of 2005 confirmed that the separate category for shipping income is defined by reference to shipping income as defined in section 954(f) prior to its repeal. Accordingly, the subpart F shipping regulations continued to apply for section 904(d) purposes, and the separate category for shipping income continued to exist, through the end of taxable years beginning before 2007. See § 601.601(d)(2)(ii)(*b*).

The final regulations at §§ 1.904–4(h) (definition of and rules relating to treatment of export financing interest), 1.904–4(i) (concerning the interaction of section 907(c) and § 1.904–4), 1.904–4(j) (concerning DASTM gain or loss), 1.904–4(l) (priority rules for income meeting the definitions of more than one pre-2007 separate category), and 1.904–5 have been revised to reflect the new separate categories for passive category income and general category income.

V. Post-1986 Undistributed Earnings and Post-1986 Foreign Income Taxes of a Foreign Corporation as of the End of the Corporation's Last Pre-2007 Taxable Year

A. General Rule of Reconstruction

If a dividend is paid, or an amount is included in the gross income of a U.S. shareholder under section 951, out of post-1986 undistributed earnings (or pre-1987 accumulated profits) of a foreign corporation attributable to more than one separate category, the amount of foreign income taxes deemed paid by the domestic shareholder or upper-tier corporation under section 902 or 960 is computed separately with respect to the post-1986 undistributed earnings (or pre-1987 accumulated profits) in each separate category out of which the dividend is paid or to which the subpart F inclusion is attributable. See §§ 1.902–1T(d)(1); 1.960–1(i)(1). The temporary regulations implement the reduction of separate categories under the AJCA by recharacterizing the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes in the pre-2007 separate categories as pools of post-1986 undistributed earnings and post-1986 foreign income taxes in the separate categories for passive category income and general category income on the first day of the foreign corporation's first post-2006 taxable year.

Section 1.904–7T(g)(2) of the temporary regulations provides that in the case of a CFC or noncontrolled section 902 corporation that has pools of post-1986 undistributed earnings and post-1986 foreign income taxes in any pre-2007 separate category, the earnings and foreign income taxes that exist as of the end of the foreign corporation's last pre-2007 taxable year are treated as if they were accumulated and paid during a period when the post-2006 rules applied, including the rules under section 904(d)(3)(E). Recharacterized amounts of earnings and taxes are taken into account in determining the opening balance of the post-1986 undistributed earnings and post-1986 foreign income taxes pools in each of the foreign corporation's post-2006 separate categories on the first day of the foreign corporation's first post-2006 taxable year.

Section 1.904–7T(g)(3)(i) of the temporary regulations provides that in order to substantiate the recharacterization of the pools of post-1986 undistributed earnings and post-1986 foreign income taxes in any pre-2007 separate category, the pools must be reconstructed for each pre-2007 taxable year, beginning with the first year in which earnings were accumulated in the pool with respect to each such pre-2007 separate category. Earnings are treated as if they were accumulated in a period when the post-2006 rules applied, taking into account earnings distributed and taxes deemed paid pro rata from the amounts that were added to the pools in each separate category in subsequent pre-2007 taxable years. As reconstructed, the pools of earnings and taxes in a pre-2007 separate category are assigned to the post-2006 separate categories on the first day of the foreign corporation's first post-2006 taxable year. (A hovering deficit is subject to the same rules for purposes of identifying the post-2006 separate categories to which the deficit is assigned, but the hovering deficit is not included in determining the opening balance of the pool. See § 1.367(b)–7.)

Similar rules apply to assign to the post-2006 separate categories amounts

of previously-taxed earnings and profits described in section 959(c)(1)(A), accumulated deficits, and pre-1987 accumulated profits in pre-2007 separate categories. For example, if there is an accumulated deficit in any pre-2007 separate category as of the end of a CFC's or noncontrolled section 902 corporation's last pre-2007 taxable year, the deficit and associated taxes (if any) are treated in the same manner as if there had been positive accumulated earnings and taxes in the separate category, that is, the deficit and taxes are treated as if the post-2006 rules applied in the year the deficit was accumulated and the taxes were paid. The earnings and deficits in earnings making up the accumulated deficit are assigned to the post-2006 separate categories based on where those items of income and expenses or losses would have been assigned had they been incurred when the post-2006 rules were in effect. As reconstructed, the deficit is taken into account in determining the opening balance of the post-1986 undistributed earnings pool in the appropriate post-2006 separate category or categories on the first day of the foreign corporation's first post-2006 taxable year.

The IRS and the Treasury Department recognize that shareholders may face difficulties in reconstructing historical accumulated earnings and taxes accounts of a foreign corporation. Therefore, a reasonable approximation of the amounts properly included in the post-2006 separate categories, based on available records obtained through reasonable, good-faith efforts by the taxpayer, will adequately substantiate reconstruction.

B. Safe Harbors

1. In General

For pools of undistributed earnings and foreign income taxes in the pre-2007 separate categories of CFCs and noncontrolled section 902 corporations, the temporary regulations provide that a taxpayer may elect to apply one of two safe harbors in lieu of reconstructing historical accumulated earnings and taxes accounts of the foreign corporation. See § 1.904–7T(g)(3)(ii). The safe harbors apply to allocate post-1986 undistributed earnings (as well as deficits and previously-taxed earnings, if any) and pre-1987 accumulated profits and associated foreign income taxes in a foreign corporation's pre-2007 separate categories. Amounts allocated to the post-2006 separate categories under a safe harbor are taken into account in computing the opening balance of the post-1986 undistributed earnings and post-1986 foreign income taxes pools, as well as pre-1987 accumulated profits and pre-1987 foreign income taxes, in each of the foreign corporation's post-2006 separate categories on the first day of the foreign corporation's first post-2006 taxable year.

2. General Safe Harbor

Under § 1.904–7T(g)(3)(ii)(B)(*1*) of the temporary regulations, the safe harbor for post-1986 undistributed earnings and post-1986 foreign income taxes (as well as deficits and previously-taxed earnings, and pre-1987 accumulated profits, if any) in a CFC's or noncontrolled section 902 corporation's pre-2007 separate category for passive income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income, or certain distributions from a FSC or former FSC provides that such earnings and taxes are allocated to the post-2006 separate category for passive category income. Under § 1.904–7T(g)(3)(ii)(B)(*2*), the safe harbor for post-1986 undistributed earnings and post-1986 foreign income taxes (as well as deficits, previously-taxed earnings, and pre-1987 accumulated profits, if any) in a CFC's or noncontrolled section 902 corporation's pre-2007 separate category for financial services income, shipping income, or general limitation income provides that such earnings and taxes are allocated to the post-2006 separate category for general category income.

Under § 1.904–7T(g)(3)(ii)(B)(*3*), the safe harbor for post-1986 undistributed earnings and post-1986 foreign income taxes (as well as deficits, previously-taxed earnings, and pre-1987 accumulated profits, if any) in a CFC's or noncontrolled section 902 corporation's pre-2007 separate category for high withholding tax interest generally provides that such earnings and taxes are allocated to the post-2006 separate category for passive category income. However, § 1.904–7T(g)(3)(ii)(B)(*4*) provides that if a CFC has positive post-1986 undistributed earnings or pre-1987 accumulated profits and foreign income taxes attributable to high-withholding tax interest, such earnings and taxes are allocated to the post-2006 separate category for general category income if the earnings would qualify as income subject to high foreign taxes under section 954(b)(4) if the entire amount of earnings in the pre-2007 pool in the separate category for high withholding tax interest were treated as a net item of income subject to the rules of § 1.954–1(d). If the earnings would not qualify as income subject to high foreign taxes under section 954(b)(4), the earnings and taxes are allocated to the post-2006 separate category for passive category income. The IRS and the Treasury Department believe that, given that high withholding tax interest generally constitutes subpart F income unless it is high-taxed, this safe harbor is an appropriate alternative to reconstructing earnings and taxes in a CFC's separate category for high withholding tax interest.

3. Interest Apportionment Safe Harbor

A second safe harbor is provided under § 1.904–7T(g)(3)(ii)(C) which allows taxpayers to allocate the post-1986 undistributed earnings and post-1986 foreign taxes (and deficits, previously-taxed earnings, and pre-1987 accumulated profits, if any) in a CFC's or noncontrolled section 902 corporation's pre-2007 pools following the principles of the safe harbor method described in the transition rules under § 1.904–7T(f)(4)(ii) for post-1986 undistributed earnings and post-1986 foreign income taxes in the non-look-through pool of a controlled foreign corporation or noncontrolled section 902 corporation.

4. Election of Safe Harbor

To allocate pools of undistributed earnings (and deficits, previously-taxed earnings, and pre-1987 accumulated profits, if any) and foreign income taxes in the pre-2007 separate categories of a CFC or noncontrolled section 902 corporation to the foreign corporation's post-2006 separate categories, the temporary regulations at § 1.904–7T(g)(3)(iii) provide that a taxpayer may elect to apply a safe harbor in lieu of reconstruction on a separate-category-by-separate-category basis. If a taxpayer elects to apply a safe harbor to allocate pre-2007 pools of more than one pre-2007 separate category of a foreign corporation, the same safe harbor (that is, the general safe harbor described in § 1.904–7T(g)(3)(ii)(B) or the interest apportionment safe harbor described in § 1.904–7T(g)(3)(ii)(C)) shall then apply to allocate the pre-2007 pools of all of the foreign corporation's pre-2007 separate categories for which the taxpayer elects to apply a safe harbor method in lieu of reconstructing the pre-2007 pools.

C. Post-1986 Undistributed Earnings and Taxes of Lower-Tier Foreign Corporations

The transition rules described in Sections V.A. and B in this preamble apply to post-1986 undistributed earnings and post-1986 foreign income taxes (as well as deficits, previously-

taxed earnings, and pre-1987 accumulated profits, if any) not only of a first-tier foreign corporation but also of lower-tier foreign corporations as well. See § 1.904–7T(g)(5). Accordingly, to the extent a lower-tier foreign corporation has pools of post-1986 undistributed earnings (attributable to amounts not yet included in gross income by the U.S. shareholder) and foreign income taxes in a pre-2007 separate category, the rules of § 1.904–7T(g) apply in treating the earnings and taxes as the opening balance of the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes in the appropriate post-2006 separate category or categories on the first day of the foreign corporation's first post-2006 taxable year. Similarly, pre-1987 accumulated profits and pre-1987 foreign income taxes in a pre-2007 separate category of a lower-tier foreign corporation are allocated to the appropriate post-2006 separate categories in accordance with the rules of § 1.904–7T(g).

VI. Separate Limitation Losses and Overall Foreign Losses

Because the AJCA reduced the number of section 904(d) separate categories from eight to two for post-2006 taxable years, the temporary regulations provide transition rules for recapture in a post-2006 taxable year of an overall foreign loss (OFL) or separate limitation loss (SLL) in a pre-2007 separate category that offset U.S. source income or income in another pre-2007 separate category, respectively, in a pre-2007 taxable year.

Section 1.904(f)–12T(h)(1) of the temporary regulations provides that to the extent a taxpayer has an OFL or SLL at the end of the taxpayer's last pre-2007 taxable year in the pre-2007 separate category for passive income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income, or certain distributions from a FSC or former FSC, such OFL or SLL is allocated on the first day of the taxpayer's next taxable year to the taxpayer's post-2006 separate category for passive category income. Accordingly, such OFL or SLL will be subject to recapture in subsequent taxable years out of the taxpayer's passive category income. Where a taxpayer has an SLL in some other pre-2007 separate category (for example, a general limitation SLL) that offset passive income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income, or certain distributions from a FSC or former FSC, the SLL will be recaptured in subsequent taxable years as passive category income.

Section 1.904(f)–12T(h)(2) of the temporary regulations provides that to the extent a taxpayer has an OFL or SLL at the end of the taxpayer's last pre-2007 taxable year in the pre-2007 separate category for financial services income, shipping income, or general limitation income, such OFL or SLL is allocated on the first day of the taxpayer's next taxable year to the taxpayer's post-2006 separate category for general category income. Accordingly, such OFL or SLL will be subject to recapture in subsequent taxable years out of the taxpayer's general category income. Where a taxpayer has an SLL in some other pre-2007 separate category (for example, a passive SLL) that offset financial services income, shipping income, or general limitation income, the SLL will be recaptured in subsequent taxable years as general category income.

Section 1.904(f)–12T(h)(3) provides that to the extent a taxpayer has an OFL or SLL at the end of the taxpayer's last pre-2007 taxable year in the pre-2007 separate category for high withholding tax interest, the allocation of such OFL or SLL to the taxpayer's post-2006 separate categories depends on the taxpayer's allocation of excess taxes in the high withholding tax interest loss category for carryover purposes. Accordingly, if the excess taxes are assigned to the appropriate post-2006 separate category or categories based on reconstruction (that is, treating the taxes as if they had been paid or accrued in a post-2006 taxable year under § 1.904–2T(i)(1)(i)), the OFL or SLL is allocated pro rata to the taxpayer's post-2006 separate categories based on the proportions in which the excess high withholding taxes are assigned to the post-2006 separate categories. If instead the taxpayer elects to assign the excess taxes to the post-2006 separate category for general category income under the safe harbor described in § 1.904–2T(i)(1)(ii), the OFL or SLL is also allocated to the same post-2006 general category. If there are no excess taxes in the loss category that are carried over to post-2006 taxable years, an OFL or SLL in the pre-2007 separate category for high withholding tax interest is allocated to the post-2006 separate category for passive category income.

Similarly, where a taxpayer has an SLL in a pre-2007 separate category that offset high withholding tax interest, the SLL will be recaptured in subsequent taxable years pro rata as income in the post-2006 separate categories for general category income and passive category income based on how the taxpayer allocated excess taxes in the pre-2007 separate category for high withholding tax interest under § 1.904–2T(i)(1). If no excess taxes in the pre-2007 separate category for high withholding tax interest are carried over to post-2006 taxable years, the SLL will be recaptured in subsequent taxable years as income in the post-2006 separate category for passive category income.

Section 1.904–12T(h)(4) provides that after application of paragraphs (1) through (3), any separate limitation loss account allocated to the post-2006 separate category for passive category income for which income is to be recaptured as passive category income will be eliminated, since ''recapture'' to and from the same category would be meaningless. For the same reason, any separate limitation loss accounts allocated to the post-2006 separate category for general category income for which income is to be recaptured as general category income will be eliminated.

Section 1.904–12T(h)(5) provides that taxpayers may in the alternative determine the treatment of OFLs and SLLs in pre-2007 separate categories following the principles of the transition rules of § 1.904–12T(g)(1) and (2) concerning the treatment of OFLs and SLLs in the separate category for dividends from a noncontrolled section 902 corporation.

Effective/Applicability Date

The effective date for these regulations is December 21, 2007. The temporary regulations apply to taxable years of United States taxpayers beginning after December 31, 2006, and ending on or after December 21, 2007, and to taxable years of a foreign corporation which end with or within a taxable year of its domestic corporate shareholder beginning after December 31, 2006, and ending on or after December 21, 2007.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble of the cross-referenced notice of proposed rulemaking published in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation

has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Jeffrey L. Parry of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.904–0 is amended as follows:

■ 1. Add the entry for § 1.904–2(i).

■ 2. Remove and reserve the entries for § 1.904–4(a), (b), (d), (f), (g), (h)(3), and (l).

■ 3. Remove and reserve the entry for § 1.904–5(h)(3).

■ 4. Add and reserve the entry for § 1.904–5(o)(3).

■ 5. Add the entry for § 1.904–7(g).

■ 6. Add the entry for § 1.904(f)–12(h).

The revisions and additions read as follows:

§ 1.904–0 Outline of regulation provisions for section 904.

* * * * *

§ 1.904–2 Carryback and carryover of unused foreign tax.

* * * * *

(i) [Reserved].

* * * * *

§ 1.904–4 Separate application of section 904 with respect to certain categories of income.

(a) [Reserved].

(b) [Reserved].

* * * * *

(d) [Reserved].

* * * * *

(f) [Reserved].

(g) [Reserved].

* * * * *

(h)(3) [Reserved].

* * * * *

(l) [Reserved].

* * * * *

§ 1.904–5 Look-through rules as applied to controlled foreign corporations and other entities.

* * * * *

(h) * * *

(3) [Reserved].

* * * * *

(o) * * *

(3) [Reserved].

§ 1.904–7 Transition rules.

* * * * *

(g) [Reserved].

§ 1.904(f)–12 Transition rules.

* * * * *

(h) [Reserved].

■ **Par. 3.** Section 1.904–2 is amended by adding paragraph (i) to read as follows:

§ 1.904–2 Carryback and carryover of unused foreign tax.

* * * * *

(i) [Reserved.] For further guidance, see § 1.904–2T(i).

■ **Par. 4.** Section 1.904–2T is amended by adding paragraph (i) to read as follows:

§ 1.904–2T Carryback and carryover of unused foreign tax (temporary).

* * * * *

(i) *Transition rules for carryovers and carrybacks of pre-2007 and post-2006 unused foreign tax*—(1) *Carryover of unused foreign tax*—(i) *General rule.* For purposes of this paragraph (i), the terms *post-2006 separate category* and *pre-2007 separate category* have the meanings set forth in § 1.904–7T(g)(1)(ii) and (iii). The rules of this paragraph (i)(1) apply to reallocate to the taxpayer's post-2006 separate categories for general category income and passive category income any unused foreign taxes (as defined in § 1.904–2(b)(2)) that were paid or accrued or deemed paid under section 902 with respect to income in a pre-2007 separate category (other than a category described in § 1.904–4(m)). To the extent any such unused foreign taxes are carried forward to a taxable year beginning after December 31, 2006, such taxes shall be allocated to the taxpayer's post-2006 separate categories to which those taxes would have been allocated if the taxes were paid or accrued in a taxable year beginning after December 31, 2006. For example, any foreign taxes paid or accrued or deemed paid with respect to financial services income in a taxable year beginning before January 1, 2007, that are carried forward to a taxable year beginning after December 31, 2006, will be allocated to the general category because the financial services income to which those taxes relate would have been allocated to the general category if it had been earned in a taxable year beginning after December 31, 2006.

(ii) *Safe harbor.* In lieu of applying the rules of paragraph (i)(1)(i) of this section, a taxpayer may allocate all unused foreign taxes in the pre-2007 separate category for passive income to the post-2006 separate category for passive category income, and allocate all other unused foreign taxes described in paragraph (i)(1)(i) of this section to the post-2006 separate category for general category income.

(2) *Carryback of unused foreign tax*—(i) *General rule.* The rules of this paragraph (i)(2) apply to any unused foreign taxes that were paid or accrued or deemed paid under section 902 with respect to income in a post-2006 separate category (other than a category described in § 1.904–4(m)). To the extent any such unused foreign taxes are carried back to a taxable year beginning before January 1, 2007, a credit for such taxes shall be allowed only to the extent of the excess limitation in the pre-2007 separate category, or categories, to which the taxes would have been allocated if the taxes were paid or accrued in a taxable year beginning before January 1, 2007. For example, any foreign taxes paid or accrued or deemed paid with respect to income in the general category in a taxable year beginning after December 31, 2006, that are carried back to a taxable year beginning before January 1, 2007, will be allocated to the same separate categories to which the income would have been allocated if it had been earned in a taxable year beginning before January 1, 2007.

(ii) *Safe harbor.* In lieu of applying the rules of paragraph (i)(2)(i) of this section, a taxpayer may allocate all unused foreign taxes in the post-2006 separate category for passive category income to the pre-2007 separate category for passive income, and may allocate all other unused foreign taxes described in paragraph (i)(2)(i) of this section to the pre-2007 separate category for general limitation income.

(3) *Effective/applicability date.* This paragraph (i) applies to taxable years of United States taxpayers beginning after December 31, 2006 and ending on or after December 21, 2007.

(4) *Expiration date.* The applicability of this paragraph (i) expires on December 20, 2010.

■ **Par. 5.** Section 1.904–4 is amended as follows:

■ 1. In the table below, for each section listed in the left column, remove the language in the middle column and add the language in the right column.

■ 2. Paragraphs (a),(b), (d), (f), (g), (h)(3) and (l) are revised.

■ 3. Paragraph (h)(4) *Example 2* is removed.

■ 4. Paragraph (h)(4) *Example 3* is redesignated as *Example 2.*

■ 5. Paragraph (h)(4) (*Example 4* is redesignated as *Example 3* and in the last sentence the language ''general limitation'' is removed and the language ''general category'' is added in its place.

■ 6. Paragraphs (h)(5)(iii) *Example 2* and (h)(5)(iii) Example 4 are removed.

7. Paragraph (h)(5)(iii) *Example 3* is redesignated as *Example 2* and in the last sentence the language ''general limitation'' is removed and the language ''general category.'' is added in its place.

The revisions read as follows:

Section	Remove	Add
1.904–4(c)(1), third sentence	general limitation	general category.
1.904–4(c)(1), third sentence	general limitation	general category.
1.904–4(c)(1), fourth sentence	general limitation	general category.
1.904–4(c)(6)(iii), second sentence	general limitation	general category.
1.904–4(c)(6)(iii), fifth sentence	general limitation	general category.
1.904–4(c)(6)(iv)(A), first sentence	general limitation	general category.
1.904–4(c)(7)(i), second sentence	general limitation	general category.
1.904–4(c)(7)(iii), third sentence	general limitation	general category.
1.904–4(c)(8) *Example 1,* last sentence	general limitation	general category.
1.904–4(c)(8) *Example 1,* last sentence	general limitation	general category.
1.904–4(c)(8) *Example 2,* last sentence	general limitation	general category.
1.904–4(c)(8) *Example 3,* last sentence	general limitation	general category.
1.904–4(c)(8) *Example 5,* last sentence	general limitation	general category.
1.904–4(c)(8) *Example 6,* seventh sentence	general limitation	general category.
1.904–4(c)(8) *Example 8,* last sentence	general limitation	general category.
1.904–4(c)(8) *Example 9* (i), last sentence	general limitation	general category.
1.904–4(c)(8) *Example 9* (ii), first sentence	general limitation	general category.
1.904–4(c)(8) *Example 9* (ii), last sentence	general limitation	general category.
1.904–4(c)(8) *Example 11,* first sentence	general limitation	general category.
1.904–4(c)(8) *Example 11,* last sentence	general limitation	general category.
1.904–4(c)(8) *Example 12,* third sentence	general limitation	general category.
1.904–4(h)(2)	general limitation	general category.
1.904–4(h)(5)(i), first sentence	that is not a financial services entity	
1.904–4(h)(5)(i), first sentence	general limitation	general category.
1.904–4(h)(5)(i), last sentence	If a financial services entity receives or accrues that income, the income shall not be considered to be export financing interest and, therefore, shall be treated as financial services income.	
1.904–4(h)(5)(ii), first sentence	904(d)(2)(A)(iii)(II)	904(d)(2)(B)(iii)(I).
1.904–4(h)(5)(ii), first sentence	general limitation	general category.
1.904–4(h)(5)(ii), first sentence	unless the interest is received or accrued by a financial services entity.	
1.904–4(h)(5)(ii), last sentence	If that interest also would be high withholding tax interest but for section 904(d)(2)(B)(ii), then the interest shall be treated as financial services income.	
1.904–4(h)(5)(iii) *Example 1,* last sentence	general limitation	general category.
1.904–4(i), second sentence	Thus, for example, if a taxpayer receives or accrues a dividend distribution from two separate noncontrolled section 902 corporations out or earnings and profits attributable to income received or accrued by the noncontrolled section 902 corporations that is income described in section 907(c), the rules provided in section 907 shall apply separately to the dividends received from each noncontrolled section 902 corporation..	
1.904–4(j), last sentence	904(d)(2)(A)(iii)(III)	904(d)(2)(B)(iii)(II).
1.904–4(m)	904(g)(10)	904(h)(10)
1.904–4(m)	and (d)(3)(F)(i).	

§ 1.904–4 Separate application of section 904 with respect to certain categories of income.

(a) [Reserved]. For further guidance, see § 1.904–4T(a).

(b) [Reserved]. For further guidance, see § 1.904–4T(b).

* * * * *

(d) [Reserved].

* * * * *

(f) [Reserved]. For further guidance, see § 1.904–4T(f).

(g) [Reserved]. For further guidance, see § 1.904–4T(g).

* * * * *

(h) * * *

(3) [Reserved]. For further guidance, see § 1.904–4T(h)(3).

* * * * *

(l) [Reserved]. For further guidance, see § 1.904–4T(l).

* * * * *

■ **Par. 6.** Section 1.904–4T is amended as follows:

■ 1. Revise paragraphs (a), (b), (c)(4)(i), (c)(4)(ii), (c)(4)(iii), (c)(5), (c)(6), (7), (c)(8), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m).

■ 2. Add paragraphs (n) and (o).

The revisions and additions read as follows:

§ 1.904–4T Separate application of section 904 with respect to certain categories of income (temporary).

(a) *In general.* A taxpayer is required to compute a separate foreign tax credit limitation for income received or accrued in a taxable year that is described in section 904(d)(1)(A) (passive category income), 904(d)(1)(B)

(general category income), or § 1.904–4(m) (additional separate categories).

(b) *Passive category income*—(1) *In general.* The term *passive category income* means passive income and specified passive category income.

(2) *Passive income*—(i) *In general.* The term *passive income* means any—

(A) Income received or accrued by any person that is of a kind that would be foreign personal holding company income (as defined in section 954(c)) if the taxpayer were a controlled foreign corporation, including any amount of gain on the sale or exchange of stock in excess of the amount treated as a dividend under section 1248; or

(B) Amount includible in gross income under section 1293.

(ii) *Exceptions.* Passive income does not include any export financing interest (as defined in section 904(d)(2)(G) and paragraph (h) of this section), any high-taxed income (as defined in section 904(d)(2)(F) and paragraph (c) of this section), or any active rents and royalties (as defined in paragraph (b)(2)(iii) of this section). In addition, passive income does not include any income that would otherwise be passive but is characterized as income in another separate category under the look-through rules of section 904(d)(3), (d)(4), and (d)(6)(C) and the regulations under those provisions. In determining whether any income is of a kind that would be foreign personal holding company income, the rules of section 864(d)(5)(A)(i) and (6) (treating related person factoring income of a controlled foreign corporation as foreign personal holding company income that is not eligible for the export financing income exception to the separate limitation for passive income) shall apply only in the case of income of a controlled foreign corporation (as defined in section 957). Thus, income earned directly by a United States person that is related person factoring income may be eligible for the exception for export financing interest.

(iii) *Active rents or royalties*—(A) *In general.* For rents and royalties paid or accrued after September 20, 2004, passive income does not include any rents or royalties that are derived in the active conduct of a trade or business, regardless of whether such rents or royalties are received from a related or an unrelated person. Except as provided in paragraph (b)(2)(iii)(B) of this section, the principles of section 954(c)(2)(A) and the regulations under that section shall apply in determining whether rents or royalties are derived in the active conduct of a trade or business. For this purpose, the term taxpayer shall be substituted for the term controlled foreign corporation if the recipient of the rents or royalties is not a controlled foreign corporation.

(B) *Active conduct of trade or business.* Rents and royalties are considered derived in the active conduct of a trade or business by a United States person or by a controlled foreign corporation (or other entity to which the look-through rules apply) for purposes of section 904 (but not for purposes of section 954) if the requirements of section 954(c)(2)(A) are satisfied by one or more corporations that are members of an affiliated group of corporations (within the meaning of section 1504(a), determined without regard to section 1504(b)(3)) of which the recipient is a member. For purposes of this paragraph (b)(2)(iii)(B), an affiliated group includes only domestic corporations and foreign corporations that are controlled foreign corporations in which domestic members of the affiliated group own, directly or indirectly, at least 80 percent of the total voting power and value of the stock. For purposes of this paragraph (b)(2)(iii)(B), indirect ownership shall be determined under section 318 and the regulations under that section.

(iv) *Examples.* The following examples illustrate the application of paragraph (b)(2) of this section.

Example 1. P is a domestic corporation with a branch in foreign country X. P does not have any financial services income. For 2008, P has a net foreign currency gain that would not constitute foreign personal holding company income if P were a controlled foreign corporation because the gain is directly related to the business needs of P. The currency gain is, therefore, general category income to P because it is not income of a kind that would be foreign personal holding company income.

Example 2. Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. S is regularly engaged in the restaurant franchise business. P licenses trademarks, tradenames, certain know-how, related services, and certain restaurant designs for which S pays P an arm's length royalty. P is regularly engaged in the development and licensing of such property. The royalties received by P for the use of its property are allocable under the look-through rules of § 1.904–5 to the royalties S receives from the franchisees. Some of the franchisees are unrelated to S and P. Other franchisees are related to S or P and use the licensed property outside of S's country of incorporation. S does not satisfy, but P does satisfy, the active trade or business requirements of section 954(c)(2)(A) and the regulations under that section. The royalty income earned by S with regard to both its related and unrelated franchisees is foreign personal holding company income because S does not satisfy the active trade or business requirements of section 954(c)(2)(A) and, in addition, the royalty income from the related franchisees does not qualify for the same country exception of section 954(c)(3). However, all of the royalty income earned by S is general category income to S under § 1.904–4(b)(2)(iii) because P, a member of S's affiliated group (as defined therein), satisfies the active trade or business test (which is applied without regard to whether the royalties are paid by a related person). S's royalty income that is taxable to P under subpart F and the royalties paid to P are general category income to P under the look-through rules of § 1.904–5(c)(1)(i) and (c)(3), respectively.

(3) *Specified passive category income* means—

(i) Dividends from a DISC or former DISC (as defined in section 992(a)) to the extent such dividends are treated as income from sources without the United States;

(ii) Taxable income attributable to foreign trade income (within the meaning of section 923(b)); or

(iii) Distributions from a FSC (or a former FSC) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)) or interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b)).

* * * * *

(c)(4)(i) through (h)(2) [Reserved]. For further guidance, see § 1.904–4(c)(i) through (h)(2).

(3) *Exception.* Unless it is received or accrued by a financial services entity, export financing interest shall be treated as passive category income if that income is also related person factoring income. For this purpose, related person factoring income is—

(i) Income received or accrued by a controlled foreign corporation that is income described in section 864(d)(6) (income of a controlled foreign corporation from a loan for the purpose of financing the purchase of inventory property of a related person); or

(ii) Income received or accrued by any person that is income described in section 864(d)(1) (income from a trade receivable acquired from a related person).

(h)(4) through (k) [Reserved]. For further guidance, see § 1.904–4(h)(3)(iii) through (k).

(l) *Priority rule.* Income that meets the definitions of a separate category described in paragraph (m) of this section and another category of income described in section 904(d)(2)(A)(i) and (ii) will be subject to the separate limitation described in paragraph (m) of this section and will not be treated as general category income described in section 904(d)(2)(A)(ii).

(m) [Reserved]. For further guidance, see § 1.904–4(m).

(n) *Effective/applicability date.* Paragraphs (a), (b), (h)(3), and (l) of this section shall apply to taxable years of United States taxpayers beginning after December 31, 2006 and ending on or after December 21, 2007, and to taxable years of a foreign corporation which end with or within taxable years of its domestic corporate shareholder beginning after December 31, 2006 and ending on or after December 21, 2007.

(o) *Expiration date.* The applicability of paragraphs (a), (b), (h)(3)(ii) and (l) of this section expires on December 20, 2010.

■ **Par. 7.** Section 1.904–5 is amended by revising paragraph (h)(3) and adding paragraph (o)(3) to read as follows:

§ 1.904–5 Look-through rules as applied to controlled foreign corporations and other entities.

* * * * *

(h) * * *

(3) [Reserved]. For further guidance, see § 1.904–5T(h)(3).

* * * * *

(o) * * *

(3) [Reserved]. For further guidance, see § 1.904–5T(o)(3).

■ **Par. 8.** Section 1.904–5T is amended by revising paragraphs (c)(4)(iv), (d), (e), (f), (g), and (h) and adding paragraph (o)(3) to read as follows:

§ 1.904–5T Look-through rules as applied to controlled foreign corporations and other entities (temporary).

* * * * *

(c)(4)(iv) through (h)(2) [Reserved]. For further guidance, see § 1.904–5(c)(4)(iv) through (h)(2).

(3) *Income from the sale of a partnership interest*—(i) *In general.* To the extent a partner recognizes gain on the sale of a partnership interest, that income shall be treated as passive category income to the partner, unless the income is considered to be high-taxed under section 904(d)(2)(B)(iii)(II) and § 1.904–4(c).

(ii) *Exception for 25-percent owned partnership.* In the case of a sale of an interest in a partnership by a partner that is a 25-percent owner of the partnership under the principles of section 954(c)(4)(B), income recognized on the sale of the partnership interest shall be treated as general category income to the extent that such gain would not be classified as foreign personal holding company income under the look-through rule of section 954(c)(4).

* * * * *

(o) * * *

(3) *Rules for income from the sale of a partnership interest*—(i) *Effective/applicability date.* Paragraph (h)(3) of this section shall apply to taxable years of United States taxpayers beginning after December 31, 2006 and ending on or after December 21, 2007, and to taxable years of a foreign corporation which end with or within taxable years of its domestic corporate shareholder beginning after December 31, 2006 and ending on or after December 21, 2007.

(ii) *Expiration date.* The applicability of paragraph (h)(3) of this section expires on December 20, 2010.

■ **Par. 9.** Section 1.904–7 is amended by adding paragraph (g) to read as follows:

§ 1.904–7 Transition rules.

* * * * *

(g) [Reserved.] For further guidance, see § 1.904–7T(g).

■ **Par. 10.** Section 1.904–7T is amended by adding paragraph (g) to read as follows:

§ 1.904–7T Transition Rules (temporary).

* * * * *

(g) *Treatment of earnings and foreign taxes of a controlled foreign corporation or a noncontrolled section 902 corporation accumulated in taxable years beginning before January 1, 2007*—(1) *Definitions*—(i) *Pre-2007 pools* means the pools in each separate category of post-1986 undistributed earnings (as defined in § 1.902–1(a)(9)) that were accumulated, and post-1986 foreign income taxes (as defined in § 1.902–1(a)(8)) paid, accrued, or deemed paid, in taxable years beginning before January 1, 2007.

(ii) *Pre-2007 separate categories* means the separate categories of income described in section 904(d) as applicable to taxable years beginning before January 1, 2007, and any other separate category of income described in § 1.904–4(m).

(iii) *Post-2006 separate categories* means the separate categories of income described in section 904(d) as applicable to taxable years beginning after December 31, 2006, and any other separate category of income described in § 1.904–4(m).

(2) *Treatment of pre-2007 pools of a controlled foreign corporation or a noncontrolled section 902 corporation.* Any post-1986 undistributed earnings in a pre-2007 pool of a controlled foreign corporation or a noncontrolled section 902 corporation shall be treated in taxable years beginning after December 31, 2006, as if they were accumulated during a period in which the rules governing the determination of post-2006 separate categories applied. Post-1986 foreign income taxes paid, accrued, or deemed paid with respect to such earnings shall be treated as if they were paid, accrued, or deemed paid during a period in which the rules governing the determination of post-2006 separate categories (including the rules of section 904(d)(3)(E)) applied as well. Any such earnings and taxes in pre-2007 pools shall constitute the opening balance of the foreign corporation's post-1986 undistributed earnings and post-1986 foreign income taxes on the first day of the foreign corporation's first taxable year beginning after December 31, 2006, in accordance with the rules of paragraph (g)(3) of this section. Similar rules shall apply to characterize any deficits in the pre-2007 pools and previously-taxed earnings and profits described in section 959(c)(1)(A) that are attributable to earnings in the pre-2007 pools.

(3) *Substantiation of post-2006 character of earnings and taxes in a pre-2007 pool*—(i) *Reconstruction of earnings and taxes pools.* In order to substantiate the post-2006 characterization of post-1986 undistributed earnings (as well as deficits and previously-taxed earnings, if any) and post-1986 foreign income taxes in pre-2007 pools of a controlled foreign corporation or a noncontrolled section 902 corporation, the taxpayer shall make a reasonable, good-faith effort to reconstruct the pre-2007 pools of post-1986 undistributed earnings (as well as deficits and previously-taxed earnings, if any) and post-1986 foreign income taxes following the rules governing the determination of post-2006 separate categories for each taxable year beginning before January 1, 2007, beginning with the first year in which post-1986 undistributed earnings were accumulated in the pre-2007 pool. Reconstruction shall be based on reasonably available books and records and other relevant information. To the extent any pre-2007 separate category includes earnings that would be allocated to more than one post-2006 separate category, the taxpayer must account for earnings distributed and taxes deemed paid in these years for such category as if they were distributed and deemed paid pro rata from the amounts that were added to that category during each taxable year beginning before January 1, 2007.

(ii) *Safe harbor method*—(A) *In general.* Subject to the rules of paragraph (g)(3)(iii) of this section, a taxpayer may allocate the post-1986 undistributed earnings and post-1986 foreign income taxes in pre-2007 pools of a controlled foreign corporation or a noncontrolled section 902 corporation (as well as deficits and previously-taxed earnings, if any) under one of the safe harbor methods described in paragraphs

(g)(3)(ii)(B) and (g)(3)(ii)(C) of this section.

(B) *General safe harbor method*—(*1*) Any post-1986 undistributed earnings (as well as deficits and previously-taxed earnings, if any) and post-1986 foreign income taxes of a noncontrolled section 902 corporation or a controlled foreign corporation in a pre-2007 separate category for passive income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income, or certain distributions from a FSC or former FSC shall be allocated to the post-2006 separate category for passive category income.

(*2*) Any post-1986 undistributed earnings (as well as deficits and previously-taxed earnings, if any) and post-1986 foreign income taxes of a noncontrolled section 902 corporation or a controlled foreign corporation in a pre-2007 separate category for financial services income, shipping income or general limitation income shall be allocated to the post-2006 separate category for general category income.

(*3*) Except as provided in paragraph (g)(3)(ii)(B)(*4*) of this section, any post-1986 undistributed earnings (as well as deficits and previously-taxed earnings, if any) and post-1986 foreign income taxes of a noncontrolled section 902 corporation or a controlled foreign corporation in a pre-2007 separate category for high withholding tax interest shall be allocated to the post-2006 separate category for passive category income.

(*4*) If a controlled foreign corporation has positive post-1986 undistributed earnings and post-1986 foreign income taxes in a pre-2007 separate category for high withholding tax interest, such earnings and taxes shall be allocated to the post-2006 separate category for general category income if the earnings would qualify as income subject to high foreign taxes under section 954(b)(4) if the entire amount of post-1986 undistributed earnings were treated as a net item of income subject to the rules of § 1.954–1(d). If the high withholding tax interest earnings would not qualify as income subject to high foreign taxes under section 954(b)(4), then the earnings and taxes shall be allocated to the post-2006 separate category for passive category income.

(C) *Interest apportionment safe harbor.* A taxpayer may allocate the post-1986 undistributed earnings (as well as deficits and previously-taxed earnings, if any) and post-1986 foreign income taxes in pre-2007 pools of a controlled foreign corporation or a noncontrolled section 902 corporation following the principles of paragraph (f)(4)(ii) of this section.

(iii) *Consistency rule.* The election to apply a safe harbor method under paragraph (g)(3)(ii) of this section in lieu of the rules described in paragraph (g)(3)(i) of this section may be made on a separate category by separate category basis. However, if a taxpayer elects to apply a safe harbor to allocate pre-2007 pools of more than one pre-2007 separate category of a controlled foreign corporation or a noncontrolled section 902 corporation, such safe harbor (the general safe harbor described in paragraph (g)(3)(ii)(B) of this section or the interest apportionment safe harbor described in paragraph (g)(3)(ii)(C) of this section) shall apply to allocate post-1986 undistributed earnings (as well as deficits and previously-taxed earnings, if any) and post-1986 foreign income taxes for the pre-2007 pools in each pre-2007 separate category of the foreign corporation for which the taxpayer elected to apply a safe harbor method in lieu of reconstructing the pre-2007 pools.

(4) *Treatment of pre-1987 accumulated profits.* Any pre-1987 accumulated profits (as defined in § 1.902–1(a)(10)) of a noncontrolled section 902 corporation or a controlled foreign corporation shall be treated in taxable years beginning after December 31, 2006, as if they had been accumulated during a period in which the rules governing the determination of post-2006 separate categories applied. Foreign income taxes paid, accrued, or deemed paid with respect to such earnings shall be treated as if they were paid, accrued, or deemed paid during a period in which the rules governing the determination of post-2006 separate categories applied as well. The taxpayer must substantiate the post-2006 characterization of the pre-1987 accumulated profits and pre-1987 foreign income taxes in accordance with the rules of paragraph (g)(3) of this section, including the safe harbor provisions. Similar rules shall apply to characterize any deficits or previously-taxed earnings and profits described in section 959(c)(1)(A) that are attributable to pre-1987 accumulated profits.

(5) *Treatment of earnings and foreign taxes in pre-2007 pools of a lower-tier controlled foreign corporation or noncontrolled section 902 corporation.* The rules of paragraphs (g)(1) through (4) of this section apply to post-1986 undistributed earnings (as well as deficits and previously-taxed earnings, if any) and post-1986 foreign income taxes in pre-2007 pools, and pre-1987 accumulated profits and pre-1987 foreign income taxes, of a lower-tier controlled foreign corporation or noncontrolled section 902 corporation.

(6) *Effective/applicability date.* This paragraph (g) shall apply to taxable years of United States taxpayers beginning after December 31, 2006 and ending on or after December 21, 2007, and to taxable years of a foreign corporation which end with or within taxable years of its domestic corporate shareholder beginning after December 31, 2006 and ending on or after December 21, 2007.

(7) *Expiration date.* The applicability of this paragraph (g) expires on December 20, 2010.

■ **Par. 11.** Section 1.904(f)–12 is amended by adding paragraph (h) to read as follows:

§ 1.904(f)–12 Transition rules.

* * * * *

(h) [Reserved.] For further guidance, see § 1.904(f)–12T(h).

■ **Par. 12.** Section 1.904(f)–12T is amended by adding paragraph (h) to read as follows:

§ 1.904(f)–12T Transition rules (temporary).

* * * * *

(h) *Recapture in years beginning after December 31, 2006, of separate limitation losses and overall foreign losses incurred in years beginning before January 1, 2007*—(1) *Losses related to pre-2007 separate categories for passive income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income or certain distributions from a FSC or former FSC*—(i) *Recapture of separate limitation loss or overall foreign loss incurred in a pre-2007 separate category for passive income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income or certain distributions from a FSC or former FSC.* To the extent that a taxpayer has a balance in any separate limitation loss or overall foreign loss account in a pre-2007 separate category (as defined in § 1.904–7T(g)(1)(ii)) for passive income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income or certain distributions from a FSC or former FSC, at the end of the taxpayer's last taxable year beginning before January 1, 2007, the amount of such balance, or balances, shall be allocated on the first day of the taxpayer's next taxable year to the taxpayer's post-2006 separate category (as defined in § 1.904–7T(g)(1)(iii)) for passive category income.

(ii) *Recapture of separate limitation loss with respect to a pre-2007 separate*

category for passive income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income or certain distributions from a FSC or former FSC. To the extent that a taxpayer has a balance in any separate limitation loss account in any pre-2007 separate category with respect to a pre-2007 separate category for passive income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income or certain distributions from a FSC or former FSC at the end of the taxpayer's last taxable year beginning before January 1, 2007, such loss shall be recaptured in subsequent taxable years as income in the post-2006 separate category for passive category income.

(2) *Losses related to pre-2007 separate categories for shipping, financial services income or general limitation income*—(i) *Recapture of separate limitation loss or overall foreign loss incurred in a pre-2007 separate category for shipping income, financial services income or general limitation income.* To the extent that a taxpayer has a balance in any separate limitation loss or overall foreign loss account in a pre-2007 separate category for shipping income, financial services income or general limitation income at the end of the taxpayer's last taxable year beginning before January 1, 2007, the amount of such balance, or balances, shall be allocated on the first day of the taxpayer's next taxable year to the taxpayer's post-2006 separate category for general category income.

(ii) *Recapture of separate limitation loss with respect to a pre-2007 separate category for shipping income, financial services income or general limitation income.* To the extent that a taxpayer has a balance in any separate limitation loss account in any pre-2007 separate category with respect to a pre-2007 separate category for shipping income, financial services income or general limitation income at the end of the taxpayer's last taxable year beginning before January 1, 2007, such loss shall be recaptured in subsequent taxable years as income in the post-2006 separate category for general category income.

(3) *Losses related to a pre-2007 separate category for high withholding tax interest*—(i) *Recapture of separate limitation loss or overall foreign loss incurred in a pre-2007 separate category for high withholding tax interest.* To the extent that a taxpayer has a balance in any separate limitation loss or overall foreign loss account in a pre-2007 separate category for high withholding tax interest at the end of the taxpayer's last taxable year beginning before January 1, 2007, the amount of such balance shall be allocated on the first day of the taxpayer's next taxable year on a pro rata basis to the taxpayer's post-2006 separate categories for general category and passive category income, based on the proportion in which any unused foreign taxes in the same pre-2007 separate category for high withholding tax interest are allocated under § 1.904–2T(i)(1). If the taxpayer has no unused foreign taxes in the pre-2007 separate category for high withholding tax interest, then any loss account balance in that category shall be allocated to the post-2006 separate category for passive category income.

(ii) *Recapture of separate limitation loss with respect to a pre-2007 separate category for high withholding tax interest.* To the extent that a taxpayer has a balance in a separate limitation loss account in any pre-2007 separate category with respect to a pre-2007 separate category for high withholding tax interest at the end of the taxpayer's last taxable year beginning before January 1, 2007, such loss shall be recaptured in subsequent taxable years on a pro rata basis as income in the post-2006 separate categories for general category and passive category income, based on the proportion in which any unused foreign taxes in the pre-2007 separate category for high withholding tax interest are allocated under § 1.904–2T(i)(1). If the taxpayer has no unused foreign taxes in the pre-2007 separate category for high withholding tax interest, then the loss account balance shall be recaptured in subsequent taxable years solely as income in the post-2006 separate category for passive category income.

(4) *Elimination of certain separate limitation loss accounts.* After application of paragraphs (h)(1) through (h)(3) of this section, any separate limitation loss account allocated to the post-2006 separate category for passive category income for which income is to be recaptured as passive category income, as determined under those same provisions, shall be eliminated. Similarly, after application of paragraphs (h)(1) through (h)(3) of this section, any separate limitation loss account allocated to the post-2006 separate category for general category income for which income is to be recaptured as general category income, as determined under those same provisions, shall be eliminated.

(5) *Alternative method.* In lieu of applying the rules of paragraphs (h)(1) through (h)(3) of this section, a taxpayer may apply the principles of paragraphs (g)(1) and (g)(2) of this section to determine recapture in taxable years beginning after December 31, 2006, of separate limitation losses and overall foreign losses incurred in taxable years beginning before January 1, 2007.

(6) *Effective/applicability date.* This paragraph (h) shall apply to taxable years of United States taxpayers beginning after December 31, 2006 and ending on or after December 21, 2007.

(7) *Expiration date.* The applicability of this paragraph (h) expires on December 20, 2010.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 14, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9371]

RIN 1545–BH14

Treatment of Overall Foreign and Domestic Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 904(g) of the Internal Revenue Code (Code) relating to the recapture of overall domestic losses. Section 402 of the American Jobs Creation Act of 2004 (AJCA) enacted new section 904(g) of the Code to provide for the recapture of overall domestic losses. These regulations provide guidance needed to comply with these changes, as well as updated guidance with respect to overall foreign losses and separate limitation losses, and affect individuals and corporations claiming foreign tax credits. The text of these temporary regulations also serves as the text of the proposed regulations (REG–141399–07) published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on *December 21, 2007.*

Applicability Dates: For dates of applicability, see §§ 1.904(f)–1T(g), 1.904(f)–2T(e), 1.904(f)–7T(f), 1.904(f)–8T(c), 1.904(g)–1T(f), 1.904(g)–2T(d), 1.904(g)–3T(i), and 1.1502–9T(e).

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Parry, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 402 of the AJCA enacted new section 904(g) of the Code to provide for the recharacterization of U.S. source income as foreign source income where a taxpayer's foreign tax credit limitation has been reduced as a result of an overall domestic loss. See Public Law 108–357, 118 Stat. 1418 (October 22, 2004), as corrected by the Gulf Opportunity Zone Act of 2005, Public Law 109–135, 119 Stat. 2577 (December 22, 2005). The primary reason for enacting these provisions was ''to create parity in the treatment of overall domestic losses and overall foreign losses in order to prevent the double taxation of income.'' H.R. Rep. No. 108–548, at 187 (June 16, 2004); see also S. Rep. No. 108–192, at 19–20 (November 7, 2003).

When a U.S. source loss is allocated to reduce foreign source income, the foreign tax credit limitation is reduced for the taxable year, which may result in excess foreign tax credits. Any such excess foreign taxes may be credited, if at all, in a subsequent (or the preceding) taxable year. In addition, U.S. source taxable income in a subsequent taxable year is not offset by the U.S. source loss allocated to foreign source income in the prior taxable year, and U.S. tax on such U.S. source taxable income cannot be offset by the foreign tax credit carryforward. This may lead to the double taxation of foreign source income over time. The overall domestic loss recapture provisions amend this result.

Section 904(g)(1) generally provides that a portion of a taxpayer's U.S. source income is recharacterized as foreign source income in an amount equal to the lesser of (1) the amount of the overall domestic loss for years prior to such taxable year and (2) fifty percent of the taxpayer's U.S. source income for such taxable year. Section 904(g)(2) generally defines an overall domestic loss for this purpose as any domestic loss to the extent it offsets foreign source taxable income for the current year or any preceding taxable year by reason of a carryback. Section 904(g)(4) provides that the Secretary of the Treasury shall prescribe such regulations as may be necessary to coordinate the overall domestic loss provisions with the overall foreign loss provisions.

Similar rules were first enacted as a part of the Tax Reform Act of 1976, Public Law 94–455, 90 Stat. 1531 (1976), in section 904(f) to deal with overall foreign losses. Under the overall foreign loss provisions, a portion of foreign source taxable income earned after an overall foreign loss year is recharacterized as U.S. source taxable income for foreign tax credit purposes. Unless a taxpayer elects a higher percentage, generally no more than 50 percent of the foreign source taxable income earned in any particular taxable year is recharacterized as U.S. source taxable income. Recapturing the overall foreign loss reduces the foreign tax credit limitation in one or more years following an overall foreign loss.

The separate limitation loss provisions of section 904(f)(5) were added by the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085 (1986) (the 1986 Act) and amended by the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647, 102 Stat. 3342 (1988). Other amendments to the overall foreign loss provisions were made by the AJCA as well.

Regulations addressing overall foreign losses under section 904(f) were published in the **Federal Register** (52 FR 31992) on August 25, 1987 (the 1987 regulations) and updated by regulations published in the **Federal Register** (71 FR 24516) on April 25, 2006 (the 2006 regulations). Additional guidance was provided in Notice 89–3, 1989–1 CB 623, regarding ordering rules for the allocation of net operating losses, overall foreign losses, and separate limitation losses; the recapture of overall foreign losses and separate limitation losses; and the allocation of U.S. source losses. The section 904(f) regulations have not been amended to reflect changes to the Code since the Tax Reform Act of 1976 or to incorporate the rules of Notice 89–3. See § 601.601(d)(2)(ii)(*b*).

These temporary regulations provide guidance needed to comply with enactment of the overall domestic loss regime, as well as provide updated guidance with respect to overall foreign losses and separate limitation losses.

Explanation of Provisions

I. Overall Domestic Losses

The temporary regulations include rules in §§ 1.904(g)–1T and 1.904(g)–2T which address the establishment, maintenance, and recapture of overall domestic loss accounts.

A. Overall Domestic Loss Accounts

Section 1.904(g)–1T(b)(1) provides that taxpayers must establish overall domestic loss accounts for an overall domestic loss. It further provides that a separate overall domestic loss account must be maintained for each separate category of foreign source income that is offset by a domestic loss.

Section 1.904(g)–1T(b)(2) explains when an overall domestic loss is sustained. Generally, an overall domestic loss is treated as sustained in the later of the taxable years in which the domestic loss is incurred or the foreign source income offset by the domestic loss is earned. Accordingly, in the case of a domestic loss that is carried back to offset foreign source income in a prior taxable year in which the taxpayer elects to credit foreign taxes, the resulting overall domestic loss is treated as sustained in the taxable year the domestic loss is incurred, not in the prior taxable year in which the domestic loss offsets foreign source income. In the case of a domestic loss that is carried forward to offset foreign source income in a later taxable year, however, the overall domestic loss is treated as sustained in the year in which the domestic loss offsets foreign source income, not the earlier year in which the domestic loss is incurred. Accordingly, if a taxpayer incurs a domestic loss in a pre-2007 taxable year, and the loss is carried forward as part of a net operating loss and applied to offset foreign source income in a post-2006 taxable year, the resulting overall domestic loss is treated as sustained in the post-2006 taxable year.

Section 1.904(g)–1T(c) provides that an overall domestic loss is sustained when a domestic loss offsets foreign source taxable income in the same taxable year or a preceding taxable year by reason of a carryback, provided the taxpayer has elected to take a credit for its foreign taxes in the year of the offset. A domestic loss is the amount by which U.S. source gross income is exceeded by deductions properly allocated and apportioned thereto. See § 1.904(g)–1T(c).

Section 1.904(g)–1T(d) describes additions to overall domestic loss accounts. This includes any overall domestic losses of the taxpayer, as determined above, as well as any allocation from another taxpayer of an overall domestic loss account under § 1.1502–9T, described in Part V of this preamble, and certain adjustments for capital gains and losses. Section 1.904(g)–1T(e) describes reductions to overall domestic loss accounts, including reductions for recaptured amounts and any allocation to another taxpayer of an overall domestic loss account under § 1.1502–9T.

B. Recapture of Overall Domestic Losses

Section 1.904(g)–2T provides that overall domestic losses are recaptured by treating a portion of a taxpayer's U.S. source taxable income as foreign source income. If the taxpayer has overall domestic loss accounts attributable to more than one separate category, the recharacterized income will be allocated among those categories on a pro rata basis. The amount of U.S. source income subject to recapture is the lesser of the aggregate balance in the overall domestic loss account, or fifty percent of the taxpayer's U.S. source taxable income. Unlike the overall foreign loss recapture provisions in section 904(f), section 904(g) does not permit a taxpayer to elect to recharacterize more than fifty percent of its U.S. source taxable income. Recapture continues until the balance in the overall domestic loss account has been reduced to zero.

II. Separate Limitation Losses

As discussed below, the 1987 regulations do not reflect the enactment of the separate limitation loss provisions of section 904(f)(5) as part of the 1986 Act. These temporary regulations include new provisions regarding the establishment and recapture of separate limitation loss accounts. Section 1.904(f)–7T provides that taxpayers must establish a separate limitation loss account with respect to a separate category to the extent a foreign source loss in that category offsets foreign source income in another separate category. This section also provides definitions and rules relating to the maintenance of these accounts.

Section 1.904(f)–8T provides rules for the recapture of separate limitation loss accounts. Separate limitation loss accounts are recaptured by recharacterizing a portion of the foreign source income in the separate category with the loss account as income in the separate category in which foreign source income of a prior year was offset to create the loss account. The amount of foreign source income subject to recharacterization is the lesser of the balance in a separate limitation loss account or the amount of foreign source income for the taxable year in that same separate category. There is no fifty-percent limitation with respect to separate limitation loss account recapture. If there is more than one separate limitation loss account in a single separate category and the aggregate balance in all those loss accounts exceeds the income in the separate category, income is recharacterized in proportion to the balance in each account. Recapture with respect to a particular separate limitation loss account continues until the balance in the separate limitation loss account has been reduced to zero.

III. Overall Foreign Loss

The 1987 regulations set forth rules governing the determination and maintenance of overall foreign loss accounts, as well as the recapture of overall foreign losses and the allocation of net operating losses and net capital losses. The regulations do not reflect changes made to the overall foreign loss rules of section 904(f) as part of the 1986 Act and certain subsequent changes to section 904(f), such as the enactment in the AJCA of section 904(f)(3)(D), addressing dispositions of stock in controlled foreign corporations. These temporary regulations update the existing regulations to take into account certain changes made to the overall foreign loss rules since the 1987 regulations were promulgated.

Section 1.904(f)–1(a) states that the 1987 regulations apply to taxpayers that sustain overall foreign losses (as defined in paragraph (c) of that section) in taxable years beginning after December 31, 1975. However, paragraph (c) of that section only defines overall foreign losses for taxable years beginning after December 31, 1982, and before January 1, 1987.

While it is beyond the scope of this project to undertake a full revision of the 1987 regulations to reflect all intervening statutory changes made to section 904(f), the Treasury Department and the IRS believe that as part of this regulations project the principles of the 1987 regulations should be extended to apply to overall foreign losses sustained in taxable years beginning after December 31, 1986, modified so as to take into account statutory amendments. New § 1.904(f)–1T(a)(2) adopts such a rule.

The Treasury Department and the IRS believe the application of the fifty-percent limitation on the amount of foreign source income subject to recapture in a taxable year under the overall foreign loss recapture provisions also needs to be clarified as part of this regulations project. Section 1.904(f)–2(c)(1) provides that the amount of foreign source taxable income subject to recapture in a taxable year is the lesser of the balance in the applicable overall foreign loss account in a given separate category or fifty percent of the taxpayer's foreign source taxable income in that same separate category. For example, recapture of a general category overall foreign loss would be limited to the lesser of the balance in the general category overall foreign loss account or fifty percent of the general category taxable income for the taxable year.

The legislative history to the 1986 Act clarifies that the fifty-percent limitation is to be applied to the full amount of the taxpayer's foreign source income, not on a separate-category-by-separate-category basis. See H.R. Conf. Rep. No. 99–841 at II–590 (1986). This clarification was incorporated by reference into Notice 89–3, paragraph 3(b), and reflected in instructions to Form 1118 (Foreign Tax Credit—Corporations). The temporary regulations modify the fifty-percent limitation to reflect this clarification.

Section 1.904(f)–2T(c)(1) provides that the foreign source taxable income subject to recharacterization is the lesser of the aggregate amount of maximum potential recapture in all overall foreign loss accounts or fifty percent of the taxpayer's total foreign source income. If the aggregate amount of maximum potential recapture in all overall foreign loss accounts exceeds fifty percent of the taxpayer's total foreign source taxable income, foreign source taxable income in each separate category with an overall foreign loss account is recharacterized in an amount equal to the separate category's allocable portion of the section 904(f)(1) recapture amount. The maximum potential recapture from any separate category is the lesser of the balance in the overall foreign loss account or the foreign source taxable income for the current year in the same separate category.

Other revisions to the 1987 regulations include updating provisions to reflect statutory and regulatory changes affecting capital gains and losses, in particular those provisions that were superseded by the regulations promulgated under section 904(b) in TD 9141 (July 20, 2004). In addition, § 1.904(f)–3 is made obsolete by the ordering rules added in § 1.904(g)–3T and is removed accordingly.

IV. Coordination of Overall Foreign Losses, Separate Limitation Losses, and Overall Domestic Losses

Under the specific grant of regulatory authority in section 904(g)(4), these temporary regulations provide ordering rules for coordinating the section 904(f) overall foreign loss and separate limitation loss provisions and the section 904(g) overall domestic loss provisions.

Section 1.904(g)–3T provides ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and the recapture of separate limitation losses, overall foreign losses, and overall domestic losses. While these rules generally follow the ordering rules set

forth in Notice 89–3, some changes were appropriate to take into account the enactment of the overall domestic loss provisions.

A. Step One: Allocation of Net Operating Loss and Net Capital Loss Carryovers

These temporary regulations generally follow the rules of Notice 89–3 for the carryover and carryback of net operating losses. Under § 1.904(g)–3T(b)(1), net operating losses that are carried back to a prior year are allocated to income in the carryback year in accordance with the allocation rules for absorbing and allocating net operating loss carryovers. However, the income against which the net operating loss is allocated is the income after application of the overall foreign loss, separate limitation loss and overall domestic loss allocation and recapture rules for the carryback year.

The rules for net operating loss carryforwards vary for full and partial carryovers of the net operating loss. In the case of a full net operating loss carryover, the U.S. source losses and foreign losses in separate categories that are part of the net operating loss are carried forward and combined with U.S. source income or loss and foreign source income or loss in the same categories as the respective portions of the net operating loss.

In the case of a partial net operating loss carryover, several steps apply. In applying these steps it is important to distinguish the net operating loss, which is the total net operating loss, and the net operating loss carryover, which is the portion of the net operating loss that is absorbed in the carryover year. First, the U.S. source portion of the net operating loss (but not in excess of the net operating loss carryover) is carried over to the extent of U.S. source income in the carryover year. Second, the separate limitation losses that are part of the net operating loss are tentatively carried to the extent of taxable income in the same separate category. This amount is tentative because the total amount of matching net operating losses and separate limitation income may exceed the net operating loss carryover amount remaining after the first step. To the extent the total amount of these tentative loss carryovers is in fact limited by the amount of the remaining net operating loss carryover, then the tentative carryovers in each separate category are reduced on a pro rata basis so that their sum equals the amount of the remaining net operating loss carryover amount.

Third, any net operating loss carryover remaining after the first and second steps is carried over proportionately from any remaining loss in each separate category and combined with foreign source loss, if any, in the same separate categories in the carryover year. Finally, any remaining U.S. source loss is carried over to the extent of the net operating loss carryover remaining after the third step, if any, and combined with U.S. source loss, if any, in the carryover year.

The temporary regulations deviate from the net operating loss rules of Notice 89–3 in the final two steps. The temporary regulations require the U.S. source loss and foreign source losses in the separate categories that are carried over to be combined with U.S. source income or loss and foreign source income or loss in the same categories as the respective portions of the net operating loss. Then, the temporary regulations provide these losses are allocated against other income as part of the general loss allocation rules for current year losses. Notice 89–3, however, requires the allocation of the net operating loss against income in other separate categories before allocation of current year losses. The Treasury Department and the IRS believe there is no difference in result whether the net operating losses carried into a taxable year are allocated before or at the same time as current year losses, given the treatment of U.S. losses in § 1.904(g)–3T. However, the approach of the temporary regulations provides added simplicity in application of the ordering rules as well as greater consistency with the rules for full net operating loss carryovers.

The rules for the allocation of net operating losses apply similarly to net capital loss carryovers.

B. Step Two: Allocation of Separate Limitation Losses

Separate limitation losses are first allocated to separate limitation income for the taxable year in other separate categories on a proportionate basis. Separate limitation loss accounts are increased as a result of any such allocations. To the extent the separate limitation losses exceed separate limitation income for the year, those losses are allocated against U.S. income, if any, for the taxable year and overall foreign loss accounts are increased.

Unlike Notice 89–3, the temporary regulations also provide that offsetting separate limitation loss accounts are netted against one another. For example, if a taxpayer has a separate limitation loss account in the general category with respect to passive category income, and in the next year incurs a passive category separate limitation loss that offsets general category income, the two accounts will be netted against each other, rather than both being carried forward until each one is recaptured.

C. Step Three: Allocation of U.S. Source Loss

U.S. source losses are allocated against separate limitation income on a proportionate basis, and overall domestic loss accounts are increased appropriately. Under the ordering rules in Notice 89–3, U.S. losses sustained in the current taxable year are allocated after all other losses are allocated and after separate limitation losses and overall foreign losses are recaptured. With the addition of section 904(g), Congress expressed that domestic losses and foreign source losses should be treated with greater parity. To that end, the Treasury Department and the IRS believe the ordering rules of Notice 89–3 should be amended. Accordingly, the temporary regulations provide that U.S. losses are allocated in the same manner as foreign losses, before any income is recharacterized.

D. Step Four: Recapture of Overall Foreign Loss Accounts

To the extent a taxpayer has any separate limitation income for the taxable year after losses are allocated in steps one through three, a portion of such income will be subject to recharacterization in order to recapture prior year overall foreign losses, if any.

E. Step Five: Recapture of Separate Limitation Loss Accounts

To the extent a taxpayer has any separate limitation income for the taxable year after overall foreign losses are recaptured in step four, then such income will be subject to recharacterization in order to recapture prior year separate limitation losses, if any.

F. Step Six: Recapture of Overall Domestic Loss Accounts

To the extent a taxpayer has any U.S. source income after losses are allocated in steps one through three, but not taking into account any foreign source income that is recharacterized as U.S. source income under step four, then a portion of such income will be subject to recharacterization in order to recapture prior year overall domestic losses, if any.

The temporary regulations coordinate the overall foreign loss and overall domestic loss regimes by providing that the recapture of overall foreign and domestic loss accounts is done independently. Accordingly, income recharacterized under one recapture provision is not taken into account in

determining the amount of income subject to recharacterization under the other recapture provision. For example, foreign source income that is recharacterized as U.S. source income in order to recapture an overall foreign loss account will not then be included in the determination of U.S. source income subject to recharacterization as foreign source income in order to recapture an overall domestic loss account.

V. Consolidated Overall Domestic Loss Accounts—§ 1.1502–9T

Section 1.1502–9T revises § 1.1502–9 to include rules for the application of section 904(g) to consolidated groups and their members. Section 1.1502–9 provides rules only for the application of section 904(f) to consolidated groups and their members. Under those rules, consolidated overall foreign loss (COFL) accounts and consolidated separate limitation loss (CSLL) accounts are determined by the consolidated group on an aggregate basis under the principles of §§ 1.1502–11 and 1.1502–12. When a new member joins the group, its separate overall foreign loss and separate limitation loss accounts are combined with the appropriate COFL and CSLL accounts of the group. When a member leaves the group, it is allocated a pro rata portion of each of the group's COFL and CSLL accounts based on the member's share of the group's assets that generate income subject to recharacterization under the corresponding loss account. The temporary regulations do not alter these provisions addressing COFL and CSLL accounts. The revisions simply extend these principles to provide parallel treatment for consolidated overall domestic loss accounts.

Effective/Applicability Dates

The effective date for these regulations is December 21, 2007. The regulations generally apply to taxable years beginning after December 21, 2007. However, taxpayers may choose to apply the overall domestic loss provisions of the regulations in other taxable years beginning after December 31, 2006. In the alternative, taxpayers may use any reasonable method consistently applied for those years, including one based on the ordering rules of Notice 89–3.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. For applicability of the Regulatory Flexibility Act, see the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.904(g)–3T also issued under 26 U.S.C. 904(g)(4). * * *

■ **Par. 2.** Section 1.904–0 is amended by revising the section heading and introductory text to read as follows:

§ 1.904–0 Outline of regulation provisions.

This section lists the headings for §§ 1.904–1 through 1.904–7.

* * * * *

■ **Par. 3.** Section 1.904(b)–0 is added. The entries for §§ 1.904(b)–1 and 1.904(b)–2 in § 1.904–0 are redesignated as entries in new § 1.904(b)–0.

§ 1.904(b)–0 Outline of regulation provisions.

This section lists the headings for §§ 1.904(b)–1 and 1.904(b)–2.

■ **Par. 4.** Section 1.904(f)–0 is added and amended as follows:

■ 1. The entries for §§ 1.904(f)–1, 1.904(f)–2, 1.904(f)–3, 1.904(f)–4, 1.904(f)–5, 1.904(f)–6 and 1.904(f)–12 in § 1.904–0 are redesignated as entries in new § 1.904(f)–0.

■ 2. The entry for § 1.904(f)–1(a) is redesignated as § 1.904(f)–1(a)(1) and a new entry for § 1.904(f)–1(a)(2) is added.

■ 3. The entries for § 1.904(f)–1(d)(2), (d)(3), and (d)(4) are revised and the entry for § 1.904(f)–1(d)(5) is removed.

■ 4. The entries for § 1.904(f)–2(c) and (c)(1) are revised.

■ 5. The entries for § 1.904(f)–3 are removed.

■ 6. New entries for §§ 1.904(f)–7 and 1.904(f)–8 are added.

■ The additions and revisions read as follows:

§ 1.904(f)–0 Outline of regulation provisions.

This section lists the headings for §§ 1.904(f)–1 through 1.904(f)–8 and 1.904(f)–12.

* * * * *

§ 1.904(f)–1 Overall foreign loss and the overall foreign loss account.

(a)(1) Overview of regulations.

(2) [Reserved]. For further guidance, see the entry for § 1.904(f)–1T(a)(2) in § 1.904(f)–0T.

* * * * *

(d) * * *

(2) Overall foreign losses of another taxpayer.

(3) Additions to overall foreign loss account created by loss carryovers.

(4) [Reserved]. For further guidance, see the entry for § 1.904(f)–1T(d)(4) in § 1.904(f)–0T.

* * * * *

§ 1.904(f)–2 Recapture of overall foreign losses.

* * * * *

(c) and (c)(1) [Reserved]. For further guidance, see the entries for § 1.904(f)–2T(c) and (c)(1) in § 1.904(f)–0T.

* * * * *

§ 1.904(f)–7 Separate limitation loss and the separate limitation loss account.

[Reserved]. For further guidance, see the entries for § 1.904(f)–7T in § 1.904(f)–0T.

§ 1.904(f)–8 Recapture of separate limitation loss accounts.

[Reserved]. For further guidance, see the entries for § 1.904(f)–8T in § 1.904(f)–0T.

■ **Par. 5.** Section 1.904(f)–0T is added to read as follows:

§ 1.904(f)–0T Outline of regulation provisions (temporary).

This section lists the headings for §§ 1.904(f)–1T, 1.904(f)–2T, 1.904(f)–7T and 1.904(f)–8T.

§ 1.904(f)–1T Overall foreign loss and the overall foreign loss account (temporary).

(a)(1) [Reserved]. For further guidance, see the entry for § 1.904(f)–1(a)(1) in § 1.904(f)–0.

(2) Application to post-1986 taxable years.

(b) through (d)(3) [Reserved]. For further guidance, see the entries for § 1.904(f)–1(b) through (d)(3) in § 1.904(f)–0.

(d)(4) Adjustments for capital gains and losses.

(e) through (f) [Reserved]. For further guidance, see the entries for § 1.904(f)–1(e) through (f) in § 1.904(f)–0.

(g) Effective/applicability date.

(h) Expiration date.

§ 1.904(f)–2T Recapture of overall foreign loss (temporary).

(a) and (b) [Reserved]. For further guidance, see the entries for § 1.904(f)–2(a) and (b) in § 1.904(f)–0.

(c) Section 904(f)(1) recapture.

(1) In general.
(c)(2) through (d) [Reserved]. For further guidance, see the entries for § 1.904(f)–2(c)(2) through (d) in § 1.904(f)–0.
(e) Effective/applicability date.
(f) Expiration date.

§ 1.904(f)–7T Separate limitation loss and the separate limitation loss account (temporary).
(a) Overview of regulations.
(b) Definitions.
(1) Separate category.
(2) Separate limitation income.
(3) Separate limitation loss.
(c) Separate limitation loss account.
(d) Additions to separate limitation loss accounts.
(1) General rule.
(2) Separate limitation losses of another taxpayer.
(3) Additions to separate limitation loss account created by loss carryovers.
(e) Reductions of separate limitation loss accounts.
(1) Pre-recapture reduction for amounts allocated to other taxpayers.
(2) Reduction for offsetting loss accounts.
(3) Reduction for amounts recaptured.
(f) Effective/applicability date.
(g) Expiration date.

§ 1.904(f)–8T Recapture of separate limitation loss accounts (temporary).
(a) In general.
(b) Effect of recharacterization of separate limitation income on associated taxes.
(c) Effective/applicability date.
(d) Expiration date.

■ **Par. 6.** Section 1.904(f)–1 is amended as follows:
■ 1. Redesignate paragraph (a) as (a)(1).
■ 2. Add a new paragraph (a)(2).
■ 3. In paragraph (d)(1), remove the language ''paragraph (d)(4) of this section'' and add the language ''paragraph (d)(3) of this section'' in its place.
■ 4. Remove paragraphs (d)(2), (d)(5), and *Example 4* and *Example 5* in paragraph (f).
■ 5. Redesignate paragraph (d)(3) as paragraph (d)(2), and paragraph (d)(4) as paragraph (d)(3).
■ 6. In newly-redesignated paragraph (d)(3), remove the language ''1.904(f)–1(d)(5)'' and add the language ''1.904(f)–1(d)(4)'' in its place.
■ 7. Add new paragraphs (d)(4) and (g).
■ The revisions and additions read as follows:

§ 1.904(f)–1 Overall foreign loss and the overall foreign loss account.

* * * * *

(a) * * *

(2) [Reserved]. For further guidance, see § 1.904(f)–1T(a)(2).

* * * * *

(d) * * *

(4) [Reserved]. For further guidance, see § 1.904(f)–1T(d)(4).

* * * * *

(g) [Reserved]. For further guidance, see § 1.904(f)–1T(g).

■ **Par. 7.** Section 1.904(f)–1T is added to read as follows:

§ 1.904(f)–1T Overall foreign loss and the overall foreign loss account (temporary).

(a)(1) [Reserved]. For further guidance, see § 1.904(f)–1(a)(1).

(2) *Application to post-1986 taxable years.* The principles of §§ 1.904(f)–1 through 1.904(f)–5 shall apply to overall foreign loss sustained in taxable years beginning after December 31, 1986, modified so as to take into account the effect of statutory amendments.

(b) through (d)(3) [Reserved]. For further guidance, see § 1.904(f)–1(b) through (d)(3).

(d)(4) *Adjustments for capital gains and losses.* If a taxpayer has capital gains or losses, the taxpayer shall make adjustments to such capital gains and losses to the extent required under section 904(b)(2) and § 1.904(b)–1 before applying the provisions of § 1.904(f)–1T. See § 1.904(b)–1(h).

(e) and (f) [Reserved]. For further guidance, see § 1.904(f)–1(e) and (f).

(g) *Effective/applicability date.* This section applies to taxable years beginning after *December 21, 2007.*

(h) *Expiration date.* The applicability of this section expires on December 20, 2010.

■ Par. 8. Section 1.904(f)–2 is amended as follows:
■ 1. Revise paragraph (c)(1).
■ 2. Revise paragraph (c)(5) *Example 4.*
■ 3. Add a new paragraph (e).
■ The revisions and addition read as follows:

§ 1.904(f)–2 Recapture of overall foreign losses.

* * * * *

(c) * * * (1) [Reserved]. For further guidance, see § 1.904(f)–2T(c)(1).

(5) * * *

Example 4. [Reserved]. For further guidance see § 1.904(f)–2T(c)(5) *Example 4.*

* * * * *

(e) [Reserved]. For further guidance, see § 1.904(f)–2T(e).

■ Par. 9. Section 1.904(f)–2T is added to read as follows:

§ 1.904(f)–2T Recapture of overall foreign losses (temporary).

(a) and (b) [Reserved]. For further guidance, see § 1.904(f)–2(a) and (b).

(c) *Section 904(f)(1) recapture*—(1) *In general.* In a year in which a taxpayer elects the benefits of section 901 or 30A, the amount of foreign source taxable income subject to recharacterization in a taxable year in which paragraph (a) of this section is applicable is the lesser of the aggregate amount of maximum potential recapture in all overall foreign loss accounts or fifty percent of the taxpayer's total foreign source taxable income. If the aggregate amount of maximum potential recapture in all overall foreign loss accounts exceeds fifty percent of the taxpayer's total foreign source taxable income, foreign source taxable income in each separate category with an overall foreign loss account is recharacterized in an amount equal to the section 904(f)(1) recapture amount, multiplied by the maximum potential recapture in the overall foreign loss account, divided by the aggregate amount of maximum potential recapture in all overall foreign loss accounts. The maximum potential recapture in any account is the lesser of the balance in that overall foreign loss account (after reduction of such accounts in accordance with § 1.904(f)–1(e)) or the foreign source taxable income for the year in the same separate category as the loss account. If, in any year, in accordance with section 164(a) and section 275(a)(4)(A), a taxpayer deducts rather than credits its foreign taxes, recapture is applied to the extent of the lesser of—

(i) The balance in the overall foreign loss account in each separate category; or

(ii) Foreign source taxable income minus foreign taxes in each separate category.

(c)(2) through (5) *Example 3* [Reserved]. For further guidance, see § 1.904(f)–2(c)(2) through (5) *Example 3.*

Example 4. Y Corporation is a domestic corporation that does business in the United States and abroad. On December 31, 2007, the balance in Y's general category overall foreign loss account is $500, all of which is attributable to a loss incurred in 2007. Y has no other loss accounts subject to recapture. For 2008, Y has U.S. source taxable income of $400 and foreign source taxable income of $300 in the general category and $900 in the passive category. Under paragraph (c)(1) of this section, the amount of Y's general category income subject to recharacterization is the lesser of the aggregate maximum potential recapture or 50 percent of the total foreign source taxable income. In this case Y's aggregate maximum potential recapture is $300 (the lesser of the $500 balance in the general category overall foreign loss account or $300 foreign source income in the general category for the year), which is less than $600, or 50 percent of total foreign source taxable income ($1200 × 50%). Therefore, pursuant to paragraph (c) of this section, $300 of foreign source income in the general category is recharacterized as U.S. source income. The balance in Y's general category overall foreign loss account is reduced by $300 to $200 in accordance with § 1.904(f)–1(e)(2).

(c)(5) *Example 5* through (d) [Reserved]. For further guidance, see § 1.904(f)–2(c)(5) *Example 5* through § 1.904(f)–2(d).

(e) *Effective/applicability date.* This section applies to taxable years beginning after *December 21, 2007.*

(f) *Expiration date.* The applicability of this section expires on *December 20, 2010.*

■ Par. 10. Section 1.904(f)–3 is revised to read as follows:

§ 1.904(f)–3 Allocation of net operating losses and net capital losses.

For rules relating to the allocation of net operating losses and net capital losses, see § 1.904(g)–3T.

■ **Par. 11.** Sections 1.904(f)–7, 1.904(f)–7T, 1.904(f)–8, and 1.904(f)–8T are added to read as follows:

§ 1.904(f)–7 Separate limitation loss and the separate limitation loss account. [Reserved].

For further guidance, see § 1.904(f)–7T.

§ 1.904(f)–7T Separate limitation loss and the separate limitation loss account (temporary).

(a) *Overview of regulations.* This section provides rules for determining a taxpayer's separate limitation losses, for establishing separate limitation loss accounts, and for making additions to and reductions from such accounts for purposes of section 904(f). Section 1.904(f)–8T provides rules for recharacterizing the balance in any separate limitation loss account under the general recharacterization rule of section 904(f)(5)(C).

(b) *Definitions.* The definitions in paragraphs (b)(1) through (4) of this section apply for purposes of this section and §§ 1.904(f)–8T and 1.904(g)–3T.

(1) *Separate category* means each separate category of income described in section 904(d) and any other category of income described in § 1.904–4(m). For example, income subject to section 901(j) or 904(h)(10) is income in a separate category.

(2) *Separate limitation income* means, with respect to any separate category, the taxable income from sources outside the United States, separately computed for that category for the taxable year. Separate limitation income shall be determined by taking into account any adjustments for capital gains and losses under section 904(b)(2) and § 1.904(b)–1. See § 1.904(b)–1(h)(1)(i).

(3) *Separate limitation loss* means, with respect to any separate category, the amount by which the foreign source gross income in that category is exceeded by the sum of expenses, losses and other deductions (not including any net operating loss deduction under section 172(a) or any expropriation loss or casualty loss described in section 907(c)(4)(B)(iii)) properly allocated and apportioned thereto for the taxable year. Separate limitation losses are determined separately for each separate category. Accordingly, income and deductions attributable to a separate category are not netted with income and deductions attributable to another separate category for purposes of determining the amount of a separate limitation loss. Separate limitation losses shall be determined by taking into account any adjustments for capital gains and losses under section 904(b)(2) and § 1.904(b)–1. See § 1.904(b)–1(h)(1)(i).

(c) *Separate limitation loss account.* Any taxpayer that sustains a separate limitation loss that is allocated to reduce separate limitation income of the taxpayer under the rules of § 1.904(g)–3T must establish a separate limitation loss account for the loss. The taxpayer must establish separate loss accounts for each separate category in which a separate limitation loss is incurred that is allocated to reduce other separate limitation income. A separate account must then be established for each separate category to which a portion of the loss is allocated. The balance in any separate limitation loss account represents the amount of separate limitation income that is subject to recharacterization (as income in another separate category) in a subsequent year pursuant to § 1.904(f)–8T and section 904(f)(5)(F). From year to year, amounts may be added to or subtracted from the balance in such loss accounts, as provided in paragraphs (d) and (e) of this section.

(d) *Additions to separate limitation loss accounts*—(1) *General rule.* A taxpayer's separate limitation loss as defined in paragraph (b)(3) of this section shall be added to the applicable separate limitation loss accounts at the end of the taxable year to the extent that the separate limitation loss has reduced separate limitation income in one or more other separate categories of the taxpayer during the taxable year. For rules with respect to net operating loss carryovers, see paragraph (d)(3) of this section and § 1.904(g)–3T.

(2) *Separate limitation losses of another taxpayer.* If any portion of any separate limitation loss account of another taxpayer is allocated to the taxpayer in accordance with § 1.1502–9T (relating to consolidated separate limitation losses) the taxpayer shall add such amount to its applicable separate limitation loss account.

(3) *Additions to separate limitation loss account created by loss carryovers.* The taxpayer shall add to each separate limitation loss account all net operating loss carryovers to the current taxable year to the extent that separate limitation losses included in the net operating loss carryovers reduced foreign source income in other separate categories for the taxable year.

(e) *Reductions of separate limitation loss accounts.* The taxpayer shall subtract the following amounts from its separate limitation loss accounts at the end of its taxable year in the following order as applicable:

(1) *Pre-recapture reduction for amounts allocated to other taxpayers.* A separate limitation loss account is reduced by the amount of any separate limitation loss account which is allocated to another taxpayer in accordance with § 1.1502–9T (relating to consolidated separate limitation losses).

(2) *Reduction for offsetting loss accounts.* A separate limitation account is reduced to take into account any netting of separate limitation loss accounts under § 1.904(g)–3T(c).

(3) *Reduction for amounts recaptured.* A separate limitation loss account is reduced by the amount of any separate limitation income that is earned in the same separate category as the separate limitation loss that resulted in the account and that is recharacterized in accordance with § 1.904(f)–8T (relating to recapture of separate limitation losses) or section 904(f)(5)(F) (relating to recapture of separate limitation loss accounts out of gain realized from dispositions).

(f) *Effective/applicability date.* This section applies to taxpayers that sustain separate limitation losses in taxable years beginning after *December 21, 2007.* For taxable years beginning after December 31, 1986, and on or before *December 21, 2007*, see section 904(f)(5).

(g) *Expiration date.* The applicability of this section expires on *December 20, 2010.*

§ 1.904(f)–8 Recapture of separate limitation loss accounts.

[Reserved]. For further guidance, see § 1.904(f)–8T.

§ 1.904(f)–8T Recapture of separate limitation loss accounts (temporary).

(a) *In general.* A taxpayer shall recapture a separate limitation loss account as provided in this section. If the taxpayer has a separate limitation loss account or accounts in any separate category (the ''loss category'') and the

loss category has income in a subsequent taxable year, the income shall be recharacterized as income in that other category or categories. The amount of income recharacterized shall not exceed the separate limitation loss accounts for the loss category as determined under § 1.904(f)–7T, including the aggregate separate limitation loss accounts from the loss category not previously recaptured under this paragraph (a). If the taxpayer has more than one separate limitation loss account in a loss category, and there is not enough income in the loss category to recapture the entire amount in all the loss accounts, then separate limitation income in the loss category shall be recharacterized as separate limitation income in the separate limitation loss categories on a proportionate basis. This is determined by multiplying the total separate limitation income subject to recapture by a fraction, the numerator of which is the amount in a particular loss account and the denominator of which is the total amount in all loss accounts for the separate category.

(b) *Effect of recapture of separate limitation income on associated taxes.* Recharacterization of income under paragraph (a) of this section shall not result in the recharacterization of any tax. The rules of § 1.904–6, including the rules that the taxes are allocated on an annual basis and that foreign taxes paid on U.S. source income shall be allocated to the separate category that includes that U.S. source income (see § 1.904–6(a)), shall apply for purposes of allocating taxes to separate categories. Allocation of taxes pursuant to § 1.904–6 shall be made before the recapture of any separate limitation loss accounts of the taxpayer pursuant to the rules of this section.

(c) *Effective/applicability date.* This section applies to taxpayers that sustain separate limitation losses in taxable years beginning after *December 21, 2007.* For taxable years beginning after December 31, 1986, and on or before *December 21, 2007,* see section 904(f)(5).

(d) *Expiration date.* The applicability of this section expires on *December 20, 2010.*

■ **Par. 11.** Section 1.904(g)–0 is added to read as follows:

§ 1.904(g)–0 Outline of regulation provisions.

This section lists the headings for §§ 1.904(g)–1 through 1.904(g)–3.

§ 1.904(g)–1 Overall domestic loss and the overall domestic loss account.

[Reserved]. For further guidance, see the entries for § 1.904(g)–1T in § 1.904(g)–0T.

§ 1.904(g)–2 Recapture of overall domestic losses.

[Reserved]. For further guidance, see the entries for § 1.904(g)–2T in § 1.904(g)–0T.

§ 1.904(g)–3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses.

[Reserved]. For further guidance, see the entries for § 1.904(g)–3T in § 1.904(g)–0T.

■ **Par. 12.** Section 1.904(g)–0T is added to read as follows:

§ 1.904(g)–0T Outline of regulation provisions (temporary).

This section lists the headings for §§ 1.904(g)–1T through 1.904(g)–3T.

§ 1.904(g)–1T Overall domestic loss and the overall domestic loss account (temporary).

(a) Overview of regulations.
(b) Overall domestic loss accounts.
(1) In general.
(2) Taxable year in which overall domestic loss is sustained.
(c) Determination of a taxpayer's overall domestic loss.
(1) Overall domestic loss defined.
(2) Domestic loss defined.
(3) Qualified taxable year defined.
(4) Method of allocation and apportionment of deductions.
(d) Additions to overall domestic loss accounts.
(1) General rule.
(2) Overall domestic loss of another taxpayer.
(3) Adjustments for capital gains and losses.
(e) Reductions of overall domestic loss accounts.
(1) Pre-recapture reduction for amounts allocated to other taxpayers.
(2) Reduction for amounts recaptured.
(f) Effective/applicability date.
(g) Expiration date.

§ 1.904(g)–2T Recapture of overall domestic losses (temporary).

(a) In general.
(b) Determination of U.S. source taxable income for purposes of recapture.
(c) Section 904(g)(1) recapture.
(d) Effective/applicability date.
(e) Expiration date.

§ 1.904(g)–3T Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses (temporary).

(a) In general.
(b) Step One: Allocation of net operating loss and net capital loss carryovers.
(1) In general.
(2) Full net operating loss carryover.
(3) Partial net operating loss carryover.
(4) Net capital loss carryovers.
(c) Step Two: Allocation of separate limitation losses.
(d) Step Three: Allocation of U.S. source losses.
(e) Step Four: Recapture of overall foreign loss accounts.
(f) Step Five: Recapture of separate limitation loss accounts.
(g) Step Six: Recapture of overall domestic loss accounts.
(h) Examples.
(i) Effective/applicability date.
(j) Expiration date.

■ **Par. 13.** Sections 1.904(g)–1, 1.904(g)–1T, 1.904(g)–2, 1.904(g)–2T, 1.904(g)–3, and 1.904(g)–3T are added to read as follows:

§ 1.904(g)–1 Overall domestic loss and the overall domestic loss account.

[Reserved]. For further guidance, see § 1.904(g)–1T.

§ 1.904(g)–1T Overall domestic loss and the overall domestic loss account (temporary).

(a) *Overview of regulations.* This section provides rules for determining a taxpayer's overall domestic losses, for establishing overall domestic loss accounts, and for making additions to and reductions from such accounts for purposes of section 904(g). Section 1.904(g)–2T provides rules for recapturing the balance in any overall domestic loss account under the general recharacterization rule of section 904(g)(1). Section 1.904(g)–3T provides ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and the recapture of separate limitation losses, overall foreign losses and overall domestic losses.

(b) *Overall domestic loss accounts*—(1) *In general.* Any taxpayer that sustains an overall domestic loss under paragraph (c) of this section must establish an account for such loss. Separate overall domestic loss accounts must be maintained with respect to each separate category in which foreign source income is offset by the domestic loss. The balance in each overall domestic loss account represents the amount of such overall domestic loss subject to recapture in a given year. From year to year, amounts may be added to or subtracted from the balances in such accounts as provided in paragraphs (d) and (e) of this section.

(2) *Taxable year in which overall domestic loss is sustained.* When a taxpayer incurs a domestic loss that is carried back as part of a net operating loss to offset foreign source income in a qualified taxable year, as defined in paragraph (c)(3) of this section, the resulting overall domestic loss is treated as sustained in the later year in which the domestic loss was incurred and not in the earlier year in which the loss offset foreign source income. Similarly, when a taxpayer incurs a domestic loss that is carried forward as part of a net

operating loss and applied to offset foreign source income in a later taxable year, the resulting overall domestic loss is treated as sustained in the later year in which the domestic loss offsets foreign source income and not in the earlier year in which the loss was incurred. For example, if a taxpayer incurs a domestic loss in the 2007 taxable year that is carried back to the 2006 qualified taxable year and offsets foreign source income in 2006, the resulting overall domestic loss is treated as sustained in the 2007 taxable year. If a taxpayer incurs a domestic loss in a pre-2007 taxable year that is carried forward to a post-2006 qualified taxable year and offsets foreign source income in the post-2006 year, the resulting overall domestic loss is treated as sustained in the post-2006 year. The overall domestic loss account is established at the end of the later of the taxable year in which the domestic loss arose or the qualified taxable year to which the loss is carried and applied to offset foreign source income, and will be recaptured from U.S. source income arising in subsequent taxable years.

(c) *Determination of a taxpayer's overall domestic loss*—(1) *Overall domestic loss defined.* For taxable years beginning after December 31, 2006, a taxpayer sustains an overall domestic loss—

(i) In any qualified taxable year in which its domestic loss for such taxable year offsets foreign source taxable income for the taxable year or for any preceding qualified taxable year by reason of a carryback; and

(ii) In any other taxable year in which the domestic loss for such taxable year offsets foreign source taxable income for any preceding qualified taxable year by reason of a carryback.

(2) *Domestic loss defined.* For purposes of this section and §§ 1.904(g)–2T and 1.904(g)–3T, the term *domestic loss* means the amount by which the U.S. source gross income for the taxable year is exceeded by the sum of the expenses, losses and other deductions properly apportioned or allocated to such income, taking into account any net operating loss carried forward from a prior taxable year, but not any loss carried back. If a taxpayer has any capital gains or losses, the amount of the taxpayer's domestic loss shall be determined by taking into account adjustments under section 904(b)(2) and § 1.904(b)–1. See § 1.904(b)–1(h)(1)(iii).

(3) *Qualified taxable year defined.* For purposes of this section and §§ 1.904(g)–2T and 1.904(g)–3T, the term *qualified taxable year* means any taxable year for which the taxpayer chooses the benefits of section 901.

(4) *Method of allocation and apportionment of deductions.* In determining its overall domestic loss, a taxpayer shall allocate and apportion expenses, losses, and other deductions to U.S. gross income in accordance with sections 861(b) and 865 and the regulations thereunder, including §§ 1.861–8T through 1.861–14T.

(d) *Additions to overall domestic loss accounts*—(1) *General rule.* A taxpayer's overall domestic loss as determined under paragraph (c) of this section shall be added to the applicable overall domestic loss account at the end of its taxable year to the extent that the overall domestic loss either reduces foreign source income for the year (but only if such year is a qualified taxable year) or reduces foreign source income for a qualified taxable year to which the loss has been carried back.

(2) *Overall domestic loss of another taxpayer.* If any portion of any overall domestic loss of another taxpayer is allocated to the taxpayer in accordance with § 1.1502–9T (relating to consolidated overall domestic losses) the taxpayer shall add such amount to its applicable overall domestic loss account.

(3) *Adjustments for capital gains and losses.* If the taxpayer has capital gains or losses, the amount by which an overall domestic loss reduces foreign source income in a taxable year shall be determined in accordance with § 1.904(b)–1(h)(1)(i) and (iii).

(e) *Reductions of overall domestic loss accounts.* The taxpayer shall subtract the following amounts from its overall domestic loss accounts at the end of its taxable year in the following order, if applicable:

(1) *Pre-recapture reduction for amounts allocated to other taxpayers.* An overall domestic loss account is reduced by the amount of any overall domestic loss which is allocated to another taxpayer in accordance with § 1.1502–9T (relating to consolidated overall domestic losses).

(2) *Reduction for amounts recaptured.* An overall domestic loss account is reduced by the amount of any U.S. source income that is recharacterized in accordance with § 1.904(g)–2T(c) (relating to recapture under section 904(g)(1)).

(f) *Effective/applicability date.* This section applies to any taxpayer that sustains an overall domestic loss for a taxable year beginning after *December 21, 2007.* Taxpayers may choose to apply this section to overall domestic losses sustained in other taxable years beginning after December 31, 2006, as well.

(g) *Expiration date.* The applicability of this section expires on *December 20, 2010.*

§ 1.904(g)–2 Recapture of overall domestic losses.

[Reserved]. For further guidance, see § 1.904(g)–2T.

§ 1.904(g)–2T Recapture of overall domestic losses (temporary).

(a) *In general.* A taxpayer shall recapture an overall domestic loss as provided in this section. Recapture is accomplished by treating a portion of the taxpayer's U.S. source taxable income as foreign source income. The recharacterized income is allocated among and increases foreign source income in separate categories in proportion to the balances of the overall domestic loss accounts with respect to those separate categories. As a result, if the taxpayer elects the benefits of section 901, the taxpayer's foreign tax credit limitation is increased. As provided in § 1.904(g)–1T(f)(2), the balance in a taxpayer's overall domestic loss account with respect to a separate category is reduced at the end of each taxable year by the amount of loss recaptured during that taxable year. Recapture continues until such time as the amount of U.S. source income recharacterized as foreign source income equals the amount in the overall domestic loss account.

(b) *Determination of U.S. source taxable income for purposes of recapture.* For purposes of determining the amount of an overall domestic loss subject to recapture, the taxpayer's taxable income from U.S. sources shall be computed in accordance with the rules set forth in § 1.904(g)–1T(c)(4).

(c) *Section 904(g)(1) recapture.* The amount of any U.S. source taxable income subject to recharacterization in a taxable year in which paragraph (a) of this section is applicable is the lesser of the aggregate balance in taxpayer's overall domestic loss accounts in each separate category (after reduction of such account in accordance with § 1.904(g)–1T(e)) or fifty percent of the taxpayer's U.S. source taxable income (as determined under paragraph (b) of this section).

(d) *Effective/applicability date.* This section applies to any taxpayer that sustains an overall domestic loss for a taxable year beginning after *December 21, 2007.* Taxpayers may choose to apply this section to overall domestic losses sustained in other taxable years beginning after December 31, 2006, as well.

(e) *Expiration date.* The applicability of this section expires on *December 20, 2010.*

§ 1.904(g)–3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses.

[Reserved]. For further guidance, see § 1.904(g)–3T.

§ 1.904(g)–3T Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses (temporary).

(a) *In general.* This section provides ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses. The rules must be applied in the order set forth in paragraphs (b) through (g) of this section.

(b) *Step One: Allocation of net operating loss and net capital loss carryovers*—(1) *In general.* Net operating losses from a current taxable year are carried forward or back to a taxable year in the following manner. Net operating losses that are carried forward pursuant to section 172 are combined with income or loss in the carryover year in the manner described in this paragraph (b). The combined amounts are then subject to the ordering rules provided in paragraphs (c) through (g) of this section. Net operating losses that are carried back to a prior taxable year pursuant to section 172 are allocated to income in the carryback year in the manner set forth in paragraphs (b)(2) and (3), (c), and (d) of this section. The income in the carryback year to which the net operating loss is allocated is the foreign source income in each separate category and the U.S. source income after the application of sections 904(f) and 904(g) to income and loss in that previous year, including as a result of net operating loss carryovers or carrybacks from taxable years prior to the current taxable year.

(2) *Full net operating loss carryover.* If the full net operating loss (that remains after carryovers to other taxable years) is less than or equal to the taxable income in a particular taxable year (carryover year), and so can be carried forward in its entirety to such carryover year, U.S. source losses and foreign source losses in separate categories that are part of a net operating loss from a particular taxable year that is carried forward in its entirety shall be combined with the U.S. income or loss and the foreign source income or loss in the same separate categories in the carryover year.

(3) *Partial net operating loss carryover.* If the full net operating loss (that remains after carryovers to other taxable years) exceeds the taxable income in a carryover year, and so cannot be carried forward in its entirety to such carryover year, the following rules apply:

(i) First, any U.S. source loss (not to exceed the net operating loss carryover) shall be carried over to the extent of any U.S. source income in the carryover year.

(ii) If the net operating loss carryover exceeds the U.S. source loss carryover determined under paragraph (b)(3)(i) of this section, then separate limitation losses that are part of the net operating loss shall be tentatively carried over to the extent of separate limitation income in the same separate category in the carryover year. If the sum of the potential separate limitation loss carryovers determined under the preceding sentence exceeds the amount of the net operating loss carryover reduced by any U.S. source loss carried over under paragraph (b)(3)(i) of this section, then the potential separate limitation loss carryovers shall be reduced pro rata so that their sum equals such amount.

(iii) If the net operating loss carryover exceeds the sum of the U.S. and separate limitation loss carryovers determined under paragraphs (b)(3)(i) and (ii) of this section, then a proportionate part of the remaining loss from each separate category shall be carried over to the extent of such excess and combined with the foreign source loss, if any, in the same separate categories in the carryover year.

(iv) If the net operating loss carryover exceeds the sum of all the loss carryovers determined under paragraphs (b)(3)(i), (ii), and (iii) of this section, then any U.S. source loss not carried over under paragraph (b)(3)(i) of this section shall be carried over to the extent of such excess and combined with the U.S. source loss, if any, in the carryover year.

(4) *Net capital loss carryovers.* Rules similar to the rules of paragraphs (b)(1) through (3) of this section apply for purposes of determining the components of a net capital loss carryover to a taxable year.

(c) *Step Two: Allocation of separate limitation losses.* The taxpayer shall allocate separate limitation losses sustained during the taxable year (increased, if appropriate, by any losses carried over under paragraph (b) of this section), in the following manner:

(1) the taxpayer shall allocate its separate limitation losses for the year to reduce its separate limitation income in other separate categories on a proportionate basis, and increase its separate limitation loss accounts appropriately. To the extent a separate limitation loss in one separate category is allocated to reduce separate limitation income in a second separate category, and the second category has a separate limitation loss account from a prior taxable year with respect to the first category, the two separate limitation loss accounts shall be netted one against the other.

(2) If the taxpayer's separate limitation losses for the taxable year exceed the taxpayer's separate limitation income for the year, so that the taxpayer has separate limitation losses remaining after the application of paragraph (c)(1) of this section, the taxpayer shall allocate those losses to its U.S. source income for the taxable year, to the extent thereof, and shall increase its overall foreign loss accounts appropriately.

(d) *Step Three: Allocation of U.S. source losses.* The taxpayer shall allocate U.S. source losses sustained during the taxable year (increased, if appropriate, by any losses carried over under paragraph (b) of this section) to separate limitation income on a proportionate basis, and shall increase its overall domestic loss accounts appropriately.

(e) *Step Four: Recapture of overall foreign loss accounts.* If the taxpayer's separate limitation income for the taxable year (reduced by any losses carried over under paragraph (b) of this section) exceeds the sum of the taxpayer's U.S. source loss and separate limitation losses for the year, so that the taxpayer has separate limitation income remaining after the application of paragraphs (c)(1) and (d) of this section, then the taxpayer shall recapture prior year overall foreign losses, if any, in accordance with §§ 1.904(f)–2 and 1.904(f)–2T.

(f) *Step Five: Recapture of separate limitation loss accounts.* To the extent the taxpayer has remaining separate limitation income for the year after the application of paragraph (e) of this section, then the taxpayer shall recapture prior year separate limitation loss accounts, if any, in accordance with § 1.904(f)–8T.

(g) *Step Six: Recapture of overall domestic loss accounts.* If the taxpayer's U.S. source income for the year (reduced by any losses carried over under paragraph (b) of this section or

allocated under paragraph (c) of this section, but not increased by any recapture of overall foreign loss accounts under paragraph (e) of this section) exceeds the taxpayer's separate limitation losses for the year, so that the taxpayer has U.S. source income remaining after the application of paragraph (c)(2) of this section, then the taxpayer shall recapture its prior year overall domestic losses, if any, in accordance with § 1.904(g)–2T.

(h) *Examples.* The following examples illustrate the rules of this section. Unless otherwise noted, all corporations use the calendar year as the U.S. taxable year.

Example 1. (i) *Facts.* (A) Z Corporation is a domestic corporation with foreign branch operations in Country B. For 2009, Z has a net operating loss of ($500), determined as follows:

General	Passive	US
($300)	$0	($200)

(B) For 2008, Z had the following taxable income and losses after application of section 904(f) and (g) to income and loss in 2008:

General	Passive	US
$400	$200	$110

(ii) *Net operating loss allocation.* Because Z's taxable income for 2008 exceeds its total net operating loss for 2009, the full net operating loss is carried back. Under Step 1, each component of the net operating loss is carried back and combined with its same category in 2008. See paragraph (b)(2) of this section. After allocation of the net operating loss, Z has the following taxable income and losses for 2008:

General	Passive	US
$100	$200	($90)

(iii) *Loss allocation.* Under Step 3, the ($90) of U.S. loss is allocated proportionately to reduce the general category and passive category income. Accordingly, $30 ($90 × $100/$300) of the U.S. loss is allocated to general category income and $60 ($90 × $200/$300) of the U.S. loss is allocated to passive category income, with a corresponding creation or increase to Z's overall domestic loss accounts.

Example 2. (i) *Facts.* (A) X Corporation is a domestic corporation with foreign branch operations in Country C. As of January 1, 2007, X has no loss accounts subject to recapture. For 2007, X has a net operating loss of ($1400), determined as follows:

General	Passive	US
($400)	($200)	($800)

(B) X has no taxable income in 2005 or 2006 available for offset by a net operating loss carryback. For 2008, X has the following taxable income and losses:

General	Passive	US
$500	($100)	$1200

(ii) *Net operating loss allocation.* Under Step 1, because X's total taxable income for 2008 of $1600 ($1200 + $500 − $100) exceeds the total 2007 net operating loss, the full $1400 net operating loss is carried forward. Under paragraph (b)(2) of this section, each component of the net operating loss is carried forward and combined with its same category in 2008. After allocation of the net operating loss, X has the following taxable income and losses:

General	Passive	US
$100	($300)	$400

(iii) *Loss allocation.* Under Step 2, $100 of the passive category loss offsets the $100 of general category income, resulting in a passive category separate limitation loss account with respect to general category income, and the other $200 of passive category loss offsets $200 of the U.S. source taxable income, resulting in the creation of an overall foreign loss account in the passive category.

Example 3. (i) *Facts.* Assume the same facts as in *Example 2*, except that in 2008, X had the following taxable income and losses:

General	Passive	US
$200	($100)	$1200

(ii) *Net operating loss allocation.* Under Step 1, because the total net operating loss for 2007 of ($1400) exceeds total taxable income for 2008 of $1300 ($1200 + $200 − $100), X has a partial net operating loss carryover to 2008 of $1300. Under paragraph (b)(3)(i) of this section, first, the $800 U.S. source component of the net operating loss is allocated to U.S. income for 2008. The tentative general category carryover under paragraph (b)(3)(ii) of this section ($200) does not exceed the remaining net operating loss carryover amount ($500). Therefore, $200 of the general category component of the net operating loss is next allocated to the general category income for 2008. Under paragraph (b)(3)(iii) of this section, the remaining $300 of net operating loss carryover ($1300 − $800 − $200) is carried over proportionally from the remaining net operating loss components in the general category ($200, or $400 total general category loss—$200 general category loss already allocated) and passive category ($200). Therefore, $150 ($300×$200×$400) of the remaining net operating loss carryover is carried over from the general category for 2007 and combined with the general category for 2008, and $150 ($300×$200×$400) of the remaining net operating loss carryover is carried over from the passive category for 2007 and combined with the passive category for 2008. After allocation of the net operating loss carryover from 2007 to the appropriate categories for 2008, X has the following taxable income and losses:

General	Passive	US
($150)	($250)	$400

(iii) *Loss allocation.* Under Step 2, the losses in the general and passive categories fully offset the U.S. source income, resulting in the creation of general category and passive category overall foreign loss accounts.

Example 4. (i) *Facts.* Assume the same facts as in *Example 2*, except that in 2008, X has the following taxable income and losses:

General	Passive	US
$200	$200	($200)

(ii) *Net operating loss allocation.* Under Step 1, because the total net operating loss of ($1400) exceeds total taxable income for 2008 of $200 ($200 + $200 − $200), X has a partial net operating loss carryover to 2008 of $200. Because X has no U.S. source income in 2008, under paragraph (b)(3)(i) of this section no portion of the U.S. source component of the net operating loss is initially carried into 2008. Because the total tentative carryover under paragraph (b)(3)(ii) of this section of $400 ($200 in each of the general and passive categories) exceeds the net operating loss carryover amount, the tentative carryover from each separate category is reduced proportionately by $100 ($200 × $200/$400). Accordingly, $100 ($200 − $100) of the general category component of the net operating loss is carried forward and $100 ($200 − $100) of the passive category component of the net operating loss is carried forward and combined with income in the same respective categories for 2008. After allocation of the net operating loss carryover from 2007, X has the following taxable income and losses:

General	Passive	US
$100	$100	($200)

(iii) *Loss allocation.* Under Step 3, the $200 U.S. source loss offsets the remaining $100 of general category income and $100 of passive category income, resulting in the creation of overall domestic loss accounts with respect to the general and passive categories.

Example 5. (i) *Facts.* Assume the same facts as in *Example 2*, except that in 2008, X has the following taxable income and losses:

General	Passive	US
$800	($100)	$100

(ii) *Net operating loss allocation.* Under Step 1, because X's total net operating loss in 2007 of ($1400) exceeds its total taxable income for 2008 of $800 ($100 + $800 − $100), X has a partial net operating loss carryover to 2008 of $800. Under paragraph (b)(3)(i) of this section, $100 of the U.S. source component of the net operating loss

is allocated to U.S. income for 2008. The tentative general category carryover under paragraph (b)(3)(ii) of this section does not exceed the remaining net operating loss carryover amount. Therefore, $400 of the general category component of the net operating loss is allocated to reduce general category income in 2008. Under paragraph (b)(3)(iii) of this section, of the remaining $300 of net operating loss carryover ($800 − $100 − $400), $200 is carried forward from the passive category component of the net operating loss and combined with the passive category for 2008. Under paragraph (b)(3)(iv) of this section, the remaining $100 ($300 − $200) of net operating loss carryover is carried forward from the U.S. source component of the net operating loss and combined with the U.S. source income (loss) for 2008. After allocation of the net operating loss carryover from 2007, X has the following taxable income and losses:

General	Passive	US
$400	($300)	($100)

(iii) *Loss allocation.* (A) Under Step 2, the $300 passive category loss offsets the $300 of income in the general category, resulting in the creation of a passive category separate limitation loss account with respect to the general category.

(B) Under Step 3, the $100 U.S. source loss offsets the remaining $100 of the general category income, resulting in the creation of an overall domestic loss account with respect to the general category.

Example 6. (i) *Facts.* (A) Y Corporation is a domestic corporation with foreign branch operations in Country D. Y has no net operating losses and does not make an election to recapture more than the required amount of overall foreign losses. As of January 1, 2007, Y has a ($200) general category overall foreign loss (OFL) account and a ($200) general category separate limitation loss (SLL) account with respect to the passive category. For 2007, Y has $400 of passive category income that is fully offset by a ($400) domestic loss in that taxable year, giving rise to the creation of an overall domestic loss (ODL) account with respect to the passive category. As of January 1, 2008, Y has the following balances in its OFL, SLL, and ODL accounts:

General		US Passive ODL
OFL	Passive SLL	
$200	$200	$400

(B) In 2008, Y has the following taxable income and losses:

General	Passive	US
$400	($100)	$600

(ii) *Loss allocation.* Under Step 2, the $100 of passive category loss offsets $100 of the general category income, creating a passive category SLL account of $100 with respect to the general category. Because there is an offsetting general category SLL account of $200 with respect to the passive category from a prior taxable year, the two accounts are netted against each other so that all that remains is a $100 general category SLL account with respect to the passive category.

(iii) *OFL account recapture.* Under Step 4, 50 percent of the remaining $300, or $150, of income in the general category is subject to recharacterization as U.S. source income as a recapture of part of the OFL account in the general category.

(iv) *SLL account recapture.* Under Step 5, $100 of the remaining $150 of income in the general category is recharacterized as passive category income as a recapture of the general category SLL account with respect to the passive category.

(v) *ODL account recapture.* Under Step 6, 50 percent of the $600, or $300, of U.S. source income is subject to recharacterization as foreign source passive category income as a recapture of a part of the ODL account with respect to the passive category. None of the $150 of general category income that was recharacterized as U.S. source income under Step 5 is included here as income subject to recharacterization in connection with recapture of the overall domestic loss account.

(v) *Results.* (A) After the allocation of loss and recapture of loss accounts, X has the following taxable income and losses for 2008:

General	Passive	US
$50	$400	$450

(B) As of January 1, 2009, Y has the following balances in its OFL, SLL and ODL accounts:

General		Passive	US
OFL	Passive SLL	General SLL	Passive ODL
$50	$0	$0	$100

(i) *Effective/applicability date.* This section applies to taxable years beginning after *December 21, 2007.* Taxpayers may choose to apply this section to other taxable years beginning after December 31, 2006, as well.

(j) *Expiration date.* The applicability of this section expires on *December 20, 2010.*

■ **Par. 15.** Section 1.904(i)–0 is added. The entries for § 1.904(i)–1 in § 1.904–0 are redesignated as entries for new § 1.904(i)–0.

§ 1.904(i)–0 Outline of regulation provisions.

This section lists the headings for § 1.904(i)–1.

■ **Par. 16.** Section 1.904(j)–0 is added. The entries for § 1.904(j)–1 in § 1.904–0 are redesignated as entries for new § 1.904(j)–0.

§ 1.904(j)–0 Outline of regulation provisions.

This section lists the headings for § 1.904(j)–1.

■ **Par. 17.** Section 1.1502–9 is revised to read as follows:

§ 1.1502–9 Consolidated overall foreign losses, separate limitation losses, and overall domestic losses.

[Reserved]. For further guidance, see § 1.1502–9T.

■ **Par. 18.** Section 1.1502–9T is added to read as follows:

§ 1.1502–9T Consolidated overall foreign losses, separate limitation losses, and overall domestic losses (temporary).

(a) *In general.* This section provides rules for applying section 904(f) and (g) (including its definitions and nomenclature) to a group and its members. Generally, section 904(f) concerns rules relating to overall foreign losses (OFLs) and separate limitation losses (SLLs) and the consequences of such losses. Under section 904(f)(5), losses are computed separately in each category of income described in section 904(d)(1) or § 1.904–4(m) (separate category). Section 904(g) concerns rules relating to overall domestic losses (ODLs) and the consequences of such losses. Paragraph (b) of this section defines terms and provides computational and accounting rules, including rules regarding recapture. Paragraph (c) of this section provides rules that apply to OFLs, SLLs, and ODLs when a member becomes or ceases to be a member of a group. Paragraph (d) of this section provides a predecessor and successor rule. Paragraph (e) of this section provides effective dates.

(b) *Consolidated application of section 904(f) and (g).* A group applies section 904(f) and (g) for a consolidated return year in accordance with that section, subject to the following rules:

(1) *Computation of CSLI or CSLL and consolidated U.S.-source taxable income or CDL.* The group computes its consolidated separate limitation income (CSLI) or consolidated separate limitation loss (CSLL) for each separate category under the principles of § 1.1502–11 by aggregating each member's foreign-source taxable income or loss in such separate category computed under the principles of § 1.1502–12, and taking into account the foreign portion of the consolidated items described in § 1.1502–11(a)(2) through (8) for such separate category. The group computes its consolidated U.S.-source taxable income or consolidated domestic loss (CDL) under similar principles.

(2) *Netting CSLLs, CSLIs, and consolidated U.S.-source taxable income.* The group applies section 904(f)(5) to determine the extent to which a CSLL for a separate category reduces CSLI for another separate category or consolidated U.S.-source taxable income.

(3) *Netting CDL and CSLI.* The group applies section 904(g)(2) to determine the extent to which a CDL reduces CSLI.

(4) *CSLL, COFL, and CODL accounts.* To the extent provided in section 904(f), the amount by which a CSLL for a separate category (the loss category) reduces CSLI for another separate category (the income category) shall result in the creation of (or addition to) a CSLL account for the loss category with respect to the income category. Likewise, the amount by which a CSLL for a loss category reduces consolidated U.S.-source taxable income will create (or add to) a consolidated overall foreign loss account (a COFL account). To the extent provided in section 904(g), the amount by which a CDL reduces CSLI shall result in the creation of (or addition to) a consolidated overall domestic loss (CODL) account for the income category reduced by the CDL.

(5) *Recapture of COFL, CSLL, and CODL accounts.* In the case of a COFL account for a loss category, section 904(f)(1) and (3) recharacterizes some or all of the foreign-source income in the loss category as U.S.-source income. In the case of a CSLL account for a loss category with respect to an income category, section 904(f)(5)(C) and (F) recharacterizes some or all of the foreign-source income in the loss category as foreign-source income in the income category. In the case of a CODL account, section 904(g)(3) recharacterizes some of the U.S.-source income as foreign-source income in the separate category that was offset by the CDL. The COFL account, CSLL account, or CODL account is reduced to the extent income is recharacterized with respect to such account.

(6) *Intercompany transactions*—(i) *Nonapplication of section 904(f) disposition rules.* Neither section 904(f)(3) (in the case of a COFL account) nor section 904(f)(5)(F) (in the case of a CSLL account) applies at the time of a disposition that is an intercompany transaction to which § 1.1502–13 applies. Instead, section 904(f)(3) and (5)(F) applies only at such time and only to the extent that the group is required under § 1.1502–13 (without regard to section 904(f)(3) and (5)(F)) to take into account any intercompany items resulting from the disposition, based on the COFL or CSLL account existing at the end of the consolidated return year during which the group takes the intercompany items into account.

(ii) *Examples.* Paragraph (b)(6)(i) of this section is illustrated by the following examples. The identity of the parties and the basic assumptions set forth in § 1.1502–13(c)(7)(i) apply to the examples. Except as otherwise stated, assume further that the consolidated group recognizes no foreign-source income other than as a result of the transactions described. The examples are as follows:

Example 1. (i) On June 10, year 1, S transfers nondepreciable property with a basis of $100 and a fair market value of $250 to B in a transaction to which section 351 applies. The property was predominantly used without the United States in a trade or business, within the meaning of section 904(f)(3). B continues to use the property without the United States. The group has a COFL account in the relevant loss category of $120 as of December 31, year 1.

(ii) Because the contribution from S to B is an intercompany transaction, section 904(f)(3) does not apply to result in any gain recognition in year 1. See paragraph (b)(5)(i) of this section.

(iii) On January 10, year 4, B ceases to be a member of the group. Because S did not recognize gain in year 1 under section 351, no gain is taken into account in year 4 under § 1.1502–13. Thus, no portion of the group's COFL account is recaptured in year 4. For rules requiring apportionment of a portion of the COFL account to B, see paragraph (c)(2) of this section.

Example 2. (i) The facts are the same as in paragraph (i) of *Example 1.* On January 10, year 4, B sells the property to X for $300. As of December 31, year 4, the group's COFL account is $40. (The COFL account was reduced between year 1 and year 4 due to unrelated foreign-source income taken into account by the group.)

(ii) B takes into account gain of $200 in year 4. The $40 COFL account in year 4 recharacterizes $40 of the gain as U.S. source. See section 904(f)(3).

Example 3. (i) On June 10, year 1, S sells nondepreciable property with a basis of $100 and a fair market value of $250 to B for $250 cash. The property was predominantly used without the United States in a trade or business, within the meaning of section 904(f)(3). The group has a COFL account in the relevant loss category of $120 as of December 31, year 1. B predominantly uses the property in a trade or business without the United States.

(ii) Because the sale is an intercompany transaction, section 904(f)(3) does not require the group to take into account any gain in year 1. Thus, under paragraph (b)(5)(i) of this section, the COFL account is not reduced in year 1.

(iii) On January 10, year 4, B sells the property to X for $300. As of December 31, year 4, the group's COFL account is $60. (The COFL account was reduced between year 1 and year 4 due to unrelated foreign-source income taken into account by the group.)

(iv) In year 4, S's $150 intercompany gain and B's $50 corresponding gain are taken into account to produce the same effect on consolidated taxable income as if S and B were divisions of a single corporation. See § 1.1502–13(c). All of B's $50 corresponding gain is recharacterized under section 904(f)(3). If S and B were divisions of a single corporation and the intercompany sale were a transfer between the divisions, B would succeed to S's $100 basis in the property and would have $200 of gain ($60 of which would be recharacterized under section 904(f)(3)), instead of a $50 gain. Consequently, S's $150 intercompany gain and B's $50 corresponding gain are taken into account, and $10 of S's gain is recharacterized under section 904(f)(3) as U.S. source income to reflect the $10 difference between B's $50 recharacterized gain and the $60 recomputed gain that would have been recharacterized.

(c) *Becoming or ceasing to be a member of a group*—(1) *Adding separate accounts on becoming a member.* At the time that a corporation becomes a member of a group (a new member), the group adds to the balance of its COFL, CSLL or CODL account the balance of the new member's corresponding OFL account, SLL account or ODL account. A new member's OFL account corresponds to a COFL account if the account is for the same loss category. A new member's SLL account corresponds to a CSLL account if the account is for the same loss category and with respect to the same income category. A new member's ODL account corresponds to a CODL account if the account is with respect to the same income category. If the group does not have a COFL, CSLL or CODL account corresponding to the new member's account, it creates a COFL, CSLL or CODL account with a balance equal to the balance of the member's account.

(2) *Apportionment of consolidated account to departing member*—(i) *In general.* A group apportions to a member that ceases to be a member (a

departing member) a portion of each COFL, CSLL and CODL account as of the end of the year during which the member ceases to be a member and after the group makes the additions or reductions to such account required under paragraphs (b)(4), (b)(5) and (c)(1) of this section (other than an addition under paragraph (c)(1) of this section attributable to a member becoming a member after the departing member ceases to be a member). The group computes such portion under paragraph (c)(2)(ii) of this section, as limited by paragraph (c)(2)(iii) of this section. The departing member carries such portion to its first separate return year after it ceases to be a member. Also, the group reduces each account by such portion and carries such reduced amount to its first consolidated return year beginning after the year in which the member ceases to be a member. If two or more members cease to be members in the same year, the group computes the portion allocable to each such member (and reduces its accounts by such portion) in the order that the members cease to be members.

(ii) *Departing member's portion of group's account.* A departing member's portion of a group's COFL, CSLL or CODL account for a loss category is computed based upon the member's share of the group's assets that generate income subject to recapture at the time that the member ceases to be a member. Under the characterization principles of §§ 1.861–9T(g)(3) and 1.861–12T, the group identifies the assets of the departing member and the remaining members that generate U.S.-source income (domestic assets) and foreign-source income (foreign assets) in each separate category. The assets are characterized based upon the income that the assets are reasonably expected to generate after the member ceases to be a member. The member's portion of a group's COFL or CSLL account for a loss category is the group's COFL or CSLL account, respectively, multiplied by a fraction, the numerator of which is the value of the member's foreign assets for the loss category and the denominator of which is the value of the foreign assets of the group (including the departing member) for the loss category. The member's portion of a group's CODL account for each income category is the group's CODL account multiplied by a fraction, the numerator of which is the value of the member's domestic assets and the denominator of which is the value of the domestic assets of the group (including the departing member). The value of the domestic and foreign assets is determined under the asset valuation rules of § 1.861–9T(g)(1) and (2) using either tax book value or fair market value under the method chosen by the group for purposes of interest apportionment as provided in § 1.861–9T(g)(1)(ii). For purposes of this paragraph (c)(2)(ii), § 1.861–9T(g)(2)(iv) (assets in intercompany transactions) shall apply, but § 1.861–9T(g)(2)(iii) (adjustments for directly allocated interest) shall not apply. If the group uses the tax book value method, the member's portions of COFL, CSLL, and CODL accounts are limited by paragraph (c)(2)(iii) of this section. In addition, for purposes of this paragraph (c)(2)(ii), the tax book value of assets transferred in intercompany transactions shall be determined without regard to previously deferred gain or loss that is taken into account by the group as a result of the transaction in which the member ceases to be a member. The assets should be valued at the time the member ceases to be a member, but values on other dates may be used unless this creates substantial distortions. For example, if a member ceases to be a member in the middle of the group's consolidated return year, an average of the values of assets at the beginning and end of the year (as provided in § 1.861–9T(g)(2)) may be used or, if a member ceases to be a member in the early part of the group's consolidated return year, values at the beginning of the year may be used, unless this creates substantial distortions.

(iii) *Limitation on member's portion for groups using tax book value method.* If a group uses the tax book value method of valuing assets for purposes of paragraph (c)(2)(ii) of this section and the aggregate of a member's portions of COFL and CSLL accounts for a loss category (with respect to one or more income categories) determined under paragraph (c)(2)(ii) of this section exceeds 150 percent of the actual fair market value of the member's foreign assets in the loss category, the member's portion of the COFL or CSLL accounts for the loss category shall be reduced (proportionately, in the case of multiple accounts) by such excess. In addition, if the aggregate of a member's portions of CODL accounts (with respect to one or more income categories) determined under paragraph (c)(2)(ii) of this section exceeds 150 percent of the actual fair market value of the member's domestic assets, the member's portion of the CODL accounts shall be reduced (proportionately, in the case of multiple accounts) by such excess. This rule does not apply in the case of COFL or CSLL accounts if the departing member and all other members that cease to be members as part of the same transaction own all (or substantially all) the foreign assets in the loss category. In the case of CODL accounts, this rule does not apply if the departing member and all other members that cease to be members as part of the same transaction own all (or substantially all) the domestic assets.

(iv) *Determination of values of domestic and foreign assets binding on departing member.* The group's determination of the value of the member's and the group's domestic and foreign assets for a loss category is binding on the member, unless the Commissioner concludes that the determination is not appropriate. The common parent of the group must attach a statement to the return for the taxable year that the departing member ceases to be a member of the group that sets forth the name and taxpayer identification number of the departing member, the amount of each COFL and CSLL for each loss category and each CODL that is apportioned to the departing member under this paragraph (c)(2), the method used to determine the value of the member's and the group's domestic and foreign assets in each such loss category, and the value of the member's and the group's domestic and foreign assets in each such loss category. The common parent must also furnish a copy of the statement to the departing member.

(v) *Anti-abuse rule.* If a corporation becomes a member and ceases to be a member, and a principal purpose of the corporation becoming and ceasing to be a member is to transfer the corporation's OFL account, SLL account or ODL account to the group or to transfer the group's COFL, CSLL or CODL account to the corporation, appropriate adjustments will be made to eliminate the benefit of such a transfer of accounts. Similarly, if any member acquires assets or disposes of assets (including a transfer of assets between members of the group and the departing member) with a principal purpose of affecting the apportionment of accounts under paragraph (c)(2)(i) of this section, appropriate adjustments will be made to eliminate the benefit of such acquisition or disposition.

(vi) *Examples.* The following examples illustrate the rules of this paragraph (c):

Example 1. (i) On November 6, year 1, S, a member of the P group, a consolidated group with a calendar consolidated return year, ceases to be a member of the group. On December 31, year 1, the P group has a $40 COFL account for the general category, a $20 CSLL account for the general category (that is, the loss category) with respect to the

passive category (that is, the income category), and a $10 CODL account with respect to the passive category (that is, the income category). No member of the group has foreign-source income or loss in year 1. The group apportions its interest expense according to the tax book value method.

(ii) On November 6, year 1, the group identifies S's assets and the group's assets (including S's assets) expected to produce foreign-source general category income. Use of end-of-the-year values will not create substantial distortions in determining the relative values of S's and the group's relevant assets on November 6, year 1. The group determines that S's relevant assets have a tax book value of $2,000 and a fair market value of $2,200. Also, the group's relevant assets (including S's assets) have a tax book value of $8,000. On November 6, year 1, S has no assets expected to produce U.S. source income.

(iii) Under paragraph (c)(2)(ii) of this section, S takes a $10 COFL account for the general category ($40 × $2000/$8000) and a $5 CSLL account for the general category with respect to the passive category ($20 × $2000/$8000). S does not take any portion of the CODL account. The limitation described in paragraph (c)(2)(iii) of this section does not apply because the aggregate of the COFL and CSLL accounts for the general category that are apportioned to S ($15) is less than 150 percent of the actual fair market value of S's general category foreign assets ($2,200 x 150%).

Example 2. (i) Assume the same facts as in *Example 1,* except that the fair market value of S's general category foreign assets is $4 as of November 6, year 1.

(ii) Under paragraph (c)(2)(iii) of this section, S's COFL and CSLL accounts for the general category must be reduced by $9, which is the excess of $15 (the aggregate amount of the accounts apportioned under paragraph (c)(2)(ii) of this section) over $6 (150 percent of the $4 actual fair market value of S's general category foreign assets). S thus takes a $4 COFL account for the general category ($10 − ($9 × $10/$15)) and a $2 CSLL account for the general category with respect to the passive category ($5 − ($9 × $5/$15)).

Example 3. (i) Assume the same facts as in *Example 1,* except that S also has assets that are expected to produce U.S. source income.

(ii) On November 6, year 1, the group identifies S's assets and the group's assets (including S's assets) expected to produce U.S. source income. Use of end-of-the-year values will not create substantial distortions in determining the relative values of S's and the group's relevant assets on November 6, year 1. The group determines that S's relevant assets have a tax book value of $3,000 and a fair market value of $2,500. Also, the group's relevant assets (including S's assets) have a tax book value of $6,000.

(iii) Under paragraph (c)(2)(ii) of this section, S takes a $5 CODL account ($10 × $3,000/$6,000), in addition to the COFL and CSLL accounts determined in *Example 1.* The limitation described in paragraph (c)(2)(iii) of this section does not apply because the CODL account that is apportioned to S ($5) is less than 150 percent of the actual fair market value of S's U.S. assets ($2,500 × 150%).

(d) *Predecessor and successor.* A reference to a member includes, as the context may require, a reference to a predecessor or successor of the member. See § 1.1502–1(f).

(e) *Effective/applicability date.* This section applies to consolidated return years beginning after *December 21, 2007.* Taxpayers may choose to apply the provisions of this section relating to overall domestic losses to other consolidated return years beginning after December 31, 2006, as well. For rules relating to overall foreign losses and separate limitation losses in consolidated return years beginning on or before *December 21, 2007* see 26 CFR 1.1502–9 (revised as of April 1, 2007).

(f) *Expiration date.* The applicability of this section expires on *December 20, 2010.*

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 14, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–24877 Filed 12–20–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 9370]

RIN 1545–BG88

User Fees Relating to Enrollment To Perform Actuarial Services

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to user fees for the initial and renewed enrollment to become an enrolled actuary. The charging of user fees is authorized by the Independent Offices Appropriations Act (IOAA) of 1952.

DATES: *Effective Date:* These regulations are effective on December 21, 2007.

Applicability Date: For date of applicability, see § 300.0(c).

FOR FURTHER INFORMATION CONTACT: Concerning cost methodology, Eva J. Williams at (202) 435–5514; concerning the final regulations, Kimberly Mattonen at (202) 622–4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Employee Retirement Income Security Act of 1974 (Pub. L. 93–406) ordered the Secretary of Labor and the Secretary of Treasury to establish a Joint Board for the Enrollment of Actuaries. 29 U.S.C. 1241. The Joint Board shall, by regulation, establish reasonable standards and qualifications for persons performing actuarial services and the Joint Board shall enroll such individuals who, upon application, satisfy such standards and qualifications. 29 U.S.C. 1242(a). The regulations at 20 CFR Part 901, Subpart B address eligibility for enrollment and renewal of enrollment. Pursuant to the Joint Board's bylaws, the Secretary of the Treasury is to appoint an Executive Director to the Board who has the delegated authority to administer the Board's enrollment program. The Secretary of the Treasury has delegated these functions to the Internal Revenue Service and the costs of these activities are borne by the Service.

20 CFR 901.11(d)(4) provides for a reasonable non-refundable fee for applications for renewal of enrollment. Form 5434–A, ''Application for Renewal of Enrollment'' presently states that the renewal fee is $25. Final 26 CFR 300.7 and 300.8 establish separate $250 user fees for the enrollment and renewal of enrollment process. These fees represent the IRS's costs in administering the program, and the $250 fee for renewal of enrollment will supplant the $25 fee.

Authority

The IOAA of 1952 (31 U.S.C. 9701) authorizes agencies to prescribe regulations that establish charges for services provided by the agency. The charges must be fair and be based on the costs to the Government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA of 1952 provides that regulations implementing user fees are subject to policies prescribed by the President, which are currently set forth in OMB Circular A–25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for government-provided services must calculate its full cost of providing those services. In general, a user fee should be set at an amount in order for the agency to recover the cost of providing the special service, unless the Office of

Management and Budget grants an exception. Pursuant to the guidelines in the OMB Circular, the IRS has calculated its cost of providing services under the enrolled actuaries program. The IRS has determined that the full cost of administering the enrollment and re-enrollment processes is $250 per enrolled actuary per process.

The final user fees will be implemented under the authority of the IOAA of 1952 and the OMB Circular.

On October 31, 2007, a notice of proposed rulemaking (REG–134923–07) was published in the **Federal Register** [72 FR 61583]. No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted by this Treasury decision.

Special Analyses

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. These final rules affect enrolled actuaries, of which there are currently 4,600 active. The economic impact of these regulations on any small entity would result from a small entity, including a sole proprietor, being required to pay a fee prescribed by these regulations in order to obtain a particular service. The appropriate NAICS codes for enrolled actuaries relate to Insurance Other (524298) and Administrative and General Management Consulting, Including Financial Consulting (541611). Entities identified under these codes are considered small under the SBA size standards (13 CFR 121.201) if their annual revenue is less than $6.5 million. The IRS estimates that as many as 2,070 enrolled actuaries may be operating as or employed by small entities. Therefore, the IRS has determined that these final rules will affect a substantial number of small entities. The dollar amounts of the fees are not, however, substantial enough to have a significant economic impact on any entity subject to the fees. The amounts of the fees are commensurate with, if not less than, the amount charged by professional organizations. Persons who elect to apply for enrollment or renewal of enrollment also receive benefits from obtaining the enrolled actuary designation. Pursuant to section 7805(f) of the Internal Revenue Code, the NPRM preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact.

Drafting Information

The principal author of these regulations is Kimberly A. Mattonen of the Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR Part 300 is amended as follows:

PART 300—USER FEES

■ **Paragraph 1.** The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

■ **Par. 2.** Section 300.0 is amended as follows:

■ 1. Paragraphs (b)(7) and (b)(8) are added.

■ 2. Paragraph (c) is revised.

■ The additions and revision read as follows:

§ 300.0 User fees, in general.

* * * * *

(b) * * *

(7) Enrolling an enrolled actuary.

(8) Renewing the enrollment of an enrolled actuary.

(c) *Effective/applicability date.* This part 300 is applicable March 16, 1995, except that the user fee for processing offers in compromise is applicable November 1, 2003; the user fee for the special enrollment examination, enrollment, and renewal of enrollment for enrolled agents is applicable November 6, 2006; the user fee for entering into installment agreements on or after January 1, 2007, is applicable January 1, 2007; the user fee for restructuring or reinstatement of an installment agreement on or after January 1, 2007, is applicable January 1, 2007; and the user fee for the enrollment and renewal of enrollment for enrolled actuaries is applicable January 22, 2008.

■ **Par. 3.** Section 300.7 is added to read as follows:

§ 300.7 Enrollment of enrolled actuary fee.

(a) *Applicability.* This section applies to the initial enrollment of enrolled actuaries with the Joint Board for the Enrollment of Actuaries pursuant to 20 CFR Part 901.

(b) *Fee.* The fee for initially enrolling as an enrolled actuary with the Joint Board for the Enrollment of Actuaries is $250.00.

(c) *Person liable for the fee.* The person liable for the enrollment fee is the applicant filing for enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries.

■ **Par. 5.** Section 300.8 is added to read as follows:

§ 300.8 Renewal of enrollment of enrolled actuary fee.

(a) *Applicability.* This section applies to the renewal of enrollment of enrolled actuaries with the Joint Board for the Enrollment of Actuaries pursuant to 20 CFR Part 901.

(b) *Fee.* The fee for renewal of enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries is $250.00.

(c) *Person liable for the fee.* The person liable for the renewal of enrollment fee is the person renewing their enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 07–6156 Filed 12–18–07; 2:32 pm]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2001–0004; FRL–8508–4]

RIN–2060–AN88

Prevention of Significant Deterioration and Nonattainment New Source Review: Reasonable Possibility in Recordkeeping

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule finalizes proposed revisions to the regulations governing the major new source review (NSR) programs mandated by parts C and D of title I of the Clean Air Act (CAA). These changes clarify the ''reasonable possibility'' recordkeeping and reporting standard of the 2002 NSR reform rules. The ''reasonable possibility'' standard identifies for sources and reviewing authorities the criteria under which an owner or operator of a major stationary source undergoing a physical change or change in the method of operation that does not

trigger major NSR permitting requirements must keep records. The standard also specifies the recordkeeping and reporting requirements on such sources. As noted in the proposal, the U.S. Court of Appeals for the DC Circuit in *New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005) (*New York*) remanded for the EPA either to provide an acceptable explanation for its ''reasonable possibility'' standard or to devise an appropriately supported alternative. To satisfy the Court's remand, the EPA is clarifying what constitutes ''reasonable possibility'' and when the ''reasonable possibility'' recordkeeping requirements apply.

DATES: This final rule is effective on January 22, 2008.

ADDRESSES: *Docket.* The EPA has established a docket for this action under Docket ID No. [EPA–HQ–OAR–2001–0004]. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Air and Radiation Docket and Information Center telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The telephone number for the Public Reading Room is (202) 566–1744. Visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Sutton, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711, *telephone number:* (919) 541–3450; *fax number:* (919) 541–5509, e-mail address: *sutton.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I obtain additional information?
II. Background and History of the Reasonable Possibility Standard
III. Summary of the Final Rule
IV. Legal and Policy Rationale for Action
A. Purpose of the Reasonable Possibility Standard
B. How Our Final Rule Differs From Proposal
C. Why Recordkeeping Trigger Is at 50 Percent of NSR Significant Levels
D. Fugitive Emissions and Emissions Due to Startup and Malfunction
E. Additional Methods Supporting Compliance
V. Effective Date of This Rule and Requirements for State Implementation Plans
VI. Statutory and Executive Order Reviews
A. Executive Order 12866—Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132—Federalism
F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
VII. Judicial Review
VIII. Statutory Authority

I. General Information

A. Does this action apply to me?

Entities affected by this final rule include major stationary sources in all industry groups.[1] The majority of sources potentially affected are expected to be in the following groups:

Industry group	SIC [a]	NAICS [b]
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122.
Petroleum Refining	291	324110.
Industrial Inorganic Chemicals	281	325181, 325120, 325131, 325182, 211112, 325998, 331311, 325188.
Industrial Organic Chemicals	286	325110, 325132, 325192, 325188, 325193, 325120, 325199.
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510.
Natural Gas Liquids	132	211112.
Natural Gas Transport	492	486210, 221210.
Pulp and Paper Mills	261	322110, 322121, 322122, 322130.
Paper Mills	262	322121, 322122.
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213.
Pharmaceuticals	283	325411, 325412, 325413, 325414.

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

Entities affected by the rule also include States, local permitting authorities, and Indian country.

B. Where can I obtain additional information?

In addition to being available in the docket, an electronic copy of this preamble and final amendments will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this notice will be posted on the EPA's NSR Web site,

[1] As noted in our proposal (72 FR 10449), the ''reasonable possibility'' standard does not apply to existing minor sources or to ''synthetic minor modifications.''

under Regulations & Standards, at *http://www.epa.gov/nsr*.

II. Background and History of the Reasonable Possibility Standard

We recognized that the long-standing major NSR applicability test based on ''actual-to-potential'' methodology was the subject of claims by industry representatives that the actual-to-potential methodology resulted in ''confiscation'' of unused plant capacity following a modification project. Accordingly, in a proposal in 1996, we proposed to allow non-utility units to use an actual-to-future-actual methodology, similar to what we had already extended to electric utility steam generating units (other than new units or the replacement of existing units) in the 1992 WEPCO rule. 61 FR at 38255. Some States commented that the accuracy of applicability determinations for major NSR was compromised by the potential for error in calculations of future actual projections. As a result, in 1998, we issued a supplemental proposal requesting comment on an actual-to-future-enforceable-actual methodology. To use this test, a source would be required to accept a permit limit equal to its future actual projection. 63 FR 39857. That proposal received many negative comments, particularly from States that were concerned about increases in resource burdens and in paperwork related to creating and enforcing the future actual emissions limit.

In the 2002 NSR reform rules (67 FR 80186, December 31, 2002), we promulgated an actual-to-projected-actual methodology for major NSR applicability determinations.[2] That rule further provides that if a source calculates its projected actual emissions for the project below major NSR significant levels, the source must comply with recordkeeping and, in some cases, reporting requirements, if there is a ''reasonable possibility'' that the project would result in a significant emissions increase. We included these requirements to respond to concerns that a source's projection could erroneously understate emissions and that the project could result in an emissions increase greater than the significant levels. Our goal for developing the ''reasonable possibility'' standard was to strike a balance between, on the one hand, States' concerns with possible calculation errors in applicability determinations and, on the other hand, sources' and States' concerns about resource burdens.

Specifically, we promulgated the ''reasonable possibility'' standard to apply ''* * * in circumstances where there is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase * * *'' (*e.g.*, 40 CFR 52.21(r)(6)).[3] We did not define the term ''reasonable possibility'' or identify the criteria under which a ''reasonable possibility'' would arise. Sources whose project resulted in a reasonable possibility of a significant emissions increase were required to keep pre-change and post-change records. Pre-change records include a description of the project, identification of units that could be affected, a description of the applicability test used, and netting calculations (if applicable). For purposes of pre-change recordkeeping, the description of the applicability test addresses baseline actual emissions, projected actual emissions, and emissions excluded (such as due to demand growth) with an explanation as to why they are excluded. (See, *e.g.*, 40 CFR 52.21(r)(6)(i).) The post-change recordkeeping requirement—actually a recordkeeping and monitoring requirement—entailed monitoring emissions of those regulated NSR pollutants for which there was a reasonable possibility of a significant emissions increase and calculating and maintaining records of the annual emissions for 5 (or 10) years. (See, *e.g.*, 40 CFR 52.21(r)(6)(iii).) Further, for certain cases, sources whose project resulted in a reasonable possibility of a significant emissions increase were required to submit pre-change and/or post-change reports to the reviewing authority. The reporting requirements applied depending on whether the unit was an electric utility steam generating unit and on whether the project's annual emissions exceeded the baseline by a significant amount. (See, *e.g.*, 40 CFR 52.21(r)(6)(ii), (iv), and (v).)

In the *New York* case, the Court held, ''[b]ecause EPA has failed to explain how it can ensure NSR compliance without the relevant data, we will remand for it either to provide an acceptable explanation for its ''reasonable possibility'' standard or to devise an appropriately supportive alternative.'' 413 F.3d at 35–36. This final action addresses the Court's remand by including regulatory changes that clarify the reasonable possibility standard and specify the criteria under which records must be kept for a physical change or change in the method of operation that does not trigger major NSR permitting requirements. (For purposes of this action, we refer to the physical or operational change interchangeably as a change or a project.) Two options were proposed in the March 8, 2007 proposal (45 FR 10445, March 8, 2007). These options include the ''percentage increase trigger'' and the ''potential emissions trigger.'' Based on our[4] evaluation and consideration of comments received on the two main options proposed for clarifying the ''reasonable possibility'' standard, we are finalizing the ''percentage increase trigger'' option with refinements to address concerns raised by commenters.

Other background information for this action is included in the notice of proposed rulemaking (72 FR 10445, March 8, 2007), and this notice assumes familiarity with that information.

III. Summary of the Final Rule

This rule finalizes the ''percentage increase trigger'' option, with a few changes from what we proposed as our preferred option. Under the proposed ''percentage increase trigger'' option, there was a reasonable possibility that your change would result in a significant emissions increase if the projected increase in emissions of a pollutant—determined by comparing baseline actual emissions to projected actual emissions—equaled or exceeded 50 percent of the applicable NSR significant level for that pollutant. The proposed rule imposed recordkeeping, emissions monitoring, and reporting requirements on any source projecting that a change could result in a reasonable possibility of a significant emissions increase.

By definition in our regulations, ''projected actual emissions'' excludes emissions attributable to an independent factor[5] (such as demand growth); see, *e.g.*, 40 CFR 52.21(b)(41). Likewise, in our proposal, we excluded emissions attributable to independent factors from the projected increase in emissions to which the ''reasonable possibility'' recordkeeping trigger applied. In this final action, based on the comments received, we are requiring

[2] Under the actual-to-projected-actual methodology, a source may opt to use potential to emit as its projected actual emissions. See, *e.g.*, 40 CFR 52.21(b)(41)(ii)(*d*).

[3] For example, we required that owners/operators record the netting calculations for a project if the owners/operators used emissions reductions elsewhere at the source to conclude that the project was not a major modification. 67 FR at 80197.

[4] In this rulemaking, the terms ''we,'' ''us,'' and ''our'' refer to the EPA and the terms ''you'' and ''your'' refer to the owners or operators of major stationary sources of air pollution.

[5] Use of the term ''projected actual emissions'' in this preamble has the same meaning for both major NSR applicability and the ''reasonable possibility'' recordkeeping and reporting requirements.

that emissions attributable to independent factors (such as demand growth) be considered for purposes of the ''percentage increase'' test. We are retaining the proposed approach, which requires sources to compare baseline actual emissions to projected actual emissions to determine whether this value equals or exceeds 50 percent of the applicable NSR significant level. The final rule requires these sources to comply with both the pre-change and the post-change recordkeeping and reporting requirements, as in the proposed rule. This final rule includes the additional requirement that sources whose projected actual emissions increase is less than 50 percent of the applicable NSR significant level must determine whether emissions attributable to demand growth that is unrelated to the change would cause the post-project emissions increase to exceed 50 percent of the applicable NSR significant level. If so, then under the final rule, these sources also have a reasonable possibility of causing a significant emissions increase, but under these circumstances, the final rule requires such sources to comply with only the pre-change recordkeeping requirements and not the pre-change reporting requirements or post-change recordkeeping and reporting requirements.

At the same time that we proposed the 50-percent ''percentage increase trigger'' option, we included that approach as an interim interpretation in appendix S of 40 CFR part 51. In this final rule, we are amending appendix S to include the additional requirement concerning independent factors (such as demand growth) described earlier in this section.

IV. Legal and Policy Rationale for Action

A. Purpose of the Reasonable Possibility Standard

From the standpoint of compliance, project-related records allow permitting authorities and enforcement officials to evaluate a source's claim that any emissions increase from a project does not trigger NSR. If ease of enforcement were our only consideration, it would point us toward the most inclusive of recordkeeping and reporting requirements. Nonetheless, agencies do not invariably require the regulated community to keep records to prove the nonapplicability of a requirement. In imposing recordkeeping requirements in this case, we strove for a balance between ease of enforcement and avoidance of requirements that would be unnecessary or unduly burdensome on reviewing authorities or the regulated community.

Initially, in promulgating the ''reasonable possibility'' standard, we intended to limit recordkeeping requirements to those projects for which variability in calculating emissions creates an interest in obtaining additional information in order to confirm that the appropriate applicability outcome is reached. Nonetheless, the Court expressed concerns with the lack of definition for the standard and with the uncertainty that accompanies particular elements of the calculations, including demand growth and fugitive emissions, as well as startups and malfunctions. The regulated community expressed concern that the lack of a bright-line test left them uncertain about their recordkeeping and reporting obligations. As a result, our proposal in response to the Court's remand in *New York* included a bright-line, 50-percent test for the ''reasonable possibility'' standard. We stated that the closer the projected actual emissions are to the significant level, the greater the likelihood that the project could ultimately result in a significant emissions increase, and that the bright-line test will capture most if not all projects that have a higher probability of variability and/or error in projected actual emissions. Thus, we proposed the bright-line test to create certainty for the regulated community and reviewing authorities.

B. How Our Final Rule Differs From Proposal

We are finalizing the ''percentage increase trigger'' option with one difference from the proposed option. This final rule requires consideration of ''demand growth'' emissions and additionally requires pre-change recordkeeping (specified, *e.g.*, at 40 CFR 52.21(r)(6)(i)) of a project whose emissions increase would equal or exceed 50 percent of the applicable NSR significant level only if emissions due to independent factors (such as demand growth) are included. As proposed, under the ''percentage increase'' test, ''reasonable possibility'' recordkeeping and reporting requirements are triggered in the case of a 50 percent or greater increase in emissions, calculated as the difference of ''baseline actual emissions'' and ''projected actual emissions.'' Under our NSR regulations, the calculation of ''projected actual emissions'' excludes ''that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions * * * and that are also unrelated to the particular project, including any increased utilization due to product demand growth.* * *'' See, *e.g.*, 40 CFR 52.21(b)(41). This exclusion is commonly called the ''demand growth exclusion.''

The Court, in its order on remand of the reasonable possibility provision to EPA, specifically cited as a problem the possibility that sources would overstate the demand growth exclusion:

> [T]he intricacies of the actual-to-projected-actual methodology will aggravate the enforcement difficulties stemming from the absence of data. The methodology mandates that projections include fugitive emissions, malfunctions, and start-up costs, and *exclude demand growth unrelated to the change.** * * Each such determination requires sources to predict uncertain future events. By understating projections for emissions associated with malfunctions, for example, or *overstating the demand growth exclusion,* sources could conclude that a significant emissions increase was not reasonably possible. Without paper trails, however, enforcement authorities have no means of discovering whether the exercise of such judgment was indeed ''reasonable.''

413 F.3d at 35 (emphasis added).

Following our proposal to treat 50 percent of the applicable NSR significant level as the trigger for ''reasonable possibility'' recordkeeping and reporting requirements, we received numerous comments expressing continued concerns about ''demand growth'' emissions. These commenters argued that a source's inaccurate or improper use of the demand growth exclusion could allow projects to go unreviewed under the proposed rule trigger.

We have decided to refine the ''percentage increase'' test by providing for recordkeeping to document projections of an emissions increase that would exceed the 50-percent threshold if emissions attributable to independent factors (such as demand growth) are counted. Thus, this final rule requires sources to include emissions from demand growth for purposes of applying the ''percentage increase'' test. Several commenters specifically recommended this approach. Some commenters suggested applying the trigger at 100 percent of the significant level where demand growth is concerned. However, we believe that such an approach would complicate the regulatory requirements by applying two different percentages depending on the circumstances. For ease of implementation, we are applying the same trigger—50 percent of the significant level—that applies to sources

not relying on excluding emissions caused by independent factors.

A project that triggers ''reasonable possibility'' recordkeeping and reporting requirements but does so only when counting emissions due to an independent factor (such as demand growth) will be subject to only pre-change recordkeeping requirements. The project will not be subject to pre-change reporting requirements or post-change recordkeeping or reporting requirements. According to the ''reasonable possibility'' standard of our existing rules, the source owner/operator must make a pre-change report prior to construction if the unit is an electric utility steam generating unit. (See, *e.g.*, 40 CFR 52.21(r)(6)(ii).) Under this final rule, however, the pre-change reporting requirement does not apply to the utility project unless the projected actual emissions increase alone equals or exceeds 50 percent of the NSR significant levels.

We believe this pre-change recordkeeping requirement establishes an adequate paper trail to allow enforcement authorities to evaluate the source's claims concerning what amount of an emissions increase is related to the project and what amount is attributable to demand growth. In most cases, it is unlikely that ''demand growth'' emissions could ultimately be found to be related to changes made at a facility. Accordingly, NSR applicability is not affected by whether a source overestimates or underestimates demand growth emissions. Nonetheless, we recognize that for some limited types of projects, additional information may be required to determine whether a projected emissions increase is related to the change. The source must retain pre-change records that describe the project, identify the units that could be affected, describe the baseline actual emissions, the projected actual emissions, and the emissions excluded due to demand growth with an explanation as to why they were excluded. These records provide permitting authorities and enforcement officials sufficient information to determine whether the type of project undertaken could have a causal link to increases in emissions due to demand growth. With these records, enforcement authorities will have an adequate starting point to make further inquiries and to access other types of records, as discussed later in this preamble, to verify post-project demand growth and enforce NSR requirements.

In imposing a recordkeeping requirement on projects that attribute any emissions to demand growth, we believe our ''percentage increase test'' further addresses the Court's concerns that a source might overstate the demand growth exclusion but not retain records to support its exclusion of emissions attributable to demand growth. The rule imposes pre-change recordkeeping requirements on projects that have a higher probability of variability and/or error in projected actual emissions. This approach balances ease of enforcement with avoidance of requirements that would be unnecessary or unduly burdensome on reviewing authorities or the regulated community. Because sources that rely on the demand growth exclusion already conduct the necessary calculations to determine whether the project would trigger major NSR requirements, requiring the source to retain this calculation adds little additional burden.

The following example illustrates the difference between the ''percentage increase trigger'' as proposed and as finalized with the refinement for demand growth. Consider an owner/operator who calculates a post-project emissions increase of 60 tpy for a pollutant with a 40-tpy significant level. The owner/operator attributes 10 tons of the increase to the project and the other 50 tons to demand growth. The owner/operator correctly concludes that the project is not a ''major modification'' that triggers major NSR requirements because the emissions increase of 10 tpy is below the significant level for the pollutant. Under our proposal, the project would not have triggered any recordkeeping or reporting requirements because the projected increase of 10 tpy is below 50 percent of the applicable significant level of 40 tpy (i.e., below the 20-tpy threshold level that triggers ''reasonable possibility'' recordkeeping and reporting requirements). In contrast, under this final rule, the source must take the additional step of determining whether the project has a reasonable possibility of a significant emissions increase before subtracting the 50 tpy of emissions attributed to demand growth. Because 60 tpy exceeds the 20-tpy threshold level (and even though the owner/operator attributes only 10 tons of the increase to the project), the project would trigger pre-change recordkeeping requirements as described earlier in this section. The project would not trigger pre-change reporting or post-change recordkeeping (which includes emissions monitoring) or reporting.

C. Why Recordkeeping Trigger Is at 50 Percent of NSR Significant Levels

Our final rule (like our proposal) uses 50 percent of the applicable NSR significant level as the trigger for ''reasonable possibility'' recordkeeping and reporting requirements, but we solicited comment on use of a different percentage, such as 25, 33, 66 or 75 percent. Commenters who supported the ''percentage increase trigger'' option expressed support for a trigger of not less than 50 percent. We are using 50 percent because it balances competing interests, as described by the Court. Specifically, the Court stated:

> We recognize that less burdensome requirements may well be appropriate for sources with little likelihood of triggering NSR. * * *

413 F.3d at 34.

Agencies have authority under circumstances such as these to establish a bright-line test, as opposed to making case-by-case determinations. See, *e.g.*, *Time Warner Entertainment Co. L.P.* v. *F.C.C.,* 240 F.3d 1126, 1141 (DC Cir. 2001). We believe a bright-line test at 50 percent will capture projects that have a higher probability of variability and/or error in projected emissions.

Projects with projected increases below the 50-percent threshold, especially when emissions from demand growth are included in projections, are, we believe, sufficiently small that any variability or error in calculations is less likely to be large enough for the change to have increased emissions to the significant level. This view seems to be consistent with comments submitted by the group of States that successfully challenged the ''reasonable possibility'' rule.[6] Other commenters included general objections to the 50-percent threshold but did not give specific examples of projects for which sources would project emissions increases of less than 50 percent of the significant level but which would nevertheless be likely to cause emissions increases above the significant level. For projects with a projected increase of more than 50 percent of the significant level, the increase is large enough that we conclude there is a reasonable possibility of a significant emissions increase, due to variability in emissions and the possibility of error in the projection. As a result, for these projects, we do not believe the imposition of ''reasonable possibility'' recordkeeping and reporting

[6] See comment letter from Hon. Andrew M. Cuomo, New York Attorney General, *et al.,* at Docket Item EPA–HQ–OAR–2001–0004–0810.1, page 9, footnote 2.

requirements to be unnecessarily burdensome. The project-specific records and reports created pursuant to this rule (see, *e.g.*, 40 CFR 52.21(r)(6)) will provide an adequate paper trail for reviewing authorities and will be supplemented with records that are kept for other purposes for use by a reviewing agency in determining whether enforcement action is warranted.

Some commenters expressed concern that a threshold at 50 percent of NSR significant levels would capture too many small projects, including routine maintenance projects. The ''reasonable possibility'' standard applies when a major source undergoes a physical change or change in the method of operation. We point out that in defining ''major modification,'' the major NSR regulations specify that a ''physical change or change in the method of operation'' excludes routine maintenance, repair, and replacement, certain uses of alternative fuel or raw material, certain increases in hours of operation or production rate, changes in ownership, and certain activities associated with clean coal technology. (See, *e.g.*, 40 CFR 52.21(b)(2).) Thus, a project that is not a ''physical change or change in the method of operation'' is not subject to ''reasonable possibility'' recordkeeping and reporting requirements.

D. Fugitive Emissions and Emissions Due to Startup and Malfunction

Under the actual-to-projected-actual methodology of the major NSR applicability test, projected actual emissions include fugitive emissions as well as emissions anticipated to be caused by startups and malfunctions. One of the concerns expressed by the Court in remanding the ''reasonable possibility'' standard was that sources may underestimate future emissions by understating fugitive, startup, or malfunction emissions.

We do not believe projections of fugitive, startup, or malfunction emissions are likely to be significant causes of variability or error that would lead to underestimates of emissions increases from existing units.[7] The types of emissions at issue are included in the project's baseline actual emissions, and we have no reason to expect greater amounts of these types of emissions in the post-project projections. Thus, any variability or error in estimating these types of emissions is not likely to lead to underestimates of emissions increases due to the project. Indeed, because the types of the projects at issue are often small improvements—that is, they are relatively small physical or operational changes, many of which would make nonroutine repairs or other types of improvements or make the source operations run more smoothly—such projects would, if anything, reduce these types of emissions from the amounts included in the baseline.

E. Additional Methods Supporting Compliance

We believe that the reasons described earlier are sufficient to support the 50-percent bright-line test, with the demand growth refinement. In addition, we believe that as a practical matter, existing records will aid in permitting and enforcement.

For projects that do not trigger recordkeeping and reporting requirements under the ''reasonable possibility'' standard, many source owners/operators will have various types of records that, collectively, provide information on the baseline actual emissions and projected actual emissions, as well as post-change emissions. These records will also be valuable for projects that trigger the ''reasonable possibility'' recordkeeping and reporting requirements but are not required to track post-change emissions. Such records include but are not limited to reports submitted to reviewing authorities pursuant to title V operating permit program requirements of 40 CFR parts 70 and 71, State minor NSR permit application data, business records, and emissions inventory data.

In the *New York* case, the Court questioned whether reporting requirements of the CAA's title V program would provide the information enforcement authorities need, noting, ''EPA fails to explain how emissions reported under title V can be traced to a particular physical or operational change.'' 413 F.3d at 35. We recognize the Court's concern that records kept in connection with monitoring and compliance under the title V operating permit program do not necessarily provide specific information on emissions increases from particular projects. Even so, many of these records will be useful in allowing enforcement authorities to identify an emissions increase from a particular piece of equipment, which can provide a starting point for inquiry as to whether a particular project was associated with such an increase. The enforcement authority could determine whether the source has kept records of changes that caused those emissions increases and, if not, whether the source has an adequate explanation for the emissions increases.

Sources annually quantify and report emissions to reviewing authorities for purposes of computing annual permit program emission fees. Some sources calculate their reported emissions based on stack testing and emission factors. Other sources submit emissions data collected from continuous emissions monitoring (CEM). This information, in conjunction with title V permit applications, can allow enforcement authorities to determine whether emissions increases are associated with a particular piece of equipment.

In addition, major sources are subject to periodic monitoring and recordkeeping requirements for every individual applicable requirement in the source's operating permit. *See* 71 FR 75422. These requirements frequently apply on an emissions-unit-by-emissions-unit basis. In many cases, physical changes or changes in the method of operation associated with a project occur at the emission unit level, so that these emissions records provide enforcement authorities a starting point for further inquiry as to whether a project at that unit is associated with such increase. Large emissions equipment is also subject to additional monitoring and recordkeeping under the ''compliance assurance monitoring'' (CAM) regulations at 40 CFR part 64. The CAM rule requires sources to establish monitoring or recordkeeping sufficient to assure compliance on a pollutant-specific basis at each emissions unit for which there is a limit, standard, or similar pollution control requirement. Monitoring assures proper operation of active pollution control devices in order to reduce the amount of downtime which would cause emissions increases. Typically, parameters are monitored that show proper operation of the control device, and if these parameters fall outside acceptable ranges or limits, then it is possible that there has been an emissions increase. In certain cases, CEMS (continuous emission monitoring systems), COMS (continuous opacity monitoring systems), PM CEMS (particulate matter continuous emission monitoring systems), or similar direct monitoring, is required to be used for CAM. In many such cases, these devices would be providing direct evidence of emissions increases. Monitoring compliance data includes logs of operations, visible emissions and instrumental opacity readings, stack test reports, analytically generated mass balances, and strip charts from continuous direct emissions and parametric monitors. These records can

[7] We are not concerned about fugitive, startup, or malfunction emissions from new units at a project, because their emissions increases are based on potential to emit.

also allow enforcement authorities to identify an emissions increase at a particular piece of equipment, which provides a starting point for further inquiry about projects associated with that equipment.[8]

Regarding State minor source programs, the Court also expressed concern:

> * * *[R]eliance on state programs to establish minimum recordkeeping and reporting standards means that states unwilling to impose stricter rules are free to retain the 2002 rule's approach. * * *

413 F.3d at 35.

While we recognize the Court's concern that States have latitude in structuring their minor source review programs, we recently collected information confirming that, as a practical matter, existing State minor NSR programs already provide data that assist reviewing authorities and enforcement authorities in identifying major modifications. Specifically, CAA 110(a)(2)(C) requires States to regulate construction and modification of stationary sources. Accordingly, States have adopted programs that require the owner/operator to provide notification or obtain a permit before construction or modification. These steps allow reviewing authorities to confirm the source's preconstruction projections and non-major NSR applicability determination. Minor NSR programs by definition apply to emissions increases less than the major NSR significant level, and only activities that a State qualifies as ''insignificant activities'' under the SIP-approved program may be excluded from review. Thus, reviewing authorities have an opportunity to review virtually all projects causing an emissions increase before construction begins. Moreover, our regulations (40 CFR 51.161) provide for public review of information submitted by owners/operators for purposes of minor NSR review. Thus, information provided for purposes of minor NSR programs is also of value in determining applicability of major NSR.

In October 2004, the EPA published an Information Collection Request (ICR) covering changes to the major NSR regulations. Our ICR analysis resulted in an estimate of 25,000 minor NSR permit applications per year processed by State and local agencies at major sources (specifically, 74,609 applications over a 3-year period).[9] These permit applications include descriptions of the projects and other data that enforcement authorities can use in evaluating the applicability of NSR.

Business records include such routinely maintained operation-related records as production records, capital project development and appropriation requests, work orders, purchase records, and sales records. This information is readily available to reviewing authorities. In addition, publicly available information on production levels and growth in various industrial sectors can be used by authorities to determine if unexplained actual emissions increases are occurring at a source that might have constructed, installed, or modified equipment without NSR review.

Sources report the earlier-described title V data and State minor source permit data to the States, and, in turn, States must submit certain emissions data to the EPA. All information that the source submits to the State is available to assist EPA enforcement authorities, regardless of whether the information is included in the State's data submittal to EPA. States submit emissions inventory data directly to the EPA through the EPA's Central Data Exchange.[10] Under the Consolidated Emissions Reporting Rule (CERR) (at 40 CFR part 51, subpart A), States must report criteria pollutant emissions from large point sources every year and must report emissions for all point sources, at the process level, at 3-year intervals.

States develop emissions inventories in support of their State Implementation Plans (SIPs) and submit the data to the EPA through the Governor or his/her designee. The EPA interprets CAA 110(a)(2)(F) as requiring SIPs to provide for the reporting of criteria air pollutant emissions from stationary sources for all areas under the general SIP requirements of section 110. In addition, EPA interprets section 172(c)(3) as providing the Administrator with discretionary authority to require other emissions data from stationary sources as deemed necessary for SIP development in nonattainment areas to attain the National Ambient Air Quality Standards (NAAQS).

Another source of data is the National Emissions Inventory (NEI). Produced by the EPA every 3 years, the NEI is an inventory of criteria air pollutant and hazardous air pollutant emissions from stationary sources. The EPA uses data submitted by States under the CERR (as well as data from other sources) to develop the NEI. The NEI has several applications, including support for trends analyses and national rulemakings.

Enforcement authorities can use all of these earlier-described information sources to examine whether emissions from particular sources and, in some cases, particular pieces of equipment have increased. Such increases could give an enforcement authority a starting point for further inquiry. Upon inquiring, the enforcement authority could determine whether the source has kept records of changes that caused those emissions increases, and if not, whether the source has an adequate explanation for the emissions increases.

V. Effective Date of This Rule and Requirements for State Implementation Plans

These changes will take effect in the Federal PSD and Federal nonattainment NSR programs on January 22, 2008. This means we will apply these rules in any area without a SIP-approved PSD or SIP-approved nonattainment NSR program for which we are the reviewing authority or for which we have delegated our authority to issue permits to a State, local, or tribal reviewing authority.

We are establishing these requirements as minimum program elements of the PSD and nonattainment NSR programs. Notwithstanding these requirements, it may not be necessary for a State or local authority to revise its SIP program to begin to implement these changes.[11]

Some State or local authorities may be able to adopt these changes through a change in interpretation of the term ''reasonable possibility'' without the need to revise the SIP. For any State or local authority that can implement the changes without revising its approved SIP, the changes will become effective when the reviewing authority publicly announces that it accepts these changes by interpretation. In the case of NSR SIP revisions that include the term ''reasonable possibility'' but that EPA has not yet approved, we will approve the SIP revision if the State or local authority commits to implementing the ''reasonable possibility'' standard in a manner consistent with our final rule.

[8] Major stationary sources are also subject to State reporting requirements. In addition to data collected from sources for purposes of title V permit program emission fees, as noted earlier, States may also collect emissions data from sources for local ambient air quality planning purposes.

[9] See Supporting Statement for Information Collection Request, EPA ICR Number 1230.17, at Docket Item EPA–HQ–OAR–2004–0001–0835, p. 14.

[10] The EPA's Central Data Exchange (*http://www.epa.gov/cdx/*) is the point of entry on the Environmental Information Exchange Network for environmental data submissions to the Agency.

[11] Currently, there are no tribal permitting agencies with an approved TIP to implement the major NSR permitting program.

Although no SIP revision may be necessary in certain areas that adopt these changes by interpretation, we encourage State and local authorities in such areas to revise their SIPs to adopt these changes, in order to enhance the clarity of the existing rules.

For State and local authorities that revise their SIPs to adopt these changes, the changes are not effective in such areas until we approve the SIP revision. These State and local authorities must submit revisions to SIPs to EPA for approval within 3 years.

State and local authorities may adopt or maintain NSR program elements that have the effect of making their regulations more stringent than these rules. Several State and local authorities have regulations already approved into their SIPs that are more stringent than these rules. These State and local authorities must submit notice to EPA within 3 years to acknowledge that their regulations fulfill these requirements.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises policy issues arising from the President's priorities. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB's recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden as the burden imposed by this rule has already been taken into account in previously approved information collection requirement actions under the NSR program. The OMB has previously approved the information collection requirements contained in the existing 40 CFR parts 51 and 52 regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0003, EPA ICR number 1230.19. A copy of the OMB-approved Information Collection Request (ICR), EPA ICR number 1230.19 may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or by calling (202) 566–1672.

It is necessary that certain records and reports be collected by a State or local agency (or the EPA Administrator in non-delegated areas), for example, to: (1) Confirm the compliance status of stationary sources, including identifying any stationary sources subject/not subject to the rule, and (2) ensure that the stationary source control requirements are being achieved. The information is then used by the EPA or State enforcement personnel to ensure that the subject sources are applying the appropriate control technology and that the control requirements are being properly operated and maintained on a continuous basis. Based on the reported information, the State, local, or tribal agency can decide which plants, records, or processes should be inspected. Such information collection requirements for sources and States are currently reflected in the approved ICR referenced above for the NSR program.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information; disclosing and providing information; adjusting the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statue unless the Agency certifies that this action will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, a small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (see 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA because this action merely provides explanation of an existing recordkeeping and reporting standard.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''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 does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely provides explanation of an existing recordkeeping and reporting standard. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 13175, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This action does not have tribal implications, as there are no tribal authorities currently issuing major NSR permits. Thus, Executive Order 13175 does not apply to this action.

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

Executive Order 13045, entitled ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action does not establish an environmental standard intended to mitigate health or safety risks but rather provides explanation of an existing recordkeeping and reporting standard.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action does not constitute a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it will not likely have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, any disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. The reason for EPA's determination is because this action does not affect the level of protection provided to human health or the environment as it merely provides an explanation of an existing recordkeeping and reporting standard.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action does not constitute a ''major rule'' as defined by 5 U.S.C. 804(2). Therefore, this action will be effective January 22, 2008.

VII. Judicial Review

Under section 307(b)(1) of the Act, judicial review of this final action is available by filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 19, 2008. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Act, the requirements of this final

action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

VIII. Statutory Authority

The statutory authority for this action is provided by sections 307(d)(7)(B), 101, 111, 114, 116, and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601). This action is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 14, 2007.

Stephen L. Johnson,

Administrator.

■ For reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart I—[Amended]

■ 2. Section 51.165 is amended by revising paragraph (a)(6) introductory text and adding paragraph (a)(6)(vi) to read as follows:

§ 51.165 Permit requirements.

(a) * * *

(6) Each plan shall provide that, except as otherwise provided in paragraph (a)(6)(vi) of this section, the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph (a)(6)(vi) of this section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (a)(1)(xxviii)(B)(*1*) through (*3*) of this section for calculating projected actual emissions. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (a)(6)(i) through (vi) of this section.

* * * * *

(vi) A ''reasonable possibility'' under paragraph (a)(6) of this section occurs when the owner or operator calculates the project to result in either:

(A) A projected actual emissions increase of at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph (a)(1)(xxvii) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(B) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (a)(1)(xxviii)(B)(*3*), sums to at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph (a)(1)(xxvii) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (a)(6)(vi)(B) of this section, and not also within the meaning of paragraph (a)(6)(vi)(A) of this section, then provisions (a)(6)(ii) through (v) do not apply to the project.

* * * * *

■ 3. Section 51.166 is amended by revising paragraph (r)(6) introductory text and adding paragraph (r)(6)(vi) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

(r) * * *

(6) Each plan shall provide that, except as otherwise provided in paragraph (r)(6)(vi) of this section, the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph (r)(6)(vi) of this section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (b)(40)(ii)(*a*) through (*c*) of this section for calculating projected actual emissions. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (r)(6)(i) through (vi) of this section.

* * * * *

(vi) A ''reasonable possibility'' under paragraph (r)(6) of this section occurs when the owner or operator calculates the project to result in either:

(*a*) A projected actual emissions increase of at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph (b)(39) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(*b*) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (b)(40)(ii)(*c*), sums to at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph (b)(39) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (r)(6)(vi)(*b*) of this section, and not also within the meaning of paragraph (a)(6)(vi)(*a*) of this section, then provisions (a)(6)(ii) through (v) do not apply to the project.

* * * * *

■ 4. Appendix S to Part 51 is amended by revising paragraph IV.J introductory text and adding paragraph IV.J.6 to read as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

IV. * * *

J. *Provisions for projected actual emissions.* Except as otherwise provided in paragraph IV.J.6(ii) of this Ruling, the provisions of this paragraph IV.J apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph IV.J.6 of this Ruling, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs II.A.24(ii)(a) through

(c) of this Ruling for calculating projected actual emissions.

* * * * *

6. A ''reasonable possibility'' under paragraph IV.J of this Ruling occurs when the owner or operator calculates the project to result in either:

(i) A projected actual emissions increase of at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph II.A.23 of this Ruling (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(ii) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph II.A.24(ii)(*c*), sums to at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph II.A.23 of this Ruling (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph IV.J.6(ii) of this Ruling, and not also within the meaning of paragraph IV.J.6(i) of this Ruling, then provisions IV.J.2 through IV.J.5 do not apply to the project.

* * * * *

PART 52—[AMENDED]

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

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

Subpart A—[Amended]

■ 6. Section 52.21 is amended by revising paragraph (r)(6) introductory text and adding paragraph (r)(6)(vi) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

(r) * * *

(6) Except as otherwise provided in paragraph (r)(6)(vi)(*b*) of this section, the provisions of this paragraph (r)(6) apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph (r)(6)(vi) of this section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(*a*) through (*c*) of this section for calculating projected actual emissions.

* * * * *

(vi) A ''reasonable possibility'' under paragraph (r)(6) of this section occurs when the owner or operator calculates the project to result in either:

(*a*) A projected actual emissions increase of at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph (b)(40) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(*b*) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (b)(41)(ii)(*c*) of this section, sums to at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under paragraph (b)(40) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (r)(6)(vi)(*b*) of this section, and not also within the meaning of paragraph (r)(6)(vi)(*a*) of this section, then provisions (r)(6)(ii) through (v) do not apply to the project.

* * * * *

[FR Doc. E7–24714 Filed 12–20–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2006–0928; FRL–8509–4]

Approval and Promulgation of Air Quality Implementation Plan; South Dakota; Revisions to New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to Chapter 74:36:09 of the South Dakota Administrative Rules (Prevention of Significant Deterioration) for incorporation into the South Dakota State Implementation Plan (SIP). South Dakota adopted these rule revisions on August 29, 2006 and May 14, 2007, and submitted the requests for approval to EPA on September 1, 2006 and June 28, 2007. One rule provision that EPA had proposed to disapprove has been corrected by South Dakota. Therefore, EPA is also approving that provision. South Dakota was granted delegation of authority by EPA on July 6, 1994, to implement and enforce the federal Prevention of Significant Deterioration (PSD) permitting regulations. As part of this final rule EPA is rescinding South Dakota's delegation of authority for implementing the federal PSD regulations. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective January 22, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2006–0928. All documents in the docket are listed on the *www.regulations.gov* Web site. 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 either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Cindy Cody, Air and Radiation Program, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6228, *cody.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *South Dakota* mean the State of South Dakota, unless the context indicates otherwise.

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I. What is being addressed in this document?

Chapter 74:36:09 was submitted to EPA for inclusion in the State

Implementation Plan (SIP) by the South Dakota Department of Environment and Natural Resources (DENR) on September 1, 2006. Chapter 74:36:09 relates to the Prevention of Significant Deterioration (PSD) permit program of the State of South Dakota. Revisions to Chapter 74:36:09 were adopted by the South Dakota Board Interim Rules Committee on August 29, 2006. EPA proposed on February 1, 2007 (72 FR 4671) to partially approve and partially disapprove Chapter 74:36:09 (Prevention of Significant Deterioration) of the Administrative Rules of South Dakota under section 110 of the CAA.[1] Comments were received on our February 2007 proposal (see discussion in section III. below). Subsequent to the public comment period, South Dakota revised 74:36:09:02, adopted May 14, 2007, to address EPA's concern (see Section II) and submitted the revised provision to EPA on June 28, 2007. After considering the comments received, EPA is finalizing its approval of Chapter 74:36:09, including the now-corrected provision that EPA had proposed to disapprove. EPA is also rescinding its delegation to South Dakota of the federal PSD regulations.

II. What are the changes that EPA is approving?

EPA is approving a revision to South Dakota's SIP that incorporates by reference the federal PSD requirements, found at 40 CFR 52.21, into the State's SIP. The revision to the South Dakota Administrative Rules Chapter 74:36:09 incorporates by reference the provisions of 40 CFR 52.21, as they exist on July 1, 2005, with the exceptions noted below.

South Dakota did not incorporate by reference those sections of the federal rules that do not apply to State activities or are reserved for the Administrator of the EPA. These sections are 40 CFR 52.21(a)(1) (plan disapproval), 52.21(q) (public participation), 52.21(s) (environmental impact statements), 52.21(t) (disputed permit or redesignations), and 52.21(u) (delegation of authority).

South Dakota did not incorporate by reference provisions for Clean Units and Pollution Control Project (PCPs). These provisions were vacated by a June 24, 2005, ruling by the United States Court of Appeals for the District of Columbia Circuit. References to Clean Units and PCPs were removed by EPA from Federal regulation on June 13, 2007 (see 72 FR 32526). In addition, South Dakota did not incorporate by reference the provisions for equipment replacement (40 CFR 52.21(cc)), which were stayed indefinitely by a court order on December 24, 2003, and subsequently vacated. *See, New York* v. *EPA,* 443 F.3d 880 (D.C. Cir. 2006). Therefore, the following federal provisions found in 40 CFR 52.21 are not incorporated by reference in Chapter 74:36:09: 40 CFR 52.21(x), 52.21(y), 52.21(z), 52.21(cc), 52.21(a)(2)(iv)(e), the second sentence of 52.21(a)(2)(iv)(f), 52.21(a)(2)(vi), 52.21(b)(2)(iii)(h), 52.21(b)(3)(iii)(b), 52.21(b)(3)(vi)(d), 52.21(b)(32), 52.21(b)(42), (b)(55), (b)(56), (b)(57), (b)(58), and the phrase ''other than projects at a Clean Unit or at a source with a PAL'' in 40 CFR 52.21(r)(6).

The phrase ''reasonable possibility'' used in the federal rule at 40 CFR 52.21(r)(6) limits the recordkeeping provisions to modifications at facilities that use the actual-to-future-actual methodology to calculate emissions changes and that may have a ''reasonable possibility'' of a significant emissions increase. The South Dakota rule does incorporate by reference the phrase ''reasonable possibility'' as it is used at 40 CFR 52.21(r)(6). On March 8, 2007, EPA published a proposed rule in response to the D.C. Circuit Court's remand of the recordkeeping provisions of EPA's 2002 NSR Reform Rules (see 72 FR 10445), but EPA has not yet made a final decision with regard to the remand. Therefore, EPA may need to take further action on this portion of South Dakota's PSD rule. At this time, however, South Dakota's recordkeeping provisions are as stringent as the federal requirements, and are therefore, approvable.

The South Dakota incorporation by reference describes the circumstances in which the term ''Administrator'' continues to mean the EPA Administrator and when it means the Secretary of the South Dakota DENR instead. South Dakota rule 74:36:09:02(1) identifies the following provisions in Chapter 74:36:09 where the term ''Administrator'' continues to mean the Administrator of EPA: 40 CFR 52.21(b)(17), 52.21(b)(37)(i), 52.21(b)(43), 52.21(b)(48)(ii)(c), 52.21(b)(50)(i), 52.21(g)(1) to 52.21(g)(6), 52.21(l)(2), and 52.21(p)(2). As submitted on September 1, 2006, this list did not include 40 CFR 52.21(p)(2), and under South Dakota's PSD rule, the term ''Administrator'' in 40 CFR 52.21(p)(2) referred to the Secretary of the DENR.

This was inconsistent with EPA's determination that 40 CFR 52.21(p)(2) must still refer to the Administrator of EPA, and EPA proposed to disapprove the incorporation by reference of 40 CFR 52.21(p)(2). On June 28, 2007, South Dakota submitted to EPA a revision of Chapter 74:36:09, effective June 13, 2007, that added 40 CFR 52.21(p)(2) to the list of provisions in Chapter 74:36:09 where the term ''Administrator'' continues to mean the Administrator of EPA. Therefore, EPA is approving the incorporation by reference of 40 CFR 52.21(p)(2) as part of the approval of Chapter 74:36:09.

As noted above, South Dakota did not incorporate by reference 40 CFR 52.21(q) (public participation). South Dakota has instead incorporated by reference 40 CFR 51.166(q) (public participation) at 74:36:09:03. The regulations at 40 CFR 51.166 are what a SIP must contain for EPA to approve a PSD permit program, and generally mirror the federal PSD regulations at 40 CFR 52.21. In addition, South Dakota added in 74:36:09:03 six additional provisions that revise 40 CFR 51.166(q) in order to make the PSD permit public participation requirements specific to South Dakota.

The requirements included in South Dakota's PSD program, as specified in Chapter 74:36:09, are substantively the same as the federal PSD provisions due to South Dakota's incorporation of the federal rules by reference. EPA reviewed the revisions South Dakota made to 40 CFR 52.21 and 40 CFR 51.166 noted above and found them to be as stringent as the federal rules. EPA has, therefore, determined that the revisions are consistent with the program requirements for the preparation, adoption, and submittal of implementation plans for the Prevention of Significant Deterioration of Air Quality, as set forth at 40 CFR 51.166, and are approvable as part of the South Dakota SIP.

III. What were the comments received and EPA's response?

EPA received three comment letters on our February 1, 2007 (72 FR 4671) proposal. Two commenters supported, and one commenter opposed, our proposed action. We have considered the comments received and we are generally finalizing our action as proposed. Following is a summary of the comments.

A. Two commenters support the inclusion of Chapter 74:36:09 Prevention of Significant Deterioration into the South Dakota State Implementation Plan.

Response: EPA acknowledges receipt of the comments and agrees with the commenters.

[1] Our proposal notice discusses EPA's December 31, 2002 NSR Reform rules and the provisions that have subsequently been clarified, and vacated and remanded by the courts.

B. One commenter submitted comments opposing our proposed partial approval and supporting our proposed partial disapproval of the inclusion of Chapter 74:36:09 Prevention of Significant Deterioration into the South Dakota State Implementation Plan.

1. The commenter stated that our proposed approval ''appears to be a thinly-veiled attempt by the state to rollback critical public health and environmental safeguards in South Dakota by substituting a delegated program with a more lax state-administered program'' and that ''the proposed changes would eliminate the public's opportunity to obtain review of a PSD permit by the U.S. Environmental Protection Agency's Environmental Appeals Board and remove the automatic stay provision that provides the public with an opportunity to obtain review of a permit before construction commences.''

Response: Federal regulations specify the parameters that state-administered programs must meet and these regulations help ensure that public health and safety safeguards remain in place with the transition from a federal to a state program. Regulations at 40 CFR 51.166 set forth the criteria for PSD program approvals that EPA applies. EPA has determined that South Dakota's PSD rules meet these criteria. As discussed above, South Dakota's rules satisfy the public participation criteria in 40 CFR 51.166(q). Since these minimum criteria are satisfied, we have no grounds to conclude that South Dakota's SIP approved program will be less rigorous than the federal permitting program that the State currently administers through a delegation.

Although permits issued under SIP approved programs are not subject to appeal to EPA's Environmental Appeals Board, such actions are instead subject to the opportunities for review and appeal provided under state law. We interpret the statute and regulations to require at minimum an opportunity for state judicial review of PSD permits. See, 61 FR 1880, 1882 (Jan. 24, 1996). South Dakota has specified procedures for contesting a final PSD permit determination and requesting an administrative hearing at Chapter 74:09 of the South Dakota Administrative Rules (Contested Case Procedure). These procedures are referenced in 74:36:09:03 (Public participation). South Dakota law also provides for the right to judicial review of contested cases (SDCL 1–26–30). We, thus, have no grounds to deny PSD program approval based on the nature of review of final permit decisions under South Dakota law.

2. The commenter stated that the proposed approval ''appears to be an attempt to reduce U.S. EPA's obligation to protect endangered and threatened species in South Dakota.'' The commenter noted that the Endangered Species Act (ESA) applies to EPA's proposal to approve to South Dakota's PSD permit program such that EPA ''must determine whether this proposed action—approving major changes to the South Dakota PSD permit program—may affect any listed species'' and ''consult with the [U.S. Fish and Wildlife Service] prior to transferring air permitting authority to the State of South Dakota.'' In addition, the commenter stated that EPA ''must structure its approval * * * in such a manner as to preserve the agency's duties to protect and restore listed species and their habitat.''

Response: EPA disagrees with the commenter. EPA's approval of the South Dakota permitting program into the SIP is not an attempt to reduce ESA requirements in connection with PSD permitting in the State. As a practical matter, EPA has not carried out ESA consultation requirements in its prior approvals of PSD permitting programs for other states. Moreover, under relevant CAA provisions, states are entitled to administer approved PSD permitting programs, and EPA is required to approve a state's program that satisfies applicable CAA requirements. The CAA SIP approval authority does not provide the Agency with the discretion to refrain from taking the action of approving the South Dakota PSD permit program if it meets all applicable CAA requirements. Accordingly, and as confirmed by recent Supreme Court precedent, the ESA requirements cited in the comments do not apply to EPA's decision to approve South Dakota's PSD permitting program into the SIP. See 50 CFR 402.03; *National Ass'n of Home Builders* v. *Defenders of Wildlife*, 127 S. Ct. 2518 (2007).

Section 7(a)(2) of the ESA generally requires federal agencies to consult with the relevant federal wildlife agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of federally-listed endangered or threatened species, or result in the destruction or adverse modification of designated critical habitat of such species. 16 U.S.C. 1536(a)(2). In accordance with relevant ESA implementing regulations, this requirement applies only to actions in which there is discretionary federal involvement or control. 50 CFR 402.03. In the *Defenders of Wildlife* case, the Supreme Court examined these provisions in the context of EPA's decision to approve a state permitting program under the Clean Water Act (CWA). In that case, the Court held that when a federal agency is required by statute to undertake a particular action once certain specified triggering events have occurred, there is no relevant agency discretion, and thus the requirements of ESA section 7(a)(2) do not apply. 127 S. Ct. at 2536.

With regard to EPA's transfer of CWA permitting authority to a state, the Court found that because the relevant CWA provision mandated that EPA ''shall approve'' a state permitting program if a list of CWA statutory criteria are met, EPA lacked the discretion to deny a transfer application that satisfied those criteria. *Id.* at 2531–32. The Court also found that the relevant CWA program approval criteria did not include consideration of endangered or threatened species, and stated that ''[n]othing in the text of [the relevant CWA provision] authorizes EPA to consider the protection of threatened or endangered species as an end in itself when evaluating [an] application'' to transfer a permitting program to a state. *Id.* at 2537. Accordingly, the Court held that the CWA required EPA to approve the state's permitting program if the statutory criteria were met; those criteria did not include the consideration of ESA-protected species; and thus, consistent with 50 CFR 402.03, the non-discretionary action to transfer CWA permitting authority to the state did not trigger relevant ESA section 7 requirements.

Similar to the CWA program approval provision at issue in *Defenders of Wildlife*, section 110(k)(3) of the CAA mandates that EPA ''shall approve'' a SIP submittal that meets applicable CAA requirements. 42 U.S.C. 7410(k)(3). The CAA provides a list of SIP submittal criteria in section 110. *See* 42 U.S.C. 7410(a)(2). With respect to SIP submittals involving PSD permitting program applications, the relevant program approval criteria are found in the general CAA provisions regarding the PSD program, Title I, Part C, and EPA's relevant regulations implementing those provisions, 40 CFR 51.166. See 42 U.S.C. 7410 (a)(2)(J).

As was the case with the CWA requirements in *Defenders of Wildlife*, the SIP requirements contained in section 110 of the CAA do not include protection of listed species, and neither Title I, Part C of the CAA nor EPA's PSD implementing regulations explicitly state that consideration of the impacts on listed species is a required factor in PSD permitting decisions. EPA has interpreted sections 169(3) and

165(e)(3)(B) of the CAA as providing EPA with the relevant discretion to carry out ESA section 7(a)(2) obligations during its review of individual applications for federally-issued PSD permits under section 165. *See, In re: Indeck-Elwood, LLC,* PSD Appeal No. 03–04 (EAB Sept. 27, 2006), slip. op at 108 (holding EPA has discretion to consider impacts to listed species in Best Available Control Technology and soils and vegetation analysis). However, the use of this discretion in individual PSD permitting decisions does not provide EPA similar discretion in its SIP approval decisions under section 110.

In issuing individual PSD permits, EPA is required to complete an environmental impacts analysis in the best available control technology determination of CAA section 169(3) and an additional impacts analysis, including impacts on soils and vegetation, under section 165(e)(3)(B) of the CAA. In carrying out these analyses, EPA has interpreted these provisions as affording the Agency discretion to determine whether listed species are impacted by individual federal PSD permitting decision. In contrast, EPA's action on state SIP submittals is governed by section 110 of the CAA, which unequivocally directs EPA to approve state plans meeting applicable CAA requirements. Section 110 does not provide for similar impact analyses in reviewing PSD SIP submittals. Thus, although EPA's approval of an individual federal PSD permit and its approval of a state PSD permitting program both involve PSD, they are entirely different actions arising under different provisions of the CAA. An ESA obligation triggered by one provision of the statute—consideration of ESA in individual federal PSD permitting decisions—cannot be bootstrapped to raise that obligation in another provision—approval of a PSD SIP submittal—that does not provide EPA with similar discretion. See generally *Defenders of Wildlife* (finding that while EPA undertakes ESA consultation when issuing individual federal NPDES permits, it was not required to do so in approving state NPDES permitting programs). EPA recognizes that it exercises some judgment when evaluating whether a SIP submittal meets specific statutory PSD criteria. However, as the Supreme Court held in *Defenders of Wildlife*, the use of such judgment does not allow the Agency ''the discretion to add another entirely separate prerequisite''—such as the ESA section 7(a)(2) consultation requirements—to the list of required criteria EPA considers when determining whether it ''shall approve'' a state permitting program. 127 S. Ct. at 2537.

Applying the reasoning of *Defenders of Wildlife*, ESA consultation obligations do not apply to EPA's approval of South Dakota's PSD permit program, because the SIP approval criteria contained in the CAA do not provide EPA with the discretionary authority to consider whether approval of the State PSD permitting program into the SIP may affect any listed species. EPA has determined that the State has submitted a SIP for a PSD program that satisfies all of the applicable SIP requirements contained in section 110 of the CAA, as well as the applicable PSD requirements found in CAA Title I, Part C, and 40 CFR 51.166. Thus, given this Supreme Court precedent and applicable regulations, see 50 CFR 402.03, EPA is without discretion to disapprove or condition the State's program based on concerns for listed species, and the ESA requirements cited by the commenter are thus inapplicable to this approval action.

3. The commenter ''supports U.S. EPA disapproving SD's attempt to have the state conduct the necessary consultation with a Federal Land Manager when a proposed source may impact a class 1 area.''

Response: EPA's proposed disapproval concerned only the narrow issue of the Federal Land Manager's (FLM) responsibility to consult with the EPA Administrator under 40 CFR 51.166(p)(2). See EPA's February 1, 2007 Notice of Proposed Rule (72 FR 4673) for additional discussion of this issue. On June 28, 2007, South Dakota submitted to EPA a revision of Chapter 74:36:09, effective June 13, 2007, that added 40 CFR 52.21(p)(2) to the list of provisions incorporated in Chapter 74:36:09 where the term ''Administrator'' continues to mean the Administrator of EPA. Therefore, in South Dakota, an FLM will continue to have the responsibility to consider, in consultation with the EPA, whether a proposed source or modification in South Dakota will have an adverse impact on air quality related values (including visibility). This is consistent with 40 CFR 51.166(p)(2).

EPA is approving the incorporation by reference of 40 CFR 52.21(p)(2) as part of the approval of Chapter 74:36:09. However, the State will have the responsibility to consider and respond to the FLM's analysis under the procedures set forth in sections 40 CFR 52.21(p)(3)–(8). In accordance with 40 CFR 51.166(p)(3) and 165(d)(2)(C)(ii) of the CAA, when there is no projected violation of the PSD increments, the FLM bears the burden of demonstrating to the satisfaction of the state permitting authority that a project will have an adverse impact on air quality related values.

IV. What action is EPA taking?

We are approving the inclusion of Administrative Rules of South Dakota, Chapter 74:36:09, Prevention of Significant Deterioration, into the South Dakota SIP, including 74:36:09:02's incorporation of 40 CFR 52.21(p)(2). Additionally, EPA is rescinding its delegation of the PSD regulations to South Dakota.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely

approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 19, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 12, 2007.

Stephen S. Tuber,

Acting Regional Administrator, Region 8.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

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

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

Subpart QQ—South Dakota

■ 2. In § 52.2170, the table in paragraph (c) is amended by adding a new entry for chapter 74:36:09 after the existing entry for 74:36:07 to read as follows:

State citation	Title/subject	State effective date	EPA approval date and citation[1]	Explanations
*	* * * *	*	*	*
	74:36:09 Prevention of Significant Deterioration			
74:36:09:01	Applicability	9/18/06	[Insert **Federal Register** page number where the document begins and date]	
74:36:09:01.01	Prevention of significant deterioration permit required	9/18/06	[Insert **Federal Register** page number where the document begins and date]	
74:36:09:02	Prevention of significant deterioration	6/13/07	[Insert **Federal Register** page number where the document begins and date]	
74:36:09:03	Public participation	9/18/06	[Insert **Federal Register** page number where the document begins and date]	
*	* * * *	*	*	*

[1] In order to determine the EPA effective date for a specific provision that is listed in this table, consult the **Federal Register** cited in this column for that particular provision.

■ 3. Section 52.2178 is amended by revising paragraphs (a) and (b) to read as follows and by deleting paragraph (c):

§ 52.2178 Significant deterioration of air quality.

(a) The South Dakota plan, as submitted, is approved as meeting the requirements of part C, subpart 1 of the CAA, except that it does not apply to sources proposing to construct on Indian reservations;

(b) Regulations for preventing significant deterioration of air quality.

The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the South Dakota State implementation plan and are applicable to proposed major stationary sources or major modifications to be located on Indian reservations.

* * * * *

[FR Doc. E7–24717 Filed 12–20–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0029; FRL–8342–3]

Glufosinate-ammonium; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation modifies the tolerances for the combined residues of glufosinate-ammonium and its metabolites expressed as butanoic acid in or on raw agricultural commodities. Bayer CropScience LLC requested this revision under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 21, 2007. Objections and requests for hearings must be received on or before February 19, 2008 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–2007–0029. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in 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: Kathryn V. Montague, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1243; e-mail address: *montague.kathryn@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), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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 an electronic copy of this **Federal Register** document through the electronic docket 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 pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 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–2007–0029 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 February 19, 2008.

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–2007–0029, 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'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 28, 2007 (72 FR 9000) (FRL–8115–5), 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 6F7161) by Bayer CropScience LLC, 2 T.W. Alexander Dr.,

Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.473 be amended by establishing a tolerance for combined residues of the herbicide, glufosinate-ammonium and its metabolites expressed as butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid (expressed as glufosinate free acid equivalents), in or on raw agricultural commodities grain aspirated fractions at 25.0 parts per million (ppm); non-transgenic canola, meal at 1.1 ppm; non-transgenic canola, seed at 0.4 ppm; non-transgenic field corn, forage at 4.0 ppm; non- transgenic field corn, grain at 0.2 ppm; non- transgenic field corn, stover at 6.0 ppm; non- transgenic soybean, at 2.0 ppm; non-transgenic soybean, hulls at 5.0 ppm. That notice referenced a summary of the petition prepared by Bayer CropScience LLC, the registrant, which is available to the public in the docket, *http://www.regulations.gov*.

In the **Federal Register** of June 27, 2007 (72 FR 35237) (FRL–8133–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the amendment to existing tolerances by filing of a pesticide petition (PP 6F7161) by Bayer CropScience LLC, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. The petition proposes to amend the tolerances in 40 CFR 180.473(a) to eliminate the reference to transgenic crops tolerant to glufosinate ammonium in §180.473(a)(2) such that the crop tolerances listed under §180.473 (a) General, support uses in all of the crops listed to include both conventional and transgenic crops and to delete §180.473 (a)(1) and (a)(2). This notice clarifies the initial notice of filing published in the **Federal Register** of February 28, 2007 (72 FR 9000) (FRL–8115–5). The tolerances for glufosinate-ammonium and its metabolites listed for the commodities under both paragraphs (a)(1) and paragraph (a)(2) are proposed to be placed in §180.473 (a) General to read as follows: Tolerances are established for residues of glufosinate-ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-monoammonium salt) and its metabolites expressed as butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid expressed as glufosinate free acid equivalents in or on the raw agricultural commodities: Almond, hulls at 0.50 ppm; apple at 0.05 ppm; grain aspirated fractions at 25.0 ppm; banana at 0.30 ppm; banana, pulp at 0.20 ppm; beet, sugar, molasses at 5.0 ppm; beet, sugar, roots at 0.9 ppm; beet, sugar, tops at 1.5 ppm; bushberry subgroup 13B at 0.15 ppm; canola, meal at 1.1 ppm; canola, seed at 0.4 at ppm; cattle, fat at 0.40 ppm; cattle, meat at 0.15 ppm; cattle, meat byproducts at 6.0 ppm; corn, field forage at 4.0 ppm; corn, field, grain at 0.2 ppm; corn, field, stover at 6.0 ppm; cotton, gin byproducts at 15 ppm; cotton, undelinted seed at 4.0 ppm; egg at 0.15 ppm; goat, fat at 0.40 ppm; goat, meat at 0.15 ppm; goat, meat byproducts at 6.0 ppm; grape at 0.05 ppm; hog, fat at 0.40 ppm; hog, meat at 0 .15; hog, meat byproducts at 6.0 ppm; horse, fat at 0.40 ppm; horse, meat at 0.15 ppm; horse, meat byproducts at 6.0 ppm; Juneberry 0.10 ppm; lingonberry at 0.10 ppm; milk at 0.15 ppm; nut, tree, group 14 at 0.10 ppm; potato at 0.80 ppm; potato, chips at 1.60 ppm; potato granules/flakes 2.00 ppm; poultry, fat 0.15 ppm; poultry, meat at 0.15 ppm; poultry, meat byproducts 0.60 ppm; rice, grain at 1.0 ppm; rice, hull at 2.0 ppm; rice, straw at 2.0 ppm; salal at 0.10 ppm; sheep, fat at 0.40 ppm; sheep, meat at 0.15 ppm; sheep, meat byproducts at 6.0 ppm; soybean at 2.0 ppm and soybean, hulls at 5.0 ppm.

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

Bayer's petition asks EPA to consolidate subsections (a)(1) and (a)(2) of 40 CFR 180.473 which contains tolerances for glufosinate on various non-transgenic crops and transgenic crops, respectively, and remove the restriction as to transgenic crops. In part this petition is related to Bayer's application to EPA to amend its glufosinate registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to allow pre-plant burn down application to both transgenic and non-transgenic field corn, canola, and soybean. Glufosinate is currently registered foliar uses on the transgenic forms of these crops. The proposed registration amendment would not alter existing seasonal application amount limitations. There are currently no FFDCA tolerances for glufosinate on non-transgenic field corn, canola, and soybean but FFDCA tolerances are in place for the foliar use on the transgenic form of these crops. Consolidating subsections (a)(1) and (a)(2) and removing the transgenic restriction would address the lack of tolerances for non-transgenic field corn, canola, and soybean.

EPA initially concluded that two tolerance expressions were appropriate for plants: non-transgenic (40 CFR 180.473 (a)(1)) with glufosinate ammonium and 3-methylphosphinico-propionic acid and transgenic crops (40 CFR 180.473 (a)(2)) with glufosinate ammonium, *N*-acetyl-glufosinate, and 3-methylphosphinico-propionic acid. Subsequent to this decision, based upon a petition from Bayer, EPA modified the tolerance expressions in subsections (a)(1) and (a)(2) so that they are identical for transgenic and non-transgenic crops. 68 FR 55833 (September 29, 2003). This modification was done because EPA concluded that a single tolerance expression for both transgenic crops and non-transgenic crops (i.e. glufosinate ammonium, N-acetyl-glufosinate, and 3-methylphosphinico-propionic acid) was appropriate for the following reasons: 1) Enforcement laboratories do not know if a sample is derived from transgenic or non-transgenic crop and 2) the enforcement method quantifies glufosinate ammonium and *N*-acetyl-glufosinate together (both are devitalized to the same compound). As a result of the decision, the tolerance expression for 40 CFR 180.473 (a)(1) was altered to include *N*-acetyl-glufosinate; however, the tolerances in 40 CFR 180.473 (a)(2) remains. EPA has determined that consolidating the existing glufosinate tolerances in subsections (a)(1) and (a)(2) and removing the transgenic crop restriction, where applicable, is safe and is appropriate. Tolerance levels will not need to be increased with the addition of a pre-plant burn down use because the same seasonal amount limitations are being retained. Given that foliar applications would result in higher residue levels than pre-plant burn down, allocation of a portion of the permitted application to the pre-plant burn down use will not increase the residue level that could be present.

III. Aggregate Risk Assessment and Determination of Safty

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. . . .'' These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), 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 proposal to place all the commodities listed in 180.473 (a)(1) and 180.473 (a)(2) together in paragraph 180.473(a) based on the rationale for having a single tolerance expression is appropriate. Tolerance levels for combined residues of glufosinate-ammonium are unchanged. EPA's assessment of exposures and risks associated with establishing the tolerance 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. Specific information on the studies received and the nature of the adverse effects caused by glufosinate-ammonium as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies.

Specific information on the studies received and the nature of the toxic effects caused by glufosinate ammonium as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of September 29, 2003 (68 FR 55833) (FRL–7327–9).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from 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) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC 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 risks by comparing aggregate 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 LOC by all applicable UFs. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. 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/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

A summary of the toxicological endpoints for glufosinate ammonium used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 29, 2003 (68 FR 55833) (FRL–7327–9).

C. Exposure Assessment

EPA concludes that the tolerance levels for combined residues of Glufosinate-ammonium are unchanged. The exposure assumptions discussed in the final rule published in the **Federal Register** of September 29, 2003 (68 FR 55833) (FRL–7327–9) remain the same.

D. Safety Factor for Infants and Children

A summary of the safety factor for infants and children for glufosinate ammonium is discussed in Unit III.D. of the final rule published in the **Federal Register** of September 29, 2003 (68 FR 55833) (FRL–7327–9)

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-term, intermediate-term, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in section 408(b)(2)(D), 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 revision in the tolerance expressions for combined residues of glufosinate-ammonium and its metabolites. EPA's assessment of exposures and risks associated with establishing the tolerance are discussed in the **Federal Register** of September 29, 2003 (68 FR 55833) (FRL–7327–9).

Accordingly 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 glufosinate-ammonium residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology gas chromatography 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

Since tolerances levels remain the same and since there are no new tolerances established, harmonization with CODEX, Canada or Mexico's MRLs is impacted.

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 glufosinate ammonium, 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) (October 29, 2004, 69 FR 63083).

V. Conclusion

Therefore, the tolerance regulation for the combined residues of glufosinate-ammonium and its metabolites expressed as butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid (expressed as glufosinate free acid equivalents), are revised by placing all the commodities listed §180.473 (a)(1) and (a)(2) together in §180.473 (a).

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these 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, 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) 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 6, 2000) do not apply to this rule. In addition, This 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: December 14, 2007.

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 180.473 is amended by revising paragraph (a) to read as follows.

180.473 Glufosinate-ammonium; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide glufosinate-ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-monoammonium salt) and its metabolites, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents, in or on the following food commodities:

Commodity	Parts per million
Almond, hulls	0.50
Apple	0.05
Banana	0.30
Banana, pulp	0.20
Beet, sugar, molasses	5.0
Beet, sugar, roots	0.9
Beet, sugar, tops (leaves)	1.5
Bushberry subgroup 13B	0.15
Canola, meal	1.1
Canola, seed	0.40
Cattle, fat	0.40
Cattle, meat	0.15
Cattle, meat byproducts	6.0
Corn, field forage	4.0
Corn, field, grain	0.20
Corn, field, stover	6.0

Commodity	Parts per million
Cotton, gin byproducts	15
Cotton, undelinted seed	4.0
Egg	0.15
Goat, fat	0.40
Goat, meat	0.15
Goat, meat byproducts	6.0
Grain aspirated fractions	25
Grape	0.05
Hog, fat	0.40
Hog, meat	0.15
Hog, meat byproducts	6.0
Horse, fat	0.40
Horse, meat	0.15
Horse, meat byproducts	6.0
Juneberry	0.10
Lingonberry	0.10
Milk	0.15
Nut, tree, group 14	0.10
Pistachio	0.10
Potato	0.80
Potato, chips	1.6
Potato granules/flakes	2.0
Poultry, fat	0.15
Poultry, meat	0.15
Poultry, meat byproducts	0.60
Rice, grain	1.0
Rice, hull	2.0
Rice, straw	2.0
Salal	0.10
Sheep, fat	0.40
Sheep, meat	0.15
Sheep, meat byproducts	6.0
Soybean	2.0
Soybean, hulls	5.0

* * * * *

[FR Doc. E7–24841 Filed 12–20–07; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–4945; MB Docket No. 02–352; RM–10602, RM–10776, RM–10777]

Radio Broadcasting Services; Clyde and Glenville, NC, Tazewell, Tennessee and Weaverville, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal.

SUMMARY: This document approves a Joint Request for Approval of Settlement Agreement filed by Liberty Productions, a Limited Partnership, Saga Communications of North Carolina, LLC, Ashville Radio Partners, LLC, and Willsyr Communications, Limited Partnership, requesting withdrawal of a Petition for Reconsideration and all pleadings filed in connection MB Docket No. 02–352. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the letter from Peter H. Doyle, Chief, Audio Division, Media Bureau to Liberty Productions, a Limited Partnership, *et al.,* released December 11, 2007, (DA 07–4945). The full text of this letter is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals l1, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copying and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission, is, therefore, not required to submit a copy of this *Letter* pursuant to the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801 (a)(1)(A), because the Petition for Reconsideration was dismissed.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–24623 Filed 12–20–07; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070817468–7715–02]

RIN 0648–AV91

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 20

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

ACTION: Final Rule.

SUMMARY: NMFS issues this final rule to approve and implement measures contained in Framework Adjustment 20 (Framework 20) to the Atlantic Sea Scallop Fishery Management Plan (FMP). This action maintains the trip

allocations and possession limits established by the interim measures that were enacted by NMFS on June 21, 2007, for the Elephant Trunk Access Area (ETAA) in 2007 to reduce the potential for overfishing the Atlantic sea scallop (scallop) resource and excessive scallop mortality. This action reduces the number of scallop trips to the ETAA, and prohibits the retention of more than 50 U.S. bushels (17.62 hL) of in-shell scallop outside ot the boundaries of the ETAA (deckloading). The action also clarifies that the current restriction on landing no more than one scallop trip per calendar day for vessels fishing under general category rules does not prohibit a vessel from leaving on a scallop trip on the same calendar day that the vessel landed scallops.

DATES: This rule is effective December 24, 2007.

ADDRESSES: Copies of Framework Adjustment 20 are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2,Newburyport, MA 01950. The framework document is also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, 978–281–9221; fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule for Framework 20 was published in the **Federal Register** on October 30, 2007 (72 FR 61320). Comments were accepted through November 14, 2007. By approving Framework 20 this action adjusts measures approved as part of Framework 18 to the FMP (Framework 18) (71 FR 33211, June 8, 2006), and maintains the provisions of the interim action that: (1) Reduce the number of trips from five trips to three trips for full-time scallop vessels in the ETAA (scallop possession limit would remain at 18,000 lb); (2) reduce the number of trips from three trips to two trips (for all access areas) for part-time scallop vessels in the ETAA (scallop possession limit for part-time vessels would be increased from 16,800 lb (7,620 kg) per trip to 18,000 lb (8,165 kg) per trip); (3) reduce the occasional vessel possession limit from 10,500 lb (4,763 kg) per trip to 7,500 lb (3,402 kg) per trip; (4) reduce the general category scallop fleet ETAA trip allocation from 1,360 trips to 865 trips; and (5) prohibit the retention of more than 50 U.S. bushels (17.62 hL) of in-shell scallops outside of the boundaries of the ETAA (or deckloading, i.e., leaving a high volume of scallops on deck after leaving an access area so that the scallops can be shucked on the way back to port).

The Council developed Framework 20 to prevent the Framework 18 measures from going back into effect when the interim measures expire on December 23, 2007. If this were to happen, it would restore the higher trip allocations and allow additional effort by the fleet, resulting in overfishing for the last 2 months (January and February 2008) of the 2007 fishing year (FY). Such an outcome would undermine the effect of the interim measures in preventing overfishing.

Approved Management Measures

In the proposed rule, NMFS requested comments on all proposed management measures, and received one comment on the proposed rule. The approved management measures are discussed below. No measures in Framework 20 were disapproved. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

1. ETAA Trip Reduction

This action maintains the reduction in the number of trips from five trips to three trips for full-time scallop vessels in the ETAA (scallop possession limit would remain at 18,000 lb (8,165 kg)); the reduction in the number of trips from three trips to two trips (for all access areas) for part-time scallop vessels in the ETAA (scallop possession limit for part-time vessels remains at 16,800 lb (7,620 kg) per trip); and the reduction in the occasional vessel possession limit from 10,500 lb (4,763 kg) per trip to 7,500 lb (3,402 kg) per trip. The regulations at § 648.60(a)(5) published for Framework 18 specified that an occasional vessel's possession limit is 7,500 lb (3,402 kg) per trip. However, Framework 18 intended and analyzed a possession limit of 10,500 lb (4,763 kg) per trip for the 2007 FY. This action also maintains the reduction in the general category scallop fleet trip allocation from 1,360 to 865 trips in the ETAA.

Reducing the number of trips for scallop vessels in the ETAA addresses the concern that overfishing of the scallop resource may occur in 2007. Although the biomass in the ETAA remains very high relative to the rest of the scallop resource, it is less abundant than was projected in Framework 18. As a result, even though the fishing mortality is expected to be lower than the target fishing mortality in the area, it would be high enough at the lower biomass to contribute to overfishing in 2007. Part-time vessels have a trip reduction with an increase in the possession limit to ensure that the total access area catch for part-time vessels remains at 40 percent of the full-time access area catch, as intended by the FMP. Occasional vessels have one trip to any access area, but have a possession limit of 7,500 lb (3,402 kg) for the trip, ensuring that the total access area catch for occasional vessels remains at 8.3 percent of the full-time access area catch. Reducing trips in the ETAA was contemplated in Framework 18 and the potential impacts of the trip reductions were fully analyzed in Framework 18.

2. Prohibition on Deckloading

This action maintains the prohibition on the retention of more than 50 U.S. bushels (17.62 hL) of in-shell scallop outside of the boundaries of the ETAA for vessels on ETAA trips. Deckloading is the practice of loading the deck of a vessel with the scallop catch from several tows and shucking the scallops while steaming back to port. If allowed to deckload, vessel could leave the area, and the vessel crews can spend the time steaming home sorting and shucking scallops, thereby reducing overall trip costs. This can result in a vessel having more scallops on board than are necessary to achieve the possession limit. The excess scallops are discarded. In addition, due to deckloading, scallops remain on deck longer, increasing discard mortality. In the ETAA, deckloading may cause even higher scallop mortality, since catch rates are expected to be very high, there is a mix of scallop sizes in the area, and scallop crews may discard smaller scallops in favor of larger scallops. Although the amount of additional mortality cannot be precisely estimated, prohibiting deckloading on ETAA trips is a complementary measure that will help prevent additional scallop mortality.

3. Regulatory Change

This final rule implements a regulatory change making the regulations consistent with the original intent of Amendment 4 to the FMP (Amendment 4) (59 FR 2757, January 19, 1994) . Amendment 4 intended that general category scallop vessels cannot land scallops on more than one trip per calendar day. NMFS implemented the scallop regulations consistent with this intent until it was recently discovered that the regulations, as written, prohibit such vessels from ''fishing for'' scallops more than once per calendar day. This prohibited a vessel from leaving on a scallop trip on a calendar day if scallops had previously been landed that calendar day. The general category

scallop industry is concerned that interpreting the regulation this way may encourage unsafe fishing behavior to complete as many trips as possible while avoiding the ''one trip per calendar day'' restriction. For example, if a vessel owner has to wait a full calendar day to set sail on a subsequent trip, he/she may sail despite hazardous weather. To make the regulations consistent with Amendment 4, NMFS implements the regulatory change in this final rule that prohibits a general category scallop vessel from landing scallops on more than one trip per calendar day, but allows vessels to depart on a subsequent scallop trip on the same calendar day that the vessel landed scallops.

The trip allocations and possession limits for the ETAA in 2007 are intended to be effective for the remainder of the 2007 fishing year. However the FMP currently specifies that if framework measures to change annual scallop measures are not implemented by March 1 of each fishing year, the scallop DAS and access area allocations remain in effect until replaced by new measures. Therefore, if Framework 19 to the FMP (adopted by the Council in October 2007) is not completed by March 1, 2007, the trip allocations and possession limits for the ETAA in 2007 will remain in effect until modified by Framework 19 measures. The prohibition on deckloading and the regulatory change to the ''one per calender day'' landing restriction is permanent, unless modified by the Council and NMFS through subsequent action.

Comments and Responses

NMFS received one comment on the proposed rule to implement Framework 20 that was in favor of extending DAS limitations on scallop fishing for the purpose of preventing overfishing. This comment did not address any specific measures in Framework 20 and therefore was not pertinent to the decision to implement this action.

Classification

NMFS has determined that this final rule is consistent with the FMP and has determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effective date under authority contained in 5 U.S.C. 553(d)(3) for this rule because provisions in this rule are critical for the sustainable management of the scallop resource and need to be implemented in a timely manner. This action extends interim measures for the Elephant Trunk Access Area (ETAA), implemented in December 2006 to reduce overfishing for the 2007 fishing year (March 1, 2007, through February 29, 2008). If this rule is implemented after December 23, 2007 Framework 18 measures will come into effect, which would likely cause overfishing in the 2007 fishing year as a result of the higher trip allocations. Overfishing of the scallop resource in the 2007 fishing year would make future measures already developed by the Council for the 2008 and 2009 fishing years less likely to achieve their goals of preventing overfishing and providing for optimum yield to the industry on a continuing basis. In turn, the Council would likely have to consider more restrictive measures to account for the unexpected overfishing in 2007, which would likely cause short term losses for the industry. In addition, this action extends measures currently in place and does not implement any new compliance requirements on the scallop industry.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act has prepared a FRFA in support of Framework 20. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summarized in the IRFA for the proposed rule to implement Framework 20 (72 FR 61320, October 30, 2007), the comments and responses in this final rule, and the corresponding economic analyses prepared for Framework 20 (e.g., the EA and RIR). The contents of these incorporated documents are not repeated in detail here. A copy of the IRFA, the RIR and the EA are available on request (see **ADDRESSES**). A description of the reasons for this action, the objectivs of the action, and the legal basis for this final rule are found in Framework 20 and the preamble to the proposed and final rules.

Statement of Need for this Action

The purpose of this action is to prevent the Framework 18 measures from reverting back into effect when the interim measures expire on December 23, 2007. If this were to happen, it would restore the higher trip allocations and allow additional effort by the fleet, resulting in overfishing for the last 2 months of the 2007 fishing year (FY). Such an outcome would undermine the effect of the interim measures in preventing overfishing.

Description of the Small Business Entities to Which this Action Will Apply

The regulations associated with Framework 20 will affect vessels with limited access scallop and general category permits. According to NMFS Northeast Region permit data as of October 2006, 351 vessels were issued limited access scallop permits, with 318 full-time, 32 part-time, and 1 occasional limited access permit issued. In addition, 2,501 open access general category permits were issued. All of the vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than $3 million according to landings data for the period 2004 to 2006. Therefore, there will be no differential impact from this action between large and small entities. According to this information, annual revenue from scallops averaged over a million dollars per limited access vessel in 2005. Total revenues per vessel were higher when revenues from species other than scallops were included, but still averaged less than $3 million per vessel. Average scallop revenue per general category vessel was $88,702 in 2005, though it exceeded $240,000 when revenue from other species was included.

Proposed Reporting, Recordkeeping, and Other Compliance Requirements

There are no new reporting, recordkeeping, or other compliance requirements associated with the measures proposed in Framework 20.

Description of the Steps taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities was Rejected

The regulations implementing Framework 20 were developed to ensure that scallop landings and economic benefits would be kept to sustainable levels. Therefore, overall positive economic impacts are expected as a result of preventing overfishing. The prohibition on deckloading on ETAA trips is expected to help prevent additional scallop mortality associated with discards and thus would improve yield, revenues, and economic benefits from the resource. The owners of vessels

that fish for scallops would benefit over the long-term if overfishing is prevented. There was strong industry support for the proposed action in public testimony before the Council at the meeting when it adopted Framework 20.

While a range of alternatives were considered in Framework 18, which established the management measures for 2006 and 2007, the only other alternative the Council considered in Framework 20 was to take no action. If no action had been taken, the Framework 18 measures would revert into effect, with the potential that fishing activity during January and February 2008 would lead to overfishing in the 2007 FY. Overfishing would have had negative impacts on scallop biomass, with landings, revenues and economic benefits likely to decline in future years as a result. The Council found this to be unacceptable and adopted Framework 20 to prevent this outcome. Other alternatives that the Council could have considered included overall reductions in effort or reductions in trip allocations in other areas. Such actions would have had other negative economic impacts since reductions in DAS or trip allocations would still have been necessary. In addition, these actions would have been more suitable for an annual adjustment rather than the extension of interim measures through Framework 20. The Council therefore did not consider and analyze these alternatives.

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

Dated: December 17, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, paragraph (i)(1) is removed and reserved, paragraph (i)(2) is revised, and paragraphs (h)(27), (i)(13), and (i)(14) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(h) * * *

(27) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of the Elephant Trunk Access Area specified in § 648.59(e) by a vessel that is declared into the Elephant Trunk Access Area under the Area Access Program as specified in § 648.60.

(i) * * *

(2) Land scallops on more than one trip per calendar day.

* * * * *

(13) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked, or 50 bu (17.62 hL) of in-shell scallops, unless the vessel is participating in the Area Access Program specified in § 648.60, is carrying an observer as specified in § 648.11, and an increase in the possession limit is authorized as specified in § 648.60(d)(2).

(14) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of the Elephant Trunk Access Area specified in § 648.59(e) by a vessel that is declared into the Elephant Trunk Access Area under the Area Access Program as specified in § 648.60.

* * * * *

■ 3. In § 648.52, paragraph (e) is added to read as follows:

§ 648.52 Possession and landing limits.

* * * * *

(e) Owners or operators of a vessel that is declared into the Elephant Trunk Access Area Sea Scallop Area Access Program as described in § 648.60, are prohibited from possessing more than 50 bu (17.62 hL) of in-shell scallops outside of the Elephant Trunk Access Area described in § 648.59(e).

§ 648.58 [Amended]

■ 4. In § 648.58, paragraph (a) is removed and reserved.

■ 5. In § 648.59, paragraphs (e)(1) and (e)(4) are revised to read as follows:

§ 648.59 Sea Scallop Access Areas.

* * * * *

(e) * * *

(1) From March 1, 2007, through February 29, 2012, and subject to the seasonal restrictions specified in paragraph (e)(3) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Elephant Trunk Sea Scallop Access Area, described in paragraph (e)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

* * * * *

(4) *Number of trips*— (i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Elephant Trunk Sea Scallop Access Area between March 1, 2007, and February 29, 2008, as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains an Elephant Trunk Sea Scallop Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Elephant Trunk Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* Subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), a vessel issued a general category scallop permit may not enter in, or fish for, possess, or land sea scallops in or from the Elephant Trunk Sea Scallop Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that the 865 trips allocated for the period March 1, 2007, through February 29, 2008, have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken.

* * * * *

■ 6. In § 648.60, paragraphs (a)(3)(i), (a)(3)(ii)(B), (a)(5)(i), (d)(1)(v), (e)(1)(v), and (g)(3)(iv) are revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

* * * * *

(a) * * *

(3) * * *

(i) *Limited Access Vessel trips.* (A) Except as provided in paragraph (c) of this section, paragraphs (a)(3)(i)(B) through (E) of this section specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, has been allocated a compensation trip pursuant to paragraph (c) of this section.

(B) *Full-time scallop vessels.* In the 2007 fishing year, a full-time scallop vessel may take one trip in the Closed

Area I Access Area, one trip in the Nantucket Lightship Access Area, and three trips in the Elephant Trunk Access Area.

(C) *Part-time scallop vessels.* In the 2007 fishing year, a part-time scallop vessel may take one trip in the Closed Area I Access Area and one trip in the Nantucket Lightship Access Area; or one trip in the Closed Area I Access Area and one trip in the Elephant Trunk Access Area; or one trip in the Nantucket Lightship Access Area and one trip in the Elephant Trunk Access Area; or two trips in the Elephant Trunk Access Area.

(D) *Occasional scallop vessels.* An occasional scallop vessel may take one trip in the 2007 fishing year into any of the Access Areas described in § 648.59 that is open during the specified fishing years.

(E) *Hudson Canyon Access Area trips.* In addition to the number of trips specified in paragraphs (a)(3)(i) (B) and (C) of this section, vessels may fish remaining Hudson Canyon Access Area trips allocated for the 2005 fishing year in the Hudson Canyon Access Area in the 2006 and/or 2007 fishing year, as specified in § 648.59(a)(3). The maximum number of trips that a vessel could take in the Hudson Canyon Access Area in the 2005 fishing year was three trips, unless a vessel acquired additional trips through an authorized one-for-one exchange as specified in paragraph (a)(3)(ii) of this section. Full-time scallop vessels were allocated three trips into the Hudson Canyon Access Area. Part-time vessels were allocated two trips that could be distributed among Closed Area I, Closed Area II, and the Hudson Canyon Access Areas, not to exceed one trip in the Closed Area I or Closed Area II Access Areas. Occasional vessels were allocated one trip that could be taken in any Access Area that was open in the 2005 fishing year.

(ii) * * *

(B) Limited access scallop vessels involved in an exchange of Closed Area II and/or Nantucket Lightship Closed Area Access Area trips for the 2006 fishing year, and Elephant Trunk Access Area trips for the 2007 fishing year shall be subject to a reduction of the vessels' allocated trips so that the total number of allocated Elephant Trunk Access Area trips between two vessels that were involved in such an exchange shall be six for full-time vessels and four for part-time vessels in the 2007 fishing year. Reductions will be applied equally to both vessels' resulting Elephant Trunk Access Area allocation for the 2007 fishing year after the exchange is taken into account, unless the vessel giving Elephant Trunk Access Area trips to another vessel has one or zero Elephant Trunk Access Area trips remaining after the exchange. In such a case, the vessel that received the Elephant Trunk Access Area trips will be subject to a reduction of up to four Elephant Trunk Access Area trips.

* * * * *

(5) * * *

(i) *Scallop possession limits.* Unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in paragraphs (a)(5)(i)(A) and (B) of this section. No vessel declared into the Elephant Trunk Access Area as described in § 648.59(e) may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Elephant Trunk Access Area described in § 648.59(e).

(A) Up to 18,000 lb (8,165 kg) of shucked scallops for full-time and part-time scallop vessels.

(B) Up to 7,500 lb (3,402 kg) of shucked scallops for occasional scallop vessels.

* * * * *

(d) * * *

(1) * * *

(v) *Elephant Trunk Access Area.* From March 1, 2007, through February 29, 2008, the observer set-aside for the Elephant Trunk Access Area is 173,100 lb (78.5 mt).

* * * * *

(e) * * *

(1) * * *

(v) *Elephant Trunk Access Area.* From March 1, 2007, through February 29, 2008, the research set-aside for the Elephant Trunk Access Area is 346,200 lb (157 mt).

* * * * *

(g) * * *

(3) * * *

(v) *Elephant Trunk Access Area.* 346,000 lb (157 mt) in 2007.

* * * * *

[FR Doc. E7–24907 Filed 12–20–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.060824226–6322–02]

RIN 0648–XE38

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Pacific Whiting Allocation

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

ACTION: Reapportionment of surplus Pacific whiting allocation; request for comments.

SUMMARY: NMFS has determined that 6,000 metric tons (mt) of the 87,398 mt shore-based sectors allocation would not be used by December 31, 2007. Therefore, automatic action was taken to reapportion the surplus whiting.

DATES: Effective from noon l.t. November 28, 2007, until the start of the 2008 primary seasons, unless modified, superseded or rescinded. Comments will be accepted through January 7, 2008.

ADDRESSES: You may submit comments, identified by the RIN number 0648–XE38, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 206–526–6736, Attn: Becky Renko
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Becky Renko

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

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Becky Renko at 206–526–6110

SUPPLEMENTARY INFORMATION: This action is authorized by regulations

implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California.

The 2007 non-tribal commercial OY for whiting is 208,091 mt. Regulations at 50 CFR 660.323(a)(4) divide the commercial whiting optimum yield (OY) into separate allocations for the catcher/processor, mothership, and shore-based sectors. The catcher/processor sector is composed of vessels that harvest and process whiting. The mothership sector is composed of catcher vessels that harvest whiting and mothership vessels that process, but do not harvest whiting. The shore-based sector is composed of vessels that harvest whiting for delivery to land-based processors. Each commercial sector receives a portion of the commercial OY. For 2007 the catcher/processors received 34 percent (70,751 mt), motherships received 24 percent (49,942 mt), and the shore-based sector received 42 percent (87,398 mt).

The best available information on November 28, 2007, indicated that 6,000 metric tons (mt) of the 87,398 mt shore-based sector's allocation would not be used by December 31, 2007. Therefore, automatic action was taken to reapportion the surplus whiting. Such reapportionments are generally disbursed to the other sectors in the same proportion as each sector's allotted portion of the commercial OY. However, the mothership sector did not express an interest in harvesting reapportioned whiting in 2007. Therefore, all surplus whiting from the shore-based sector was reallocated to the catcher/processor sector. Facsimiles directly to fishing businesses and postings on the Northwest Regions internet site were used to provide actual notice to the affected fishers.

NMFS Action

This action announces the reapportionment of 6,000 mt of whiting from the shore-based sector to the catcher/processor sector at noon local time November 28, 2007. The revised Pacific whiting allocations by sector for 2007 are: catcher/processor, 76,751 mt; mothership, 49,942 mt; and shore-based, 81,398 mt.

Classification

The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours.

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The Assistant Administrator for Fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for comment on this action pursuant to 5 U.S.C. 553 (3)(b)(B), because providing prior notice and opportunity would be impracticable. It would be impracticable because of the need for immediate action. NMFS has determined that providing an opportunity for prior notice and comment would be impractical and contrary to public interest. Delay of this action would leave whiting unharvested. Unlike the catcher/processors, the smaller shore-based and mothership sectors are comprised of smaller catcher vessels that are less likely to operate in inclement fall and winter weather. The agency believes this constitutes good cause to waive the 30–day delay in effectiveness. In addition, the catcher/processors need an immediate reallocation if they are to keep their workers employed. This actions is taken under the authority of 50 CFR 660.323(a)(2), and are exempt from review under Executive Order 12866. Actual notice of the reapportionment was provided to the affected fishers.

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

Dated: December 17, 2007.

Emily H. Menashes,

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

[FR Doc. E7–24864 Filed 12–20–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 245
Friday, December 21, 2007

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.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2423

Unfair Labor Practice Proceedings

AGENCY: Office of the General Counsel, Federal Labor Relations Authority.

ACTION: Notice of proposed rulemaking.

SUMMARY: The General Counsel of the Federal Labor Relations Authority (FLRA) proposes to revise portions of its regulations regarding unfair labor practice (ULP) proceedings (Part 2423, subpart A). The purpose of the proposed revisions is to clarify the Office of the General Counsel's (OGC) role during the investigatory stage of processing unfair labor practice charges consistent with the policies of the General Counsel, and to clarify certain administrative matters relating to the filing and investigation of ULP charges. Implementation of the proposed changes confirms and enhances the neutrality of the OGC before a ULP merit determination is made.

DATES: Comments must be received on or before January 22, 2008.

ADDRESSES: Mail or deliver written comments to the Office of the Executive Director, Federal Labor Relations Authority, 1400 K Street, NW., Fourth Floor, Washington, DC 20424. Comments may also be e-mailed to *FLRAexecutivedirector@flra.gov*.

FOR FURTHER INFORMATION CONTACT: Jill Crumpacker, Executive Director, at *jcrumpacker@flra.gov*.

SUPPLEMENTARY INFORMATION: The OGC of the FLRA proposes modifications to the existing rules and regulations in subpart A of title 5 of the Code of Federal Regulations regarding the processing and investigation of ULP charges.

Subpart A of the regulations has not been reexamined in its entirety since 1998, and before that since its enactment in 1980. The OGC has modified its policies, revising or rescinding many of the internal policies that were established prior to 1998 and which resulted in the 1998 regulatory changes. Accordingly, the General Counsel has proposed revisions to the regulations addressing the investigation and processing of ULP charges.

The proposed revisions clarify the neutral fact-finding role of the OGC in the investigation of ULP charges. The proposed revisions continue to encourage parties involved in a ULP dispute to work collaboratively to resolve the dispute; however, consistent with the General Counsel's Settlement policy, the proposed revisions clarify that the OGC will not be involved in any way in resolving parties' disputes until after a determination has been made that a charge is meritorious. At that time, the OGC will aggressively use Alternative Dispute Resolution (ADR) processes to resolve parties' ULP disputes and to avoid protracted litigation of ULP complaints.

Sectional Analyses

Sectional analyses of the revisions to Part 2423—Unfair Labor Practice Proceedings are as follows:

Part 2423—Unfair Labor Practice Proceedings

Section 2423.0

This part is applicable to any charge of an alleged ULP pending or filed with the Authority on or after February 1, 2008.

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

Section 2423.1

The current section encourages parties to meet and resolve ULP disputes prior to filing ULP charges. The proposed revision continues to encourage parties to settle their ULP disputes, and clarifies that the OGC will assist the parties in resolving their dispute only once a decision has been made that the issuance of a ULP complaint is warranted. The proposed revision promotes an understanding that the parties to a ULP dispute are responsible for their relationship and the resolution of their disputes. The proposed revision is intended to preserve the neutrality of the OGC in the investigation and processing of ULP charges, and incorporates the General Counsel's Settlement Policy, which is set forth in its entirety on the FLRA's Web site at *www.FLRA.gov*. Where the parties are unable to resolve their dispute on their own and where a determination is made that the Federal Service Labor-Management Relations Statute (Statute) has been violated, the OGC—as set forth in other sections of the proposed revised regulations—will actively work with the parties using ADR processes to reach a satisfactory resolution that is consistent with the Statute and resolves the parties' ULP dispute.

Section 2423.2

The current section sets forth the specific ADR services that the OGC may provide. The parties are redirected to § 2423.12, which sets forth the ADR services that the OGC may now provide consistent with the General Counsel's Settlement Policy.

Section 2423.3

This section, which identifies who may file a ULP charge, is unchanged.

Section 2423.4

This section, describing the content of a ULP charge, is substantially unchanged. The proposed revisions provide for the inclusion of e-mail addresses for all of the parties.

The proposed revision also includes a subsection addressing when a ULP charge must be filed and reiterates the statutory time limits for the filing of a ULP charge set forth in 5 U.S.C. 7118(a)(4).

Section 2423.5

This section, which is reserved, is unchanged.

Section 2423.6

The current section remains substantially unchanged. The proposed revisions address an issue previously not addressed in the regulations, and clarify that a charge received after the close of business will be deemed received and docketed the next business day.

The current section limited to two pages the number of pages that a party could fax to an OGC Regional Office when filing a charge. The proposed revision eliminates that limitation and returns it to the current limitation of 10 pages, consistent with 5 CFR § 2429.24.

Section 2423.7

The current section, which provides for alternative case processing,

incorporates the internal OGC policies and procedures established under the 1998 revisions. Consistent with current internal OGC policies and procedures, this section is being eliminated. Under the proposed revisions the parties to a ULP dispute are always encouraged to work collaboratively to resolve their own dispute, taking a problem-solving approach, rather than filing a ULP charge. Once a ULP charge is filed, parties are also encouraged on their own to attempt to resolve their dispute while the OGC conducts its investigation of the facts and determines the merits of the charge.

Section 2423.8

This section, which provides for the investigation of charges, is substantially unchanged. The proposed revisions clarify and confirm that all investigations conducted by the OGC are neutral and unbiased.

The revisions further clarify that the failure of a party to cooperate during an investigation may result in a ULP charge being dismissed by the Regional Director.

Section 2423.9

This section is unchanged.

Section 2423.10

This section, which provides for the action by the Regional Director, remains substantially unchanged. The proposed revisions modify this section to be consistent with the other sections under this part that the Regional Director takes its action on behalf of the General Counsel. The proposed revision also modifies the wording to reflect action currently taken on a charge that is determined to be without merit, *i.e.*, that the charge is dismissed.

Section 2423.11

The proposed revisions provide that all parties to a dispute will be advised of an OGC decision to dismiss a ULP charge upon completion of the investigation. This ensures that both parties to the dispute are apprised of the result of the investigation at the same time and maintains the neutrality of the OGC. The proposed revisions also incorporate the opportunity for a Charging Party to withdraw the charge prior to the issuance of the dismissal letter.

This section also rewords the grounds for appeal to include when a Regional Director's decision is based on an incorrect statement or application of the applicable rule of law, rather than only when a Regional Director's decision is based on an incorrect statement of the applicable rule of law.

Section 2423.12

This section, which provides for the settlement of ULP charges after a Regional Director's determination to issue a complaint, sets forth that the OGC will utilize ADR processes to assist the parties in resolving the ULP dispute and to avoid the cost of protracted litigation.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the General Counsel of the FLRA has determined that this regulation, as amended, will not have a significant impact on a substantial number of small entities, because this rule applies to Federal employees, Federal agencies, and labor organizations representing Federal employees.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 2423

Administrative practice and procedure, Government employees, Labor management relations.

For these reasons, the General Counsel of the Federal Labor Relations Authority, proposes to amend 5 CFR part 2423 as follows:

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

1. The authority citation for part 2423 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. Section 2423.0 and subpart A of part 2423 are revised to read as follows:

Sec. 2423.0 Applicability of this part.

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

Sec.

2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination whether to issue a complaint.
2423.2 Alternative Dispute Resolution (ADR) services.
2423.3 Who may file charges.
2423.4 Contents of the charge; supporting evidence and documents.
2423.5 [Reserved]
2423.6 Filing and service of copies.
2423.7 [Reserved]
2423.8 Investigation of charges.
2423.9 Amendment of charges.
2423.10 Action by the Regional Director.
2423.11 Determination not to issue complaint; review of action by the Regional Director.
2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.
2423.13–2423.19 [Reserved]

§ 2423.0 Applicability of this part.

This part is applicable to any charge of alleged unfair labor practices pending or filed with the Authority on or after February 1, 2008, and any complaint filed on or after October 1, 1997.

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

§ 2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination whether to issue a complaint.

The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the collaborative efforts of all persons covered by that law. The General Counsel encourages all persons on their own to meet, and in good faith, attempt to settle unfair labor practice disputes. To maintain complete neutrality, the General Counsel may not be involved with such settlement discussions with the parties prior to a Regional Director determination on the merits. Attempts by the parties to resolve unfair labor practice disputes prior to filing an unfair labor practice charge do not toll the time limitations for filing a charge set forth at 5 U.S.C. 7118(a)(4).

§ 2423.2 Alternative Dispute Resolution (ADR) services.

The General Counsel provides ADR services under § 2423.12(a) after a Regional Director has determined to issue a complaint.

§ 2423.3 Who may file charges.

(a) *Filing charges.* Any person may charge an activity, agency or labor organization with having engaged in, or engaging in, any unfair labor practice prohibited under 5 U.S.C. 7116.

(b) *Charging Party.* Charging Party means the individual, labor organization, activity or agency filing an unfair labor practice charge with a Regional Director.

(c) *Charged Party.* Charged Party means the activity, agency or labor organization charged with allegedly having engaged in, or engaging in, an unfair labor practice.

§ 2423.4 Contents of the charge; supporting evidence and documents.

(a) *What to file.* The Charging Party may file a charge alleging a violation of 5 U.S.C. 7116 by completing a form prescribed by the General Counsel, or on a substantially similar form, that contains the following information:

(1) The name, address, telephone number, facsimile number (where facsimile equipment is available), and e-mail address of the Charging Party;

(2) The name, address, telephone number, facsimile number (where facsimile equipment is available), and e-mail address of the Charged Party;

(3) The name, address, telephone number, facsimile number (where facsimile equipment is available), and e-mail address of the Charging Party's point of contact;

(4) The name, address, telephone number, facsimile number (where facsimile equipment is available), and e-mail address of the Charged Party's point of contact;

(5) A clear and concise statement of the facts alleged to constitute an unfair labor practice, a statement of how those facts allegedly violate specific section(s) and paragraph(s) of the Federal Service Labor-Management Relations Statute and the date and place of occurrence of the particular acts; and

(6) A statement whether the subject matter raised in the charge:

(i) Has been raised previously in a grievance procedure;

(ii) Has been referred to the Federal Service Impasses Panel, the Federal Mediation and Conciliation Service, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, or the Office of the Special Counsel for consideration or action;

(iii) Involves a negotiability issue raised by the Charging Party in a petition pending before the Authority pursuant to part 2424 of this subchapter; or

(iv) Has been the subject of any other administrative or judicial proceeding.

(7) A statement describing the result or status of any proceeding identified in paragraph (a)(6) of this section.

(b) *When to file.* Under 5 U.S.C. 7118 (a)(4), a charge alleging an unfair labor practice must normally be filed within six (6) months of its occurrence.

(c) *Declarations of truth and statement of service.* A charge shall be in writing and signed, and shall contain a declaration by the individual signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that individual's knowledge and belief.

(d) *Statement of service.* A charge shall also contain a statement that the Charging Party served the charge on the Charged Party, and shall list the name, title and location of the individual served, and the method of service.

(e) *Self-contained document.* A charge shall be a self-contained document describing the alleged unfair labor practice without a need to refer to supporting evidence and documents submitted under paragraph (f) of this section.

(f) *Submitting supporting evidence and documents and identifying potential witnesses.* When filing a charge, the Charging Party shall submit to the Regional Director, any supporting evidence and documents, including, but not limited to, correspondence and memoranda, records, reports, applicable collective bargaining agreement clauses, memoranda of understanding, minutes of meetings, applicable regulations, statements of position and other documentary evidence. The Charging Party also shall identify potential witnesses with contact information (telephone number, e-mail address, and facsimile number) and shall provide a brief synopsis of their expected testimony.

§ 2423.5 [Reserved]

§ 2423.6 Filing and service of copies.

(a) *Where to file.* A Charging Party shall file the charge with the Regional Director for the region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the Regional Director in any of those regions.

(b) *Filing date.* A charge is deemed filed when it is received by a Regional Director. A charge received in a Region after the close of the business day will be deemed received and docketed on the next business day. The business hours for each of the Regional Offices are set forth at *www.FLRA.gov*.

(c) *Method of filing.* A Charging Party may file a charge with the Regional Director in person or by commercial delivery, first class mail, facsimile or certified mail. If filing by facsimile transmission, the Charging Party is not required to file an original copy of the charge with the Region. A Charging Party assumes responsibility for receipt of a charge. Supporting evidence and documents must be submitted to the Regional Director in person, by commercial delivery, first class mail, certified mail, or by facsimile transmission. Charges shall not be filed by electronic mail.

(d) *Service of the charge.* The Charging Party shall serve a copy of the charge (without supporting evidence and documents) on the Charged Party. Where facsimile equipment is available, the charge may be served by facsimile transmission in accordance with paragraph (c) of this section.

§ 2423.7 [Reserved]

§ 2423.8 Investigation of charges.

(a) *Investigation.* The Regional Director, on behalf of the General Counsel, conducts an unbiased, neutral investigation of the charge as the Regional Director deems necessary. During the course of the investigation, all parties involved are afforded an opportunity to present their evidence and views to the Regional Director.

(b) *Cooperation.* The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the full cooperation of all parties involved and the timely submission of all potentially relevant information from all potential sources during the course of the investigation. All persons shall cooperate fully with the Regional Director in the investigation of charges. The failure of a Charging Party to cooperate during an investigation may provide grounds for a Regional Director to dismiss the charge for failure to produce evidence supporting the charge.

Cooperation includes any of the following actions, when deemed appropriate by the Regional Director:

(1) Making union officials, employees, and agency supervisors and managers available to give sworn/affirmed testimony regarding matters under investigation;

(2) Producing documentary evidence pertinent to the matters under investigation; and

(3) Providing statements of position on the matters under investigation.

(c) *Investigatory subpoenas.* If a person fails to cooperate with the Regional Director in the investigation of a charge, the General Counsel, upon recommendation of a Regional Director, may decide in appropriate circumstances to issue a subpoena under 5 U.S.C. 7132 for the attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel or training within an agency or between an agency and the Office of Personnel Management.

(1) A subpoena shall be served by any individual who is at least 18 years old and who is not a party to the proceeding. The individual who served the subpoena must certify that he or she did so:

(i) By delivering it to the witness in person;

(ii) By registered or certified mail; or

(iii) By delivering the subpoena to a responsible individual (named in the document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended. The subpoena shall show on its face the name and address of the Regional Director and the General Counsel.

(2) Any person served with a subpoena who does not intend to comply shall, within 5 days after the date of service of the subpoena upon such person, petition in writing to revoke the subpoena. A copy of any petition to revoke shall be served on the General Counsel.

(3) The General Counsel shall revoke the subpoena if the witness or evidence, the production of which is required, is not material and relevant to the matters under investigation or in question in the proceedings, or the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. The General Counsel shall state the procedural or other grounds for the ruling on the petition to revoke. The petition to revoke, shall become part of the official record if there is a hearing under subpart C of this part.

(4) Upon the failure of any person to comply with a subpoena issued by the General Counsel, the General Counsel shall determine whether to institute proceedings in the appropriate district court for the enforcement of the subpoena. Enforcement shall not be sought if to do so would be inconsistent with law, including the Federal Service Labor-Management Relations Statute.

(d) *Confidentiality.* It is the General Counsel's policy to protect the identity of individuals who submit statements and information during the investigation, and to protect against the disclosure of documents obtained during the investigation, as a means of ensuring the General Counsel's continuing ability to obtain all relevant information. After issuance of a complaint and in preparation for a hearing, however, identification of witnesses, a synopsis of their expected testimony and documents proposed to be offered into evidence at the hearing may be disclosed as required by the prehearing disclosure requirements in § 2423.23.

§ 2423.9 Amendment of charges.

Prior to the issuance of a complaint, the Charging Party may amend the charge in accordance with the requirements set forth in § 2423.6.

§ 2423.10 Action by the Regional Director.

(a) *Regional Director action.* The Regional Director, on behalf of the General Counsel, may take any of the following actions, as appropriate:

(1) Approve a request to withdraw a charge;

(2) Dismiss a charge;

(3) Approve a written settlement agreement in accordance with the provisions of § 2423.12;

(4) Issue a complaint; or

(5) Withdraw a complaint.

(b) *Request for appropriate temporary relief.* Parties may request the General Counsel to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d). The General Counsel may initiate and prosecute injunctive proceedings under 5 U.S.C. 7123(d) only upon approval of the Authority. A determination by the General Counsel not to seek approval of the Authority to seek such appropriate temporary relief is final and shall not be appealed to the Authority.

(c) *General Counsel requests to the Authority.* When a complaint issues and the Authority approves the General Counsel's request to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d), the General Counsel may make application for appropriate temporary relief (including a restraining order) in the district court of the United States within which the unfair labor practice is alleged to have occurred or in which the party sought to be enjoined resides or transacts business. Temporary relief may be sought if it is just and proper and the record establishes probable cause that an unfair labor practice is being committed. Temporary relief shall not be sought if it would interfere with the ability of the agency to carry out its essential functions.

(d) *Actions subsequent to obtaining appropriate temporary relief.* The General Counsel shall inform the district court which granted temporary relief pursuant to 5 U.S.C. 7123(d) whenever an Administrative Law Judge recommends dismissal of the complaint, in whole or in part.

§ 2423.11 Determination not to issue complaint; review of action by the Regional Director.

(a) *Opportunity to withdraw a charge.* If, upon the completion of an investigation under § 2423.8, a decision has been made to dismiss the charge, the Regional Director will notify the parties of the decision and the Charging Party will be advised of an opportunity to withdraw the charge(s).

(b) *Dismissal letter.* If the Charging Party does not withdraw the charge within a reasonable period of time, the Regional Director will, on behalf of the General Counsel, dismiss the charge and provide the parties with a written statement of the reasons for not issuing a complaint.

(c) *Appeal of a dismissal letter.* The Charging Party may obtain review of the Regional Director's decision not to issue a complaint by filing an appeal with the General Counsel within 25 days after service of the Regional Director's decision. A Charging Party shall serve a copy of the appeal on the Regional Director. The General Counsel shall serve notice on the Charged Party that an appeal has been filed.

(d) *Extension of time.* The Charging Party may file a request, in writing, for an extension of time to file an appeal, which shall be received by the General Counsel not later than 5 days before the date the appeal is due. A Charging Party shall serve a copy of the request for an extension of time on the Regional Director.

(e) *Grounds for granting an appeal.* The General Counsel may grant an appeal when the appeal establishes at least one of the following grounds:

(1) The Regional Director's decision did not consider material facts that would have resulted in issuance of a complaint;

(2) The Regional Director's decision is based on a finding of a material fact that is clearly erroneous;

(3) The Regional Director's decision is based on an incorrect statement or application of the applicable rule of law;

(4) There is no Authority precedent on the legal issue in the case; or

(5) The manner in which the Region conducted the investigation has resulted in prejudicial error.

(f) *General Counsel action.* The General Counsel may deny the appeal of the Regional Director's dismissal of the charge, or may grant the appeal and remand the case to the Regional Director to take further action. The General Counsel's decision on the appeal states the grounds listed in paragraph (e) of this section for denying or granting the appeal, and is served on all the parties. Absent a timely motion for reconsideration, the decision of the General Counsel is final.

(g) *Reconsideration.* After the General Counsel issues a final decision, the Charging Party may move for reconsideration of the final decision if it can establish extraordinary circumstances in its moving papers. The motion shall be filed within 10 days after the date on which the General Counsel's final decision is postmarked. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations. The decision of the General Counsel on a motion for reconsideration is final.

§ 2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.

(a) *Alternative Dispute Resolution (ADR).* After a merit determination to issue a complaint, the Regional Director will work with the parties to settle the dispute using ADR, to avoid costly and protracted litigation.

(b) *Bilateral informal settlement agreement.* Prior to issuing a complaint but after a merit determination by the Regional Director, the Regional Director may afford the Charging Party and the Charged Party a reasonable period of time to enter into an informal settlement agreement to be approved by the Regional Director. When a Charged Party complies with the terms of an informal settlement agreement approved by the Regional Director, no further action is taken in the case. If the Charged Party fails to perform its obligations under the approved informal settlement agreement, the Regional Director may institute further proceedings.

(c) *Unilateral informal settlement agreement.* If the Charging Party elects not to become a party to a bilateral settlement agreement which the Regional Director concludes effectuates the policies of the Federal Service Labor-Management Relations Statute, the Regional Director may choose to approve a unilateral settlement between the General Counsel and the Charged Party. The Regional Director, on behalf of the General Counsel, shall issue a letter stating the grounds for approving the settlement agreement and declining to issue a complaint. The Charging Party may obtain review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 2423.11(c) and (d). The General Counsel shall take action on the appeal as set forth in § 2423.11(e)–(g).

§§ 2423.13–2423.19 [Reserved]

Dated: December 18, 2007.

Colleen Duffy Kiko,

General Counsel, Federal Labor Relations Authority.

[FR Doc. E7–24846 Filed 12–20–07; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–260–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. That action would have required revising the airplane flight manual to advise the flightcrew of special operating limitations associated with a reduction in airplane performance due to loss of propeller efficiency. That action also would have required installing placards in the flight compartment and operating the airplane per certain special operating limitations; or performing repetitive flight checks to verify the adequacy of the airplane's climb performance, and accomplishing follow-on actions if necessary. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has issued another NPRM applicable to certain propellers, which addresses the identified unsafe condition. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on February 6, 2004 (69 FR 5775). The proposed rule would have required revising the airplane flight manual to advise the flightcrew of special operating limitations associated with a reduction in airplane performance due to loss of propeller efficiency. That action also would have required installing placards in the flight compartment and operating the airplane per certain special operating limitations; or performing repetitive flight checks to verify the adequacy of the airplane's climb performance, and accomplishing follow-on actions if necessary. That action was prompted by a report indicating that a shortfall in engine performance, compared to the performance standards shown in the airplane flight manual (AFM), has been observed during climb-performance test flights. The proposed actions were intended to ensure that the flightcrew accounts for the potential loss of airplane performance due to loss of propeller efficiency, which could result in an increased risk of collision with terrain.

Actions that Occurred Since the NPRM Was Issued

On October 24, 2007, we issued NPRM, Docket No. FAA–2006–25173, for McCauley Propeller Systems propeller models B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0. These propellers are installed on BAE Systems (Operations) Limited (Jetstream) Model 4100 and 4101 airplanes. That NPRM would require, for certain blades, fluorescent penetrant inspections (FPI) and eddy current inspections (ECI) of propeller blades for cracks based on hours time-in-service after the effective date of the AD, and if any crack indications are found, removal from service.

Also, the NPRM would require inspecting for blunt leading edges of the

propeller blades while inspecting them for cracks, and if necessary, dressing any erosion before returning the blades to service. That NPRM results from our determination that we must require repetitive inspections for cracks, and from reports of blunt leading edges of the propeller blades due to erosion. We issued that NPRM to detect cracks in the propeller blade that could cause failure and separation of the propeller blade and loss of control of the airplane, and to detect blunt leading edges on the propeller blades, which could cause airplane single engine climb performance degradation and could result in an increased risk of collision with terrain.

FAA's Conclusions

Upon further consideration, we have determined that, for all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes, the proposed actions specified in NPRM, Docket No. FAA–2006–25173, more adequately address loss of propeller efficiency due to erosion or profile changes of the propeller blade's leading edge. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2002–NM–260–AD, published in the **Federal Register** on February 6, 2004 (69 FR 5775), is withdrawn.

Issued in Renton, Washington, on December 14, 2007.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24821 Filed 12–20–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2007–29305; Notice No. 07–15]

RIN 2120–AI92

Automatic Dependent Surveillance—Broadcast (ADS–B) Out Performance Requirements To Support Air Traffic Control (ATC) Service

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a revised Initial Regulatory Flexibility Analysis associated with the notice of proposed rulemaking entitled, ''Automatic Dependent Surveillance-Broadcast (ADS–B) Out performance requirements to support Air Traffic Control (ATC) service.''

DATES: The comment period for the Notice of Proposed Rulemaking (NPRM) published on October 5, 2007 (72 FR 56947), as extended on November 19, 2007 (72 FR 64966), closes March 3, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–29305 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.
- *Hand Delivery:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov*.

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas C. Smith, Regulatory Analysis Division, Office of Aviation Policy and Plans, APO–310, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number: (202) 267–3289; *thomas.c.smith@faa.gov*.

SUPPLEMENTARY INFORMATION

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Discussion

On October 1, 2007, the Federal Aviation Administration (FAA) issued a notice of proposed rulemaking (NPRM) entitled, ''Automatic Dependent Surveillance—Broadcast (ADS–B) Out performance requirements to support Air Traffic Control (ATC) service'' (72 FR 56947; October 5, 2007). The comment period for the NPRM, as extended on November 19, 2007 (72 FR 64966), closes on March 3, 2007.

The Small Business Administration's (SBA) Office of Advocacy has asked us to revise the Initial Regulatory Flexibility Analysis (IRFA) associated with the NPRM and to publish the

revised IRFA in the **Federal Register**.[1] Specifically, the SBA was concerned that two tables that we included in the IRFA might be misleading. The tables listed specific data on a sample of 34 U.S. part 91, 121, and 135 operators. We used data from the sample along with Census Bureau data to extrapolate the number of small entities in the U.S. that might be significantly affected by the proposed rule. We then concluded that the proposal would have a significant effect on a substantial number of small entities.

The SBA was concerned that inclusion of these tables would cause companies to mistakenly conclude that the proposed rule would only have a significant impact on those companies listed. We do not want to create such an impression as those companies listed were used as a sample. Therefore, we changed the IRFA by removing the tables and provided a fuller discussion.

The analysis examines whether the proposed rulemaking would have a significant economic impact on a substantial number of small entities.

Initial Regulatory Flexibility Determination ADS–B

Introduction and Purpose of This Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this proposal would result in a significant economic impact on a substantial number of small entities. The purpose of this analysis is to provide the reasoning underlying the FAA determination.

Under Section 603(b) of the RFA, the analysis must address:

- Description of reasons the agency is considering the action,
- Statement of the legal basis and objectives for the proposed rule,
- Description of the recordkeeping and other compliance requirements of the proposed rule,
- All federal rules that may duplicate, overlap, or conflict with the proposed rule,
- Description and an estimated number of small entities to which the proposed rule will apply,
- Analysis of small firms' ability to afford the proposed rule,
- Estimation of the potential for business closures,
- Conduct a competitive analysis,
- Conduct a disproportionality analysis, and
- Describe the alternatives considered.

Reasons Why the Rule Is Being Proposed

Public Law 108–176, referred to as ''The Century of Aviation Reauthorization Act,'' was enacted December 12, 2003 (Pub. L. 108–176). This law set forth requirements and objectives for transforming the air transportation system to progress further into the 21st Century. Section 709 of this statute requires the Secretary of Transportation to establish in the FAA a joint planning and development office (JPDO) to manage work related to the Next Generation Air Transportation System (NextGen). Among its statutorily defined responsibilities, the JPDO coordinates the development and utilization of new technologies to ensure that when available, they may be used to the fullest potential in aircraft and in the air traffic control system.

The FAA, the National Aeronautics and Space Administration (NASA) and the Departments of Commerce, Defense, and Homeland Security have launched an effort to align their resources to develop and further the NextGen. The goals of NextGen, as stated in section 709, are addressed by this proposal and include:

(1) improve the level of safety, security, efficiency, quality, and affordability of the NAS and aviation services;

(2) take advantage of data from emerging ground-based and space-based communications, navigation, and surveillance technologies;

(3) be scalable to accommodate and encourage substantial growth in domestic and international transportation and anticipating and accommodating continuing technology upgrades and advances; and

(4) accommodate a wide range of aircraft operations, including airlines, air taxis, helicopters, general aviation, and unmanned aerial vehicles.

The JPDO was also charged to create and carry out an integrated plan for NextGen. The NextGen Integrated Plan,[2] transmitted to Congress on December 12, 2004, ensures that the NextGen system meets the air transportation safety, security, mobility, efficiency and capacity needs beyond those currently included in the FAA's Operational Evolution Plan (OEP). As described in the NextGen Integrated Plan, the current approach to air transportation, i.e., ground based radars tracking congested flyways and passing information among the control centers for the duration of the flights, is becoming operationally obsolete. The current system is increasingly inefficient and large increases in air traffic will only result in mounting delays or limitations in service for many areas.

This growth will result in more air traffic than the present system can handle. The current method of handling traffic flow will not be able to adapt to the highest volume and density of it in the future. It is not only the number of flights but also the nature of the new growth that is problematic, as the future of aviation will be much more diverse than it is today. For example, a shift of two percent of today's commercial passengers to micro-jets that seat 4–6 passengers would result in triple the number of flights in order to carry the same number of passengers. Furthermore, the challenges grow as other non-conventional aircraft, such as unmanned aircraft, are developed for special operations, e.g. forest fire fighting.

The FAA believes that ADS–B technology is a key component in achieving many of the goals set forth in the plan. This proposed rule embraces a new approach to surveillance that can lead to greater and more efficient utilization of airspace. The NextGen Integrated Plan articulates several large transformation strategies in its roadmap

[1] The original IRFA can be found in the FAA's Draft Regulatory Impact Analysis, Document ID FAA–2007–29305–0004.1 at the Federal eRulemaking Portal (*http://www.regulations.gov*).

[2] A copy of the Plan has been placed in the docket for this rulemaking.

to successfully creating the Next Generation System. This proposal is a major step toward strategically ''establishing an agile air traffic system that accommodates future requirements and readily responds to shifts in demand from all users.'' ADS–B technology would assist in the transition to a system with less dependence on ground infrastructure and facilities, and provide for more efficient use of airspace.

Statement of the Legal Basis and Objectives

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103, Sovereignty and use of airspace, and Subpart III, section 44701, General requirements. Under section 40103, the FAA is charged with prescribing regulations on the flight of aircraft, including regulations on safe altitudes, navigating, protecting, and identifying aircraft, and the safe and efficient use of the navigable airspace. Under section 44701, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

This proposal is within the scope of sections 40103 and 44701 since it proposes aircraft performance requirements that would meet advanced surveillance needs to accommodate the projected increase in operations within the National Airspace System (NAS). As more aircraft operate within the U.S. airspace, improved surveillance performance is necessary to continue to balance the growth in air transportation with the agency's mandate for a safe and efficient air transportation system.

Projected Reporting, Recordkeeping and Other Requirements

We expect no more than minimal new reporting and recordkeeping compliance requirements to result from this proposed rule. Costs for the initial installation of new equipment and associated labor constitute a burden under the Paperwork Reduction Act. The Paperwork Reduction Act analysis was included in the full Regulatory Analysis that is included in the docket for this rulemaking.

Overlapping, Duplicative, or Conflicting Federal Rules

We are unaware that the proposed rule will overlap, duplicate or conflict with existing Federal Rules.

Estimated Number of Small Firms Potentially Impacted

Under the RFA, the FAA must determine whether a proposed rule significantly affects a substantial number of small entities. This determination is typically based on small entity size and cost thresholds that vary depending on the affected industry.

Using the size standards from the Small Business Administration for Air Transportation and Aircraft Manufacturing, we defined companies as small entities if they have fewer than 1,500 employees.[3]

This proposed rule would become final in 2009 and fully effective in 2020. Although the FAA forecasts traffic and air carrier fleets to 2030, our forecasts do not have the granularity to determine if an operator will likely still be in business or will still remain a small business entity. Therefore we will use current U.S. operator's fleet and employment in order to determine the number of operators this proposal would affect.

We obtained a list of part 91, 121 and 135 U.S. operators from the FAA Flight Standards Service.[4] Using information provided by the U.S. Department of Transportation Form 41 filings, World Aviation Directory and ReferenceUSA, operators that are subsidiary businesses of larger businesses and businesses with more than 1,500 employees were eliminated from the list of small entities. In many cases the employment and annual revenue data was not public and we did not include these companies in our analysis. For the remaining businesses, we obtained company revenue and employment from the above three sources.

The methodology discussed above resulted in a sample of 34 U.S. part 91, 121 and 135 operators, with less than 1,500 employees, who operate 341 airplanes. Due to the sparse amount of publicly available data on internal company financial statistics for small entities, it is not feasible to estimate the total population of small entities affected by this proposed rule. These 34 U.S. small entity operators are a representative sample to assess the cost impact of the total population of small businesses, who operate aircraft affected by this proposed rulemaking. This representative sample was then applied to the U.S. Census Bureau data on the Small Business Administration's website to develop an estimate of the total number of affected small business entities. The U.S. Census Bureau data lists small entities in the Air Transportation Industry that employ less than 500 employees. Other small businesses may own aircraft and not be included in the U.S. Census Bureau Air Transportation Industry category. Therefore our estimate of the number of affected small entities affected by this proposed rulemaking will likely be understated. The estimate of the total number of affected small entities is developed below.

Cost and Affordability for Small Entities

To assess the cost impact to small business part 91, 121 and 135 operators, we contacted manufacturers, industry associations, and ADS–B equipage providers to estimate ADS–B equipage costs. We requested estimates of airborne installation costs, by aircraft model, for the output parameters listed in the *Equipment Specifications* section of the Regulatory Evaluation.

To satisfy the manufacturer's request to keep individual aircraft pricing confidential, we calculated a low, baseline, and high range of costs by equipment class. The baseline estimate equals the average of the low and high industry estimates. The dollar value ranges consist of a wide variety of avionics within each aircraft group. The aircraft architecture within each equipment group can vary, causing different carriage, labor and wiring requirements for the installation of ADS–B. Volume discounting versus single line purchasing also affects the dollar value ranges. On the low end, the dollar value may represent a software upgrade or OEM option change. On the high end, the dollar value may represent a new installation of upgraded transponder systems necessary to assure accuracy, reliability and safety. We used the estimated baseline dollar value cost by equipment class in determining the impact to small business entities.

We estimated each operator's total compliance cost by multiplying the baseline dollar value cost, by equipment class, by the number of aircraft each small business operator currently has in its fleet. We summed these costs by equipment class and group. We then measured the economic impact on small entities by dividing the estimated baseline dollar value compliance cost for their fleet by the small entity's annual revenue. Each equipment group

[3] 13 CFR Part 121.201, Size Standards Used to Define Small Business Concerns, Sector 48–49 Transportation, Subsector 481 Air Transportation.

[4] AFS–260.

operated by a small entity may have to comply with different requirements in the proposed rule depending on the state of the aircraft's avionics. In the *ADS–B Out Equipage Cost Estimate* section of the Regulatory Evaluation we detail our methodology to estimate operators' total compliance cost by equipment group.

The ADS–B cost is estimated to be greater than two percent of annual revenues for about 35 percent and greater than one percent of annual revenues for about 54 percent of the small entity operators in our sample population of 34 small aviation entities. Applying these percentages to the 2,719 firms with employment under 500 from the Air Transportation Industry category of the U.S. Census Bureau data [5] results in the estimated ADS–B cost being greater than two percent of annual revenues for at least 960 small entities and greater than one percent of annual revenues for at least 1,476 small entity operators.

Thus the FAA has determined that a substantial number of small entities would be significantly affected by the proposed rule. Every small entity who operates an aircraft in the airspace defined by this proposal would be required to install ADS–B out equipage and therefore would be affected by this rulemaking.

Business Closure Analysis

For commercial operators, the ratio of present-value costs to annual revenue shows that seven of 34 small business air operator firms analyzed would have ratios in excess of five percent. Since many of the other commercial small business air operator firms do not make their annual revenue publicly available, it is difficult to assess the financial impact of this proposed rule on their business. To fully assess whether this proposed rule could force a small entity into bankruptcy requires more financial information than is publicly available.

The FAA seeks comment, with supportive justification, to determine the degree of hardship, and feasible alternative methods of compliance, the proposed rule will have on these small entities.

Competitive Analysis

The aviation industry is an extremely competitive industry with slim profit margins. The number of operators who entered the industry and have stopped operations because of mergers, acquisitions, or bankruptcy litters the history of the aviation industry.

[5] *http://www.sba.gov/advo/research/us04_n6.pdf.*

The FAA analyzed five years of operating profits for the affected small-entity operators listed above. We were able to determine the operating profit for 18 of the 34 small business entities. The FAA discovered that 33 percent of these 18 affected operators' average operating profit is negative. Only four of the 18 affected operators had average annual operating profit that exceeded $10,000,000.

In this competitive industry, cost increases imposed by this proposed regulation would be hard to recover by raising prices, especially by those operators showing an average five-year negative operating profit. Further, large operators may be able to negotiate better pricing from outside firms for inspections and repairs, so small operators may need to raise their prices more than large operators. These factors make it difficult for the small operators to recover their compliance costs by raising prices. If small operators cannot recover all the additional costs imposed by this regulation, market shares could shift to the large operators.

However, small operators successfully compete in the aviation industry by providing unique services and controlling costs. To the extent the affected small entities operate in niche markets, their ability to pass on costs will be enhanced. Currently small operators are much more profitable than the established major scheduled carriers. This proposed rule would offset some of the advantages that these small operators have of using older aircraft that have lower capital cost.

Overall, in terms of competition, this rulemaking reduces small operators' ability to compete. We request comments from industry on the results of the competitive analysis.

Disproportionality Analysis

The disproportionately higher impact of the proposed rule on the fleets of small operators result in higher relative costs to small operators. Due to the potential of fleet discounts, large operators may be able to negotiate better pricing from outside sources for inspections, installation, and ADS–B hardware purchases.

Based on the percent of potentially affected current airplanes over the analysis period, small U.S. business operators may bear a disproportionate impact from the proposed rule.

Comments received and final rule changes on regulatory flexibility issues will be addressed in the statement of considerations for the final rule.

Analysis of Alternatives

Alternative One

The status quo alternative has compliance costs to continue the operation and commissioning of radar sites. The FAA rejected this status quo alternative because the ground based radars tracking congested flyways and passing information among the control centers for the duration of the flights is becoming operationally obsolete. The current system is not efficient enough to accommodate the estimated increases in air traffic, which would result in mounting delays or limitations in service for many areas.

Alternative Two

This alternative would employ a technology called multilateration. Multilateration is a separate type of secondary surveillance system that is not radar and has limited deployment in the U.S. At a minimum, multilateration requires upwards of four ground stations to deliver the same volume of coverage and integrity of information as ADS–B, due to the need to ''triangulate'' the aircraft's position. Multilateration is a process wherein an aircraft position is determined using the difference in time of arrival of a signal from an aircraft at a series of receivers on the ground. Multilateration meets the need for accurate surveillance and is less costly than ADS–B (but more costly than radar), but cannot achieve the same level of benefits that ADS–B can. Multilateration would provide the same benefits as radar, but we estimate that cost to provide multilateration (including the cost to sustain radar until multilateration is operational), would exceed the cost to continue full radar surveillance.[6]

Alternative Three

This alternative would provide relief by having the FAA provide an exemption to small air carriers from all requirements of this rule. This alternative would mean that the small air carriers would rely on the status quo ground based radars tracking their flights and passing information among the control centers for the duration of the flights. This alternative would require compliance costs to continue for the commissioning of radar sites. Air traffic controller workload and training costs would increase having to employ two systems in tracking aircraft. Small entities may request ATC deviations prior to operating in the airspace

[6] However, the cost to operate and maintain the multilateration facilities and equipment is less than the cost to continue full radar surveillance.

affected by this proposal. It would also be contrary to our policy for one level of safety in part 121 operations to exclude certain operators simply because they are small entities. Thus, this alternative is not considered to be acceptable.

Alternative Four

This alternative is the proposed ADS–B rule. ADS–B does not employ different classes of receiving equipment or provide different information based on its location. Therefore, controllers will not have to account for transitions between surveillance solutions as an aircraft moves closer or farther away from an airport. In order to meet future demand for air travel without significant delays or denial of service, ADS–B was found to be the most cost effective solution to maintain a viable air transportation system. ADS–B provides a wider range of services to aircraft users and could enable applications unavailable to multilateration or radar.

Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

ICAO is developing a set of standards that are influenced by, and similar to, the U.S. RTCA developed standards. Initial discussions with the international community lead us to conclude that U.S. aircraft operating in foreign airspace would not have to add any equipment or incur any costs in addition to what they would incur to operate in domestic airspace under this proposed rulemaking. Foreign operators may incur additional costs to operate in U.S. airspace, if their national rules, standards and, current level of equipage are different than those required by this proposed rule. The FAA is actively engaged with the international community to ensure that the international and U.S. ADS–B standards are as compatible as possible. For a fuller discussion of what other countries are planning with regards to ADS–B, see Section VII of the preamble. By 2020 ICAO standards may change to harmonize with this proposed rule and foreign operators will not have to incur additional costs.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million. This proposed rule is not expected to impose significant costs on small governmental jurisdictions such as state, local, or tribal governments but the FAA calls for comment on whether this expectation is correct. However, this proposed rule would result in an unfunded mandate because it would result in expenditures in excess of an inflation-adjusted value of $128.1 million. We have considered three alternatives to this rulemaking, which are discussed in section 4.0 and in the regulatory flexibility analysis in section 7.

Issued in Washington, DC on December 14, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E7–24713 Filed 12–20–07; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA 2007–0070]

RIN 0960–AF96

Parent-to-Child Deeming From Stepparents

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to change the Supplemental Security Income (SSI) parent-to-child deeming rules so that we would no longer consider the income and resources of a stepparent when an eligible child resides in the household with a stepparent, but that child's natural or adoptive parent has permanently left the household. These proposed rules would respond to a decision by the United States Court of Appeals for the Second Circuit. Social Security Acquiescence Ruling (AR) 99–1(2) currently applies the Court's decision to individuals who reside in Connecticut, New York, and Vermont. These rules propose to establish a uniform national policy with respect to this issue. Also, we propose to make uniform the age at which we consider someone to be a ''child'' in SSI program regulations and to make other minor clarifications to our rules.

DATES: To be sure that we consider your comments, we must receive them by February 19, 2008.

ADDRESSES: You may submit comments by any of the following methods. Regardless of which method you choose, to ensure that we can associate your comments with the correct regulation for consideration, you must state that your comments refer to Docket No. SSA–2007–0070:

- Federal eRulemaking Portal at *http://www.regulations.gov.* (This is the preferred method for submitting your comments.) In the Search Documents section, select ''Social Security Administration'' from the agency drop-down menu, then click ''submit''. In the Docket ID Column, locate SSA–2007–0070 and then click ''Add Comments'' in the ''Comments Add/Due By'' column.
- Telefax to (410) 966–2830.
- Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703.
- Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days.

Comments are posted on the Federal eRulemaking portal, or you many inspect them on regular business days by making arrangements with the contact person shown in this preamble.

FOR FURTHER INFORMATION CONTACT: Eric Skidmore, Office of Income Security Programs, 252 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 597–1833, or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Background

The basic purpose of the SSI program is to provide a minimum level of

income to people aged 65 or older, or who are blind or disabled, and who have limited income and resources. Section 1611 of the Social Security Act (the Act) provides that SSI payments can only be made to people who have income and resources below specified amounts.

When we determine SSI eligibility and benefit amounts, we always consider the individual's own income and resources. Through a process known as deeming, we also consider the income and resources of others who are responsible for the individual's welfare. Deeming is based on the concept that those with responsibility for others provide support to them.

Section 1614(f)(2) of the Act requires the Commissioner of Social Security (the Commissioner) to deem the income and resources of eligible children to include the income and resources of a natural or adoptive parent and the spouse of a parent who are living in the same household as the eligible child. These income and resource amounts are deemed to the eligible child whether or not they are available to the child, except to the extent determined by the Commissioner to be inequitable under the circumstances.

Existing regulations in 20 CFR part 416, subparts K, L and R, apply to parents and stepparents equally for purposes of deeming income and resources to an eligible child who lives in the same household as the parent or stepparent. However, a 1998 decision by the United States Court of Appeals for the Second Circuit held that our regulations require that a stepparent live in the same household as the natural or adoptive parent, in addition to living with the child, in order for the stepparent's income to be deemed to the child. (*Florez on behalf of Wallace* v. *Callahan,* 156 F. 3d 438 (2d Cir. 1998.)). In the case of a natural parent who abandoned the family home leaving her spouse, as stepparent, with sole physical custody of the eligible child, the Court found that deeming of a stepparent's income to the child was not supported by the regulations.

The Court disagreed with us that the controlling regulation in such a case was § 416.1806, which addresses who is a spouse for SSI purposes and, by extension, who is a spouse for purposes of deeming. Under this regulation, we deem the income and resources of a stepparent living in the same household as the eligible child when the stepparent is legally married under State law to that child's natural or adoptive parent, even if the natural or adoptive parent is not living in the household.

Instead, the Court held that § 416.1101, which defines a spouse as someone who lives with another person as that person's husband or wife, was the controlling regulation. The Court found that §§ 416.1101 and 416.1806 created a two-part test for determining whether a spouse of a natural parent, who lives with the eligible child, is an ineligible parent for deeming purposes under § 416.1160. Under this test, (1) the spouse must live with the child's natural or adoptive parent pursuant to § 416.1101; and (2) the relationship must be as husband or wife, as further defined at § 416.1806.

The Court concluded that the plain language of these regulations, supported by the legislative history of the Act, required us to exclude a stepparent's income from deeming when the eligible child's natural parent no longer resided in the family home. As a result of this decision, we issued AR 99–1(2) on February 1, 1999 to apply the Court's decision within the States in the Second Circuit. We apply the AR if an SSI beneficiary is an eligible child who resides in Connecticut, New York, and Vermont at the time of the determination (including all post-eligibility determinations) or decision at any level of the administrative review process. We continue to use § 416.1806 as the controlling regulation in similar cases for the rest of the nation.

These rules propose to change our regulations so that we will now deem a child's income and resources to include the income and resources of the stepparent only if the stepparent lives in the same household as the child and the natural or adoptive parent. If we adopt these proposed rules as final rules, we anticipate that we would rescind AR 99–1(2), consistent with our regulations at 20 CFR 416.1485(e)(4).

The regulatory changes we propose would amend existing regulations so that we would exclude, as part of an eligible child's income and resources, the income and resources of a stepparent if the natural or adoptive parent is permanently absent from the household. If adopted as final rules, the proposed rules would restore national uniformity by extending the policy set out in AR 99–1(2) to the rest of the nation. We believe the policy in these proposed rules will encourage stepparents to voluntarily accept responsibility for SSI eligible children who have been abandoned by their natural or adoptive parents.

Generally, we believe this regulatory change will prove beneficial to SSI children who are subject to the conditions described above because we will not deem income or resources from stepparents who assume sole responsibility for their well-being. There may be a small number of children who are affected by the proposed changes in the following manner. Under this proposed rule, the stepparent would no longer be considered a parent for deeming purposes and the child would be considered living in another person's household and, therefore, possibly in receipt of income in the form of in-kind support and maintenance (ISM). ISM is treated as income and represents the value of food and/or shelter that an individual receives while in the household of a person who is not the individual's spouse or parent. Although we would no longer deem the stepparent's income and resources when the natural or adoptive parent has left the home, under the SSI living arrangement rules, we are required to consider the ISM value the child may receive. While the individual is in the household of another, the value of ISM is determined by dividing the food and household expenses by the number of people in the household and then subtracting the individual's contribution, if any, toward those expenses. If the individual's contribution is less than the computed pro rata share of the expenses, the difference between the contribution and the pro rata share is then counted as income to the individual. The amount of income charged to an eligible individual in such a situation is capped at one-third of the Federal Benefit Rate (FBR) for an individual. So, if the difference between the individual's contribution and the individual's pro rata share is greater than one-third of the individual FBR, we only count one-third of the FBR as income to the individual. The amount of ISM we would charge to the child would be reduced if the child contributed a portion of his or her income (such as the child's SSI check) toward the household expenses, and in no case can ISM alone cause a child to be ineligible for SSI benefits.

We tracked cases in the States in the Second Circuit for a 1-year period following issuance of the AR and found no other cases where the stepparent was the only person who remained in the household with the eligible child after the natural or adoptive parent left. Since we found that there are generally other people in the household, we believe it is more likely that the child would be able to pay his or her share of the household expenses and, therefore, we expect that the child would be charged with little or no ISM. In addition, if the computation results in countable ISM, it may be less than the amount of deemed

income we would have counted under our current rules in such a circumstance. As compared to our current rules where we deem a stepparent's income, if these proposed rules are adopted as final rules, we believe there would likely be no adverse impact on the child. We also considered the possibility of revising our regulations pertaining to ISM to not count ISM in the case of a stepparent and child living together when the natural or adoptive parent has departed the household. We determined that this option was undesirable because of the inequities it would create under the established ISM framework for other beneficiaries living in a non-deemor's household. That is, we could not justify not counting ISM in one situation (an eligible child living with a non-deemor stepparent), but continuing to count ISM in other similar situations (an eligible child living with a non-deemor such as a friend or other relative).

We also propose to modify existing regulations to clarify our longstanding policy of not deeming the income and resources of a stepparent who lives with an eligible child to the child when the natural or adoptive parent dies or divorces the stepparent.

We also propose one change and one clarification to our definition of ''ineligible child.'' First, we propose to eliminate the age difference in existing regulations between our definitions of ''child'' and ''ineligible child.'' For purposes of consistency and to make our rules more easily understood by the public, we propose revising the regulatory definition of ''ineligible child'' to mirror the regulatory definition of ''child'' with respect to the maximum age requirement. As proposed, the new rule would permit a child in the household to be considered an ineligible child for deeming purposes until attainment of age 22, assuming all other requirements are met.

Second, we also propose to modify our definition of ''ineligible child'' to clarify who is considered a ''spouse'' for purposes of ineligible child determinations in deeming situations. Under current policy, in determining the amount of income to deem from a parent to an eligible child, we make an allocation for other children in the home, that is, we consider what other ineligible children reside in the home and deduct from the amount of income to be deemed accordingly. In the situation where a parent lives in a home with his or her eligible child, and also with the ineligible child of the parent's spouse, we provide an allocation for the ineligible child of the parent's spouse in determining how much income to deem from the parent to the eligible child. If the parent's spouse were to abandon the home, leaving the ineligible child of the parent's spouse behind, we still provide an allocation with respect to the ineligible child of the parent's spouse, when determining how much income to deem from the parent to the eligible child. The proposed rule would clarify, consistent with current policy, that when determining who meets the definition of ''ineligible child'' for SSI purposes in the context of the child of a spouse, we use the definition of spouse at § 416.1806, which does not necessarily require that the spouse of a parent live with the parent to be considered the parent's spouse.

Finally, we propose to update the name of a government entity in our regulations due to the creation of the United States Department of Homeland Security. This change is clerical in nature and has no substantive effect on our policies or procedures.

Explanation of Proposed Changes

We propose to amend the regulations in 20 CFR, part 416, subparts K, L and R, to implement the policy changes discussed above. In summary, we propose to:

- Revise §§ 416.1160(a)(2) and (d), 416.1165(g)(4), 416.1202(b)(1), and 416.1851(c) to not deem income and resources from a stepparent when an eligible child lives with a stepparent but not with his or her natural or adoptive parent. This will make our national policy uniform with respect to the deeming of income and resources from stepparents to eligible children when the natural or adoptive parent has permanently left the household, as defined in § 416.1167.
- Update § 416.1160(d) to replace ''Immigration and Naturalization Service'' with ''U.S. Citizenship and Immigration Services'' due to a change in the name of a government entity. This is a result of the creation of the Department of Homeland Security.
- Revise the definition of ineligible child in § 416.1160(d) to remove the under 21 age standard so that the definition of ''ineligible child'' will cross-reference the definition of ''child'' in § 416.1101, which uses an age limit of 22. This change would eliminate a layer of complexity that currently exists in the SSI program; that is, the distinction between an ''ineligible child'' for deeming purposes and a ''child'' for all other purposes.
- Revise the definition of ineligible child in § 416.1160(d) to clarify how we decide who is a ''spouse'' when determining who is an ''ineligible child.'' The definition of ''ineligible child'' would cross-reference § 416.1806 defining how we determine if an individual is married and who is a spouse. The proposed change would clarify our regulations, consistent with current policy, to continue providing an ineligible child allocation when the spouse of a parent leaves the household, but the spouse's children remain in the household with the eligible child and the parent of the eligible child.
- Revise § 416.1165(g)(3) to clarify how we deem income to an eligible child when the ineligible parent dies. The proposed changes to § 416.1165(g)(3) would clarify our longstanding policy, consistent with § 416.1881(b), to no longer deem the income of the stepparent to the eligible child when the natural or adoptive parent dies or divorces the stepparent.
- Update § 416.1204 to replace ''Immigration and Naturalization Service'' with ''U.S. Citizenship and Immigration Services'' due to a change in the name of a government entity. This is a result of the creation of the Department of Homeland Security.

Clarity of These Rules

Executive Order 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules 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 rules easier to understand?

Regulatory Procedures

Executive Order 12866, as Amended

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the requirements for a significant regulatory action under Executive Order 12866, as amended. Thus, they were reviewed by OMB.

Regulatory Flexibility Act

We certify that these proposed rules, when published in final, would not have a significant economic impact on

a substantial number of small entities because they affect only individuals. Accordingly, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Programs No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: September 25, 2007.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subparts K, L and R of part 416 of chapter III of title 20 Code of Federal Regulations as set forth below:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

2. Amend § 416.1160 by revising the section heading, paragraph (a)(2) and the definitions of ''Date of admission to or date of entry into the United States'' and ''Ineligible child'' in paragraph (d) to read as follows:

§ 416.1160 What is deeming of income?

(a) * * *

(2) *Ineligible parent.* If you are a child to whom deeming rules apply (see § 416.1165), we look at your ineligible parent's income to decide whether we must deem some of it to be yours. If you live with both your parent and your parent's spouse (i.e., your stepparent), we also look at your stepparent's income to decide whether we must deem some of it to be yours. We do this because we expect your parent (and your stepparent, if living with you and your parent) to use some of his or her income to take care of your needs.

* * * * *

(d) * * *

Date of admission to or *date of entry into the United States* means the date established by the U.S. Citizenship and Immigration Services as the date the alien is admitted for permanent residence.

* * * * *

Ineligible child means your natural child or adopted child, or the natural or adopted child of your spouse, or the natural or adopted child of your parent or of your parent's spouse (as the term *child* is defined in § 416.1101 and the term *spouse* is defined in § 416.1806), who lives in the same household with you, and is not eligible for SSI benefits.

* * * * *

3. Amend § 416.1165 by revising paragraphs (g)(3) and (g)(4) to read as follows:

§ 416.1165 How we deem income to you from your ineligible parent(s).

* * * * *

(g) * * *

(3) *Ineligible parent dies.* If your ineligible parent dies, we do not deem that parent's income to you to determine your eligibility for SSI benefits beginning with the month following the month of death. In determining your benefit amount beginning with the month following the month of death, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your deceased ineligible parent (see § 416.1160(b)(2)(iii)). If you live with two ineligible parents and one dies, we continue to deem income from the surviving ineligible parent who is also your natural or adoptive parent. If you live with a stepparent following the death of your natural or adoptive parent, we do not deem income from the stepparent.

(4) *Ineligible parent and you no longer live in the same household.* If your ineligible parent and you no longer live in the same household, we do not deem that parent's income to you to determine your eligibility for SSI benefits beginning with the first month following the month in which one of you leaves the household. We also will not deem income to you from your parent's spouse (i.e., your stepparent) who remains in the household with you if your natural or adoptive parent has permanently left the household. To determine your benefit amount if you continue to be eligible, we follow the rule in § 416.420 of counting your income including deemed income from your parent and your parent's spouse (i.e., your stepparent) (if the stepparent and parent lived in the household with you) in the second month prior to the current month.

* * * * *

Subpart L—[Amended]

4. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

5. Amend § 416.1202 by revising paragraph (b)(1) to read as follows:

§ 416.1202 Deeming of resources.

* * * * *

(b) *Child*—(1) *General.* In the case of a child (as defined in § 416.1856) who is under age 18, such child's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of an ineligible parent of such child who is living in the same household with such child (as described in § 416.1851). Such child's resources also shall be deemed to include the resources of an ineligible spouse of a parent (stepparent), provided the stepparent lives in the same household as the child and the parent. The child's resources shall be deemed to include the resources of the parent and stepparent whether or not the resources of the parent and stepparent are available to the child, to the extent that the resources of such parent (or parent and stepparent), exceed the resource limits described in § 416.1205 except as provided in paragraph (b)(2) of this section. (If the child is living with only one parent, the resource limit for an individual applies. If the child is living with both parents, or the child is living with one parent and the stepparent, the resource limit for an individual and spouse applies.) In addition to the exclusions listed in § 416.1210, pension funds which the parent or spouse of a parent may have are also excluded. The term ''pension funds'' is defined in paragraph (a) of this section. As used in this section, the term ''parent'' means the natural or adoptive parent of a child and the terms ''spouse of a parent'' and ''stepparent'' means the spouse (as defined in § 416.1806) of such natural or adoptive parent who is living in the same household with the child and parent.

* * * * *

6. Amend § 416.1204 by revising the first two sentences of the introductory text to read as follows:

§ 416.1204 Deeming of resources of the sponsor of an alien.

The resources of an alien who first applies for SSI benefits after September 30, 1980, are deemed to include the resources of the alien's sponsor for 3 years after the alien's date of admission into the United States. The *date of admission* is the date established by the U.S. Citizenship and Immigration Services as the date the alien is admitted for permanent residence.

* * * * *

Subpart R—[Amended]

7. The authority citation for subpart R of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1612(b), 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382a(b), 1382c(b), (c), and (d), and 1383(d)(1) and (e)).

8. Amend § 416.1851 by revising the first sentence of paragraph (c) and adding a new second sentence to read as follows:

§ 416.1851 Effects of being considered a child.

* * * * *

(c) If you are under age 18 and live with your parent(s) who is not eligible for SSI benefits, we consider (deem) part of his or her income and resources to be your own. If you are under age 18 and live with both your parent and your parent's spouse (stepparent) and neither is eligible for SSI benefits, we consider (deem) part of their income and resources to be your own.

* * * * *

[FR Doc. E7–24787 Filed 12–20–07; 8:45 am]
BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114126–07]

RIN 1545–BG54

Reduction of Foreign Tax Credit Limitation Categories Under Section 904(d)

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section in this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance relating to the reduction of the number of separate foreign tax credit limitation categories under section 904(d) of the Internal Revenue Code. Changes to the applicable law were made by the American Jobs Creation Act of 2004 (AJCA) reducing the number of section 904(d) separate categories from eight to two, effective for taxable years beginning after December 31, 2006. The temporary regulations provide guidance needed to comply with these changes and affect individuals and corporations claiming foreign tax credits. The text of those temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 20, 2008. Outlines of topics to be discussed at the public hearing scheduled for April 22, 2008, at 10 a.m. must be received by April 1, 2008.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–114126–07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–114126–07), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–114126–07). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jeffrey L. Parry, (202) 622–3850; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Kelly Banks, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations (26 CFR Part 1) which provide rules relating to the reduction of the number of separate foreign tax credit limitation categories under section 904(d). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. The regulations affect individuals and corporations claiming foreign tax credits.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

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

A public hearing has been scheduled for April 26, 2008, in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by March 20, 2008 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 1, 2008. A period of 10 minutes

will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.904–2(i) is added to read as follows:

§ 1.904–2 Carryback and carryover of unused foreign tax.

* * * * *

(i) [The text of proposed § 1.904–2(i) is the same as the text of § 1.904–2T(i)(1) through (3) published elsewhere in this issue of the **Federal Register**.]

Par. 3. In § 1.904–4, paragraphs (a), (b), (h)(3), and (l) are revised and paragraph (n) is added to read as follows:

§ 1.904–4 Separate application of section 904 with respect to certain categories of income.

(a) [The text of the proposed amendment to § 1.904–4(a) is the same as the text of § 1.904–4T(a) published elsewhere in this issue of the **Federal Register**.]

(b) [The text of the proposed amendment to § 1.904–4(b) is the same as the text of § 1.904–4T(b) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(h) * * *

(3) [The text of the proposed amendment to § 1.904–4(h)(3) is the same as the text of § 1.904–4T(h)(3) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(l) [The text of the proposed amendment to § 1.904–4(l) is the same as the text of § 1.904–4T(l) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(n) [The text of proposed § 1.904–4(n) is the same as the text of § 1.904–4T(n) published elsewhere in this issue of the **Federal Register**.]

Par. 4. In § 1.904–5, paragraph (h)(3) is revised and paragraph (o)(3) is added to read as follows:

§ 1.904–5 Look-through rules as applied to controlled foreign corporations and other entities.

* * * * *

(h) * * *

(3) [The text of the proposed amendment to § 1.904–5(h)(3) is the same as the text of § 1.904–5T(h)(3) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(o) * * *

(3) [The text of proposed § 1.904–5(o)(3) is the same as the text of § 1.904–5T(o)(3) published elsewhere in this issue of the **Federal Register**.]

Par. 5. Section 1.904–7(g) is added to read as follows:

§ 1.904–7 Transition rules.

* * * * *

(g) [The text of proposed § 1.904–7(g) is the same as the text of § 1.904–7T(g)(1) through (6) published elsewhere in this issue of the **Federal Register**.]

Par. 6. § 1.904(f)–12(h) is added to read as follows:

§ 1.904(f)–12 Transition rules.

* * * * *

(h) [The text of proposed § 1.904–12(h) is the same as the text of § 1.904–12T(h)(1) through (h)(6) published elsewhere in this issue of the **Federal Register**.]

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–24783 Filed 12–20–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–141399–07]

RIN 1545–BH13

Treatment of Overall Foreign and Domestic Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section in this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance relating to the recapture of overall foreign and domestic losses. Changes to the applicable law were made by the American Jobs Creation Act of 2004, as corrected by the Gulf Opportunity Zone Act of 2005. The temporary regulations provide guidance needed to comply with these changes, as well as updated guidance with respect to overall foreign losses and separate limitation losses, and affect individuals and corporations claiming foreign tax credits. The text of those temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 20, 2008. Outlines of topics to be discussed at the public hearing scheduled for April 10, 2008, at 10 a.m. must be received by March 20, 2008.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–141399–07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–141399–07), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044, or sent electronically, via the Federal eRulemaking Portal at www.regulations.gov (IRS REG–141399–07). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jeffrey L. Parry, (202) 622–3850 (not a toll free number); concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst, *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) providing rules relating to the recapture of overall domestic losses under section

904(g) as well as the recapture overall foreign losses and separate limitation losses under section 904(f). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. The regulations affect individuals and corporations claiming foreign tax credits.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. Moreover, the Treasury Department and the IRS are considering providing additional guidance on overall domestic losses and separate limitation losses, as well as further revisions to the overall foreign loss provisions of the 1987 regulations. Comments are welcome on this ongoing project, particularly with regard to the need to provide for guidance on the application of the overall domestic loss provisions to income earned through foreign or domestic trusts, as well as guidance regarding the recapture of overall foreign losses and separate limitation losses on the disposition of property under section 904(f)(3) and (f)(5)(F). In addition, the Treasury Department and the IRS are continuing to study whether additional rules to better coordinate the overall foreign loss and overall domestic loss regimes would be appropriate, including whether a netting rule should apply to offsetting overall foreign loss accounts and overall domestic loss accounts. The Treasury Department and the IRS welcome additional comments in this regard. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 10, 2008, in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by March 20, 2008 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 20, 2008. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.904(g)–3 also issued under 26 U.S.C. 904(g)(4) * * *

Par. 2. Section 1.904–0 is amended by revising the entries for § 1.904(f)–1(a), (d)(2), (d)(3), and (d)(4), and for § 1.904(f)–2(c) and (c)(1), and adding entries for §§ 1.904(f)–7 and 1.904(f)–8 to read as follows:

§ 1.904–0 Outline of regulation provisions for section 904.

* * * * *

§ 1.904(f)–1 Overall foreign loss and the overall foreign loss account.

* * * * *

(a)(1) and (a)(2) [The text of these entries is the same as the text of the entries for § 1.904(f)–1T(a)(1) and (a)(2) in § 1.904(f)–0T published elsewhere in this issue of the **Federal Register**.]

* * * * *

(d)(2), (d)(3), and (d)(4) [The text of these entries is the same as the text of the entries for § 1.904(f)–1T(d)(2), (d)(3), and (d)(4) in § 1.904(f)–0T published elsewhere in this issue of the **Federal Register**.]

* * * * *

§ 1.904(f)–2 Recapture of overall foreign losses.

* * * * *

(c) and (c)(1) [The text of these entries is the same as the text of the entries for § 1.904(f)–2T(c) and (c)(1) in § 1.904(f)–0T published elsewhere in this issue of the **Federal Register**.]

* * * * *

§ 1.904(f)–7 Separate limitation loss and the separate limitation loss account.

[The text of the entries for this section is the same as the text of the entries for § 1.904(f)–7T(a) through (f) in § 1.904(f)–0T published elsewhere in this issue of the **Federal Register**.]

§ 1.904(f)–8 Recapture of separate limitation loss accounts.

[The text of the entries for this section is the same as the text of the entries for § 1.904(f)–8T(a) through (c) in § 1.904(f)–0T published elsewhere in this issue of the **Federal Register**.]

Par. 3. In § 1.904(f)–1, paragraph (a)(2) is added, and paragraph (d)(4) is revised, to read as follows:

§ 1.904(f)–1 Overall foreign loss and the overall foreign loss account.

(a)(1) * * *

(2) [The text of the proposed amendments to § 1.904(f)–1(a)(2) is the same as the text of § 1.904(f)–1T(a)(2) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(d) * * *

(4) [The text of the proposed amendments to § 1.904(f)–1(d)(4) is the same as the text of § 1.904(f)–1T(d)(4) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Par. 4. Section 1.904(f)–2(c)(1) and (c)(5) *Example 4.* are revised to read as follows:

§ 1.904(f)–2 Recapture of overall foreign losses.

* * * * *

(c) * * * (1) [The text of the proposed amendments to § 1.904(f)–2(c)(1) is the same as the text of § 1.904(f)–2T(c)(1) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(5) * * *

Example 4. [The text of the proposed amendments to § 1.904(f)–2(c)(5) *Example 4.* is the same as the text of § 1.904(f)–2T(c)(5) *Example 4.* published elsewhere in this issue of the **Federal Register**.]

* * * * *

Par. 5. Sections 1.904(f)–7 and 1.904(f)–8 are added to read as follows:

§ 1.904(f)–7 Separate limitation loss and the separate limitation loss account.

[The text of proposed § 1.904(f)–7 is the same as the text of § 1.904(f)–7T(a) through (f) published elsewhere in this issue of the **Federal Register**.]

§ 1.904(f)–8 Recapture of separate limitation loss accounts.

[The text of proposed § 1.904(f)–8 is the same as the text of § 1.904(f)–8T(a) through (c) published elsewhere in this issue of the **Federal Register**.]

Par. 6. Section 1.904(g)–0 is added to read as follows:

§ 1.904(g)–0 Outline of regulation provisions.

* * * * *

§ 1.904(g)–1 Overall domestic loss and the overall domestic loss account.

[The text of the entries for this section is the same as the text for § 1.904(g)–1T(a) through (f) in § 1.904(g)–0T published elsewhere in this issue of the **Federal Register**.]

§ 1.904(g)–2 Recapture of overall domestic losses.

[The text of the entries for this section is the same as the text for § 1.904(g)–2T(a) through (d) in § 1.904(g)–0T published elsewhere in this issue of the **Federal Register**.]

§ 1.904(g)–3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses.

[The text of the entries for this section is the same as the text for § 1.904(g)–3T(a) through (i) in § 1.904(g)–0T published elsewhere in this issue of the **Federal Register**.]

Par. 7. Sections 1.904(g)–1, 1.904(g)–2, and 1.904(g)–3 are added to read as follows:

§ 1.904(g)–1 Overall domestic loss and the overall domestic loss account.

[The text of proposed § 1.904(g)–1 is the same text of § 1.904(g)–1T(a) through (f) published elsewhere in this issue of the **Federal Register**.]

§ 1.904(g)–2 Recapture of overall domestic losses.

[The text of proposed § 1.904(g)–2 is the same text of § 1.904(g)–2T(a) through (d) published elsewhere in this issue of the **Federal Register**.]

§ 1.904(g)–3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses.

[The text of proposed § 1.904(g)–3 is the same text of § 1.904(g)–3T(a) through (i) published elsewhere in this issue of the **Federal Register**.]

Par. 8. Section 1.1502–9 is revised to read as follows:

§ 1.1502–9 Consolidated overall foreign losses and separate limitation losses.

[The text of proposed § 1.1502–9 is the same as the text of § 1.1502–9T(a) through (e) published elsewhere in this issue of the **Federal Register**.]

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–24896 Filed 12–20–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 203, 250, 251, 256, 280, 281, and 290

[Docket ID: MMS–2007–OMM–0065]

RIN 1010–AD43

Electronic Payment of Fees for Outer Continental Shelf Activities

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The MMS proposes that all lessees, operators, permittees, and rights-of-way holders pay all fees for processing plans, applications, and permits electronically. The MMS believes this proposed rule would aid industry in payment processing, and reduce payment processing errors. This proposed rule would improve MMS processing efficiency and facilitate the correction of industry payment errors. The MMS would not accept checks, money orders, or cashier's checks for payment of fees after the effective date of the final rule.

DATES: Submit comments by February 19, 2008. The MMS may not fully consider comments received after this date.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD43 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Select ''Minerals Management Service'' from the agency drop-down menu, then click ''submit.'' In the Docket ID column, select MMS–2007–OMM–0065 to submit public comments and to view supporting and related materials available for this rulemaking. 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. All comments submitted will be posted to the docket.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Regulations and Standards Branch (RSB); 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference ''Electronic Payment of Fees for Outer Continental Shelf Activities, 1010–AD43'' in your comments and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Kirk Malstrom, Petroleum Engineer, Offshore Minerals Management, Office of Offshore Regulatory Programs at (703) 787–1751.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule would require a lessee, operator, pipeline right-of-way (ROW) holder, or permittee to submit payments for cost recovery service fees electronically. The idea for paying electronically is not a new concept and industry has been informed of MMS's intentions to collect fees electronically in the Notice to Lessees (NTL) No. 2006–N05 Payment Method for New and Existing Cost Recovery Fees. As stated in NTL No. 2006–N05, MMS prefers and strongly urges applicants to pay their fees using credit card or Automated Clearing House (ACH) payments through the Pay.Gov Web site. Launched in October 2000, Pay.Gov is a secure government-wide collection portal, developed to meet the U.S. Treasury's commitment to process collections electronically using internet technologies. Pay.Gov has been developed to help Federal agencies meet the directives outlined in the Government Paperwork Elimination

Act, primarily the reduction of paper transactions through the utilization of electronic processing via the Internet. By using an electronic payment system, MMS and industry have an efficient method to aid in the payment process.

The MMS has made Pay.Gov available for payment of cost recovery fees since early 2006 and accepted electronic Pay.Gov payments for all applications since September 2006. To show industry's acceptance of electronic payments, currently more than 94 percent of cost recovery fees are paid electronically through Pay.Gov. This proposed rule would require all fees to be paid electronically. The MMS is aware of a few companies not paying electronically, but MMS has determined that the costs to use Pay.Gov are negligible compared to that of operating on the Outer Continental Shelf (OCS).

Electronic payment through Pay.Gov is more efficient and less prone to mistakes than check payments. Examples of check payment errors include incorrect date, incorrect payment amount, check sent to a different address than application, and closing an account shortly after the check is sent to MMS. Check payment errors can result in delay or lead to denial of an application or permit due to non-payment. To rectify a check payment error additional time and expense are required from industry, MMS, or both. If payment errors are made through Pay.Gov, the refund process is easier due to system records and controls. With 100% electronic payment, the internal MMS processes to secure, verify and deposit check payments can be eliminated.

The MMS does not believe that this proposed rule would place an additional burden on industry. Industry has been advised by NTL No. 2006-N05 and MMS staff about our future intent to require electronic payments. Most companies voluntarily pay electronically and have been satisfied with the functionality and performance of the Pay.Gov system. For the remaining companies that have opted not to pay electronically, the time between the publishing of the proposed and final rule would provide sufficient opportunity to implement internal processes to pay fees by ACH or credit card.

The MMS intends to accept only Pay.Gov payments for cost recovery service fees. Checks, money orders, and cashier's checks will no longer be accepted after the effective date of the final rule. If you process your applications through eWell, you are already directed to Pay.Gov in order to pay application fees online.

Since MMS has accepted payments electronically, industry has provided verbal feedback to MMS requesting the availability of declining deposit accounts. The basic proposal, as an alternative to Pay.Gov, would permit a company conducting business on the OCS to deposit funds with MMS. The MMS would then draw down those funds as the company submits applications requiring fees. The company would be notified when its balance reached a trigger level and the company would replenish the account. Invoices would periodically be sent to the customer.

The MMS does not have a financial system that can track, invoice, and manage declining deposit accounts. The existing bureau financial system cannot handle deferred revenue. Since we do not have system functionality, the declining deposit accounts would be tracked manually. A manual process would increase the cost for processing cost recovery payments, increase the potential for errors, and result in increased fees charged to industry. Therefore, MMS will not consider implementing declining deposit accounts.

The MMS plans to adjust certain cost recovery fees according to inflation in the final rule. These fees have not been updated to include inflation since the Cost Recovery Final Rule published on July 19, 2006 (71 FR 40904).

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This proposed rule is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under E.O. 12866.

(1) This proposed rule would not have an effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This proposed rule would simply require all fees be paid electronically through Pay.Gov.

(2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. By requiring electronic payment through the Pay.Gov system, MMS is supporting the President's Management Agenda of expanding electronic government or ''E–Government.''

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients.

(4) This proposed rule would not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The changes proposed in the rule would affect lessees, operators of leases, pipeline right-of-way (ROW) holders in the OCS, and permittees. This could include about 130 active Federal oil and gas lessees, 88 pipeline ROW holders, and 10 geophysical companies. Small lessees that operate under this rule mostly fall under the Small Business Administration's (SBA) North American Industry Classification System Codes (NAICS) 211111, Crude Petroleum and Natural Gas Extraction and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 70 percent of these companies are considered small. This rule, therefore, affects a substantial number of small entities.

The changes proposed in the rule would not have a significant economic effect on a substantial number of small entities because Pay.Gov credit card or ACH payments do not increase the amount of money a company would pay in cost recovery fees. We do not expect any company to incur significant other costs because no special software or other equipment would be required to pay through Pay.Gov or ACH. We have no information that any company would incur any costs associated with accounting processes, changes in business procedures, or other compliance costs.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity, be written to minimize litigation, and promote simplification and burden reduction; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no substantial direct effects on federally recognized Indian tribes. There are no Indian or tribal lands in the OCS.

Paperwork Reduction Act

The proposed rule contains no new reporting or recordkeeping requirements, and an OMB submission under the Paperwork Reduction Act (PRA) is not required. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The proposed regulations will specify that all operators, lessees, and ROW holders must now use Pay.Gov for every fee that will be submitted to MMS. The proposed revisions in this rulemaking refer to, but do not change, information collection requirements in numerous current regulations. The OMB approved the referenced information collection requirements under OMB Control Numbers 1010–0071, 1010–0114, 1010–0151, 1010–0141, 1010–0067, 1010–0043, 1010–0059, 1010–0149, 1010–0050, 1010–0051, 1010–0086, 1010–0142, 1010–0048, 1010–0006, and 1010–0072, respectively.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The MMS has analyzed this rule under the criteria of the National Environmental Policy Act and 516 Departmental Manual 2, Appendix 1.10. and determined that it falls within the categorical exclusion for ''regulations * * * that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis.'' The MMS completed a Categorical Exclusion Review for this action and concluded that the rulemaking does not represent an exception to the established criteria for categorical exclusion; therefore, preparation of an environmental analysis or environmental impact statement will not be required.

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C Section 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of this Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment'including your personal identifying information'may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in

30 CFR Part 203

Continental shelf, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

30 CFR Part 250

Administrative practice and procedure, Continental shelf, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements.

30 CFR Part 251

Continental shelf, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 256

Administrative practice and procedure, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements.

30 CFR Part 280

Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 281

Administrative practice and procedure, Mineral royalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 290

Administrative practice and procedure.

Dated: December 10, 2007.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR parts 203, 250, 251, 256, 280, 281, and 290 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

1. The authority citation for part 203 is revised to read as follows:

Authority: 25 U.S.C. 396; 25 U.S.C. 2107; 30 U.S.C. 189, 241; 30 U.S.C. 359; 30 U.S.C. 1023; 30 U.S.C. 1751; 31 U.S.C. 9701; and 43 U.S.C. 1334.

2. Section 203.3 is revised to read as follows:

§ 203.3 Do I have to pay a fee to request royalty relief?

When you submit an application or ask for a preview assessment, you must include a fee to reimburse us for our costs of processing your application or assessment. Federal policy and law require us to recover the cost of services that confer special benefits to identifiable non-Federal recipients. The Independent Offices Appropriation Act (31 U.S.C. 9701), Office of Management and Budget Circular A'25, and the Omnibus Appropriations Bill (Pub. L. 104'134, 110 Stat. 1321, April 26, 1996) authorize us to collect these fees.

(a) We will specify the necessary fees for each of the types of royalty relief applications and possible MMS audits in a Notice to Lessees. We will periodically update the fees to reflect changes in costs, as well as provide other information necessary to administer royalty relief.

(b) You must file all payments electronically through the Pay.Gov Web site and you must include a copy of the Pay.Gov confirmation receipt page with your application or assessment. The Pay.Gov Web site may be accessed through links on the MMS Offshore Web site at: *http://www.mms.gov/offshore/* homepage or directly through Pay.Gov at: *https://www.pay.gov/paygov/.*

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

3. The authority citation for part 250 is revised to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

4. Section 250.126 is revised to read as follows:

§ 250.126 Electronic payment instructions.

You must file all payments electronically through Pay.Gov. This includes, but is not limited to, all OCS applications or filing fee payments. The Pay.Gov Web site may be accessed through links on the MMS Offshore Web site at: *http://www.mms.gov/offshore/* homepage or directly through Pay.Gov at: *https://www.pay.gov/paygov/.*

(a) *Payment of fees associated with electronic applications.* If you submitted an application through eWell, you must use the interactive payment feature in that system which directs you through Pay.Gov.

(b) *Payment of fees for applications not submitted electronically.* For applications not submitted electronically through eWell, you must use credit card or automated clearing house (ACH) payments through the Pay.Gov Web site and you must include a copy of the Pay.Gov confirmation receipt page with your application.

5. Section 250.160(h) is revised to read as follows:

§ 250.160 When will MMS grant me a right-of-use and easement, and what requirements must I meet?

* * * * *

(h) You may make the rental payments required by paragraph (g)(1) and (g)(2) of this section on an annual basis, for a 5-year period, or for multiples of 5 years. You must make the first payment electronically through Pay.Gov and you must include a copy of the Pay.Gov confirmation receipt page with your right-of-use and easement application. You must make all subsequent payments electronically through Pay.Gov before the respective time periods begin.

* * * * *

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

6. The authority citation for part 251 is revised to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

7. Section 251.5(a) is revised to read as follows:

§ 251.5 Applying for permits or filing Notices.

(a) *Permits.* You must submit a signed original and three copies of the MMS permit application form (Form MMS—327). The form includes names of persons, type, location, purpose, dates of activity, and environmental and other information. A nonrefundable service fee of $1,900 must be paid electronically through Pay.Gov at: *https://www.pay.gov/paygov/,* and you must include a copy of the Pay.Gov confirmation receipt page with your application.

* * * * *

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

8. The authority citation for part 256 is revised to read as follows:

Authority: 31 U.S.C. 9701, 42 U.S.C. 6213, 43 U.S.C. 1334.

9. Section 256.64(a)(8) is revised to read as follows:

§ 256.64 How to file transfers.

* * * * *

(a) * * *

(8) You must pay electronically through Pay.Gov at: *https://www.pay.gov/paygov/* the service fee listed in § 256.63 of this subpart and you must include a copy of the Pay.Gov confirmation receipt page with your application for approval of any instrument of transfer you are required to file (Record Title/Operating Rights (Transfer) Fee). Where multiple transfers of interest are included in a single instrument, a separate fee applies to each individual transfer of interest. For any document you are not required to file by these regulations but which you submit for record purposes, you must also pay electronically through Pay.Gov the service fee listed in § 256.63 (Non-required Document Filing Fee) per lease affected, and you must include a copy of the Pay.Gov confirmation receipt page with your document. Such documents may be

rejected at the discretion of the authorized officer.

* * * * *

PART 280—PROSPECTING FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR ON THE OUTER CONTINENTAL SHELF

10. The authority citation for part 280 is revised to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

11. Section 280.12(a) is revised to read as follows:

§ 280.12 What must I include in my application or notification?

(a) *Permits.* You must submit to the Regional Director a signed original and three copies of the permit application form (Form MMS–134) at least 30 days before the startup date for activities in the permit area. If unusual circumstances prevent you from meeting this deadline, you must immediately contact the Regional Director to arrange an acceptable deadline. The form includes names of persons, type, location, purpose, and dates of activity, as well as environmental and other information. A nonrefundable service fee of $1,900 must be paid electronically through Pay.Gov at: *https://www.pay.gov/paygov/,* and you must include a copy of the Pay.Gov confirmation receipt page with your application.

* * * * *

PART 281—LEASING OF MINERALS OTHER THAN OIL, GAS, AND SULPHUR IN THE OUTER CONTINENTAL SHELF

12. The authority citation for part 281 is revised to read as follows:

Authority: 43 U.S.C. 1334.

13. Section 281.41(a)(2) is revised to read as follows:

§ 281.41 Requirements for filing for transfers.

(a) * * *

(2) An application for approval of any instrument required to be filed shall not be accepted unless a nonrefundable fee of $50 is paid electronically through Pay.Gov at: *https://www.pay.gov/paygov/* and a copy of the Pay.Gov confirmation receipt page is included with your application. For any document you are not required to file by these regulations but which you submit for record purposes, you must also pay electronically through Pay.Gov the service fee listed in § 256.63 (Non-required Document Filing Fee) per lease affected, and you must include a copy of the Pay.Gov confirmation receipt page with your document. Such documents may be rejected at the discretion of the authorized officer.

* * * * *

PART 290—APPEAL PROCEDURES

14. The authority citation for part 290 continues to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 396, 2107; 30 U.S.C. 189, 359, 1023, 1701 *et seq.*, 1751(a); 31 U.S.C. 3716, 9701; and 43 U.S.C. 1334.

15. Section 290.4(b) is revised to read as follows:

§ 290.4 How do I file an appeal?

* * * * *

(b) A nonrefundable processing fee of $150.00 paid with the Notice of Appeal.

(1) You must pay electronically through Pay.Gov at: *https://www.pay.gov/paygov/,* and you must include a copy of the Pay.Gov confirmation receipt page with your Notice of Appeal.

(2) You cannot extend the 60-day period for payment of the processing fee.

[FR Doc. 07–6173 Filed 12–20–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 203 and 260

RIN 1010–AD29

[Docket ID: MMS–2007–OMM–0074]

Royalty Relief for Deepwater Outer Continental Shelf (OCS) Oil and Gas Leases—Conforming Regulations to Court Decision

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 30 CFR parts 260 and 203 to conform the regulations to the decision of the United States Court of Appeals for the Fifth Circuit in *Santa Fe Snyder Corp., et al.* v. *Norton (the Decision).* That decision found that certain provisions of the MMS regulations interpreting section 304 of the Deep Water Royalty Relief Act are contrary to the requirements of the statute.

DATES: Submit comments by February 19, 2008. The MMS may not fully consider comments received after this date.

ADDRESSES: You may submit comments on the proposed rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD29 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Select ''Minerals Management Service'' from the agency drop-down menu, then click ''submit.'' In the Docket ID column, select MMS–2007–OMM–0074 to submit public comments and to view supporting and related materials available for this rulemaking. 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 to the Department of the Interior; Minerals Management Service; Attention: Regulations and Standards Branch (RSB); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Royalty Relief for Deepwater OCS Oil and Gas Leases—Conforming Regulations to Court Decision, 1010–AD29'' in your comments and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Chief, Economics Division, at (703) 787–1536.

SUPPLEMENTARY INFORMATION:

Background

On November 28, 1995, President Clinton signed Public Law 104–58, which included the Deep Water Royalty Relief Act (Act). The Act was designed to encourage development of new supplies of energy. It included incentives to promote investment in a particularly high-cost, high-risk area, the deep waters of the Gulf of Mexico. These deep Gulf of Mexico waters were viewed as having potential for large oil and gas discoveries, but technological advances and multi-billion dollar investments would be needed to realize that potential. Since the enactment of the incentive, the deep waters of the Gulf of Mexico have become one of the most important sources of domestic oil and gas production.

The Secretary was required to suspend royalties for certain volumes of production on all leases in more than 200 meters of water in the central and western Gulf of Mexico issued in the first 5 years following enactment of the Act. These royalty suspension volumes (RSVs) (i.e., specified volumes of royalty-free production) ranged from 17.5 million to 87.5 million barrels of oil equivalent, depending on water depth. The royalty suspension incentive

was intended to provide companies that undertook these investments specific volumes of royalty-free production to help recover a portion of their capital costs before starting to pay royalties. Once the specified volume has been produced, royalties become due on all additional production. This was not a matter of agency discretion.

We published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on February 23, 1996 (61 FR 6958), and informed the public of our intent to develop comprehensive regulations implementing the Act. The ANPR sought comments and recommendations to assist us in that process. We continued to collect comments and conducted a public meeting in New Orleans on March 12–13, 1996, about the matters the ANPR addressed. We published an interim rule on March 25, 1996 (effective 30 days later). We invited comments on the interim rule, and stated that we would consider them as part of our review of responses to the ANPR mentioned above. We further stated that based on comments received and experience gained, we may include changes to the matters the interim rule addresses in a comprehensive rulemaking implementing the Act.

Section 304 of the Act specifies RSVs for offshore oil and gas leases in three defined water depth ranges deeper than 200 meters of water issued in lease sales held in the first 5 years after the Act's enactment on November 28, 1995. We stated in our March 25, 1996, interim rule entitled Deepwater Royalty Relief for New Leases that ''[s]ection 304 of the Act does not provide specific guidance on how to apply the royalty suspension volumes to leases issued during sales after November 28, 1995'' and that ''[t]he primary question is how to apply the minimum royalty suspension volumes laid out in the statute'' (61 FR 12023). We published a final rule implementing section 304 of the Act in the **Federal Register**, with no substantive change in the regulatory language, on January 16, 1998 (63 FR 2626), that became effective on February 17, 1998.

On October 4, 2004, the U.S. Court of Appeals for the Fifth Circuit in *Santa Fe Snyder Corp., et al.* v. *Norton,* 385 F.3d 884, agreed with the conclusion of the U.S. District Court for the Western District of Louisiana that the regulations implementing royalty relief under section 304 are inconsistent with the statute. The regulations provided that leases issued under section 304 that are assigned to a field with a current lease that produced before November 28, 1995, are not eligible for royalty relief. The regulations further provided that where there is more than one section 304 lease in a field, leases share in the statutory RSV. These requirements were promulgated in the interim rule effective on April 24, 1996 (61 FR 12022).

The effect of the court's ruling in *Santa Fe Snyder* was that: (1) The MMS could not condition royalty relief under section 304 on the lease being part of a field that was not producing before November 28, 1995; and (2) the RSVs prescribed in section 304 apply to each lease, not jointly to all leases in a particular field. An information to lessees (ITL) dated August 8, 2005, alerted affected lessees that we would respect the decision and revise the regulations to conform to this decision, resulting in this proposed rule.

Regulatory Change

This proposed rule would revise 30 CFR part 260, which pertains to OCS leasing, and 30 CFR part 203, which pertains to royalty relief, to treat leases issued under section 304 (referred to in our regulations as ''eligible leases'') in a manner consistent with the *Santa Fe Snyder* ruling. These proposed revisions conform our regulations to the court ruling and are non-discretionary. The revisions to the regulations in part 260 would modify § 260.3 relating to MMS's authority to collect information and remove references in § 260.113(a) to prior production on the field to which a lease is assigned. Deletions in § 260.114 would remove paragraphs on procedures for notification, determination of RSVs, and having more than one RSV on a lease because they would no longer be required. Section 260.114(b) would also be revised to change the reference to ''fields'' to a reference to ''each eligible lease.'' Section 260.124 would be revised to remove a reference to eligible leases establishing an RSV for a field, which is not valid under section 304 of the Act, as interpreted in *Santa Fe Snyder.* Thus, royalty-free production from an RS lease only counts against the royalty suspension volume of a field if that volume was established as a result of an approved application for royalty relief for a pre-Act lease under part 203. Finally, all of § 260.117 would be eliminated, because provisions for allocation of royalty suspension volumes among multiple leases on a field would no longer be needed.

Changes in 30 CFR part 203 would delete references to ''eligible leases'' in § 203.69 and would change the sharing rule in § 203.71 for purposes of consistency. It would remove the eligible leases from the section that discusses how to allocate RSVs on a field. Those changes mean that regardless of the outcome of an application for royalty relief for leases issued either before or after the 5-year period covered by section 304, which may affect the field to which they are assigned, both eligible leases and leases issued in sales held after November 25, 2000 (referred to in the regulation as ''Royalty Suspension'' (RS) leases), would get the full RSVs stated in the lease instrument. Further, as with an RS lease, production from an eligible lease would count against any RSVs available to pre-Act leases on a field to which the eligible lease or RS lease has been assigned. However, unlike RS leases, lessees of eligible leases may not initiate an application seeking, or requesting a share in, an additional RSV granted to an RS lease. This is because there would now be more than enough financial incentive for any single lease.

Retroactive Effect

As explained above, the need for the change in this proposed rule arises from the Fifth Circuit's decision. The effect of the Fifth Circuit's decision was to declare void the relevant regulatory provisions that the court found to be inconsistent with section 304. Because section 304 had not changed, the necessary implication is that the relevant regulations were unlawful from their inception. The Fifth Circuit decision thus has created a regulatory void between the date on which the interim rule became effective (April 24, 1996) and the present. The Fifth Circuit plainly would apply its interpretation of section 304 for all time periods, not just the period after the decision. This proposed rule does nothing more than conform the regulations to the Fifth Circuit's decision, and reflects the legal interpretation of section 304 that the Fifth Circuit would apply. It is therefore permissible to replace the rule that the court struck down with this rule for the time period that the invalidated provisions covered, so as to avoid having a gap and consequent ambiguity in the rule between April 24, 1996, and the date of this rule. See, *Citizens to Save Spencer County* v. *EPA,* 600 F.2d 844, 879–880 (DC Cir. 1979); *Beverly Hospital* v. *Bowen,* 872 F.2d 483, 485–486 (DC Cir. 1989). Therefore, this proposed rule will be effective immediately upon being published as a final rule with retroactive effect to April 24, 1996.

Procedural Matters

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This proposed rule is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under E.O. 12866.

(1) This proposed rule would conform the regulations with the Fifth Circuit's decision. It would have an annual effect on the economy of $100 million or more.

The Fifth Circuit's decision means that more production on many section 304 leases will be subject to royalty relief than under current regulations, resulting in larger fiscal costs to the federal government. The magnitudes of these fiscal losses (on past and future royalty collections) would vary significantly depending upon whether the federal government ultimately prevails (low case) or does not prevail (high case) in pending litigation over the MMS authority to condition royalty relief on price thresholds (see *Kerr McGee Oil and Gas Corp.* v. *Allred* Docket No. 2:06 CV 0439). In the low case, only deepwater leases issued in 1998 and 1999 likely would be affected, because those leases were not issued with price thresholds, and for the other DWRRA leases, market prices most likely will exceed threshold levels, thereby eliminating future royalty relief on these other deepwater leases. In the high case, all deepwater leases issued throughout the 1996 to 2000 period would be affected, because deepwater leases issued in 1996, 1997, and 2000 then would be treated similar to deepwater leases issued in 1998 and 1999 with respect to price thresholds.

For section 304 leases placed on fields by MMS that consist of one or more leases which produced prior to the DWRRA, we projected that from 2000 through 2024, production of oil and gas could range from 4 million barrels of oil equivalent (BOE) in the low case to 27 million BOE in the high case. The total royalty losses during this 25-year period are estimated to range from $16 million in the low case to almost $205 million in the high case (expressed in current year dollars). Applying discount rates of 3 and 7 percent to the potential cash flows, the range of fiscal losses becomes $17–192 million at 3 percent and $20–189 million at 7 percent (the lower bound figures increase as the discount rate rises because all of the losses in this case, associated with leases issued in 1998 and 1999, represent historical royalties that must be paid back to the lessees).

The Fifth Circuit Court's ruling also means that the suspension volumes cited in the DWRRA must apply to each lease, not shared by all leases on a geologic field, as MMS interpreted the Act. Thus, the added production from a field that could be eligible for royalty relief consists of production from all the leases on the field in excess of the single royalty suspension volume cited in the Act (for the applicable water depth), up to an amount equal to that suspension volume times the number of leases included in the field. In fact, the vast majority of the royalty losses from section 304 leases will occur as a result of this aspect of the court's ruling. We estimate the additional production that will be subject to royalty relief from this ''lease-based'' court interpretation will be about 400 million BOE in the 20-year period from 2007 through 2026 in the low case (covering only DWRRA leases issued in 1998 and 1999), and approximately 1.3 billion BOE in the 28-year period from 2007 through 2034 in the high case (covering all DWRRA leases). The royalty costs associated with these production levels during the time periods of production are estimated to be $3 billion in the low case and $10 billion in the high case (expressed in current year dollars). Discounting at 3 and 7 percent yields ranges of royalty losses of $2.5–7.5 billion at 3 percent and $1.9–5.2 billion at 7 percent.

Thus, almost all of the fiscal costs of the Fifth Circuit Court's ruling in *Santa Fe Snyder* can be attributed to the expansion of designated amounts of royalty relief from geologic fields to individual leases. The total royalty costs of the court's ruling, spanning the 35-year period from 2000 through 2034, are estimated to be between $3.1 and $10.3 billion (expressed in current year dollars).

(2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency because royalty relief is confined to leasing in Federal offshore waters that lie outside the coastal jurisdiction of state and other local agencies. Careful review of the lease sale notices, along with stringent leasing policies now in force, ensure that the Federal OCS leasing program, of which royalty relief is only a component, does not conflict with the work of other Federal agencies.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This proposed rule would not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

This proposed rule conforms the regulations to the Fifth Circuit's decision, and reflects the legal interpretation of section 304 that the Fifth Circuit would apply. We are replacing the rule that the court struck down with this rule for the time period that the invalidated provisions covered, so as to avoid having a gap and consequent ambiguity in the rule between April 24, 1996, and the date of this rule.

A Regulatory Flexibility Analysis is not required because there are no legal alternatives to the court's decision that deemed our current regulations to be inconsistent with the statute, as cited in the preamble, other than to publish this rule. We have determined that the proposed rule will not have a significant economic effect on a substantial number of small entities. A Small Entity Compliance Guide is not required.

This change would affect lessees and operators of deepwater leases in the OCS. This includes about 40 different companies. These companies are generally classified under the North American Industry Classification System (NAICS) Code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500 employees. Based on these criteria, only 10 of these companies are considered small. This proposed rule, therefore, would not affect a substantial number of small entities.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of

MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Would have an annual effect on the economy of $100 million or more, based on the analysis presented in the previous section. Current MMS estimates indicate the royalty costs of the rule, occasioned by the court ruling, will be from $3.1 billion to $10.3 billion, based on applicable production amounts during the 35-year period from 2000 through 2034. This low case dollar amount represents the added royalty losses to the Federal government only on deepwater leases issued without price thresholds, i.e., in 1998 and 1999. The high case estimate represents royalty losses on all DWRRA leases, and assumes MMS cannot condition royalty relief on market prices for oil and gas. Note that it is likely that all of the future production associated with this added royalty cost would have occurred even without the royalty relief offered in the Act. The decisions to develop at least some of the fields responsible for this production occurred under incentive terms in effect before the *Santa Fe Snyder* judgment. Moreover, oil and gas prices have been and are expected to be much higher than anticipated by the Act's authors.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no potential effects on federally recognized Indian tribes. There are no Indian or tribal lands in the OCS.

Paperwork Reduction Act

This rulemaking does not contain any information collection subject to the PRA, and does not require a submittal to OMB for review and approval under section 3507(d) of the PRA. The one remaining requirement in Part 260 (§ 260.124(a)(l)) is exempt from the PRA under 5 CFR 1320.4(a)(2), (c).

An information letter was sent to all lessees of deep water leases on August 8, 2005, and DOI informed the lessees that it would apply the court's decision. It was neither necessary nor appropriate for the Department to collect information used only for purposes of applying the regulatory provisions that the court held invalid.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The MMS has analyzed this rule under the criteria of the National Environmental Policy Act and 516 Departmental Manual 6, Appendix 10.4C(1). The MMS completed a Categorical Exclusion Review for this action and concluded that ''the rulemaking does not represent an exception to the established criteria for categorical exclusion; therefore, preparation of an environmental analysis or environmental impact statement will not be required.''

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects

30 CFR Part 203

Continental shelf, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Sulphur.

30 CFR Part 260

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: August 3, 2007.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR parts 203 and 260 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

1. The authority citation for part 203 continues to read as follows:

Authority: 25 U.S.C. 396, *et seq.*; 25 U.S.C. 396a, *et seq.*; 25 U.S.C. 2101, *et seq.*; 30 U.S.C. 181, *et seq.*; 30 U.S.C. 351, *et seq.*; 30 U.S.C. 1001, *et seq.*; 30 U.S.C. 1701, *et seq.*; 31 U.S.C. 9701, *et seq.*; 43 U.S.C. 1301, *et seq.*; 43 U.S.C. 1331, *et seq.*; and 43 U.S.C. 1801, *et seq.*

2. Section 203.69(c) is revised to read as follows:

§ 203.69 If my application is approved, what royalty relief will I receive?

* * * * *

(c) If your application includes pre-Act leases in different categories of water depth, we apply the minimum royalty suspension volume for the deepest such lease then assigned to the field. We base the water depth and makeup of a field on the water-depth delineations in the ''Lease Terms and Economic Conditions'' map and the ''Fields Directory'' documents and updates in effect at the time your application is deemed complete. These publications are available from the MMS GOM Regional Office.

* * * * *

3. Section 203.71 is amended as set forth below:

A. Revise paragraphs (a)(1), (3), and (5).

B. Remove paragraph (b).

C. Redesignate paragraphs (c) and (d) as paragraphs (b) and (c).

The revisions read as follows:

§ 203.71 How does MMS allocate a field's suspension volume between my lease and other leases on my field?

* * * * *

(a) * * *

If * * *	Then * * *	And * * *
(1) We assign an eligible lease to your authorized field after we approve relief	We will not change your authorized field's royalty suspension volume determined under § 203.69	Production from the assigned eligible lease(s) counts toward the royalty suspension volume for the authorized field, but the eligible lease will not share any remaining royalty suspension volume for the authorized field after the eligible lease has produced the volume applicable under § 260.114 of this chapter.
*	*	*
(3) We assign another lease that you operate to your field while we are evaluating your application	In our evaluation of your authorized field, we will take into account the value of any royalty relief the added lease already has under § 260.114 or its lease document. If we find your authorized field still needs additional royalty suspension volume, that volume will be at least the combined royalty suspension volume to which all added leases on the field are entitled, or the minimum suspension volume of the authorized field, whichever is greater	(i) You toll the time period for evaluation until you modify your application to be consistent with the new field; (ii) We have an additional 60 days to review the new information; and (iii) The assigned pre-act lease or royalty suspension lease shares the royalty suspension we grant to the new field. An eligible lease does not share the royalty suspension we grant to the new field. If you do not agree to toll, we will have to reject your application due to incomplete information. Production from an assigned eligible lease counts toward the royalty suspension volume that we grant under § 203.69 for your authorized field, but you will not owe royalty on production from the eligible lease until it has produced the volume applicable under § 260.114 of this chapter.
*	*	*
(5) We reassign a well on a pre-Act, eligible, or royalty suspension lease to another field	The past production from the well counts toward the royalty suspension volume that we grant under § 203.69 to the authorized field to which we assigned the well	The past production for that well will not count toward any royalty suspension volume that we grant under § 203.69 to the authorized field from which we reassigned it. But, if the well is on an eligible lease or royalty suspension lease, production from that well will count toward the volume applicable under § 260.114 or § 260.124 of this chapter.

* * * * *

PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

4. The authority citation for part 260 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

5. Section 260.3 is revised to read as follows:

§ 260.3 What is MMS's authority to collect information?

The information collected under 30 CFR 260 is exempt from the Paperwork Reduction Act of 1995 under 5 CFR 1320.4(a)(2), (c).

6. Section 260.113 is revised to read as follows:

§ 260.113 When does an eligible lease qualify for a royalty suspension volume?

(a) Your eligible lease will receive a royalty suspension volume as specified in the Act. The bidding system in § 260.110(g) applies.

(b) Your eligible lease may receive a royalty suspension volume only if your entire lease is west of 87 degrees, 30 minutes West longitude.

7. Section 260.114 is revised to read as follows:

§ 260.114 How does MMS assign and monitor royalty suspension volumes for eligible leases?

(a) We have specified the water depth for each eligible lease in the final Notice of OCS Lease Sale. Our determination of water depth for each lease became final when we issued the lease.

(b) We have specified in the Notice of OCS Lease Sale the royalty suspension volume applicable to each water depth. The following table shows the royalty suspension volumes for each eligible

lease in million barrels of oil equivalent (MMBOE):

Water depth	Minimum royalty suspension volume (MMBOE)
(1) 200 to less than 400 meters	17.5
(2) 400 to less than 800 meters	52.5
(3) 800 meters or more	87.5

8. Section 260.117 is removed.

9. The title of § 260.124 and the introductory language of paragraph (b) are revised to read as follows:

§ 260.124 How will royalty suspension apply if MMS assigns a lease issued in a sale held after November 2000 to a field that has a pre-Act lease?

* * * * *

(b) If we establish a royalty suspension volume for a field as a result of an approved application for royalty relief submitted for a pre-Act lease under part 203 of this chapter, then:

* * * * *

[FR Doc. 07–6161 Filed 12–20–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 071121736–7619–01]

RIN 0648–AR78

Magnuson-Stevens Act Provisions; Experimental Permitting Process, Exempted Fishing Permits, and Scientific Research Activity

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes new and revised definitions for certain regulatory terms, and procedural and technical changes to the regulations addressing scientific research activities, exempted fishing, and exempted educational activities under the Magnuson-Stevens Fishery Conservation and Management Act. This action is necessary to provide better administration of these activities and to revise the regulations consistent with the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA). NMFS intends to clarify the regulations, ensure necessary information to complete required analyses is requested and made available, and provide for expedited review of permit applications where possible.

DATES: Comments must be received by March 20, 2008.

ADDRESSES: You may submit comments, identified by RIN 0648–AR78, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: 301–713–1193, Attn: Jason Blackburn
- Mail: Alan Risenhoover, Director, Office of Sustainable Fisheries, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910, Attn: EFP Comments

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

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: NOAA Desk Officer), or email to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Copies of the categorical exclusion (CE) prepared for this action are available from NMFS at the above address or by calling the Office of Sustainable Fisheries, NMFS, at 301–713–2341.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn at 301–713–2341, or by e-mail at *jason.blackburn@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

On May 28, 1996, NMFS established procedures pertaining to scientific research, exempted fishing, and exempted educational activities (61 FR 26435). These procedures were established to provide minimum standards for dealing with scientific research, exempted fishing and exempted educational activities under the Magnuson-Stevens Act. These standards clarified the requirements for those managing and enforcing the fishery regulations, and for the public. These regulations were subsequently codified in 50 CFR part 600 (61 FR 32538, June 24, 1996). Shortly thereafter, the Magnuson-Stevens Act was amended by the Sustainable Fisheries Act, which included important provisions dealing with essential fish habitat (EFH), rebuilding of overfished fisheries, and the requirement to minimize bycatch and bycatch mortality to the extent practicable. These new requirements resulted in an increased interest in fisheries research.

On January 12, 2007, the MSRA was enacted. Section 204 of the MSRA added a new Cooperative Research and Management Program section (Section 318) to the MSA. Section 318(d) of the revised MSA requires that the Secretary, through NMFS, ''promulgate regulations that create an expedited, uniform, and regionally-based process to promote issuance, where practicable, of experimental fishing permits.''

A major reason for the expansion in fisheries research has been the need to minimize bycatch and the mortality of bycatch as required under National Standard 9 of the Magnuson-Stevens Act. Much of this effort has been concentrated on studies investigating fish behavior and the development and testing of new gear technology and fishing techniques to minimize bycatch and promote the efficient harvest of target species.

Over the years, many questions have arisen regarding the differences between a scientific research activity and fishing and how NMFS interprets each type of activity under the implementing regulations. The existing regulations

contain three authorizations for catching fish outside prescribed fishing regulations: Scientific research from a scientific research vessel, exempted fishing under NMFS-issued exempted fishing permits (EFPs), and exempted educational activities. As these types of activities have increased in both volume and variety, NMFS and the affected public have identified several aspects of the regulations that could be improved in order to streamline the permitting of exempted fishing and exempted educational activities, and the acknowledgment of scientific research.

Proposed Changes from the Current Regulations

NMFS is proposing substantive and administrative changes to the current regulations, including revising and adding definitions; clarifying the differences among scientific research, exempted fishing, and exempted educational activities; clarifying the difference between conservation engineering and gear testing; clarifying the need for and extent of data required to be collected in conjunction with exempted fishing and exempted educational activities; clarifying the application process for obtaining an EFP; exempting research projects funded by quota set-asides from the requirement to publish separate notices; and defining whether and to what extent the NMFS Observer Program requires EFPs. These topics are discussed in more detail below.

Changes to Existing Definitions

In § 600.10 Definitions, three definitions would be added and several others revised. As part of the Sustainable Fisheries Act, Congress authorized the Secretary of Commerce (Secretary) to use private sector vessels, equipment, and services to conduct fisheries resource surveys. The Secretary is authorized to structure competitive solicitations to compensate a contractor for a fishery resources survey (i.e., ''compensation fishing'') by allowing the contractor to retain for sale fish harvested during the survey. If, however, the contractor is not expected to harvest during the survey the quantity or quality of fish that would allow for adequate compensation for the survey, the Secretary is authorized to structure the solicitation so as to provide that compensation by allowing the contractor to harvest on a subsequent voyage, and retain for sale, a portion of the allowable catch of the fishery as specified in a contract or EFP. Foreign vessels would not be allowed to engage in compensation fishing outside the scope of the applicable scientific research plan, or outside the time frame in which the actual scientific research activity is being conducted.

This proposed rule would define ''compensation fishing'' and authorize, as appropriate, this activity as a reason for issuing an EFP. Compensation fishing as described under section 402(e)(2)(B) of the Magnuson-Stevens Act would be authorized through an EFP. It is proposed that in cases where exemptions are not needed, compensation fishing could be conducted without an EFP. An example of this is the Mid-Atlantic Research Set-aside (RSA) program, where research projects are funded through compensation fishing. In the RSA program, vessels are either issued a Letter of Acknowledgment (LOA) or an EFP. Vessels receive an LOA if they will be conducting research. Vessels receive an EFP if they will be compensation fishing and need an exemption from the regulations. For example, an EFP would be needed for a participating vessel to harvest and land their quota during a fishery closure. The compensation fishing provisions within the NMFS general regulations dealing with scientific research and exempted fishing (§ 600.745), would apply unless fishery-specific compensation fishing regulations are in place, such as those in the West Coast Groundfish regulations (§ 660.350).

A new definition would also be added for ''conservation engineering.'' Section 404(c)(2) of the Magnuson-Stevens Act describes conservation engineering as an area of research that includes the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize bycatch, promote efficient harvest of target species, and minimize adverse effects on EFH. Because a significant number of fishery stocks are either overfished or experiencing overfishing, NMFS is concerned that bycatch of these species will make it more difficult to control mortality. Conservation engineering has become an important field of research and has led to cooperative research ventures involving NMFS, researchers, and fishermen.

For the same reasons that conservation engineering has become important, NMFS is concerned about its potential impacts on fishery resources. Conservation engineering activities often take commercial quantities of fish. In the past, these projects have been considered fishing and not scientific research because the Magnuson-Stevens Act definition of scientific research, as interpreted at § 600.10, excludes ''the testing of fishing gear.'' NMFS believes the mortality associated with conservation engineering work needs to be properly accounted for. In addition, NMFS wants to ensure that conservation engineering activities do not adversely affect fisheries resources. To best protect fisheries resources while allowing conservation engineering activities, NMFS proposes to define conservation engineering based on section 404(c)(2) of the Magnuson-Stevens Act in a manner that best protects fisheries resources while allowing conservation engineering activities. NMFS also proposes to define ''gear testing'' to differentiate it from conservation engineering. Gear testing would be defined as an at-sea activity with its sole purpose being the testing of the functionality of fishing gear. When a vessel is performing gear testing, it may not retain fish, and it must meet the specific requirements of any regulation that pertains to fishing and/or gear testing in the applicable fishery. For example, the Alaska management measures require that trawl gear testing must be performed within specified trawl gear test areas.

Some conservation engineering activities would not qualify as a scientific research activity, and would more appropriately require an EFP. To be classified as scientific research:

- At-sea research must meet the criteria for scientific research activity laid out in the regulations, and occur aboard a scientific research vessel;
- A research activity must address a testable hypothesis;
- A research activity must follow a scientific plan that includes sufficient observations and appropriate experimental design to test the hypothesis;
- A research activity must address a fishery management problem or issue;
- All fish captured for research must be necessary to meet the objectives of the experimental design, i.e. the sample size needed to prove or disprove the hypothesis. (This does not include fish captured for compensation fishing).

For example, in the development of a bycatch reduction device, research could be conducted to assess the behavior of target and bycatch species to detect exploitable differences, to determine whether prototype gear modifications achieve the desired stimuli and escape opportunities, to test whether fish respond to those stimuli as expected, or to examine whether a prototype device achieves the expected species separation. If these activities are conducted on a scientific research vessel then an LOA would be sufficient, whereas if these activities are conducted on a vessel not meeting the definition of

a scientific research vessel, then an EFP would be required. However, an opportunity for vessels to conduct sea trials of the resulting devices as proof of concept to determine their practicality and effectiveness with their gear and procedures in actual fishing conditions might qualify for an EFP, but would not be scientific research.

Technical Revisions to Definitions

Several technical revisions are proposed to be made to the Definitions section. In the definitions for ''exempted educational activity'' and ''exempted or experimental fishing,'' the words ''part 635 or'' would be removed as redundant, since part 635 is a part of chapter VI of title 50. In the definitions for ''region,'' ''Regional Administrator,'' and ''Science and Research Director,'' the word ''five'' would be changed to ''six'' to reflect the creation of the new NMFS Pacific Islands Region and NMFS Pacific Islands Fisheries Science Center. In the definition of ''scientific research activity,'' in the second sentence, the words ''or to test a hypothesis'' would be revised to read ''and to test a hypothesis,'' making this definition consistent with the new definition of conservation engineering. In the third sentence, the word ''issues'' would be revised to read ''topics'' to better describe the object of the research, and the words ''or other collateral fishing effects'' would be added following the word ''bycatch'' to encompass the range of potential impacts of fishing on the environment. In the fourth sentence, the words ''unless it meets the definition of conservation engineering'' would be added following ''or the testing of fishing gear'' to clarify that conservation engineering may be permissible. In addition, an example is provided to clarify what is meant by ''the testing of fishing gear.''

In § 600.512(a), for foreign fishing, and § 600.745(a), for domestic fishing, the procedures for acknowledging scientific research activity would be revised by adding ''aboard scientific research vessels'' to clarify that these sections apply only to scientific research activities aboard scientific research vessels in the Exclusive Economic Zone (EEZ).

To clarify who the designee could be for the Regional Administrator or Director, §§ 600.512(a) and 600.745(a) would be revised so that the Regional Administrator having responsibility for the fishery or the Director of the Office of Sustainable Fisheries (for Atlantic highly migratory species) would be primarily responsible for the issuance of LOAs, but that this responsibility may be delegated to an appropriate NMFS Science and Research Director, or the Assistant Regional Administrator for Sustainable Fisheries.

The current regulations note that the LOA ''is separate and distinct from any permit required under any other applicable law.'' For laws administered by NMFS, this reference applies to incidental take permits under the Marine Mammal Protection Act (MMPA) or section 10 permits or consultations under the Endangered Species Act (ESA). There may be additional permits required (e.g., from the Corps of Engineers) that are not under the jurisdiction of NMFS. Since the MMPA and ESA are administered by NMFS by the same officials who issue LOAs, it is appropriate for NMFS to consider the effect of the research under the provisions of these laws when the request for the LOA is being reviewed. Therefore, §§ 600.512(a) and 600.745(a) would be modified to indicate that the MMPA and ESA are two laws that may require an additional permit or consultation. NMFS would undertake an initial review of a request for an LOA to determine if any additional permit or consultation is needed. If, after an initial review, the Regional Administrator or Director believes that such a permit or consultation is required and none has been completed, the Regional Administrator or Director would not issue an LOA until required permits are issued and consultations completed. A research vessel that conducts operations without these authorizations may potentially be found in violation of the applicable law.

In addition to the foregoing changes, §§ 600.512(a) and 600.745(a) are proposed to have additional clarifying language added regarding revisions to the scientific research plan and to the rebuttable presumption that a vessel is a scientific research vessel conducting scientific research.

In § 600.745(b)(1), as previously discussed, compensation fishing is proposed to be added as a reason for an EFP. Similarly, although conservation engineering potentially could be described under several other reasons for requesting an EFP, it is proposed to be added as a specific reason for an EFP because of its increasing use in determining ways of avoiding bycatch and the extent of conservation engineering activities.

It has not always been clear to authorized officers or the exempted fishing permittee which regulations they have been exempted from. To provide a clear record of what regulatory exemptions apply to a particular EFP, § 600.745(b)(1) is also proposed to be revised to clearly indicate that a vessel with an EFP is only exempt from those regulations specified in the EFP.

Changes to Application and Permit Process

In § 600.745(b)(2)(v), NMFS proposes that an applicant for an EFP provide any anticipated impacts of the proposed activity on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH, as part of an EFP application. Under the National Environmental Policy Act (NEPA), NMFS must make a determination regarding the environmental impact of any permitted activity. This NEPA determination is usually in the form of a CE (i.e., a category of actions which do not individually or cumulatively have a significant effect on the environment and which have been found to have no such effect and for which neither an environmental assessment (EA) or environmental impact statement (EIS) is required), which includes reference to any relevant previous NEPA analysis. Under some circumstances, an activity might require an EA or what may be even more rare, an EIS. Similarly, under § 600.920, NMFS must make a determination of the impact on EFH of any permitted activity and, therefore, needs to be provided with any available information on the activity that has a potential effect on EFH. NMFS recognizes that applicants have routinely provided this type of information as part of their application. This proposed change would document the current practice and clarify the reasons for collecting the information.

A series of changes are proposed in the application process to speed public notification and allow for timely review of an application.

The current regulations state, ''... notification of receipt of the application will be published in the **Federal Register** with a brief description of the proposal, and the intent of NMFS to issue an EFP. Interested persons will be given a 15- to 45-day opportunity to comment and/or comments will be requested during public testimony at a Council meeting.'' NMFS proposes to revise this language to remove ''and the intent of NMFS to issue an EFP.'' The decision to issue an EFP should come after the public notice and comment process. NMFS also proposes to revise the language allowing public discussion of EFP applications at Council meetings, to clarify that Council meeting notices are not a substitute for publishing **Federal Register** notices for EFP applications, but are instead supplemental to that process. If the Council intends to take comments on

EFP applications at a Council meeting, it must include a statement to this effect in the Council meeting notice and meeting agenda. Multiple applications for EFPs may be published in the same **Federal Register** document and may be discussed under a single Council agenda item.

MSA section 318(f) specifically exempts research projects funded by quota set-asides from any new procedures established under section 318. There are existing procedures in place for processing EFP applications associated with these projects, which are necessary for NMFS to properly evaluate and analyze each project's compliance with NEPA, ESA, and MMPA requirements. NMFS believes the current procedures are beneficial to our process and help streamline the review and issuance of EFPs for quota set-aside programs. Therefore, these procedures will be retained. To further expedite the review of EFP applications for such projects, research projects funded through quota set-asides, such as those that participate in the Mid-Atlantic RSA program, will be exempted from the requirement to publish a separate **Federal Register** notice for each EFP application. Notice of selected Mid-Atlantic RSA projects is provided in the RSA section of the annual specifications notice that is published for each fishery management plan with an RSA program. An EA is normally prepared and analyzes the potential impacts of the selected RSA projects as part of each annual specifications process. The majority of the current quota set-aside funded projects are conducted in Northeast fisheries that are managed by the Mid-Atlantic Council. Examples of Mid-Atlantic RSA programs include: summer flounder, scup, black sea bass, squid, and monkfish. In addition, the New England Council has an RSA program for Atlantic sea scallops. RSA projects go through two concurrent processes before they receive their EFPs. There is a grant process, and an EFP process. Since 2003, the NMFS Northeast regional office has streamlined the RSA processes, particularly the EFP application and issuance process. The existing process accommodates variability, as not all fisheries or projects operate in the same manner.

NMFS proposes that § 600.745(b)(3)(i)(C) be revised to include impacts on fisheries and EFH.

In § 600.745(b)(3)(ii), current language states, ''The Council(s) or the Administrator or the Regional Administrator shall notify the applicant in advance of any meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application.'' The language is proposed to be revised to clarify that the applicant has a right to be present and make comments only at public meetings.

In § 600.745(b)(3)(iii), new language is proposed to be inserted that would clarify that NMFS would issue EFPs only after all required analyses and consultations (e.g., NEPA, EFH, ESA and MMPA) have been completed. This is in effect what currently occurs. In § 600.745(b)(3)(iii)(B), confusing language is proposed to be removed and in § 600.745(b)(3)(iii)(C) the language is clarified to indicate that while purely economic allocations could be grounds for a denial, compensation fishing should not be a reason to deny an EFP.

NMFS is proposing language to clarify what terms and conditions should be included in an EFP. As previously discussed, a new paragraph (C) would be added to § 600.745(b)(3)(v) to require that the EFP cite the specific regulations exempted. The subsequent paragraphs would be renumbered accordingly, and the renumbered paragraph (F) would be revised to indicate that observers and electronic monitoring devices may be required. Renumbered paragraph (G) would be revised to specify acceptable records for data reporting and to indicate that incidental catch and bycatch must be reported in all EFPs.

A new paragraph (4) would be added to § 600.745(b) to require that EFP holders must date and sign the permit, and return a copy of the original to the NMFS Regional Administrator or Director, to acknowledge the terms and conditions of the permit. The permit is not valid until signed by the holder. The subsequent paragraphs would be renumbered accordingly.

In § 600.745(b)(5), language relating to revocation, suspension or modification of permits would be removed, as these activities are described in § 600.745(b)(9).

In § 600.745(c)(1), clarifying language is proposed to indicate that NMFS is requesting the research information, and to clarify that the request is made for research exempted from the Magnuson-Stevens Act (research activity conducted from a scientific research vessel).

Section 600.745(c)(2) would be revised to specify that persons operating under EFPs must report their catch at the end of the EFP activity, or at specified intervals during the course of the exempted fishing activity, as determined by the Regional Administrator or Director. This supports the previous discussion and proposed changes concerning the importance of documenting all catch and bycatch related to EFPs.

Exempted educational activities are a subset of EFPs issued exclusively for educational purposes, i.e., the instruction of an individual or group, and allowing the capture of enough fish to demonstrate the lesson. Section 600.725(n) specifies that the trade, barter, or sale of any fish taken under an exempted educational activity is prohibited. This language is proposed to be repeated in § 600.745(d)(1) for clarity and ease of reference.

Consistent with the discussion regarding EFP applications in § 600.745(b)(2)(v), it is proposed that an applicant for an exempted educational activity provide any anticipated impacts of the proposed activity on the environment; including the fishery, marine mammals, threatened or endangered species, and EFH; as part of an exempted educational activity application.

Section 600.745(d)(3)(ii) would be revised to indicate that terms and conditions are mandatory for exempted educational activities in order to regulate and track catches, consistent with the proposed requirements of § 600.745(b)(3)(v).

As with EFPs, several clarifications are proposed to specify what may be included in the terms and conditions for exempted educational activities. In § 600.745(d)(3)(ii), a new paragraph (B) would be added to require that the exempted educational activity authorization cite the specific regulations exempted. The subsequent paragraphs would be renumbered accordingly, and renumbered paragraph (E) would be revised to specify acceptable records for data reporting.

In § 600.745(d)(3)(iii) and § 600.745(d)(7), NMFS proposes adding language that would require the exempted educational activity authorization specify the person(s) who will be in charge and present for the exempted educational activity to proceed. This would emphasize the educational nature of the activity and provide more assurance that the activity would be carried out as specified in the exempted educational activity authorization.

EFP Requirements for NMFS Observer Program

There have been questions regarding when, or if, observer programs are required to obtain EFPs in order for those observers to conduct catch sampling, biological studies, and retain fish for further analysis when doing so would be in violation of the applicable fishing regulations. In addition, the

fisheries use several types of NMFS-sanctioned observers, including NMFS employees, NMFS contracted observers, and third party contractors who are permitted by NMFS to provide observers in the fishery. There are also various other programs that provide ''sea samplers'' on fishing vessels: Universities, states, and industry groups. In § 600.745, a new paragraph (e) would exempt observers in the NMFS-sanctioned observer programs described above from the requirement to obtain an EFP. Other programs could continue to provide sea samplers, but would need an EFP to retain prohibited species or otherwise act in contravention of the published regulations.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the provisions of section 318(d) and 305(d) of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule would provide clarifications of current regulations and information requirements, as well as other administrative requirements regarding scientific research, exempted fishing, and exempted educational activities. The proposed rule would serve only to define terms, clarify distinctions among scientific research activity, exempted fishing, and exempted educational activities, and standardize procedures for applying for and issuing EFPs and authorizations for exempted educational activities as allowed under EFPs.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB. The public reporting burden for this collection of information is estimated: (1) To average 6 hours per response to send NMFS a copy of a scientific research plan and average 1 hour per response to provide a copy of the cruise report or research publication; (2) to average 1 hour per response to complete an application for an EFP and average 0.5 hours per response or authorization for an exempted educational activity; and (3) to average 2 hours per response to provide a report at the conclusion of exempted fishing and average 0.5 hours per response to provide a report at the conclusion of exempted educational activities, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Office of Sustainable Fisheries at the **ADDRESSES** above, and email to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

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

List of Subjects in 50 CFR Part 600

Fisheries, Fishing.

Dated: December 18, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, NMFS proposes to amend 50 CFR part 600 as follows:

PART 600 MAGNUSON—STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.* & 1801 *et seq.*

2. In § 600.10, definitions for ''Exempted educational activity'', ''Exempted or experimental fishing'', ''Region'', ''Regional Administrator'', ''Science and Research Director'', and ''Scientific research activity'' are revised, and definitions for ''Compensation fishing'', ''Conservation engineering'', and ''Gear testing'' are added, in alphabetical order, to read as follows:

§ 600.10 Definitions.

* * * * *

Compensation fishing means fishing conducted for the purpose of recovering costs associated with resource surveys and scientific studies that support the management of a fishery, or to provide incentive for participation in such studies. Compensation fishing may include fishing prior to, during, or following such surveys or studies. Foreign vessels that qualify as scientific research vessels and which are engaged in a scientific research activity may only engage in compensation fishing during the scientific research cruise and in accordance with the applicable scientific research plan. Compensation fishing must be conducted under an EFP if the activity would otherwise be prohibited by regulations under this part.

* * * * *

Conservation engineering means the study of fish behavior and the development and testing of new gear technology and fishing techniques that reduce collateral effects, such as minimizing bycatch and any adverse effects on EFH, and promote efficient harvest of target species. Conservation engineering is considered to be scientific research if it would otherwise meet the definition of a scientific research activity and is conducted by a scientific research vessel. Otherwise, conservation engineering is considered to be fishing, and must be conducted under an EFP if the activity would otherwise be prohibited by regulations under this part.

* * * * *

Exempted educational activity means an activity, conducted by an educational institution accredited by a recognized national or international accreditation body, of limited scope and duration, that is otherwise prohibited by this chapter VI, but that is authorized by the appropriate Regional Administrator or Director for educational purposes.

Exempted or experimental fishing means fishing from a vessel of the United States that involves activities otherwise prohibited by this chapter VI, but that are authorized under an EFP. The regulations in § 600.745 refer exclusively to exempted fishing. References elsewhere in this chapter to experimental fishing mean exempted fishing under this part.

* * * * *

Gear testing means at-sea activity for the purpose of testing the functionality

of fishing gear. During this type of activity, no fish may be retained aboard the vessel. Regional fishery regulations may specify additional requirements that would apply to this activity, such as using designated gear testing areas, testing trawl nets with the codend(s) open, or testing during closed seasons.

* * * * *

Region means one of six NMFS Regional Offices responsible for administering the management and development of marine resources in the United States in their respective geographical areas of responsibility.

Regional Administrator means the Director of one of the six NMFS Regions.

* * * * *

Science and Research Director means the Director of one of the six NMFS Fisheries Science Centers described in Table 1 of § 600.502 of this part, or a designee, also known as a Center Director.

* * * * *

Scientific research activity is, for the purposes of this part, an activity in furtherance of a scientific fishery investigation or study that would meet the definition of fishing under the Magnuson-Stevens Act, but for the exemption applicable to scientific research activity conducted from a scientific research vessel. Scientific research activity includes, but is not limited to, sampling, collecting, observing, or surveying the fish or fishery resources within the EEZ, at sea, on board scientific research vessels, to increase scientific knowledge of the fishery resources or their environment, and to test a hypothesis as part of a planned, directed investigation or study conducted according to methodologies generally accepted as appropriate for scientific research. At-sea scientific fishery investigations address one or more topics involving taxonomy, biology, physiology, behavior, disease, aging, growth, mortality, migration, recruitment, distribution, abundance, ecology, stock structure, bycatch or other collateral fishing effects, conservation engineering, and catch estimation of finfish and shellfish (invertebrate) species considered to be a component of the fishery resources within the EEZ. Scientific research activity does not include the collection and retention of fish outside the scope of the applicable research plan or the testing of fishing gear, unless it meets the definition of conservation engineering. For example, the testing of fishing gear to examine fish behavior in response to a bycatch reduction device would be conservation engineering and a scientific research activity, and would therefore not require an EFP. On the other hand, the testing of fishing gear to examine the gear's ability to catch more fish would not be conservation engineering or a scientific research activity, and would therefore be fishing and might require an EFP. Data collection designed to capture and land quantities of fish for product development, market research, and/or public display are not scientific research activities and must be permitted under exempted fishing procedures. For foreign vessels, such data collection activities are considered scientific research if they are carried out in full cooperation with the United States.

* * * * *

3. In § 600.512, paragraph (a) is revised to read as follows:

§ 600.512 Scientific research.

(a) *Scientific research activity*. Persons planning to conduct scientific research activities aboard a scientific research vessel in the EEZ that may be confused with fishing are encouraged to submit to the appropriate Regional Administrator or Director, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Administrator or Director will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment (LOA). This LOA is separate and distinct from any permit or consultation required under the Marine Mammal Protection Act, the Endangered Species Act, or any other applicable law. If the Regional Administrator or Director believes that such a permit or consultation is required, the Regional Administrator or Director will not issue the LOA until the vessel obtains such a permit or the consultation is completed. If the Regional Administrator or Director, after review of a research plan, determines that it does not constitute scientific research activity but rather fishing, the Regional Administrator or Director will inform the applicant as soon as practicable and in writing. The Regional Administrator or Director may designate a Science and Research Director, or the Assistant Regional Administrator for Sustainable Fisheries, to receive scientific research plans and issue LOAs. The Regional Administrator, Director, or designee may also make recommendations to revise the research plan to ensure the cruise will be considered to be a scientific research activity. In order to facilitate identification of the activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the LOA on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activities. An authorized officer may overcome this presumption by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

* * * * *

4. In § 600.745:

A. Redesignate paragraphs (b)(3)(v)(C) through (H) as paragraphs (b)(3)(v)(D) through (I), respectively.

B. Redesignate paragraphs (b)(4) through (8) as paragraphs (b)(5) through (9), respectively.

C. Redesignate paragraphs (d)(3)(ii)(B) through (F) as paragraphs (d)(3)(ii)(C) through (G), respectively.

D. Add paragraphs (b)(3)(v)(C), (b)(4), (d)(3)(ii)(B), and (e).

E. Revise paragraphs (a), (b)(1), (b)(2)(v), (b)(3)(i) introductory text, (b)(3)(i)(C), (b)(3)(ii), (b)(3)(iii) introductory text, (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(v) introductory text, (b)(3)(v)(F), (b)(3)(v)(G), (b)(5), (c), (d)(1), (d)(2)(vii), (d)(3)(ii) introductory text, (d)(3)(ii)(E), (d)(3)(iii), and (d)(7).

The revisions and additions read as follows:

§ 600.745 Scientific research activity, exempted fishing, and exempted educational activity.

(a) *Scientific research activity*. Nothing in this part is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities aboard a scientific research vessel in the EEZ are encouraged to submit to the appropriate Regional Administrator or Director, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Administrator or Director will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment (LOA). This LOA is separate and distinct from any permit or consultation required by the Marine Mammal Protection Act, the Endangered Species Act, or any other applicable law. If the Regional Administrator or Director believes that such a permit or consultation is required, the Regional Administrator or Director will not issue the LOA until the vessel obtains such a permit or the consultation is completed. If the Regional Administrator or

Director, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Administrator or Director will inform the applicant as soon as practicable and in writing. The Regional Administrator or Director may designate a Science and Research Director, or the Assistant Regional Administrator for Sustainable Fisheries, to receive scientific research plans and issue LOAs. The Regional Administrator, Director, or designee may also make recommendations to revise the research plan to ensure the cruise will be considered to be scientific research activity or recommend the applicant request an EFP. In order to facilitate identification of the activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the LOA on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activity. An authorized officer may overcome this presumption by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) * * *

(1) *General.* A NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an EFP issued by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. An EFP exempts a vessel only from those regulations specified in the EFP. All other applicable regulations remain in effect. The Regional Administrator or Director may charge a fee to recover the administrative expenses of issuing an EFP. The amount of the fee will be calculated, at least annually, in accordance with procedures of the NOAA Handbook for determining administrative costs of each special product or service; the fee may not exceed such costs. Persons may contact the appropriate Regional Administrator or Director to determine the applicable fee.

(2) * * *

(v) The species (target and incidental) expected to be harvested under the EFP, the amount(s) of such harvest necessary to conduct the exempted fishing, the arrangements for disposition of all regulated species harvested under the EFP, and any anticipated impacts on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and essential fish habitat.

* * * * *

(3) * * *

(i) The Regional Administrator or Director, as appropriate, will review each application and will make a preliminary determination whether the application contains all of the required information and constitutes an activity appropriate for further consideration. If the Regional Administrator or Director finds that any application does not warrant further consideration, both the applicant and the affected Council(s) will be notified in writing of the reasons for the decision. If the Regional Administrator or Director determines that any application warrants further consideration, notification of receipt of the application will be published in the **Federal Register** with a brief description of the proposal. Research projects funded by quota set-asides, such as those that participate in the Mid-Atlantic RSA program, are exempt from the requirement to publish such a notice. Interested persons will be given a 15- to 45-day opportunity to comment on the notice of receipt of the EFP application. In addition comments may be requested during public testimony at a Council meeting. If the Council intends to take comments on EFP applications at a Council meeting, it must include a statement to this effect in the Council meeting notice and meeting agenda. Multiple applications for EFPs may be published in the same **Federal Register** document and may be discussed under a single Council agenda item. The notification may establish a cut-off date for receipt of additional applications to participate in the same, or a similar, exempted fishing activity. The Regional Administrator or Director also will forward copies of the application to the Council(s), the U.S. Coast Guard, and the appropriate fishery management agencies of affected states, accompanied by the following information:

* * * * *

(C) Biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

(ii) If the application is complete and warrants additional consultation, the Regional Administrator or Director may consult with the appropriate Council(s) concerning the permit application during the period in which comments have been requested. The Council(s) or the Regional Administrator or Director shall notify the applicant in advance of any public meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application.

(iii) As soon as practicable after receiving a complete application, including all required analyses and consultations (e.g., NEPA, EFH, ESA and MMPA), and having received responses from the public, the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Administrator or Director shall issue the EFP or notify the applicant in writing of the decision to deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

* * * * *

(B) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, threatened or endangered species or essential fish habitat; or

(C) Issuance of the EFP would have economic allocation as its sole purpose (other than compensation fishing); or

* * * * *

(v) The Regional Administrator or Director may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing and as otherwise necessary for the conservation and management of the fishery resources and the marine environment, including, but not limited to:

* * * * *

(C) A citation of the regulations from which the vessel is exempted.

* * * * *

(F) Whether observers, a vessel monitoring system, or other electronic equipment must be carried on board vessels operated under the EFP, and any necessary conditions, such as predeployment notification requirements.

(G) Data reporting requirements necessary to document the activities and to determine compliance with the terms and conditions of the EFP and established time frames and formats for submission of the data to NMFS.

* * * * *

(4) *Acknowledging permit conditions.* Upon receipt of an EFP, the holder must date and sign the permit, and return a copy of the original to the NMFS Regional Administrator or Director. The permit is not valid until signed by the holder. In signing the permit, the holder:

(i) Agrees to abide by all terms and conditions set forth in the permit, and all restrictions and relevant regulations under this subpart; and

(ii) Acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization and revocation by the Regional Administrator or Director.

(5) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is valid for no longer than 1 year. EFPs may be renewed following the application procedures in this section.

* * * * *

(c) *Reports.* (1) NMFS requests persons conducting scientific research activities from scientific research vessels submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

(2) Upon completion of the activities of the EFP, or periodically as required by the terms and conditions of the EFP, persons fishing under an EFP must submit a report of their catches and any other information required, to the appropriate Regional Administrator or Director, in the manner and within the time frame specified in the EFP. The report must be submitted to the Regional Administrator or Director no later than 6 months after concluding the exempted fishing activity. Persons conducting EFP activities are also requested to submit a copy of any publication prepared as a result of the EFP activity.

(d) * * *

(1) *General.* A NMFS Regional Administrator or Director may authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. The trade, barter or sale of fish taken under this authorization is prohibited. The decision of a Regional Administrator or Director to grant or deny an exempted educational activity authorization is the final action of NMFS. Exempted educational activities may not be conducted unless authorized in writing by a Regional Administrator or Director in accordance with the criteria and procedures specified in this section. Such authorization will be issued without charge.

(2) * * *

(vii) The species and amounts expected to be caught during the exempted educational activity, and any anticipated impacts on the environment, including impacts on fisheries, marine mammals, threatened or endangered species, and EFH.

* * * * *

(3) * * *

(ii) The Regional Administrator or Director may attach terms and conditions to the authorization, consistent with the purpose of the exempted educational activity and as otherwise necessary for the conservation and management of the fishery resources and the marine environment, including, but not limited to:

* * * * *

(B) A citation of the regulations from which the vessel is being exempted.

* * * * *

(E) Data reporting requirements necessary to document the activities and to determine compliance with the terms and conditions of the exempted educational activity.

* * * * *

(iii) The authorization will specify the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), persons, species, and gear involved in the activity, as well as any additional terms and conditions specified under paragraph (d)(3)(ii) of this section.

* * * * *

(7) *Inspection.* Any authorization issued under this paragraph (d) must be carried on board the vessel(s) for which it was issued or be in the possession of at least one of the persons identified in the authorization, who must be present while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer. Activities that meet the definition of ''fishing,'' despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal.

(e) *Observers.* NMFS-sanctioned observers or biological technicians conducting activities within NMFS-approved observer protocols are exempt from the requirement to obtain an EFP. For purposes of this section, NMFS-sanctioned observers or biological technicians include NMFS employees, NMFS observers, observers who are employees of NMFS-contracted observer providers, and observers who are employees of NMFS-permitted observer providers.

[FR Doc. E7–24866 Filed 12–20–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 72, No. 245
Friday, December 21, 2007

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

DEPARTMENT OF AGRICULTURE

Forest Service

Grand Mesa, Uncompahgre and Gunnison National Forests; CO; Establishment of Fees for Forest Cabin Rental Program

AGENCY: Forest Service, USDA.

ACTION: Notice of new fee site and solicitation of comments.

SUMMARY: The Grand Mesa, Uncompahgre and Gunnison (GMUG) National Forests proposes to begin charging fees for the overnight rental of several cabins including 3 cabins at the Cold Springs Adminstrative Site; 2 cabins at the Mesa Lakes Administrative Site and single cabins at 25 Mesa, Silesca, and Jackson Administrative Sites. Public rentals of Forest Service cabins in other parts of Colorado is very popular and shows that the public appreciates and enjoys the use and availability of historic rental cabins. Funds from the rentals will be used for the continued operation and maintenance of the rental cabins. The Cold Springs Adminstrative Site is located in T 51N, R16, Section 29 and the Mesa Lakes Administrative Site is located in T11S, R96W, Section 34 on the Grand Valley Ranger District. The 25 Mesa Cabin is located in T49N, R13W, Section 6, the Silesca Cabin is located in T47N, R11W, Section 18, and the Jackson Cabin is located in T46N, R6W, Section 28; all three are located on the Ouray Ranger District.

DATES: The sites are expected to become available for rent May 2008. Comments, concerns or questions about this new fee must be submitted by January 30, 2008.

ADDRESSES: Submit written comments, concerns, or questions about the new fee for cabin rentals to: Grand Mesa, Uncompahgre and Gunnison National Forests, Attn: Cabin Rental Program, 2250 Highway 50, Delta, Colorado, 81416.

FOR FURTHER INFORMATION CONTACT: Connie Clementson, Grand Valley District Ranger 970—242–8211, or Tammy Randall-Parker, Ouray District Ranger 970–240–5415.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. The intent of this notice is to give the public an opportunity to comment if they have concerns or questions about new fees.

This is the GMUG National Forest's first cabin rental opportunity. Other cabin rentals exist in neighboring national forests in Colorado. The cabins in Colorado are often fully booked throughout their rental season. The GMUG National Forest proposes to rent the cabins for $40 to $180 a night, but will conduct a market analysis to determine if the fees are both reasonable and acceptable for this unique recreation experience. People wanting to rent the cabins will need to make advanced reservations through the National Recreation Reservation Service at *http://www.Recreation.gov* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a fee for reservations.

Dated: December 17, 2007.

Kendall Clark,

Deputy Forest Supervisor.

[FR Doc. E7–24840 Filed 12–20–07; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Nonprofit Agency Recordkeeping Requirements

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice; request for comments.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. This notice solicits comments on that collection of information.

DATES: Submit your written comments on the information collection on or before February 19, 2008.

ADDRESSES: Mail your comments on the requirement to Janet Yandik, Information Management Specialist, Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA, 22202–3259; fax (703) 603–0655; or e-mail *rulescomment@abilityone.gov*.

FOR FURTHER INFORMATION CONTACT: Janet Yandik, Information Management Specialist Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA, 22202–3259; phone (703) 603–2147; fax (703) 603–0655; or e-mail *rulescomment@abilityone.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The Committee plans to submit a request to OMB to renew its approval of the collection of information for nonprofit agency responsibilities related to recordkeeping. The Committee is requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 3037–0005.

The Javits-Wagner-O'Day (JWOD) Act of 1971 (41 U.S.C. 46–48c) is the authorizing legislation for the AbilityOne Program. The AbilityOne Program creates jobs and training opportunities for people who are blind or who have other severe disabilities. Its primary means of doing so is by requiring Government agencies to purchase selected products and services from nonprofit agencies employing such individuals. The AbilityOne Program is administered by the Committee. Two

national, independent organizations, National Industries for the Blind (NIB) and NISH, help State and private nonprofit agencies participate in the AbilityOne Program.

The implementing regulations for the JWOD Act, which are located at 41 CFR Chapter 51, detail the recordkeeping requirements imposed on nonprofit agencies participating in the AbilityOne Program. Section 51–2.4 of the regulations describes the criteria that the Committee must consider when adding a product or service to its Procurement List. One of these criteria is that a proposed addition must demonstrate a potential to generate employment for people who are blind or severely disabled. The Committee decided that evidence that employment will be generated for those individuals consists of recordkeeping that tracks direct labor and revenues for products or services sold through an AbilityOne Program contract. This recordkeeping can be done on each individual AbilityOne project or by product or service family.

In addition, Section 51–4.3 of the regulations requires that nonprofit agencies keep records on direct labor hours performed by each worker and keep an individual record or file for each individual who is blind or severely disabled, documenting that individual's disability and capabilities for competitive employment. The records that nonprofit agencies must keep in accordance with Section 51–4.3 of the regulations constitute the bulk of the hour burden associated with this OMB control number.

This information collection renewal request seeks approval for the Committee to continue to ensure compliance with recordkeeping requirements established by the authority of the JWOD Act and set forth in the Act's implementing regulations and to ensure that the Committee has the ability to confirm the suitability of products and services on its Procurement List. The recordkeeping requirements described in this document are the same as those currently imposed on nonprofit agencies participating in the AbilityOne Program.

- Title: Nonprofit Agency Responsibilities, 41 CFR 51–2.4 and 51–4.3.
- OMB Control Number: 3037–0005.
- Description of Collection: Recordkeeping.
- Description of Respondents: Nonprofit agencies participating in the AbilityOne Program.
- Annual Number of Respondents: About 650 nonprofit agencies will annually participate in recordkeeping.
- Total Annual Burden Hours: The recordkeeping burden is estimated to average 5 hours per respondent. Total annual burden is 3,250 hours.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our agency's functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Dated: December 17, 2007.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–24848 Filed 12–20–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletion

ACTION: Proposed addition to and deletion from the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete product previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 20, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each product or service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Service Type/Location: Supply Store Operation, U.S. Nuclear Regulatory Commission, Rockville, MD.
NPA: Blind Industries & Services of Maryland, Baltimore, MD.
Contracting Activity: U.S. Nuclear Regulatory Commission, Washington, DC.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for deletion from the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product is proposed for deletion from the Procurement List:

Product

Paper, Kraft Wrapping

NSN: 8135–00–160–7758
NSN: 8135–00–160–7772
NSN: 8135–00–160–7778
NSN: 8135–00–286–7317
NSN: 8135–00–290–3407
NPA: Cincinnati Association for the Blind, Cincinnati, OH.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–24849 Filed 12–20–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions From the Procurement List.

SUMMARY: This action adds to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

DATES: *Effective Date:* January 20, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On October 12, October 19 and October 26, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 58051; 59251; 60796–60797) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

Cable Assembly, Brake

NSN: 2590–01–265–3185—Parking (Rear Left).
Coverage: C-List for the requirements of the Defense Supply Center Columbus, Columbus, OH.

Control Assembly, Push-Pull

NSN: 2590–01–279–5714—Control Assembly, Push-Pull.
Coverage: C-List for the requirements of the Defense Supply Center Columbus, Columbus, OH.
NPA: Opportunities, Inc. of Jefferson County, Fort Atkinson, WI.
Contracting Activity: Defense Supply Center Columbus, Columbus, OH.

Hat Liners, Hoods & Booties

NSN: 8415–LL–DM1–0027—Cotton Knit Winter Liner.
NSN: 8415–LL–DM1–0076—Cloth Hood.
NSN: 8415–LL–DM1–0077—Cotton Canvas Overshoes.
NPA: Community Workshops, Inc., Boston, MA.
Coverage: C-List for the requirements of the Portsmouth Naval Shipyard, Portsmouth, NH.
Contracting Activity: Department of the Navy, Fleet Industrial Supply Center (FISC) Norfolk, Portsmouth Naval Shipyard, Portsmouth, NH.

Maintenance Record Holder

NSN: 8105–00–190–9824—Maintenance Record Holder.
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, NC.
Coverage: B-List for the broad Government requirements as specified by the General Services Administration.
Contracting Activity: General Services Administration, Region 2, Office Supply & Paper Products Acquisition Ctr, New York, NY.

Service

Service Type/Location: Base Supply Center, Defense Supply Center Richmond, 8000 Jefferson Davis Highway, Richmond, VA.
NPA: Virginia Industries for the Blind, Charlottesville, VA.
Contracting Activity: Defense Supply Center Richmond, Richmond, VA.

Deletions

On October 19 and October 26, 2007 the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 59252; 60797) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

Cup, Disposable

NSN: 7350–00–761–7467—Cup, Disposable, 6 oz.
NSN: 7350–00–914–5088—Cup, Disposable, 10 oz.
NSN: 7350–00–914–5089—Cup, Disposable, 8 oz.

Cup, Disposable (Foam Plastic)

NSN: 7350–00–082–5741—Cup, Disposable (Foam Plastic), 8 oz.
NSN: 7350–00–145–6126—Cup, Disposable (Foam Plastic), 16 oz.
NSN: 7350–00–721–9003—Cup, Disposable (Foam Plastic), 6 oz.
NSN: 7350–00–926–1661—Cup, Disposable (Foam Plastic), 10 oz.

Lid, Plastic (Foam Cup)

NSN: 7350–01–485–7092—Lid, Plastic (Foam Cup), 6 oz.
NSN: 7350–01–485–7093—Lid, Plastic (Foam Cup), 10 oz.
NSN: 7350–01–485–7094—Lid, Plastic (Foam Cup), 8 oz.
NSN: 7350–01–485–7889—Lid, Plastic (Foam Cup), 16 oz.
NPA: The Oklahoma League for the Blind, Oklahoma City, OK.
Contracting Activity: General Services Administration, Southwest Supply Center, Fort Worth, TX.

Cup, Drinking, Styrofoam

NSN: M.R. 537—Cup, Drinking, Styrofoam, 8 oz., 51 ct.
NSN: M.R. 539—Cup, Drinking, Styrofoam, 16 oz., 18 ct.
NPA: The Oklahoma League for the Blind, Oklahoma City, OK.
Contracting Activity: Defense Commissary Agency (DeCA), Fort Lee, VA.

Protector and Sleeve Transparencies

NSN: 7510–01–483–9754—Transparency Protector, Flip-Frame with Pre-View.
NSN: 7510–01–484–0016—Sleeve, Transparency.
NSN: 7510–01–484–0019—Transparency Protector, Flip-Frame.

Transparency, Ink Jet

NSN: 7530–01–484–1753 .
NPA: Industries of the Blind, Inc., Greensboro, NC.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Services

Service Type/Location: Janitorial/Custodial, U.S. Department of Agriculture, Animal and Plant Health Inspection Service/PPQ, Asian Longhorn Beetle Project, 3920 N. Rockwell, Chicago, IL.
NPA: Habilitative Systems, Inc., Chicago, IL.
Contracting Activity: U.S. Department of Agriculture, Animal & Plant Health Inspection Service, Minneapolis, MN.

Service Type/Location: Janitorial/Custodial, Naval and Marine Corps Reserve Center, Eugene, OR.
NPA: Unknown.
Contracting Activity: Naval Facilities Engineering Command—Everett, Everett, WA

Kimberly M. Zeich, *Service Type/Location: Director, Program Operations.*

[FR Doc. E7–24850 Filed 12–20–07; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limits for the Preliminary Results of the 2006–2007 Semiannual New Shipper Reviews

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

EFFECTIVE DATE: December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, Nicole Bankhead, and Michael Holton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1394, (202) 482–9068, and (202) 482–1324, respectively.

Background

On April 2, 2007, the Department of Commerce (''the Department'') published a notice of initiation of new shipper reviews of certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam'') covering the period August 1, 2006, through January 31, 2007. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of New Shipper Reviews*, 72 FR 15653 (April 2, 2007). On September 12, 2007, the Department extended the preliminary results of these new shipper reviews by ninety days. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limits for the Preliminary Results of the 2006–2007 Semiannual New Shipper Reviews*, 72 FR 52048 (September 12, 2007). The preliminary results of these new shipper reviews are currently due no later than December 21, 2007.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the ''Act''), provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated. *See also* 19 CFR 351.214 (i)(1). The Act further provides that the Department may extend that 180-day period to 300 days if it determines that the case is extraordinarily complicated. *See* 19 CFR 351.214 (i)(2).

Extension of Time Limit of Preliminary Results

The Department determines that these new shipper reviews involve extraordinarily complicated methodological issues such as potential affiliation issues, the examination of importer information and the evaluation of the *bona fide* nature of each company's sales. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for these preliminary results by 30 days, until no later than January 22, 2008.[1] The final results continue to be due 90 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: December 13, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–24854 Filed 12–20–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review

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

[1] Thirty days from the original deadline is January 20, 2008. However, Department practice dictates that where a deadline falls on a weekend or holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Act*, 70 FR 24533 (May 10, 2005).

SUMMARY: The Department of Commerce (''the Department'') is currently conducting a semi-annual 2006 new shipper review of the antidumping duty order on certain frozen warmwater shrimp (''shrimp'') from the People's Republic of China (''PRC''). We determine that Maoming Changxing Foods Co., Ltd. (''Maoming Changxing'') has failed to demonstrate its status as a separate entity entitled to a new shipper review. Therefore, we have determined that this new shipper review should be rescinded.

EFFECTIVE DATE: December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Cindy Lai Robinson, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C., 20230; telephone: (202) 482–3797.

SUPPLEMENTARY INFORMATION:

Background

The Department received a timely request from Maoming Changxing, in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on shrimp from the PRC. On September 29, 2006, the Department initiated an antidumping duty new shipper review covering the period February 1, 2006, through July 31, 2006. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Initiation of New Shipper Review*, 71 FR 57469 (September 29, 2006) (''*Initiation Notice*'').

On July 26, 2007, the Department preliminarily rescinded this new shipper review because Maoming Changxing had failed to demonstrate its eligibility for a separate rate. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Notice of Intent to Rescind Antidumping Duty New Shipper Review*, 72 FR 41058 (July 26, 2007).

On August 27, 2007, the Department received case briefs from Maoming Changxing and the Ad Hoc Shrimp Trade Action Committee (''Petitioners''). The Department received rebuttal briefs on September 6, 2007, from the same parties.

On October 12, 2007, the Department extended the time limits for the final results of this new shipper review to December 17, 2007. *See Notice of Extension of the Final Results of Antidumping Duty New Shipper Review: Certain Frozen Warmwater Shrimp from the People's Republic of China*, 72 FR 58055 (October 12, 2007).

Scope of Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (Penaeus vannemei), banana prawn (Penaeus merguiensis), fleshy prawn (Penaeus chinensis), giant river prawn (Macrobrachium rosenbergii), giant tiger prawn (Penaeus monodon), redspotted shrimp (Penaeus brasiliensis), southern brown shrimp (Penaeus subtilis), southern pink shrimp (Penaeus notialis), southern rough shrimp (Trachypenaeus curvirostris), southern white shrimp (Penaeus schmitti), blue shrimp (Penaeus stylirostris), western white shrimp (Penaeus occidentalis), and Indian white prawn (Penaeus indicus).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this investigation. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this investigation.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); (8) certain dusted shrimp;[1] and (9) certain battered shrimp.[2]

The products covered by this investigation are currently classified under the following HTS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

Period of Review

The period of review (''POR'') is February 1, 2006, through July 31, 2006.

Analysis of Comments Received

All issues raised in the briefs are addressed in the Memorandum to the Assistant Secretary: Issues and Decision Memorandum for the Final Rescission in the Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp from the People's Republic of China, dated October 17, 2007 (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B–099 of the Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://www.trade.gov/ia/* . The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Final Rescission of Review

As discussed in the Issues and Decision Memorandum at Comment 1, the Department has determined that Maoming Changxing does not meet the

[1] Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer.

[2] Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

requirements for establishing its qualification for a new shipper review under section 351.214(a) of the Department's regulations because it did not provide the Department with complete, accurate, reliable, and verifiable information regarding its ownership and affiliation. Because the Department was unable to determine the party's affiliations and Maoming Changxing failed to demonstrate that it is separate from any entity which shipped during the original period of investigation, Maoming Changxing is considered part of the PRC-wide entity. Accordingly, we are rescinding this new shipper review. *See, e.g., Freshwater Crawfish Tail Meat From the People's Republic's of China: Rescission of New Shipper Reviews*, 72 FR 26782 (May 11, 2007); *see also Brake Rotors from the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 64 FR 61581 (November 12, 1999). As the Department is rescinding this new shipper review, we are not calculating a company-specific rate for Maoming Changxing, and Maoming Changxing will remain part of the PRC-wide entity.

Changes Since the Preliminary Results

We have made no changes to our preliminary decision to rescind the new shipper review of Maoming Changxing.

Assessment of Antidumping Duties

A cash deposit of 112.81 percent *ad valorem* shall be collected for any entries produced or exported by Maoming Changxing. The Department will issue appropriate assessment instructions directly to CBP after 15 days from the publication of this notice.[3]

Notification to Interested Parties

This notice serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(f)(3).

Dated: December 17, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

Comment 1: Whether to Rescind the Review

Comment 2: The Margin Assigned to Maoming Changxing

[FR Doc. E7–24851 Filed 12–20–07; 8:45 am]

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[3] Note that the Department published the final rescission of the administrative review for certain frozen warmwater shrimp from the PRC covering the period February 1, 2006, through January 21, 2007. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Rescission of the Second Administrative Review*, 72 FR 61858 (November 1, 2007). Maoming Changxing is hereby considered part of the PRC-wide entity. The Department will issue liquidation instructions for the PRC-wide entity, which includes Maoming Changxing, 15 days after the publication of this notice.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

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

EFFECTIVE DATE: December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5831.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 2006, the Department of Commerce (''Department'') published a notice of initiation of administrative review of the antidumping duty order on polyethylene retail carrier bags from the People's Republic of China (''PRC''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006). On September 10, 2007, the Department published the preliminary results. *See Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 72 FR 51588 (September 10, 2007). This review covers the period August 1, 2005, through July 31, 2006. The final results are currently due by January 8, 2008.

Extension of Time Limit for Final 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 final determination in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary results were published. The Act further provides, however, that the Department may extend that 120-day period to 180 days after publication of the preliminary results 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 final results of the administrative review of polyethylene retail carrier bags from the PRC within the 120-day period due to complex issues the parties have raised regarding the factors of production allocation methodology of Rally Plastics Co., Ltd., a mandatory respondent in this administrative review. In accordance with section 751(a)(3)(A) of the Act, the Department is fully extending the time period for completion of the final results of this review by 60 days to 180 days after the date on which the preliminary results were published. Therefore, the final results are now due no later than March 8, 2008. However, as that date falls on a Saturday, the final results will be due no later than the next business day, Monday, March 10, 2008.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act and 19 CFR 351.213(h)(2).

Dated: November 29, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–24852 Filed 12–20–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India: Final Results of Antidumping Duty New Shipper Review

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

EFFECTIVE DATE: December 21, 2007.

SUMMARY: The Department of Commerce (''Department'') is conducting a new shipper review of the antidumping duty order on stainless steel bar from India manufactured and exported by Ambica Steels Limited (''Ambica''). The period of review is February 1, 2006, through July 31, 2006. In these final results, we have determined to apply adverse facts available.

EFFECTIVE DATE: December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Devta Ohri or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–3853 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 23, 2007, the Department published in the **Federal Register** the preliminary results of the new shipper review of the antidumping duty order on stainless steel bar (''SSB'') from India. *See Stainless Steel Bar from India: Preliminary Results of Antidumping Duty New Shipper Review*, 72 FR 40113 (July 23, 2007). Following the preliminary results, we conducted verification of Ambica's sales and costs in New Delhi, India, from September 24, 2007, through October 5, 2007. We invited interested parties to comment on the preliminary results, and the Department's verification findings. On November 26, 2007, we received a case brief from Ambica. On November 28, 2007, we received a rebuttal brief from Carpenter Technology Corporation, Valbruna Slater Stainless, Inc., Electralloy Corporation, a Division of G.O. Carlson, Inc. (collectively, ''the Petitioners'').

Period of Review

The period of review (''POR'') is February 1, 2006, through July 31, 2006.

Scope of the Order

Imports covered by the order are shipments of SSB. SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-to-length flat-rolled products (*i.e.*, cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

On May 23, 2005, the Department issued a final scope ruling that SSB manufactured in the United Arab Emirates out of stainless steel wire rod from India is not subject to the scope of this order. *See* Memorandum from Team to Barbara E. Tillman, ''Antidumping Duty Orders on Stainless Steel Bar from India and Stainless Steel Wire Rod from India: Final Scope Ruling,'' dated May 23, 2005, which is on file in the CRU in room B–099 of the main Department building. *See also Notice of Scope Rulings*, 70 FR 55110 (September 20, 2005).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the December 14, 2007, ''Issues and Decision Memorandum for the New Shipper Review of Stainless Steel Bar from India'' (''Decision Memorandum''), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, Room B–099 of the main Department building (''CRU''). In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *www.ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Verification

As provided in section 782(i)(3) of the Tariff Act of 1930 (the ''Act''), as amended, we conducted verification of Ambica's sales and costs in New Delhi, India, from September 24, 2007, through October 5, 2007. *See* Memorandum from Brandon Farlander and Devta Ohri to the File: Verification of the Sales and Cost Response of Ambica Steels Limited in the Antidumping New Shipper Review of Stainless Steel Bar from India, dated November 16, 2007 (''Verification Report'').

Bona Fide Analysis

Consistent with the Department's practice, we investigated whether the U.S. transaction reported by Ambica during the POR was a *bona fide* sale. Among the factors examined was the relationship between Ambica and its reported U.S. customer. *See* Memorandum from Devta Ohri, International Trade Compliance Analyst to the File entitled, ''*Bona Fide* Nature of Ambica Steels Limited's Sales in the New Shipper Review for Stainless Steel Bar from India,'' dated July 17, 2007, on file in room B–099 of the main Department of Commerce building. We also examined the *bona fide* nature of Ambica's sale at verification. *See* Verification Report. Based on our investigation, we continue to find that Ambica's sale was made on a *bona fide* basis. *See* Decision Memorandum at Comment 1.

Application of Adverse Facts Available

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such

information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination.

Section 782(d) of the Act provides that if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the administrative review. Section 782(e) of the Act states that the Department shall not decline to consider information determined to be ''deficient'' under section 782(d) if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103- 316, Vol. 1 (1994) at 870 (SAA), reflects the Department's practice that it may employ an adverse inference ''to ensure that the party does not obtain a more favorable result by failing to cooperate to the best of its ability than if it had cooperated fully.'' It also instructs the Department to consider, in employing adverse inferences, ''the extent to which a party may benefit from its own lack of cooperation.'' *Id.*

We determine that Ambica's home market sales database submitted on May 11, 2007, (entitled ''ASLIHM02'') cannot serve as the basis for calculating a margin for Ambica because we are unable to depend on the accuracy and reliability of the information in this database. In our questionnaire, we described the form and manner in which the respondent should report its sales data. Specifically, we stated:

> For sales of merchandise that have been shipped to the customer and invoiced by the time this response is prepared, each ''record'' in the computer data file *should correspond to an invoice line item* (*i.e.*, each unique product included on the invoice). For sales of merchandise that have not yet been shipped and invoiced (in whole or in part) to the customer, a ''record'' should correspond to the unshipped portion of the sale.

See Questionnaire, dated September 26, 2006, at B–27, and C–57 (emphasis added). In addition, our questionnaire also instructed Ambica to

> *Report the unit price recorded on the invoice* for sales shipped and invoiced in whole or in part. To report portions of sales not shipped, provide the agreed unit sale price for the quantity that will be shipped to complete the order. This value should be the gross price for a single unit of measure. Discounts and rebates should be reported separately in fields numbered 19.n and 20.n, respectively.

See Questionnaire, dated September 26, 2006, at B–40 to B–41, and C–70 to C–71 (emphasis added).

Despite these clear instructions in the Department's Questionnaire, we found at verification that Ambica did not report its home market (''HM'') sales as instructed. Specifically, at verification, the Department discovered that for a certain number of HM invoices, Ambica incorrectly reported weighted-average gross unit prices by grade, regardless of the control numbers (''CONNUM'') captured by that grade, instead of the actual gross unit prices listed on Ambica's invoices. *See* Verification Report at 21–23, and 25–26. Ambica officials stated that this error occurred because Ambica did not include size as part of the CONNUM when it first reported its HM sales database. *See* Verification Report at 21. Ambica made this error despite being instructed to consider all CONNUM characteristics, including size, in the Department's original questionnaire, dated September 26, 2006. Furthermore, Ambica failed to correct for this error when asked to do so in the Department's March 6, 2007, supplemental questionnaire. Ambica officials stated that they thought that they had corrected for this weighted-average price error in their May 11, 2007, supplemental questionnaire response. However, Ambica officials admitted, at verification, that Ambica, in fact, had failed to correct the weight-averaged gross unit prices for CONNUMs on certain invoices.

For the six-month POR, we examined all invoices issued in April, June, and July 2006. For these three months (which constitute half of the POR) Ambica's reporting error affected 8 percent, by weight, of Ambica's HM sales; and also 8 percent of the invoices. *See* Memorandum from Brandon Farlander and Devta Ohri to the File: Analysis of Ambica's Weighted-Average Gross Unit Prices Discovered at Verification, dated December 14, 2007. In addition, for certain sales for which Ambica incorrectly reported weighted-average gross unit prices, Ambica erroneously combined the quantities for two distinct sales of the same CONNUM on the same invoice. This resulted in a discrepancy in the number of sales reported in Ambica's HM sales database.

Although we examined numerous invoices, we have insufficient information on the record to correct all the discrepancies related to the misreporting of gross unit prices. As previously noted, the Department examined three of the six months composing Ambica's home market sales database. The verification team did not examine the remaining three months of the POR, nor was it feasible to do so given the time constraints to complete verification. Lacking correct prices for the entire POR, we were not able to test whether Ambica's prices were below cost using the test described in section 773(b) of the Act. In addition, because Ambica incorrectly reported weighted-average gross unit prices for certain of its HM sales (instead of the actual gross unit price it charged the customer), the reported expenses which are based on gross unit prices, such as indirect selling expenses and imputed credit expenses, are also incorrect. Therefore, Ambica failed to provide information in the form and manner requested in the Department's original questionnaire. *See* section 776(a)(2)(B) of the Act.

In addition, Ambica significantly impeded the new shipper review by not providing accurate and necessary information contained in its books and records. *See* section 776(a)(2)(C) of the Act. The Department can decline to consider information Ambica submitted because, as demonstrated above, the requirements of sections 782(e)(2) and (3) of the Act are not met. Because of these deficiencies, the Department is forced to use facts otherwise available pursuant to section 776(a)(2) of the Act.

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. *See*, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstance in Part: Prestressed Concrete Steel Wire Strand From*

Mexico, 68 FR 42378 (July 17, 2003), unchanged in the final determination (*see Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico*, 68 FR 68350 (December 8, 2003)).

Ambica had the documents necessary to report complete and correct information in the necessary and requested manner and format. Also, Ambica was given ample opportunities to correct its HM sales database but failed to do so. Therefore, we find that Ambica did not act to the best of its ability in reporting necessary and accurate information, and presenting its data in the requested manner that would enable us to calculate a margin. As a result, we find it appropriate to use an inference that is adverse to Ambica's interest in selecting from among the facts otherwise available. By doing so, we ensure that Ambica will not obtain a more favorable rate by failing to cooperate.

As total AFA, we have assigned to exports of subject merchandise produced and exported by Ambica the rate of 22.63 percent, which is the rate assigned to Ambica in the *Preliminary Results*. We find that this rate is sufficiently adverse to serve the purposes of facts available, explained above, and is appropriate considering that this AFA rate is the highest rate previously determined in this proceeding. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910 (December 23, 2004); *see also Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Moldova*, 67 FR 55790, 55792 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 2 (''we are making an adverse inference and assigning to MSW the weighted-average margin of 369.10 percent calculated for the Preliminary Determination based on MSW's submitted information. This rate is the higher of the petition margin recalculated for the *Notice of Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela*, 66 FR 50164, 50165 (October 2, 2001), or the highest margin calculated in this proceeding.'').

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted ''corroborate'' to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted. *See Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 5554 (February 4, 2000); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996).

In selecting the AFA rate for Ambica, we assigned the rate of 22.63 percent, which was based on information submitted by Ambica in its questionnaire responses and database submissions, and remains on the record of this new shipper review as a rate higher than the other available AFA rates. Because this rate is based on information that was provided to us by the respondent, it is not considered to be secondary information and, therefore, need not be corroborated. We conclude that Ambica's own data continues to be appropriate to effectuate the purpose of AFA.

Final Results of Review

We find that the following dumping margin exists for the period February 1, 2006, through July 31, 2006:

Exporter/manufacturer	Weighted-average margin percentage
Ambica Steels Limited ..	22.63

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. For subject merchandise produced and exported by Ambica, we will instruct CBP to liquidate entries at the rate indicated above. The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of SSB from India entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of these final results of administrative review, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced and exported by Ambica, the cash deposit rate will be the rate listed above (except no cash deposit will be required if a company's weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.45 percent, the ''all others'' rate established in the LTFV investigation. *See Stainless Steel Bar from India; Final Determination of Sales at Less Than Fair Value*, 59 FR 66915 (December 28, 1994). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as the only reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 14, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Decision Memorandum

Comment 1: Bona Fide Nature of Ambica's Sale
Comment 2: Weighted-Average Gross Unit Prices and Removal of Size from the Department's Control Number—Application of Total Adverse Facts Available
Comment 3: Adjustment to Ambica's International Freight Expenses
Comment 4: Inclusion of Excise Taxes in Ambica's Home Market Inland Insurance Expenses
Comment 5: Discrepancies (Rounding) Related to Ambica's Gross Unit Prices Used to Calculate Ambica's Per-Unit Adjustments
Comment 6: Multiple Payment Dates

[FR Doc. E7–24856 Filed 12–20–07; 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: Notice of Correction to the Second Amended Final Results of Antidumping Duty Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Gene Degnan, 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) 482–0414.

SUPPLEMENTARY INFORMATION:

Correction

On November 7, 2007, the Department of Commerce (''Department'') published in the **Federal Register** the second amended final results of the first administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (''PRC''). *See Second Amended Final Results of Antidumping Duty Administrative Review: Wooden Bedroom Furniture From the People's Republic of China*, 72 FR 62834 (November 7, 2007) (''*Second Amended Final Results*''). The period of review covered June 24, 2004, through December 31, 2005. The Department received no allegations of ministerial errors in the *Second Amended Final Results*. However, we have noted two inadvertent omissions from the list of entities receiving revised weighted-average margins at 72 FR 62836–37. First, Meikangchi Nantong Furniture Company Ltd. was inadvertently omitted from the list entirely. Second, parts of the name of the respondent King Kei Furniture Factory, King Kei Trading Co., Ltd. and Jiu Ching Trading Co., Ltd. were inadvertently omitted from the list. Accordingly, the Department is correcting these omissions in the list of entities receiving revised weighted-average margins by (1) adding Meikangchi Nantong Furniture Company Ltd., and (2) correcting the name of King Kei Furniture Factory, King Kei Trading Co., Ltd. and Jiu Ching Trading Co., Ltd.:

WOODEN BEDROOM FURNITURE FROM THE PRC

Exporter	Weighted-Average Margin (Percent)
King Kei Furniture Factory, King Kei Trading Co., Ltd. and Jiu Ching Trading Co., Ltd.	35.78
Meikangchi Nantong Furniture Company Ltd.	35.78

This correction is published in accordance with sections 751(h) and 777(i) of the Tariff Act of 1930, as amended.

Dated: December 12, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–24847 Filed 12–20–07; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE45

Marine Mammals; File No. 10095

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the North Carolina Zoological Park, 4401 Zoo Parkway, Asheboro, NC 27205, has applied in due form for a permit to import two juvenile harbor seals (*Phoca vitulina*) for the purposes of public display.

DATES: Written or telefaxed comments must be received on or before January 22, 2008.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 10095.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests authorization to import two male captive-born juvenile harbor seals (*Phoca vitulina*) from the New Brunswick Aquarium and Marine Center, Shippagan, New Brunswick, Canada to the North Carolina Zoo. The applicant requests this import for the purpose of public display. The receiving facility, North Carolina Zoological Park, 4401 Zoo Parkway, Asheboro, NC 27205 is: (1) open to the public on regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee; (2) offers an educational program based on professionally accepted standards of the American Association of Zoos and Aquariums; and (3) holds an Exhibitor's License, number 55–C–0007, issued by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. 2131–59).

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine whether the applicant has demonstrated that the proposed activity is humane and does not represent any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself, or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities and resources are adequate to accomplish successfully the objectives and activities stated in the application.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 17, 2007.

Patrick Opay,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–24862 Filed 12–20–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE52

Council Coordination Committee; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: NMFS will host a meeting of the Council Coordination Committee (CCC), consisting of the Regional Fishery Management Council chairs, vice chairs, and executive directors in January 2008. The intent of this meeting is to discuss issues of relevance to the Councils, including FY 2008 budget allocations, implementation of provisions from the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA), and scientific fisheries research activities.

DATES: The meeting will begin at 9 a.m. on Tuesday, January 8, 2008, recess at 5 p.m. or when business is complete; reconvene at 8:30 a.m. on Wednesday, January 9, 2008, and adjourn by 5 p.m. or when business is complete; and reconvene at 8:30 a.m. on Thursday, January 10, 2007, and adjourn by noon.

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: William D. Chappell: telephone (301) 713–2337 or e-mail at *William.Chappell@noaa.gov*; or Heidi Lovett; telephone: (301) 713–2337 or e-mail at *Heidi.Lovett@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006 established the Council Coordination Committee (CCC) by amending Section 302 (16 U.S.C. 1852) of the Magnuson-Stevens Act. The committee consists of the chairs, vice chairs, and executive directors of each of the eight Regional Fishery Management Councils authorized by the Magnuson-Stevens Act or other Council members or staff. NMFS will host this meeting and provide reports to the Committee for its information and discussion. The main topics of discussion will be the FY2008 budget allocation, implementation of the provisions of the MSRA, and related guidance and technical regulatory changes. NMFS will also be holding a joint session of the CCC with the NMFS Science Board during the morning session on Wednesday, January 9, 2008 to discuss scientific and research activities related to MSRA implementation.

Agenda

Tuesday morning, January 8, 2008

FY 2008 budget allocation

Tuesday afternoon, January 8, 2008

FY 2008 budget allocation, continued;

Council performance and metrics; and

Council administrative session (closed session).

Wednesday morning, January 9, 2008

MSRA implementation:

•Annual catch limit and accountability measure guidance;

•Marine recreational information program (MRIP);

•Five year research plans; and

•Council Scientific and Statistical Committees, peer reviews, and stipends.

Wednesday afternoon, January 9, 2008

MSRA implementation continued:

•Revised NEPA/MSA procedures;

•International provisions and regulations;

•Exempted fishing permit procedures;

•Council Statements of Organization, Practices and Procedures (SOPPs) guidance;

•''Omnibus'' technical changes to regulations;

•Jones Bill; and

•National fish habitat legislation.

Thursday morning, January 10, 2008

MSRA implementation continued, as needed;

•Permit fees; and

•Tax identification numbers.

The order in which the agenda items are addressed may change. The CCC will meet as late as necessary to complete scheduled business.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heidi Lovett at (301) 713–2337 at least 5 working days prior to the meeting.

Dated: December 18, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–24814 Filed 12–20–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE50

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Ad Hoc Recreational Red Snapper Advisory Panel (AP).

DATES: The meeting will convene at 1 p.m. on Wednesday, January 9, 2008 and conclude no later than 3 p.m. on Thursday, January 10, 2008.

ADDRESSES: This meeting will be held at the Quorum Hotel, 700 N. Westshore Blvd., Tampa, FL 33609; telephone: (813) 289–8200.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: At this meeting, the AP will consider developing goals and objectives for management of the recreational red snapper fishery, will continue to evaluate and recommend innovative management strategies for the private and for-hire recreational red snapper fisheries of the Gulf of Mexico, and will continue to evaluate and recommend innovative approaches to minimizing bycatch and bycatch mortality in the private and for-hire recreational red snapper fisheries of the Gulf of Mexico. The AP will focus on specific issues within recreational red snapper fishery management including data collection, education and enforcement, artificial reefs and marine reserves, bycatch reduction, and limited access privilege programs such as individual fishing quotas (IFQ) and angling management organizations (AMO).

Although other issues not on the agenda may come before the panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal panel action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

A copy of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: December 18, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–24819 Filed 12–20–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE46

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Steller Sea Lion Mitigation Committee (SSLMC) will meet in Seattle, WA at the Nexus Hotel (January 6) and the Alaska Fishery Science Center (January 7 and 8).

DATES: The meetings will be held on January 6, 7, 8, 2008, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the Hotel Nexus, 2140 N Northgate Way, Seattle, WA and the Alaska Fishery Science Center, 7600 Sand Point Way NE, Bldg 4, Room 2076, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Bill Wilson, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The SSLMC will review the action from the November 2007 Alaska Board of Fisheries meeting and discuss the schedule for SSSLMC work in 2008. The SSLMC will review goal and objective statements for proposals, and discuss the databases that have been assembled. Additional data needs will be identified. The SSLMC will begin proposal analysis, prioritization, and trade offs.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: December 18, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–24815 Filed 12–20–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE51

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public telephone conference meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team Klamath Subcommittee (STTKS) will hold a work session by telephone conference with members of the Yurok and Hoopa Tribes and additional agency personnel from the NMFS, United States Fish and Wildlife Service, and the California Department of Fish and Game to continue review and development of an overfishing assessment for Klamath River fall Chinook (KRFC). This meeting of the STTKS is open to the public.

DATES: The telephone conference will be held on Tuesday, January 8, 2008, from 8 a.m. to 4 p.m. and Wednesday, January 9, 2008, from 8 a.m. to 3 p.m.

ADDRESSES: A listening station for the public will be available at the Pacific Fishery Management Council, Small Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to further develop a report to assess the cause of KRFC failing to meet the 35,000 adult

natural spawner conservation objective, and the implication to the long-term productivity of the stock not meeting that objective, for three consecutive years.

When a salmon stock managed by the Council fails to meet its conservation objective for three consecutive years, an overfishing concern is triggered according to the terms of the Pacific Coast Salmon Plan (Salmon Plan). The Salmon Plan requires the Council to direct its Salmon Technical Team to work with relevant agency and tribal personnel to undertake a review of the status of the stock in question and determine if excessive harvest was responsible for the shortfall, if other factors were involved, and the significance of the stock depression with regard to achieving maximum sustainable yield.

Although non-emergency issues not contained in the meeting agenda may come before the STTKS for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: December 18, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–24820 Filed 12–20–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE47

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of a scoping meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a public scoping meeting regarding Amendment 7 to the Shrimp Fishery Management Plan for the South Atlantic Region. See **SUPPLEMENTARY INFORMATION**.

DATES: The public scoping meeting will be held January 16, 2008.

ADDRESSES: The meeting will be held at the Hilton Garden Inn Airport, 5265 International Boulevard, North Charleston, SC 29418; telephone: (877) 782–9444 or (843) 308–9330; fax: (843) 308–9331. Written comments must be received in the Council office by 5 p.m. on January 18, 2008.

Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405, or via email to: *ShrimpAm7scoping@safmc.net*. Copies of the Shrimp Amendment 7 Scoping Document are available at the Council's web site at *www.safmc.net* or from Kim Iverson, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free at (866) SAFMC–10.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; fax: (843) 769–4520; email address: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The Council is considering modifying the entry requirements for the rock shrimp limited access program. Currently, rock shrimp fishermen are required to have a commercial vessel permit for rock shrimp, and those fishermen who fish off the east coast of Florida and Georgia are required to have a limited access endorsement. Vessels with the limited access endorsements are required to show documented landings of at least 15, 000 pounds of rock shrimp from the South Atlantic Council's area of jurisdiction in one out of four calendar years to retain the endorsement. The initial four-year period began in 2004 and will end December 31, 2007. The Council is also considering a requirement for all commercial shrimp vessel permit holders in the South Atlantic to provide economic data if selected.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by January 14, 2008.

Dated: December 18, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–24816 Filed 12–20–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XE48

South Atlantic Fishery Management Council, Caribbean Fishery Management Council and Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of a scoping meeting.

SUMMARY: The South Atlantic, Caribbean, and Gulf of Mexico Fishery Management Councils (Councils) will hold a public scoping meeting regarding amending the spiny lobster fishery management plan to address the importation of spiny lobster products that do not meet U.S. conservation standards. The amendment will examine various alternatives to restrict imports of spiny lobster into the United States to a minimum acceptable length and/or weight. Spiny Lobsters are currently being imported below the U.S. minimum size limits. Much of the imported lobster does not meet the minimum size limits in the country of origin. This is adversely impacting recruitment throughout Florida and the Caribbean and, as a result, the status of spiny lobster in Caribbean and U.S. waters because of the distribution and dispersal of larvae.

DATES: The public scoping meeting will be held January 24, 2008, beginning at 6 p.m.

ADDRESSES: The meeting will be held at the Islander Hotel, 82100 Overseas Highway, Islamorada, FL 33036; telephone: (800) 753–6002 or (305) 664–2031. Written comments must be received in the South Atlantic Council's office by 5 p.m. on January 28, 2008.

Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405, or via email to: *SpLobScoping@safmc.net*. Copies of the Scoping Document are available from

Kim Iverson, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free at (866) SAFMC–10.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; fax: (843) 769–4520; email address: *kim.iverson@safmc.net*.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by January 21, 2007.

Dated: December 18, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–24817 Filed 12–20–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE49

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Deepwater Shrimp Advisory Panel and Golden Crab Advisory Panel in Charleston, SC.

DATES: The meetings will take place January 27–29, 2008. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Radisson Resort at the Port, 8701 Astronaut Blvd., Cape Canaveral, FL 32920; telephone: (800) 333–3333 or (321) 784–0000; fax: (321) 783–7718.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Members of the Golden Crab Advisory Panel will meet from 1 p.m.—5 p.m. on January 27, 2008, and from 8:30 a.m.—12 noon on January 28, 2008. The Golden Crab Advisory Panel will meet jointly with the Deepwater Shrimp Advisory Panel from 1:30 p.m.—3:30 p.m. on January 28, 2008. The Deepwater Shrimp Advisory Panel will meet from 4 p.m.—6 p.m. on January 28, 2008 and on January 29, 2008 from 8 a.m.—3 p.m.

Both the Rock Shrimp and Golden Crab Advisory Panels (APs) will receive the following presentations: (1) an overview of the Council's Fishery Ecosystem Plan (FEP) Comprehensive Amendment, (2) deepwater coral habitats in the South Atlantic Region, and (3) an update on recommendations from the recent joint meeting of the Council's Habitat and Coral Advisory Panels. Following the presentations, advisory panel members will discuss and provide recommendations on fishing operations relative to deepwater coral areas proposed as Habitat Areas of Particular Concern (HAPCs) included in the Council's Comprehensive Ecosystem Amendment 1. The Rock Shrimp AP and Golden Crab AP will meet jointly to discuss common fishing areas.

In addition, the Deepwater Shrimp AP will provide recommendations regarding Amendment 7 to the Shrimp Fishery Management Plan (FMP) addressing the current landings requirement for the rock shrimp fishery for the South Atlantic region. The requirement, created as part of a limited access program for the rock shrimp fishery through Amendment 5 to the Shrimp FMP for the South Atlantic Region, states that if a limited access rock shrimp endorsement is ''not active'' during a 48 month period (4 calendar years), it will not be renewed. A rock shrimp limited access endorsement is defined as inactive when the vessel it is attached to has less than 15,000 pounds of documented rock shrimp harvest from the exclusive economic zone (EEZ) within the South Atlantic Council's area of jurisdiction within one of four calendar years beginning in 2004.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meetings.

Note: The times and sequence specified in this agenda are subject to change.

Dated: December 18, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–24818 Filed 12–20–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Technical Information Service

National Technical Information Service Advisory Board

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the next meeting of the National Technical Information Service Advisory Board (the Advisory Board), which advises the Secretary of Commerce and the Director of the National Technical Information Service (NTIS) on policies and operations of the Service.

DATES: The Advisory Board will meet on Wednesday, January 30, 2008 from 9 a.m. to approximately 5 p.m. and again on Thursday, January 31, 2008 from 9 a.m. to approximately 12 Noon.

ADDRESSES: The Advisory Board meeting will be held in Room 2029 of the Sills Building at 5285 Port Royal Road, Springfield, Virginia 22161. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Steven D. Needle, (703) 605–6404, sneedle@ntis.gov or Ms. Jill Johnson (703) 605–6401, *jjohnson@ntis.gov.* These are not toll-free telephone numbers.

SUPPLEMENTARY INFORMATION: The NTIS Advisory Board is established by Section 3704b(c) of Title 15 of the United States Code. The charter has been filed in accordance with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

The January 30 morning session will focus on a discussion of NTIS' lines of business and core competencies. The afternoon session, time permitting, is expected to focus on issues pertaining to the identification of new markets, new

ways to enhance NTIS' utility to customers, human skill set challenges, the implications of a physical move to a new location, and technological challenges and opportunities. The January 31 session will focus primarily on Board business but may continue the previous day's discussions. A final agenda and summary of the proceedings will be posted at the NTIS Web site as soon as they are available (*http://www.ntis.gov/about/advisorybd.asp*).

The Sills Building is a secure facility. Accordingly, persons wishing to attend should call the contacts identified above to arrange for admission. Approximately one-half hour will be reserved for public comments during the afternoon of the January 30 session. The amount of time per speaker will be determined by the number of requests received. Questions from the public will not be considered during this period. Any person who wishes to submit a written statement for the Board's consideration should mail or e-mail it to the contacts named above not later than January 16, 2008.

Dated: December 3, 2007.

Ellen Herbst,

Director.

[FR Doc. E7–24859 Filed 12–20–07; 8:45 am]

BILLING CODE 3510–04–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2007–DARS–0138]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 22, 2008.

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing, and related clause at DARS 252.232–7007, Limitation of Government's Obligation; OMB Control Number 0704–0359.

Type of Request: Extension.

Number of Respondents: 800.

Responses Per Respondent: 1.

Annual Responses: 800.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 800.

Needs and Uses: This information collection requires contractors that are awarded incrementally funded, fixed-price DoD contracts to notify the Government when the work under the contract will, within 90 days, reach the point at which the amount payable by the Government (including any termination costs) approximates 85 percent of the funds currently allotted to the contract. This information will be used to determine what course of action the Government will take (e.g., allot additional funds for continued performance, terminate the contract, or terminate certain contract line items).

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Susan Jennifer Haggerty.

Written comments and recommendations on the proposed information collection should be sent to Ms. Haggerty at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings. Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: December 14, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–24823 Filed 12–20–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2007–OS–0092]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 22, 2008.

Title, Form, and OMB Number: Personnel Security Clearance Change Notification; DISCO Form 562; OMB Control Number 0704–0418.

Type of Request: Extension.

Number of Respondents: 11,290.

Responses Per Respondent: 20.

Annual Responses: 225,800.

Average Burden Per Response: 12 minutes.

Annual Burden Hours: 45,160.

Needs and Uses: The DISCO Form 562 is used by contractors participating in the National Industrial Security Program to report various changes in employee personnel clearance status or identification information, e.g. reinstatements, conversions, terminations, changes in name or other previously submitted information. The execution of the DISCO Form 562 is a factor in making a determination as to whether a contractor employee is eligible to have a security clearance. These requirements are necessary in order to preserve and maintain the security of the United States through establishing standards to prevent the improper disclosure of classified information.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Sharon Mar.

Written comments and recommendations on the proposed information collection should be sent to Ms. Mar at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket

number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings. Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: December 14, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–24827 Filed 12–20–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2007–DARS–0139]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 22, 2008.

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) part 211, Describing Agency Needs, and related clauses in DFARS 252.211; OMB Control Number 0704–0389.

Type of Request: Extension.

Number of Respondents: 581.

Responses Per Respondent: 3.032.

Annual Responses: 1,762.

Average Burden Per Response: .978 hours.

Annual Burden Hours: 1,724.

Needs and Uses: This information collection permits offerors to propose alternatives to military preservation, packaging, or packing specifications. DoD uses the information in the offeror's proposal to determine if the alternate preservation, packaging, or packing will meet the Government's needs. In addition, this information collection permits offerors to propose Single Process Initiative (SPI) processes as alternatives to military or Federal specifications and standards cited in DoD solicitations for previously developed items. DoD uses the information in the offeror's proposal to verify Government acceptance of an SPI process as a valid replacement for a military or Federal specification or standard.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Susan Jennifer Haggerty. Written comments and recommendations on the proposed information collection should be sent to Ms. Haggerty at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings. Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: December 14, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–24828 Filed 12–20–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2007–OS–0107]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 22, 2008.

Title, Form, and OMB Number: Application for Former Spouse Payments from Retired Pay; DD Form 2293; OMB Control Number 0730–0008.

Type of Request: Revision.

Number of Respondents: 27,090.

Responses Per Respondent: 1.

Annual Responses: 27,090.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 6,772.

Needs and Uses: Under 10 U.S.C. 1408, State courts may divide military retired pay as property or order alimony and child support payments from that retired pay. The former spouse may apply to the Defense Finance and Accounting Service (DFAS) for direct payment of these monies by using DD Form 2293. This information collection is needed to provide DFAS the basic data needed to process the request.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Sharon Mar.

Written comments and recommendations on the proposed information collection should be sent to Ms. Mar at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings. Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: December 14, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–24833 Filed 12–20–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Department of Defense; Uniformed Services University of the Health Sciences (USU)

ACTION: Quarterly meeting notice.

SUMMARY: Under the provisions of the Federaql Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) announcement of the following meeting:

NAME OF COMMITTEE: Board of Regents of the Uniformed Services University of the Health Sciences.

DATE OF MEETING: Tuesday, February 5, 2008.

LOCATION: Board of Regents Conference Room (D3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

TIMES: 8 a.m. to 12 noon.

PROPOSED AGENDA: The actions that will take place include the approval of minutes from the Board of Regents Meeting held November 6, 2007; acceptance of administrative reports; approval of faculty appointments and promotions; and the awarding of post-baccalaureate masters and doctoral degrees in the biomedical sciences and public health. The President, USU; Dean, USU School of Medicine; Acting Dean, USU Graduate School of Nursing; Commander, USU Brigade; and the Associate Dean, Graduate Medical Education, will also present reports. These actions are necessary for the University to remain an accredited medical school and to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

SUPPLEMENTARY INFORMATION: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, this meeting is open to the public. Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address detailed above. If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Officer will review all timely submissions with the Board of Regents Chair and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the February 2008 meeting or at a future meeting.

FOR FURTHER INFORMATION AND BASE ACCESS PROCEDURES CONTACT: Janet S. Taylor, Designated Federal Officer.

Dated: December 18, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–6178 Filed 12–19–07; 12:06 pm

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

[Docket No. USA–2007–0022]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 22, 2008.

Title, Form, and OMB Number: Vessel Operation Report; ENG Form 3926; OMB Control Number 0710–0005.

Type of Request: Extension.

Number of Respondents: 470.

Responses Per Respondent: 12.

Annual Responses: 5,640.

Average Burden Per Response: .4557 hours.

Annual Burden Hours: 2,570.

Needs and Uses: The Corps of Engineers uses the ENG Form 3926 in conjunction with ENG Forms 3925, 3925B, and 3925P as the basic source of input to conduct the Waterborne Commerce Statistics data collection program. ENG Form 3926 is used as a quality control instrument by comparing the data collected on the Vessel Operation Report with that collected on the 3926. The information is voluntarily submitted by respondents to assist the Waterborne Commerce Statistics Center in the identification of vessel operators who fail to report significant vessel moves and tonnage.

Affected Public: Business or other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Jim Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: December 14, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–24830 Filed 12–20–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of a Supplement to the Draft Environmental Impact Statement (SDEIS) and Extension of Comment Period for the Proposed Potash Corporation of Saskatchewan Phosphate Mine Continuation Near Aurora, in Beaufort County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice; extension of comment period.

SUMMARY: The notice of availability of Supplement I of the Draft

Environmental Impact Statement for the request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act, from Potash Corporation of Saskatchewan Phosphate Division (PCS) for the continuation of its phosphate mining operation near Aurora, Beaufort County, NC published in the **Federal Register** on Tuesday, November 6, 2007 (72 FR 62634), required comments be submitted by December 21, 2007. The comment period has been extended until December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Tom Walker, Telephone (828) 271–7980 ext. 222.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E7–24892 Filed 12–20–07; 8:45 am]

BILLING CODE 3710–GN–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 22, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 17, 2007.

Linda Darby,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

Office of Safe and Drug Free Schools

Type of Review: New Collection.

Title: Models of Exemplary, Effective, and Promising Alcohol or Other Drug Abuse Prevention Programs on College Campuses Grant Competition.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 50. *Burden Hours:* 1,600.

Abstract: This grant competition identifies and disseminates information about exemplary and effective alcohol or other drug abuse prevention programs implemented on college campuses. Through this grant competition, ED also will recognize colleges and universities whose programs, while not yet exemplary or effective, show evidence that they are promising. Section 4121 of the No Child Left Behind Act of 2001 authorizes funds for drug abuse and violence prevention programs for students enrolled in institutions of higher education. This form requests programmatic and budgetary information needed to evaluate applications based on the authorizing legislation and selection criteria identified in the notice of proposed priority, definitions, requirements, and selection criteria. The application package, which uses program-specific selection criteria, is a revised version of the previously used generic application.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3539. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

[FR Doc. E7–24796 Filed 12–20–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 22, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 17, 2007.

Linda Darby,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Understanding Science Professional Development and the Science Achievement of English Learners.

Frequency: Annually.

Affected Public:

Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 3,516.

Burden Hours: 673.

Abstract: The purpose of this study is to investigate how to prepare middle-school teachers to improve all students' physical science content knowledge, including that of low-performing students and English learners (ELs). Using a cluster-randomized experimental design, the research will test the effectiveness of WestEd's Understanding Science model of professional development, an approach that incorporates science content, analysis of student work and thinking, and critical analysis of issues related to teaching that content to students. The professional development course sessions focus on science concepts both in the context of structured investigations and in narrative cases of teaching practice drawn from actual classroom episodes involving those concepts. This model will be evaluated by comparing it with a control condition that provides no additional science professional development beyond that already received in each school. The experiment will evaluate the value added for grade 8 teachers in California who take an Understanding Science course in addition to whatever science professional development they ordinarily receive. The ultimate outcome of interest is the impact of the professional development on students' science achievement. To provide a basis for explaining the results, impacts will also be studied on teachers' science content knowledge, and a descriptive study will examine selected aspects of their classroom science instructional practices.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3452. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

[FR Doc. E7–24798 Filed 12–20–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Even Start Family Literacy Program Women's Prison Grant; Notice Inviting Applications for a New Award for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.313A.

DATES: Applications Available: December 21, 2007.

Deadline for Transmittal of Applications: February 29, 2008.

Deadline for Intergovernmental Review: April 29, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Even Start Family Literacy program Women's Prison grant is designed to help break the cycle of poverty and illiteracy and improve the educational opportunities of low-income families with mothers in prison by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified, high-quality, family literacy program. This project, which must be located in a prison that houses women and their preschool-age children, will serve women inmates and their children, birth through age seven. (For the purposes of this program, the term ''prison'' means a correctional institution that houses inmates, most of whom are incarcerated in the institution for at least one year.)

The grant awarded under this competition must be implemented through cooperative activities that: build on high-quality existing community resources to create a new range of services; promote the academic achievement of children and adults; assist children and adults from low-income families in achieving to challenging State content and student achievement standards; and use instructional programs based on scientifically based reading research on the prevention of reading difficulties for children and adults, to the extent such research is available. A description of the required fifteen program elements for which funds must be used is included in section V. Application Review Information, *Selection Criteria* in this application notice.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed definitions. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for the Even Start Family Literacy program Women's Prison Grant and therefore qualifies for this exemption. In order to ensure the timely award of a grant, the Secretary has decided to forego public comment on the definition of ''prison'' under section 437(d)(1) of GEPA. This definition will apply to the FY 2008 grant competition only.

Priority: Under this competition we are particularly interested in

applications that address the following priority.

Invitational Priority: For FY 2008, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Collaboration With Participating Children's Preschools or Elementary Schools

The Secretary is especially interested in applications that structure formal collaborations with the preschools and elementary schools that the children of the inmates participating in the family literacy program attend. The intent of this invitational priority is to ensure that the children of inmates in the program are fully participating in an early childhood education program that is aligned with the overall Even Start Family Literacy program.

Program Authority: 20 U.S.C. 6381a(a)(2).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $150,000 per year. Funding after the first year of this grant is contingent on the availability of funds.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* A prison (other than a Federal prison) that houses women and their preschool-age children, an institution of higher education, a local educational agency, including a charter school that is considered a local educational agency under State law, a hospital, or other public or private organization or entity. (A Federal prison may not apply for these Federal funds. However, another eligible entity may apply for a grant to operate this family literacy program in a Federal prison.)

2. *Cost sharing or Matching:* Cost sharing requirements for a grant under this program are detailed in section 1234(b) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001.

3. *Other:* Eligible participants are female prison inmates who participate in the project with one or more of their eligible children (whether or not the child resides in the prison). To be eligible: (a) The inmate parent must be eligible to participate in adult education and literacy activities under the Adult Education and Family Literacy Act, be within the State's compulsory school attendance age range (in which case a local educational agency must provide or ensure the availability of the basic education component), or be attending secondary school; and (b) the child (or children) must be younger than eight years of age.

Note: Other family members of eligible participants described in this paragraph also may participate in Even Start Family Literacy program activities when appropriate to serve Even Start purposes. In addition, under section 1236(b)(2) of the ESEA, when a member of a family participating in an Even Start Family Literacy program becomes ineligible, the family may continue to participate until all participating members become ineligible. For example, in the case of a participating family in which the mother becomes ineligible due to educational advancement, the family would remain eligible until all participating children reach age eight. In the case of ineligibility due to the child or children reaching the age of eight, the family would remain eligible for two years or until the mother becomes ineligible due to educational advancement, whichever occurs first.

4. *Participation by Private School Children and Teachers:* An entity that receives an Even Start Family Literacy Program Women's Prison grant is required to provide for the equitable participation of private elementary and secondary school children and their teachers or other educational personnel.

In order to ensure that grant program activities address the needs of these private school children, the applicant must engage in timely and meaningful consultation with appropriate private school officials during the design and development of the program. This consultation must take place before the applicant makes any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate.

Administrative direction and control over grant funds must remain with the grantee. (See section 9501, Participation by Private School Children and Teachers, of the ESEA.)

IV. Application and Submission Information

1. *Address to Request Application Package:* Amber Sheker, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3C142, Washington, DC 20202–6132. Telephone: (202) 205–0653, or by e-mail: *Amber.Sheker@ed.gov* or Rebecca Marek, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3C138, Washington, DC 20202–6132. Telephone: (202) 260–0968 or by e-mail: *Rebecca.Marek@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

You can also obtain an application package via the Internet. To obtain a copy via the Internet, use the following address: *http://www.ed.gov/programs/evenstartprison/index.html.*

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact persons listed in this section.

2. Content and Form of Application Submission: Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page and Appendices Limits: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 25 typed pages. You, the applicant, must also provide a budget narrative that reviewers use to evaluate your application. You must limit the budget narrative to the equivalent of no more than 3 typed pages. For all page limits, use the following standards:

- A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application and budget narratives, including titles, headings, footnotes, quotations, references, and captions. Text in tables, charts, graphs, and the Appendices may be single spaced.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). You may use other point fonts for any tables, charts, graphs, and the Appendices, but those tables, charts, graphs and Appendices should be in a font size that is easily readable by the reviewers of your application.
- Use one of the following fonts for the application and budget narratives:

Times New Roman, Courier, Courier New, or Arial. An application or budget narrative submitted in any other font (includes Times Roman or Arial Narrow) will not be accepted.

• Any tables, charts, or graphs are included in the overall application narrative and budget narrative page limits. The Appendices are not part of these page limits. Appendices are limited to the following: the curriculum vitae or position descriptions of no more than 5 people (including key contract personnel and consultants).

• Other application materials are limited to the specific materials indicated in the application package, and may not include any video or other non-print materials.

• The page limits do not apply to: the cover sheet; the two-page abstract; the budget forms; and the assurances and certifications (included in Section E of the application package).

Our reviewers will not read any pages of your application that exceed the page limit; or exceed the equivalent of the page limit if you apply other standards. In addition, our reviewers will not read or view any Appendices or enclosures (including non-print materials such as videotapes or CDs) other than those described in this notice and the application package.

3. *Submission Dates and Times:*

Applications Available: December 21, 2007.

Deadline for Transmittal of Applications: February 29, 2008.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application package, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 29, 2008.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* Under section 1234(b)(3) of the ESEA, the recipient of an Even Start Family Literacy program Women's Prison grant may not use funds awarded under this competition for the indirect costs of a project. Under 34 CFR 74.23(a)(4) and 80.24(a)(1), a recipient of a grant under this program also may not claim indirect costs as part of the local project share. We reference other regulations outlining additional funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Even Start Family Literacy Program Women's Prison grant, CFDA Number 84.313A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Even Start Family Literacy Program Women's Prison grant at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.313, not 84.313A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://eGrants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note

that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition, you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Rebecca Marek, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3C138, Washington, DC 20202. Fax: (202) 260–7764.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.313A), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.313A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before

relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.313A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from sections 1231, 1232(a)(2), and 1235 of the ESEA and 34 CFR 75.210 and are listed in this section. Further information about the selection criteria is in the application package. The maximum score for each criterion is indicated after the title of the criterion. The maximum score for this application is 100 points.

(a) *Meeting the purposes of the authorizing statute* (0–20 points). The Secretary evaluates each application to determine the extent to which the project will meet the purpose of the Even Start Family Literacy program Women's Prison grant. Under sections 1231 and 1232(a)(2) of the ESEA, the purpose of this grant is to help break the cycle of poverty and illiteracy and improve the educational opportunities of low-income families with mothers in prison by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified, high-quality, family literacy program. Even Start projects must be implemented through cooperative activities that build on high-quality existing community resources in order to create a new range of services, promote the academic achievement of children and adults, assist children and adults from low-income families in achieving to challenging State content and student achievement standards, and use instructional programs based on scientifically based reading research on the prevention of reading difficulties for children and adults, to the extent such research is available. (Sections 1231 and 1232(a) of ESEA)

(b) *Need for project* (0–10 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(1) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (34 CFR 75.210(a)(2)(ii))

(2) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (34 CFR 75.210(a)(2)(v))

(c) *Quality of the project design* (0–25 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (34 CFR 75.210(c)(2)(ii))

(2) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (34 CFR 75.210(c)(2)(xvii))

(3) The extent to which the design of the project incorporates the following required program elements:

- Identification and recruitment of eligible families most in need of services provided under the Even Start Family Literacy Program, as indicated by a low level of income, a low level of adult literacy or English language proficiency of the eligible parent or parents, and other need-related indicators.
- Screening and preparation of parents, including teenage parents, and children to enable those parents and children to participate fully in the Even Start activities and services provided by the project, including testing, referral to necessary counseling, other necessary developmental and support services, and related services.
- A design that accommodates the participants' work schedules and other responsibilities, including the provision of support services, when those support services are unavailable from other sources, necessary for participation in the Even Start activities provided by the project, such as—
- Scheduling and locating of services to allow joint participation by parents and children;
- Child care for the period that parents are involved in the Even Start program activities; and
- Transportation to enable parents and their children to participate in the Even Start program.
- High-quality, intensive instructional programs that promote adult literacy and empower the parents to support the educational growth of their children, developmentally appropriate early childhood educational services, and preparation of children for success in regular school programs.
- For staff whose salaries are paid in whole or in part with Federal Even Start funds: all staff hired to provide academic instruction have obtained an associate's, bachelor's, or graduate degree in a field related to early childhood education, elementary school or secondary school education, or adult education, and, if applicable, meet qualifications established by the State for early childhood education, elementary school or secondary school education, or adult education provided as part of an Even Start program or another family literacy program; the individual responsible for administration of Even Start family literacy services has received training in the operation of a family literacy program; and paraprofessionals who provide support for academic instruction have a secondary school diploma or its recognized equivalent.
- Special training of staff, including child care staff, to develop the skills necessary to work with parents and young children in the full range of Even Start instructional services offered through the Even Start Family Literacy program.
- Provision and monitoring of integrated instructional services to participating parents and children through home-based programs.
- Operation on a year-round basis, including the provision of some program services, including instructional and enrichment services, during the summer months;

• Coordination with other programs assisted under the ESEA, any relevant programs under the Adult Education and Family Literacy Act, the Individuals with Disabilities Education Act, and Title I of the Workforce Investment Act of 1998; and the Head Start program, volunteer literacy programs, and other relevant programs.

• Use of instructional programs based on scientifically based reading research for children and adults, to the extent that research is available.

• Encouraging participating families to attend regularly and to remain in the program a sufficient time to meet their program goals.

• Including reading-readiness activities for preschool children based on scientifically based reading research, to the extent available, to ensure that children enter school ready to learn to read.

• If applicable, promoting the continuity of family literacy to ensure that individuals retain and improve their educational outcomes.

• Ensuring that the program will serve those eligible families most in need of the Even Start activities and services provided by the project.

• Providing for an independent evaluation of the program to be used for program improvement. (Section 1235 of ESEA)

(d) *Quality of project services* (0–20 points). The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (34 CFR 75.210(d)(2)) In addition, the Secretary considers the following factors:

(1) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice. (34 CFR 75.210(d)(3)(iii))

(2) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards. (34 CFR 75.210(d)(3)(vii))

(e) *Quality of project personnel* (0–5 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (34 CFR 75.210(e)(2)) In addition, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of the project director or principal investigator. (34 CFR 75.210(e)(3)(i))

(2) The qualifications, including relevant training and experience, of key project personnel. (34 CFR 75.210(e)(3)(ii))

(3) The qualifications, including relevant training and experience, of project consultants or subcontractors. (34 CFR 75.210(e)(3)(iii))

(f) *Quality of the management plan* (0–10 points).

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (34 CFR 75.210(g)(2)(i))

(2) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (34 CFR 75.210(g)(2)(ii))

(g) *Quality of the project evaluation* (0–10 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (34 CFR 75.210(h)(2)(i))

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (34 CFR 75.210(h)(2)(vi))

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to: *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Secretary has established the following six (6) measures for evaluating the overall effectiveness of the Even Start Family Literacy program, including the Women's Prison grant:

(1) The percentage of Even Start adults who achieve significant learning gains on measures of reading/English language acquisition, as measured by the Comprehensive Adult Student Assessment System (CASAS) and the Tests of Adult Basic Education (TABE);

(2) The percentage of Even Start adults with a high school completion goal who earn a high school diploma;

(3) The percentage of Even Start adults with a goal of General Equivalency Diploma (GED) attainment who earn a GED;

(4) The percentage of preschool-aged children participating in Even Start programs who achieve significant gains in oral language skills as measured by the Peabody Picture Vocabulary Test-III, Receptive (PPVT–III, Receptive).

(5) The average number of letters Even Start preschool-aged children are able to identify as measured by the PALS Pre-K Upper Case Alphabet Knowledge subtask; and

(6) The percentage of preschool-aged children participating in Even Start Programs who demonstrate age-appropriate oral language skills as measured by the Peabody Picture Vocabulary Test-III, Receptive (PPVT–III, Receptive).

All grantees must provide information on these performance measures in the annual performance report referred to in section VI. 3. in this notice.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Amber Sheker, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3C142, Washington, DC 20202. Telephone: (202) 205–0653 or by e-mail: *Amber.Sheker@ed.gov* or Rebecca Marek, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3C138, Washington, DC 20202. Telephone: (202) 260–0968 or by e-mail: *Rebecca.Marek@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 18, 2007.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E7–24865 Filed 12–20–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

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), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 9, 2008, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

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: The presentation topic will be ''Low-Level/Mixed Low-Level Waste Disposition Strategy for the Oak Ridge Reservation.''

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey 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 Pat Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC on December 17, 2007.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–24826 Filed 12–20–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

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), Nevada Test 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: Thursday, January 10, 2008, 6 p.m.

ADDRESSES: Bob Rudd Community Center, 150 North Highway 160, Pahrump, Nevada 89041.

FOR FURTHER INFORMATION CONTACT: Rosemary Rehfeldt, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax (702) 295–5300 or e-mail: *ntscab@nv.doe.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:

1. Presentation from the Desert Research Institute on its Low-Level Waste Transportation Study
2. Review of Underground Test Area (UGTA) Pahute Mesa Corrective Action Investigation Plan Addendum meeting by the UGTA Committee
3. Review and approval of recommendation letter for an updated 2008 Waste Transportation Study conducted by DOE Nevada Site Office Environmental Management Program

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Rosemary Rehfeldt at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Rosemary Rehfeldt at the address listed above or at the following

Web site: *http://www.ntscab.com/MeetingMinutes.htm.*

Issued at Washington, DC on December 17, 2007.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–24829 Filed 12–20–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–34–000]

Atmos Pipeline and Storage, LLC; Notice of Application

December 14, 2007.

Take notice that on December 13, 2007, Atmos Pipeline and Storage, LLC (Atmos), 5420 LBJ Freeway, Dallas, Texas 75240, filed in Docket No. CP08–34–000, a petition for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, and section 7(c)(1)(B) of the Natural Gas Act, seeking approval of an exemption from certificate requirements to perform temporary activities in order to drill test wells and perform other activities to assess the optimal manner in which to develop an underground natural gas storage facility in the vicinity of Fort Necessity, Franklin Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Counsel for Atmos Pipeline and Storage, LLC, James H. Jeffries IV, Moore & Van Allen PLLC, 100 North Tryon Street, Charlotte, North Carolina 28202–4003, or via telephone at (704) 331–1079, facsimile number (704) 339–5879, or e-mail *jimjeffries@mvalaw.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: January 3, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24767 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–18–000]

City of Azusa, California; Notice of Filing

December 14, 2007.

Take notice that on December 7, 2008, City of Azusa, California filed its fifth annual revision to its Transmission Revenue Balancing Account Adjustment, to become effective January 1, 2008. The City of Azusa, California also request a waiver of the filing fee, pursuant to Order No. 888–A.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 7, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24750 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ07–05–001]

East Kentucky Power Cooperative, Inc.; Notice of Filing

December 14, 2007.

Take notice that on November 19, 2007, East Kentucky Power Cooperative, Inc. tendered for filing an errata notice to their July 13, 2007 filing requesting a declaratory order that its updated ''safe harbor'' OATT constituted an acceptable reciprocity tariff pursuant to the provisions of Order No. 890.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 31, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24752 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ08–4–000]

East Kentucky Power Cooperative, Inc.; Notice of Filing

December 14, 2007.

Take notice that on December 7, 2007, East Kentucky Power Cooperative, Inc. tendered for filing a revised Attachment M to its ''safe harbor'' Open Access Transmission Tariff and waiver of the filing fee.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 7, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24754 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OA07–44–000, OA07–44–001, OA07–45–000]

El Paso Electric Company; Notice of Filing

December 14, 2007.

Take notice that on August 20, 2007, El Paso Electric Company tendered for filing a revised Non-discriminatory Open Access Transmission Tariff which contained the revised non-rate terms and conditions set forth in Order No. 890.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 26, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24755 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–19–000]

Public Service Electric and Gas Company; Notice of Filing

December 14, 2007.

Take notice that on December 7, 2007, Public Service Electric and Gas Company tendered for filing a Petition for a Declaratory Order confirming that its to-be-constructed electric transmission circuits and related facilities are properly classified as transmission assets for jurisdictional and ratemaking purposes.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 7, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24751 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF06–3041–001]

Southeastern Power Administration; Notice of Filing

December 14, 2007.

Take notice that on December 3, 2007, Southeastern Power Administration filed a corrected Rate Schedule Replacement 2, effective October 1, 2006 to September 30, 2011, for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204–108.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time on December 26, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24749 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ08–3–000]

Southwestern Power Administration; Notice of Filing

December 14, 2007.

Take notice that on December 6, 2007, Southwestern Power Administration (Southwestern) filed revision to its non-jurisdictional open access transmission tariff to incorporate Attachment O—Transmission Planning Process. Southwestern requests for an effective date for its Attachment O to be February 4, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 7, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24753 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12870–000]

Hydro Green Energy, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 14, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12870–000.

c. *Date filed:* July 24, 2007.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of Project:* ''Alaska 1'' Project.

f. *Location:* The project would be located in a section of the Yukon River in the Southeast Fairbanks Census Area, Alaska. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Wayne F. Krouse, Hydro Green Energy, LLC, 5090 Richmond Avenue #390, Houston, TX 77056, and Mr. James H. Hancock, Jr., Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, Alabama 35203.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12870–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 5 arrays, each consisting of ten, 100 kilowatt hydrokinetic turbine units, for a total installed capacity of 5 megawatts, (2) a proposed transmission line no greater than 2000 feet from the ''node'' array to the shore, (3) a mooring system which does not require the use of pilings to permanently attach the units to the bedrock but instead uses tethers and Danforth type anchors, and (4) appurtenant facilities. The project would have an average annual generation of 32.873 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING

APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24756 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12871–000]

Hydro Green Energy, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 14, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12871–000.

c. *Date Filed:* July 25, 2007.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of Project:* ''Alaska 33'' Project.

f. *Location:* The project would be located in a section of the Ublutuoch River in the North Slope Borough, Alaska. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contacts:* Mr. Wayne F. Krouse, Hydro Green Energy, LLC, 5090 Richmond Avenue #390, Houston, TX 77056, and Mr. James H. Hancock Jr., Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, Alabama 35203.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12871–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 5 arrays, each consisting of ten, 100 kilowatt hydrokinetic turbine units, for a total installed capacity of 5 megawatts, (2) a proposed transmission line no greater than 1750 feet from the ''node'' array to the shore, (3) a mooring system which does not require the use of pilings to permanently attach the units to the bedrock but instead uses tethers and Danforth type anchors, and (4) appurtenant facilities. The project would have an average annual generation of 32.873 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24757 Filed 12–19–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12872–000]

Hydro Green Energy, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 14, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12872–000.

c. *Date Filed:* July 25, 2007.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of Project:* ''Alaska 24'' Project.

f. *Location:* The project would be located in a section of the Kobuk River in the Northwest Arctic Borough, Alaska. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contacts:* Mr. Wayne F. Krouse, Hydro Green Energy, LLC, 5090 Richmond Avenue #390, Houston, TX 77056, and Mr. James H. Hancock Jr., Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, Alabama 35203.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12872–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 5 arrays, each consisting of ten, 100 kilowatt hydrokinetic turbine units, for a total installed capacity of 5 megawatts, (2) a proposed transmission line no greater than 2500 feet from the ''node'' array to the shore, (3) a mooring system which does not require the use of pilings to permanently attach the units to the bedrock but instead uses tethers and Danforth type anchors, and (4) appurtenant facilities. The project would have an average annual generation of 32.873 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of

application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24758 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12877–000]

Hydro Green Energy, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 14, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12877–000.

c. *Date Filed:* July 24, 2007.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of Project:* ''Alaska 7'' Project.

f. *Location:* The project would be located in a section of the Tanana River in the Yukon-Koyukuk Census Area, Alaska. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contacts:* Mr. Wayne F. Krouse, Hydro Green Energy, LLC, 5090 Richmond Avenue #390, Houston, TX 77056, and Mr. James H. Hancock Jr., Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, Alabama 35203.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12877–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 5 arrays, each consisting of ten, 100 kilowatt hydrokinetic turbine units, for a total installed capacity of 5 megawatts, (2) a proposed transmission line no greater than 2000 feet from the ''node'' array to the shore, (3) a mooring system which does not require the use of pilings to permanently attach the units to the bedrock but instead uses tethers and Danforth type anchors, and (4) appurtenant facilities. The project would have an average annual generation of 32.873 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing

development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24759 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12878–000]

Hydro Green Energy, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 14, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12878–000.

c. *Date Filed:* July 24, 2007.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of Project:* ''Alaska 25'' Project.

f. *Location:* The project would be located in a section of the Kobuk River in the Northwest Artic Borough, Alaska. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Wayne F. Krouse, Hydro Green Energy, LLC, 5090 Richmond Avenue #390, Houston, TX 77056, and Mr. James H. Hancock Jr., Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, Alabama 35203.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12878–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 5 arrays, each consisting of ten, 100 kilowatt hydrokinetic turbine units, for a total installed capacity of 5 megawatts, (2) a proposed transmission line no greater than 2250 feet from the ''node'' array to the shore, (3) a mooring system which does not require the use of pilings to permanently attach the units to the bedrock but instead uses tethers and Danforth type anchors, and (4) appurtenant facilities. The project would have an average annual generation of 32.873 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing

application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24760 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12881–000]

Hydro Green Energy, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 14, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12881–000.

c. *Date Filed:* July 24, 2007.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of Project:* ''Alaska 28'' Project.

f. *Location:* The project would be located in a section of the Kuskokwim River in the Yukon-Koyukuk Census Area, Alaska. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Wayne F. Krouse, Hydro Green Energy, LLC, 5090 Richmond Avenue #390, Houston, TX 77056, and Mr. James H. Hancock Jr., Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, Alabama 35203.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12881–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 5 arrays, each consisting of ten, 100 kilowatt hydrokinetic turbine units, for a total installed capacity of 5 megawatts, (2) a proposed transmission line no greater than 1500 feet from the ''node'' array to the shore, (3) a mooring system which does not require the use of pilings to permanently attach the units to the bedrock but instead uses tethers and Danforth type anchors, and (4) appurtenant facilities. The project would have an average annual generation of 32.873 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may

also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24761 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 12884–000 and 12920–000]

Hydro Green Energy, LLC and FFP Project 31, LLC; Notice of Competing Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

December 14, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing).

b. *Applicants, Project Numbers, and Dates Filed:* Hydro Green Energy, LLC filed the application for Project No.12884–000 on July 25, 2007.

FFP Project 31, LLC filed the application for Project No. 12920–000 on August 6, 2007.

c. The name of the Hydro Green Energy, LLC project is the ''Mississippi 6'' Project. Name of the FFP Project 31, LLC project is the Natchez Beam Light Project. The projects would be located on the Mississippi River in Adams County, Mississippi and Concordia Parish, Louisiana. Neither project uses a dam or impoundment.

d. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

e. *Applicants Contacts:* For Hydro Green Energy, LLC: Mr. Wayne F. Krouse, Hydro Green Energy, LLC, 5090 Richmond Avenue, #390, Houston, TX 77056, phone (877) 556–6566, and Mr. James H. Hancock Jr., Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203. For FFP Project 31, LLC: Mr. Dan Irvin, FFP Project 31, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536, and Ms. Maureen Winters, Project Manager, Devine Tarbell & Associates, 970 Baxter Boulevard, Portland, ME 04103.

f. *FERC Contact:* Kelly Houff, (202) 502–6393.

g. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the

project number (P–12884–000 or P–12920–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects:* The project proposed by Hydro Green Energy, LLC would consist of: (1) 5 arrays, each consisting of ten, 100 kilowatt hydrokinetic turbine units, for a total installed capacity of 5 megawatts, (2) a proposed transmission line no greater than 2000 feet from the ''node'' array to the shore, (3) a mooring system which does not require the use of pilings to permanently attach the units to the bedrock but instead uses tethers and Danforth type anchors, and (4) appurtenant facilities. The Hydro Green Energy, LLC project would have an average annual generation of 32.873 gigawatt-hours, which would be sold to a local utility.

The project proposed by FFP Project 31, LLC would consist of: (1) 2,950 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 59 megawatts, (2) a proposed transmission line, (3) a mooring system comprised of either free standing pilings or existing infrastructure which will anchor the units, and (4) appurtenant facilities. The FFP Project 31, LLC project would have an average annual generation of 258.42 gigawatt-hours, which would be sold to a local utility.

i. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item e above.

j. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

k. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

l. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

m. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

n. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

o. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24762 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 12885–000 and 12923–000]

Hydro Green Energy, LLC and FFP Project 34, LLC; Notice of Competing Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

December 14, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing).

b. *Applicants, Project Numbers, and Dates Filed:* Hydro Green Energy, LLC

filed the application for Project No.12885–000 on July 25, 2007.

FFP Project 34, LLC filed the application for Project No. 12923–000 on August 6, 2007.

c. The name of the Hydro Green Energy, LLC project is the ''Mississippi 7'' Project. The name of the FFP Project 34, LLC project is the Cyprus Bunch Light Project. The projects would be located on the Mississippi River in Warren County, Mississippi and Madison Parish, Louisiana. Neither project uses a dam or impoundment.

d. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

e. *Applicants Contacts:* For Hydro Green Energy, LLC: Mr. Wayne F. Krouse, Hydro Green Energy, LLC, 5090 Richmond Avenue #390, Houston, TX 77056, phone (877) 556–6566, and Mr. James H. Hancock Jr., Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203. For FFP Project 34, LLC: Mr. Dan Irvin, FFP Project 34, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536, and Ms. Maureen Winters, Project Manager, Devine Tarbell & Associates, 970 Baxter Boulevard, Portland, ME 04103.

f. *FERC Contact:* Kelly Houff, (202) 502–6393.

g. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12885–000 or P–12923–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects:* The project proposed by Hydro Green Energy, LLC would consist of: (1) 5 arrays, each consisting of ten, 100 kilowatt hydrokinetic turbine units, for a total installed capacity of 5 megawatts, (2) a proposed transmission line no greater than 1800 feet from the ''node'' array to the shore, (3) a mooring system which does not require the use of pilings to permanently attach the units to the bedrock but instead uses tethers and Danforth type anchors, and (4) appurtenant facilities. The Hydro Green Energy, LLC project would have an average annual generation of 32.873 gigawatt-hours, which would be sold to a local utility.

The project proposed by FFP Project 34, LLC would consist of: (1) 2,700 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 54 megawatts, (2) a proposed transmission line, (3) a mooring system comprised of either free standing pilings or existing infrastructure which will anchor the units, and (4) appurtenant facilities. The FFP Project 34, LLC, project would have an average annual generation of 236.520 gigawatt-hours, which would be sold to a local utility.

i. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item e above.

j. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

k. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

l. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

m. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

n. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

o. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original

and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24763 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13056–000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 14, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13056–000.

c. *Date Filed:* November 5, 2007.

d. *Applicant:* BPUS Generation Development, LLC.

e. *Name of Project:* Buckhorn Lake Dam Hydroelectric Project.

f. *Location:* The project would be located on the Middle Fork of the Kentucky River in Perry County, Kentucky. It would use the U.S. Army Corps of Engineers' Buckhorn Lake Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Jeffrey M. Auser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2700, and Mr. John A. Whittaker, IV, Winston & Strawn, LLP, 1700 K Street, NW., Washington, DC 20006–3817, (202) 282–5766.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13056–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would use the U.S. Army Corps of Engineers' Buckhorn Lake Dam and would consist of: (1) A proposed forebay and intake structure located upstream of the western abutment of the dam; (2) a proposed steel lined power tunnel; (3) a proposed powerhouse, containing two turbine/generator units with a total installed capacity of 7.8 megawatts; (4) a tailrace channel; (5) a new 2.5-mile-long 12.5 to 230 kV transmission line and, (6) appurtenant facilities. The proposed project would have an average annual generation of 19.2 gigawatt-hours, which would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24764 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13057–000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 14, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13057–000.

c. *Date Filed:* November 5, 2007.

d. *Applicant:* BPUS Generation Development, LLC.

e. *Name of Project:* Taylorsville Lake Dam Hydroelectric Project.

f. *Location:* The project would be located on the Salt River in Spencer County, Kentucky. It would use the U.S. Army Corps of Engineers' Taylorsville Lake Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Jeffrey M. Auser, P.E., BPUS Generation Development LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2700, and Mr. John A. Whittaker, IV, Winston & Strawn, LLP, 1700 K Street, NW., Washington, DC 20006–3817, (202) 282–5766.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13057–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would use the U.S. Army Corps of Engineers' Taylorsville Lake Dam and would consist of: (1) A proposed forebay and intake structure located upstream of the eastern abutment of the dam; (2) a proposed steel lined power tunnel; (3) a proposed powerhouse, containing two turbine/generator units with a total installed capacity of 16.9 megawatts; (4) a tailrace channel; (5) a new 2.26-mile-long 12.5 to 230 kV transmission line and, (6) appurtenant facilities. The proposed project would have an average annual generation of 23.3 gigawatt-hours, which would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation

of a development application to construct and operate the project.

q. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24765 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2576–083]

Northeast Generation Company; Notice of Application and Soliciting Comments

December 14, 2007.

Take notice that Commission staff is providing an additional opportunity for public input into the pending proceeding before the Commission on the following application:

a. *Application Type:* Shoreline Management Plan.

b. *Project No:* 2576–083.

c. *Date Filed:* July 27, 2006.

d. *Applicant:* Northeast Generation Company (NGC).

e. *Name of Project:* Housatonic River Hydroelectric Project.

f. *Location:* The project is located on the Housatonic River, in Fairfield, Litchfield and New Haven Counties, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Gates, Station Manager—Connecticut Hydro, 143 West St., Ext. Suite E , New Milford, CT 06776, (860) 350–66987

i. *FERC Contact:* Any questions on this notice should be addressed to Isis Johnson at (202) 502–6346, or by e-mail: *Isis.Johnson@ferc.gov*.

j. *Deadline for filing comments and /or motions:* January 17, 2008.

As indicated by Commission staff at the public meeting held September 24, 2007, regarding the shoreline management plan for the Housatonic Project, an opportunity will be provided for those members of the public that did not have the opportunity to provide comments. This notice is intended to grant those parties, particularly those residents around Squantz Pond, the opportunity to provide comments on the proposed shoreline management plan filed with the Commission. All comments that have been filed with the Commission in this proceeding are still applicable, so re-filing of comments is not necessary.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, DHAC, PJ–12.1, 888 First Street, NE., Washington DC 20426. Please include the project number (2576–083) on any filed comments. Comments may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

k. *Description of Proposal:* NGC, licensee for the Housatonic River Project, submitted a Shoreline Management Plan (SMP) as required by the project license. The proposed SMP provides for the maintenance of safe public access to lake shorelines and riverfront lands and waters, as well as for the stewardship and development of shoreline/riverfront areas. The SMP also contains provisions to promote the conservation of land and water-related resources, in addition to promoting education and public awareness of resource protection and management programs. The SMP also includes guidelines for permitting new and existing structures on project lands, and a fee schedule to recover the administrative costs of implementing the permitting program.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free 1–866–208–3676, or for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', as applicable, and the Project Number of the particular application to which the filing refers.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24766 Filed 12–20–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2007–0670; FRL–8344–8]

Agency Information Collection Activities; Proposed Collection; Comment Request; TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR); EPA ICR No. 0586.11, OMB Control No. 2070–0054

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44

U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR)'' and identified by EPA ICR No. 0586.11 and OMB Control No. 2070–0054, is scheduled to expire on May 31, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before February 19, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–0670, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2007–0670. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2007–0670. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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

For technical information contact: Gerry Brown, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8086; fax number: (202) 564–4765; e-mail address: *brown.gerry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Information Collection Activity or ICR Does this Action Apply to?

Affected entities: Entities potentially affected by this action are companies that manufacture or import chemical substances, mixtures, or categories.

Title: TSCA Section 8(a) Preliminary Assessment Information Rule (PAIR).

ICR numbers: EPA ICR No. 0586.11, OMB Control No. 2070–0054.

ICR status: This ICR is currently scheduled to expire on May 31, 2008. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 8(a) of the Toxic Substances Control Act (TSCA) authorizes EPA to promulgate rules under which manufacturers, importers, and processors of chemical substances and mixtures must maintain records and submit reports to EPA. EPA has promulgated PAIR under TSCA section 8(a). EPA uses PAIR to collect information to identify, assess, and manage human health and environmental risks from chemical substances, mixtures, and categories. PAIR requires chemical manufacturers and importers to complete a standardized reporting form to help evaluate the potential for adverse human health and environmental effects caused by the manufacture or importation of identified chemical substances, mixtures, or categories. Chemicals identified by EPA or any other Federal Agency, for which a justifiable information need for production, use, or exposure-related data can be satisfied by the use of the PAIR are proper subjects for TSCA section 8(a) PAIR rulemaking. In most instances the information that EPA receives from a PAIR report is sufficient to satisfy the information need in question. This information collection addresses the reporting and recordkeeping requirements associated with TSCA section 8(a).

Responses to the collection of information are mandatory (see 40 CFR parts 712, 766, and 792). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 28.9 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 26.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 2.1.

Estimated total annual burden hours: 1,568 hours.

Estimated total annual costs: $89,593. This includes an estimated burden cost of $89,593 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are There Changes in the Estimates from the Last Approval?

There is an increase of 988 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's experience with the assumed number of PAIR reports submitted annually, based on the past five fiscal years (2003–2007) of PAIR reporting data. The change is an adjustment.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 14, 2007.

James Jones,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E7–24842 Filed 12–20–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6694–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20070385, ERP No. D–FHW–C40173–00, Peace Bridge Expansion Project, Capacity Improvements to the Peace Bridge, Plazas and Connecting Roadways, U.S. Coast Guard Bridge Permit, U.S. Army COE Section 10 and 404 Permits. City of Buffalo, Erie County, NY and Town of Fort Erie, Ontario, Canada. *Summary:* EPA expressed environmental concerns about air impacts, particularly during the construction phase of the project, as well as impacts to aquatic habitat. EPA also recommends additional cumulative impacts analyses be done. Rating EC2.

EIS No. 20070409, ERP No. D–AFS–J65392–MT, Beartooth Ranger District Travel Management Planning, Proposing to Designate Routes for Public Motorized Use, and Change Management of Pack and Saddle Stock on Certain Trail, Beartooth Ranger District, Custer National Forest, Carbon, Stillwater, Sweet Grass, and Park Counties, MT. *Summary:* EPA expressed environmental concerns about impacts to water quality, fisheries, wildlife and other resources, and recommended that the preferred alternative include modifications to reduce roads in high hazard areas, avoid adding new roads and road decommissioning to reduce risks to water quality and fisheries. Rating EC2.

EIS No. 20070430, ERP No. D–FHW–E40818–NC, NC–119 Relocation Project, Transportation Improvement from the I–185/40 Interchange Southwest of Mebane to Existing NC–119 south of NC–1918 (Mrs White Lane) Mebane, Right-of-Way Acquisition, Alamance County, NC. *Summary:* EPA expressed environmental concerns about impacts to streams, a historic property, a water supply area, and possible residential relocations. Rating EC1.

EIS No. 20070451, ERP No. D–AFS–J65395–UT, Indian Springs Road Realignment, Reducing Adverse Impacts to Watershed and Fisheries, U.S. Army COE Section 404 Permit, Uinta National Forest, Heber Ranger District, Wasatch County, UT. *Summary:* EPA expressed environmental concerns about impacts to the roadless area, and requested that other alternatives that would avoid the roadless area be investigated. If an alternative is not available, EPA requested mitigation to offset impacts to the roadless area. Rating EC2.

EIS No. 20070368, ERP No. DS–BLM–K67052–NV, Newmont Gold Mining, South Operations Area Project Amendment, Updated Information on the Cumulative Effects Analyses, Operation and Expansion, Plan of Operations, Elko and Eureka Counties, NV. *Summary:* EPA continues to have environmental objections to the project because of its potential significant adverse impacts to water quality and the lack of sufficient measures to ensure against acid rock drainage. We recommend the final SEIS provide additional information regarding mine geochemistry, measures to prevent acid drainage, mitigation for potential impacts to pit lake water quality, water quality monitoring, mercury emissions and controls, and financial assurance. Rating EO2.

EIS No. 20070369, ERP No. DS–BLM–K67056–NV, Leeville Mining Project, Propose to Develop and Operate an Underground Mine and Ancillary Facilities including Dewatering Operation, Updated Information on the Cumulative Effects Analyses, Plan-of-Operations/Right-of-Way Permit and COE Section 404 Permit, Elko and Eureka Counties, NV. *Summary:* EPA continues to have environmental concerns because of the project's potential significant adverse impacts to water quality and the lack of sufficient measures to ensure against acid rock drainage. We recommend the final SEIS provide additional information regarding mine geochemistry, measures to prevent acid drainage, mercury emissions and controls, and financial assurance. Rating EC2.

Final EISs

EIS No. 20070446, ERP No. F–FHW–F40438–IN, I–69 Evansville to Indianapolis Project, I–69 Tier 2 Section 1: Evansville to Oakland City, from 1–64 to IN–64, Preferred Alternative is 4, Gibson and Warrick Counties, IN. *Summary:* EPA does not object to the proposed project.

EIS No. 20070448, ERP No. F–USA–A15000–00, PROGRAMMATIC—Army Growth and Force Structure Realignment, Implementation, Nationwide. *Summary:* EPA does not object to the proposed project.

EIS No. 20070475, ERP No. F–FHW–H40191–KS, ADOPTION—Kansas Highway 10 (commonly known as South Lawrence Trafficway) Relocation, Issuance or Denial of Section 404 Permit Request, Lawrence City, Douglas County, KS. *Summary:* No formal comment letter was sent to the preparing agency.

Dated: December 18, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–24843 Filed 12–20–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6694–2]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 12/10/2007 Through 12/14/2007 Pursuant to 40 CFR 1506.9.

EIS No. 20070522, Final EIS, IBR, CA, Lower Yuba River Accord, Proposal to Resolve Instream Flow Issues Associated with Operation, Yuba River, Yuba County, CA, *Wait Period Ends:* 01/22/2008, *Contact:* Tim Rust 916–978–5516

EIS No. 20070523, Draft EIS, NRC, NC, Generic—License Renewal of Nuclear Plants (GEIS) Regarding Shearon Harris Nuclear Power Plant, Unit 1, Plant-Specific Supplement 33 to NUREG–1437, Wake County, NC, *Comment Period Ends:* 03/05/2008, *Contact:* Samuel Hernandez 301–415–4049.

EIS No. 20070524, Draft EIS, BLM, 00, PROGRAMMATIC EIS—Oil Shale and Tar Sands Resource Management (RMP) Amendments to Address Land Use Allocations in Colorado, Utah and Wyoming, *Comment Period Ends:* 03/20/2008, *Contact:* Michael Nedd 202–208–4201.

EIS No. 20070525, Final EIS, NPS, CA, Big Lagoon Wetland and Creek Restoration Project, To Restore a Functional, Self-Sustaining Ecosystem, including Wetland, Riparian, and Aquatic Components, Golden Gate National Area, Muir Beach, Marin County, CA, *Wait Period Ends:* 02/04/2008, *Contact:* Steve Ortega 415–561–4841.

EIS No. 20070526, Draft EIS, AFS, WY, Thunder Basin National Grassland Prairie Dog Management Strategy, Land and Resource Management Plan Amendment #3, Proposes to Implement a Site-Specific Strategy to Manage Black Trailed Prairie Dog, Douglas Ranger District, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Campbell, Converse, Niobrara and Weston Counties, WY, *Comment Period Ends:* 02/04/2008, *Contact:* Misty Hays 307–358–4690.

EIS No. 20070527, Draft EIS, JUS, NV, Las Vegas Detention Facility, Proposed Contractor-Owned/Contractor-Operated Detention Facility, Implementation, Nevada Area, *Comment Period Ends:* 02/04/2008, *Contact:* Scott P. Stermer 202–353–4601.

EIS No. 20070528, Final EIS, AFS, UT, Millville Peak/Logan Peak Road Relocation Project, Provide a Safe, Reliable, Ground Access Route, Logan Ranger District, Wasatch-Cache National Forest, Cache County, UT,

Wait Period Ends: 01/22/2008, *Contact:* Evelyn Sibbernsen 435–755–3620.

EIS No. 20070529, Draft EIS, NCP, DC, Smithsonian Institution National Museum of African American History and Culture, Construction and Operation, Between 14th and 15th Streets NW., and Constitution Avenue, NW., and Madison Drive, NW., Washington, DC, *Comment Period Ends:* 02/04/2008, *Contact:* Gene Keller 202–482–7251.

EIS No. 20070530, Final EIS, COE, 00, Wolf Creek Dam/Lake Cumberland Project, Emergency Measures in Response to Seepage, Mississippi River, South Central Kentucky and Central Tennessee, *Wait Period Ends:* 01/22/2008, *Contact:* Chip Hall 615–736–7666.

EIS No. 20070531, Final EIS, AFS, MT, Lolo National Forest Integrated Weed Management, To Establish Beneficial Vegetation and Weed Resistant Plant Communities, Missoula, Mineral, Sanders, Granite, Powell, Lewis and Clark, Flathead, Ravalli and Lake Counties, MT, *Wait Period Ends:* 01/22/2008, *Contact:* Andy Kulla 406–329–3962.

EIS No. 20070532, Draft EIS, BLM, ID, Three Rivers Stone Quarry Expansion Project, Proposing to Expand the Quarry Operation up to an Additional 73 Acres to Increase Mine Production of Flaystone, Custer County, ID, *Comment Period Ends:* 02/04/2008, *Contact:* Charles Horsburgh 208–524–7530.

EIS No. 20070533, Second Draft Supplement, AFS, CA, Watdog Project, Additional Clarification of Changes Between the Final EIS (2005) and Final Supplement EIS (2007), Feather River Ranger District, Plumas National Forest, Butte and Plumas Counties, CA, *Comment Period Ends:* 02/04/2008, *Contact:* Sharen Parker 530–534–6500.

EIS No. 20070534, Draft EIS, AFS, ID, Idaho Roadless Area Conservation Project, To Provide State-Specific Direction for the Conservation and Management of Inventoried Roadless Areas, National Forest System Lands in Idaho, *Comment Period Ends:* 03/13/2008, *Contact:* Brad Gilbert 208–765–7438.

EIS No. 20070535, Final EIS, AFS, CA, Horse Heli Project, Harvest Merchantable Timber, Thin Stands, Treat Fuels, and Conduct Associated Activities, Klamath National Forest, Oak Knoll Ranger District, Siskiyou County, CA, *Wait Period Ends:* 01/22/2008, *Contact:* Jan Ford 530–842–6131.

Amended Notices

EIS No. 20070440, Draft EIS, FHW, UT, Mountain View Corridor (MVC) Project, Proposed Transportation Improvement 2030 Travel Demand in Western Salt Lake County south of I–80 and west of Bangerter Highway and in northwestern Utah County of I–15, south of the Salt Lake County Line, and north of Utah Lake, Salt Lake and Utah County, UT , *Comment Period Ends:* 01/24/2008, *Contact:* Edward Woolford, P.E. 801–963–0182. Revision of FR Notice Published 10/26/2007: Extending Comment Period from 12/24/2007 to 01/24/2008.

Dated: December 18, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–24839 Filed 12–20–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8510–1]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a public teleconference of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. The Council is a panel of individuals who represent diverse interests from academia, industry, non-governmental organizations, and local, State, and tribal governments. The purpose of this teleconference is to discuss and approve the Draft NACEPT Comments on the EPA 2007 Report on the Environment: Highlights of National Trends (ROE HD). The objective of the Highlights Document is to present national status and trends in the environment and human health in a clear, engaging manner to a public audience of ''civic-minded individuals.'' EPA's Report on the Environment 2007 consists of three products: A Science Report containing detailed scientific and technical information, a Highlights Document written for concerned citizens, and an electronic document facilitating access to material in the reports. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacept/cal-nacept.htm*.

DATES: NACEPT will hold a public teleconference on Wednesday, January 9, 2008 at 2 p.m.–3:30 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held in the U.S. EPA Office of Cooperative Environmental Management at 1201 Constitution Ave., NW., EPA East Building, Room 1102, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer, *altieri.sonia@epa.gov*, (202) 233–0061, U.S. EPA, Office of Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to the Council should be sent to Sonia Altieri, Designated Federal Officer, at the contact information above by Friday, January 4, 2008. The public is welcome to attend all portions of the meeting, but seating is limited and is allocated on a first-come, first-serve basis. Members of the public wishing to gain access to the conference room on the day of the meeting must contact Sonia Altieri at (202) 564–0243 or *altieri.sonia@epa.gov* by January 4, 2008.

Meeting Access: For information on access or services for individuals with disabilities, please contact Sonia Altieri at 202–564–0243 or *altieri.sonia@epa.gov*. To request accommodation of a disability, please contact Sonia Altieri, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 12, 2007.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. E7–24857 Filed 12–20–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8510–2]

Meeting of the Total Coliform Rule Distribution System Advisory Committee—Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of the Federal Advisory Committee Act, the United States Environmental Protection

Agency (EPA) is giving notice of a meeting of the Total Coliform Rule Distribution System Advisory Committee (TCRDSAC). The purpose of this meeting is to discuss the Total Coliform Rule (TCR) revision and information about distribution systems issues that may impact water quality.

The TCRDSAC advises and makes recommendations to the Agency on revisions to the TCR, and on what information should be collected, research conducted, and/or risk management strategies evaluated to better inform distribution system contaminant occurrence and associated public health risks.

Topics to be discussed in the meeting include the research and information collection needs regarding how distribution system issues impact water quality and continued evaluation of TCR approaches. The discussion on distribution system issues includes topics such as: Potential health effects and exposure; contamination events; viability of potential risk mitigation; and link to infrastructure deterioration.

DATES: The public meeting will be held on Wednesday, January 16, 2008 (8:30 a.m. to 6 p.m., Eastern Time (ET)) and Thursday, January 17, 2008 (8 a.m. to 3 p.m., ET). Attendees should register for the meeting by calling Kate Zimmer at (202) 965–6387 or by e-mail to *kzimmer@resolv.org* no later than January 14, 2008.

ADDRESSES: The meeting will be held at RESOLVE, 1255 Twenty-Third St., NW., Suite 275, Washington DC 20037.

FOR FURTHER INFORMATION CONTACT: For general information, contact Kate Zimmer of RESOLVE at (202) 965–6387. For technical inquiries, contact Ken Rotert (*rotert.kenneth@epa.gov,* (202) 564–5280), Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; FAX number: (202) 564–3767.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The Committee encourages the public's input and will take public comment starting at 5:30 p.m. on January 16, 2008, for this purpose. It is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals interested in presenting an oral statement may notify Crystal Rodgers-Jenkins, the Designated Federal Officer, by telephone at 202–564–5275, no later than January 14, 2008. Any person who wishes to file a written statement can do so before or after a Committee meeting. Written statements received by January 14, 2008, will be distributed to all members before any final discussion or vote is completed. Any statements received on January 15, 2008, or after the meeting will become part of the permanent meeting file and will be forwarded to the members for their information.

Special Accommodations

For information on access or accommodations for individuals with disabilities, please contact Crystal Rodgers-Jenkins at 202–564–5275 or by e-mail at *rodgers-jenkins.crystal@epa.gov.* Please allow at least 10 days prior to the meeting to give EPA as much time to process your request.

Dated: December 18, 2007.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E7–24858 Filed 12–20–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0396; FRL–8341–1]

Dichlorvos (DDVP); Final Determination to Terminate Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On September 26, 2007, EPA issued in the **Federal Register**, a notice proposing to terminate the Special Review of dichlorvos (DDVP) because the risks that were the basis of the Special Review are no longer of concern. The Agency offered an opportunity to provide comment on the proposal. The Agency received no substantive comments in response to the proposal and EPA is announcing its final determination to terminate the Special Review of DDVP.

FOR FURTHER INFORMATION CONTACT: Susan Bartow, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603-0065; fax number: (703) 308-8005; e-mail address: bartow.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 a member of the general public or a stakeholder such as environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. 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. 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 Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0396. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

A. What Action is the Agency Taking?

On February 24, 1988, the Agency published a Notice of Special Review Position Document 1 (PD 1) for pesticide products containing DDVP based on concerns for cancer, cholinesterase inhibition, and liver effects (53 FR 5542). On September 28, 1995, the Agency published a Notice of Preliminary Determination to Cancel Certain Registrations and a Draft Notice of Intent to Cancel (PD 2/3) (60 FR 50337). In the 1995 PD 2/3, the Agency determined that exposure to DDVP from the registered uses posed a carcinogenic risk of concern as well as risks of concern for cholinesterase inhibition. However, with respect to liver effects, the Agency determined that this

endpoint was no longer of regulatory concern. Since the initiation of Special Review and publication of the PD 2/3, additional data have become available. Based in part on these data, the Agency has changed its assessment of some of the risks associated with DDVP, and modified the terms and conditions of DDVP registrations, accordingly. Moreover, during the recently concluded reregistration process for DDVP, EPA conducted an intensive and public review of whether DDVP registrations meet the FIFRA standard for registration, culminating in the Agency's 2006 Reregistration Eligibility Decision (RED) for DDVP. Through the reregistration processes the Agency resolved remaining concerns regarding cancer and cholinesterase effects. Accordingly, EPA has revised its assessment of DDVP since the time when the PD 1 and the PD 2/3 were published, respectively. Based on the RED, requested label amendments, and the voluntary cancellation of uses by the registrant pursuant to section 6(f) of FIFRA, EPA has determined that the risks that were the basis of the Special Review are no longer of concern. Therefore, on September 26, 2007, EPA announced its preliminary determination to terminate the Special Review of DDVP. The Agency did not receive any comments in response to its preliminary determination. This notice announces EPA's final determination to terminate the Special Review of DDVP. To the extent that the Agency further revises its assessment of DDVP, it will do so outside of the Special Review context.

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

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 et seq.). Before a product can be registered it must be shown that it can be used without causing ''unreasonable adverse effects on the environment,'' [FIFRA section 3(c)(5)]. The term ''unreasonable adverse effects on the environment'' is defined in FIFRA section 2(bb) as ''any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.'' The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard, the Administrator may cancel this registration under section 6 of FIFRA.

The Special Review process provides a mechanism to permit public participation in EPA's deliberations prior to issuance of any Notice of Final Determination describing the regulatory action which the Administrator has selected. The Special Review process, which was previously called the Rebuttable Presumption Against Registration (RPAR), is described in 40 CFR part 154, published in the **Federal Register** of November 25, 1985 (50 FR 49015). The purpose of this process is to determine whether some or all registrations of a particular active ingredient or ingredients meet the FIFRA standard for registration, or whether amendment of the terms and conditions of registration or cancellation of portions or all of the registrations is appropriate.

Prior to formal initiation of a Special Review, a preliminary notification is sent to registrants and applicants for registration pursuant to 40 CFR 154.21 announcing that the Agency is considering commencing a Special Review. Registrants and applicants for registration are allowed 30 days from receipt of the notification to comment on the Agency's proposal to commence a Special Review.

If the Agency determines, after issuance of a notification pursuant to 40 CFR 154.21, that it will initiate a Special Review, 40 CFR 154.25(c) requires the Administrator to publish a Notice of Special Review in the **Federal Register**. To conclude a Special Review after a Special Review has been initiated, 40 CFR 154.31 requires the Administrator to first publish a Notice of Preliminary Determination in the **Federal Register**.

That regulation requires the Administrator to respond to all significant comments received on the Notice of Special Review and, among other things, make a preliminary determination of whether any of the applicable risk criteria have been satisfied. Finally, after receipt and evaluation of comments on the Notice of Preliminary Determination, 40 CFR 154.33 requires that the Administrator publish in the **Federal Register** a Notice of Final Determination, including the reasons for the determination. This Notice is being issued pursuant to 40 CFR 154.33.

List of Subjects

Environmental protection, Pesticides, Pests.

Dated: December 14, 2007.

James Jones,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E7–24739 Filed 12–20–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1019; FRL–8341–8]

Nicotine, 4-Aminopyridine, and Fenoxycarb; Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing this notice of receipt of requests by the registrants to voluntarily cancel their registrations of certain products containing the pesticides nicotine, 4-aminopyridine, and fenoxycarb. The requests from Bonide, Inc. would terminate nicotine use in or on lawns and outdoor ornamentals; this request would not cancel the last nicotine product registered for use in the United States. The requests from Avitrol Corporation would terminate 4-aminopyridine products formulated as powder; this request would not cancel the last 4-aminopyridine product registered for use in the United States. The requests from SC Johnson & Son, Inc. would terminate fenoxycarb use in indoor residential areas; this request would not cancel the last fenoxycarb product registered for use in the United States. The requests from Syngenta would terminate fenoxycarb use by residential handlers; this request would not cancel the last fenoxycarb product registered for use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests within this period. Upon acceptance of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before January 22, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID)

number EPA–HQ–OPP–2007–1019, 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'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–2007–1019. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Search for Dockets.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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: Jill Bloom or Katie Weyrauch, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. For information on the nicotine requests, please contact: Jill Bloom, telephone number: (703) 308–8019; e-mail address: *bloom.jill@epa.gov*. For information on the 4-aminopyridine and fenoxycarb requests, please contact: Katie Weyrauch, telephone number: (703) 308–0166; e-mail address: *weyrauch.katie@epa.gov*. The fax number for both contacts is (703) 308–7070.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

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

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

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

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

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

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

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

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

II. Background on the Receipt of Requests to Cancel Registration

This notice announces receipt by EPA of requests from Bonide Products, Inc. to cancel two nicotine product registrations. Nicotine is derived from the tobacco plant and is used to kill insect pests of ornamental plants, and as part of a formulation used to repel dogs and rabbits from yard and garden areas. In separate letters dated September 18, 2007, Bonide requested that EPA cancel the two nicotine product registrations identified in this notice (see Table 1). Specifically, Bonide has made these requests in light of preliminary indications of toxicological and ecotoxicological concerns, coupled with a lack of applicable data and the likely requirement to fill these data gaps.

Bonide has not produced the insecticide product (EPA registration # 4-340) for a number of years, and has not requested time for the sale of existing stocks. For the repellent product (EPA registration # 4-465), Bonide has requested a 24–month interval after the cancellation order is issued in which to sell existing stocks. This action on the registrant's requests will not terminate the last nicotine product registered in the United States; it will terminate the registration of the last nicotine products registered in the United States for use on and around lawns and outdoor ornamentals.

This notice also announces receipt by EPA of requests from Avitrol Corporation, to cancel five 4-aminopyridine product registrations. 4-aminopyridine is an avicide with flock-alarming properties. 4-aminopyridine products are used around structures and in feedlots for the control of pigeons, starlings, some species of grackles, sparrows, crows, and some species of blackbirds. In letters dated May 30, 2007, September 30, 2007, and October 5, 2007, Avitrol Corporation requested that EPA cancel affected product registrations identified in this notice (see Table 1). Specifically, Avitrol Corporation has made these requests in light of preliminary indications of toxicological and ecotoxicological concerns and the possibility of airborne transmission of the powders. The registrant has requested to be able to sell these 4-aminopyridine products through December 31, 2007. This action on the registrant's requests will terminate the last 4-aminopyridine products formulated as powders in the United States. In addition, this action on the registrant's requests will terminate the last 4-aminopyridine products registered in the United States for use on gulls; in grape vineyards in California; on sprouting crops in California; and on the Greater Antillean grackle in Puerto Rico.

This notice also announces receipt by EPA of requests from S.C. Johnson & Son, Inc. to cancel two fenoxycarb product registrations. Fenoxycarb is an O-ester carbamate derivative insecticide/miticide/insect growth regulator. Fenoxycarb is used on turf, non-bearing orchards, and on ornamentals to control insects, including fire ants. In a letter dated July 20, 2007, S.C. Johnson & Son, Inc. requested that EPA cancel affected product registrations identified in this notice (see Table 1). Specifically, S.C. Johnson & Son, Inc. has made this request because the fenoxycarb technical label no longer includes indoor residential uses of fenoxycarb. S.C. Johnson & Son, Inc. has not produced the insecticide products (EPA registrations #4822-292 and #4822-442) for a number of years, and has not requested time for the sale of existing stocks. This action on the registrant's request will terminate the last fenoxycarb end-use products registered in the United States with use in indoor residential settings.

This notice also announces receipt by EPA of requests from Syngenta to cancel four fenoxycarb product registrations. In a letter dated November 6, 2007, Syngenta requested that EPA cancel affected product registrations identified in this notice (see Table 1). Specifically, Syngenta has made this request because these registrations have not been produced for some time. Syngenta has not produced the insecticide products (EPA registrations # 100–725, # 100–746, # 100–750, and # 100–753) for a number of years, and has not requested time for the sale of existing stocks. This action on the registrant's requests will not terminate the last fenoxycarb product registered in the United States.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from registrants to cancel certain nicotine, 4-aminopyridine, and fenoxycarb product registrations. The affected products and the registrants making the requests are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The nicotine and fenoxycarb products are not agricultural use products and are not subject to section 6(f)(1)(C) of FIFRA. EPA will provide a 30–day comment period on the proposed requests for the nicotine and fenoxycarb products. The 4-aminopyridine registrant has requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed request.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling the affected registrations.

TABLE 1.—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration Number	Product Name	Company
4-340	Bonide Tobacco Dust	Bonide Products, Inc.
4-465	Bonide Rabbit & Dog Chaser	Bonide Products, Inc.
100-725	Logic Fire Ant Killer	Syngenta Crop Protection, Inc.
100-746	Fenoxycarb 1% Bait	Syngenta Crop Protection, Inc.
100-750	Precision 25 WP	Syngenta Crop Protection, Inc.
100-753	Fenoxycarb 25 WP	Syngenta Crop Protection, Inc.
11649-10	Avitrol Concentrate	Avitrol Corporation
11649-11	Avitrol Powder Mix	Avitrol Corporation

TABLE 1.—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration Number	Product Name	Company
CA780131	Avitrol Mixed Grains - Special Local Need	Avitrol Corporation
CA780132	Avitrol Mixed Grains - Special Local Need	Avitrol Corporation
PR020001	Avitrol Powder Mix - Special Local Need	Avitrol Corporation
4822-292	Raid Flea Kill IV Plus	S.C. Johnson & Son, Inc.
4822-442	Raid DOB	S.C. Johnson & Son, Inc.

Table 2 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company Number	Company Name and Address
4	Bonide Products, Inc. 6301 Sutliff Road Oriskany, NY 13424
100	Syngenta Crop Protection, Inc. P.O. Box 18300 410 Swing Road Greensboro, NC 27419
11649	Avitrol Corporation 7644 East 46th Street Tulsa, OK 74145
4822	S.C. Johnson & Son, Inc. 1525 Howe Street Racine, WI 53403

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before [*30 days after date of publication in the* **Federal Register**]. This written withdrawal of any request for cancellation will apply only to the applicable FIFRA section 6(f)(1) requests listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

In any order issued in response to these requests for amendments to terminate uses, the Agency proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 1 in Unit III:

For EPA registration # 4–340, no sale by the registrant of existing stocks. Bonide has not manufactured this product for 3–4 years and there are no stocks in its possession.

For EPA registration # 4–465, sale by the registrant of existing stocks will be allowed for a period of 24 months, counted from the date of the cancellation order associated with this notice.

For 4-aminopyridine products (EPA registrations # 11649–10, # 11649–11, # CA780131, # CA780132, and # PR020001), sale by the registrant of existing stocks will be permitted through December 31, 2007. From January 1, 2008 on, sale by the registrant of existing stocks will be prohibited.

For fenoxycarb products (EPA registrations # 100–725, # 100–746, # 100–750, # 100–753, # 4822–292, and # 4822–442), no sale by the registrant of existing stocks. Syngenta Crop Protection, Inc. has not manufactured their products for several years and there are no stocks in its possession. S.C. Johnson & Son, Inc. has not manufactured their products for several years and there are no stocks in its possession.

If the requests for voluntary cancellation are granted as discussed in this unit, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation orders contain the existing stocks provisions just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that any of the final cancellation orders should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 13, 2007.

Peter Caulkins.

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–24903 Filed 12–20–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0190; FRL–8339–4]

Polypropylene Glycol Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide polypropylene glycol, and

opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the polypropylene glycol Docket. Butoxypolypropylene glycol (BPG) is the only active ingredient in the polypropylene glycol chemical case with any registered products. BPG is a repellant that is used to control flying and crawling insects. BPG was first registered for use in 1960, and can be applied to animals such as pets or horses directly, or to areas where animals live, like animal housing, bedding, or other areas animals may occupy. There are no food uses, and no uses on animals intended for slaughter. EPA has reviewed the polypropylene glycol chemical case through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before January 22, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–1090, 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'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–2007–1090. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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: Cathryn O'Connell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0136; fax number: (703) 308–7070; e-mail address: oconnell.cathryn@*epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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

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

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

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

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

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

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

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

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

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

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a RED for the pesticide, polypropylene glycol under section 4(g)(2)(A) of FIFRA. Butoxypolypropylene glycol (BPG) is the only active ingredient in the polypropylene glycol chemical case with any registered products. BPG is a repellant that is used to control flying and crawling insects. BPG was first registered for use in 1960, and can be applied to animals such as pets or horses directly, or to areas where animals live, like animal housing, bedding, or other areas animals may occupy. There are no food uses, and no uses on animals intended for slaughter.

EPA has determined that the data base to support reregistration is substantially complete and that products containing polypropylene glycol are eligible for reregistration, provided the risks are mitigated in the manner described in the RED. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing polypropylene glycol.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, polypropylene glycol was reviewed through the modified 4–Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for polypropylene glycol.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the polypropylene glycol RED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for polypropylene glycol. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the polypropylene glycol RED will be implemented as it is now presented.

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

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 12, 2007.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–24771 Filed 12–20–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8509–7; Docket ID No. EPA–HQ–ORD–2007–0664]

Integrated Risk Information System (IRIS); Announcement of 2008 Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for information.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the IRIS 2008 agenda and requesting scientific information on health effects that may result from exposure to the chemical substances on the agenda, including assessments that EPA is starting this year. The Integrated Risk Information System (IRIS) is an EPA database that contains the Agency's scientific positions on human health effects that may result from exposure to chemical substances in the environment. Assessments currently in progress are listed in this notice.

DATES: While EPA is not expressly soliciting comments on this notice, the Agency will accept information related to the substances included herein. Please submit any information in accordance with the instructions provided below.

ADDRESSES: Please submit relevant scientific information identified by docket ID number EPA–HQ–ORD–2007–0664, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *ord.docket@epa.gov;* mailed to Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or as an ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: For information on the IRIS program, contact Dr. Abdel-Razak Kadry, IRIS Program Director, National Center for Environmental Assessment, (mail code: 8601D), Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC 20460; telephone: (202) 564–1645, facsimile: (202) 565–0075; or e-mail: *kadry.abdel@epa.gov*.

For general questions about access to IRIS, or the content of IRIS, please call the IRIS Hotline at (202) 566–1676 or send electronic mail inquiries to *hotline.iris@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

IRIS is a database of human health effects that may result from exposure to various chemical substances found in the environment. (EPA notes that information in the IRIS database has no preclusive effect and does not predetermine the outcome of any rulemaking. When EPA uses such information to support a rulemaking, the scientific basis for, and the application of, that information are subject to comment.) IRIS currently provides information on health effects associated with more than 500 chemical substances.

The database includes chemical-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, i.e., hazard identification and dose-response evaluation. Combined with specific situational exposure assessment information, the information in IRIS is an important source in evaluating potential public health risks from environmental contaminants.

EPA's overall process for developing IRIS assessments consists of: (1) Publication of an annual **Federal Register** announcement of EPA's IRIS agenda and call for scientific information from the public on selected chemical substances; (2) a comprehensive search of the current scientific literature; (3) development of a draft IRIS health assessment utilizing state of the art scientific methods and guidelines; (4) internal EPA review of the draft assessment; (5) interagency review of the draft assessment; (6) public comment followed by independent external peer review of the draft assessment; (7) a public external peer review meeting related to the draft assessment; (8) preparation of a final IRIS assessment that reflects public comments and independent expert review; (9) interagency review of the final assessment; (10) EPA review and clearance of the final assessment; and (11) posting of the final IRIS assessment on the IRIS database (*http://www.epa.gov/iris*).

The IRIS Annual Agenda

Each year, EPA develops a priority list of chemicals and an annual agenda for the IRIS program and announces new assessments under review. EPA uses five general criteria to set these priorities: (1) Potential public health impact; (2) EPA statutory, regulatory, or program-specific implementation needs; (3) availability of new scientific information or methodology that might significantly change the current IRIS information; (4) interest to other governmental agencies or the public; and (5) availability of other scientific assessment documents that could serve as a basis for an IRIS assessment. The decision to assess any given chemical substance depends on available Agency resources. Availability of risk assessment guidance, guidelines, and science policy decisions may also have an impact on the timing of EPA's decision to assess a chemical substance.

EPA is soliciting public involvement in assessments on the IRIS agenda, including new assessments starting in 2008. While EPA conducts a thorough literature search for each chemical substance, there may be unpublished studies or other primary technical sources that are not available through the open literature. EPA would appreciate receiving scientific information from the public during the information gathering stage for the assessments listed in this notice. Interested persons should provide scientific analyses, studies, and other pertinent scientific information. While EPA is primarily soliciting information on new assessments starting in 2008, the public may submit information on any chemical substance at any time.

This notice provides: (1) A list of IRIS assessments in progress; (2) a list of new IRIS assessments starting in 2008; and (3) instructions to the public for submitting scientific information to EPA pertinent to the development of assessments.

Assessments in Progress

The following assessments are underway. The status and planned milestone dates for each assessment can be found on the IRIS Track system, accessible from the IRIS database. All health endpoints due to chronic exposure, cancer and noncancer, are being assessed unless otherwise noted. For all endpoints assessed, both qualitative and quantitative assessments are being developed where information is available.

Substance name	CAS No.
acetaldehyde	75–07–0
acrylamide	79–06–1
acrylonitrile	107–13–1
antimony	7440–36–0
arsenic, inorganic	7440–38–2
asbestos	1332–21–4
benzo[a]pyrene	50–32–8
beryllium (cancer)	7440–41–7
bromobenzene	108–86–1
butyl benzyl phthalate	85–68–7
cadmium	7440–43–9
carbon tetrachloride	56–23–5
cerium oxide and cerium compounds	1306–38–3
chlordecone (kepone)	143–50–0
chloroethane	75–00–3
chloroform	67–66–3
chloroprene	126–99–8
cobalt	7440–48–4
copper	7440–50–8
dibutyl phthalate	84–74–2
1,2-dichlorobenzene	95–50–1
1,3-dichlorobenzene	541–73–1
1,4-dichlorobenzene	106–46–7
cis-1,2-dichloroethylene	156–59–2
trans-1,2-dichloroethylene	156–60–5

Substance name	CAS No.
dichloromethane (methylene chloride)	75–09–2
di(2-ethylhexyl)adipate	103–23–1
di(2-ethylhexyl)phthalate	117–81–7
1,4-dioxane	123–91–1
ethanol	64–17–5
ethyl tert-butyl ether	637–92–3
ethylbenzene	100–41–4
ethylene dichloride	107–06–2
ethylene glycol monobutyl ether	111–76–2
ethylene oxide (cancer)	75–21–8
formaldehyde	50–00–0
hexachlorobutadiene	87–68–3
hexachloroethane	67–72–1
hexahydro-1,3,5-trinitro-triazine (RDX)	121–82–4
2-hexanone	591–78–6
hydrogen cyanide	74–90–8
isopropanol	67–63–0
methanol	67–56–1
methyl tert-butyl ether (MTBE)	1634–04–4
mirex	2385–85–5
naphthalene	91–20–3
nickel (soluble salts)	(various)
nitrobenzene	98–95–3
pentachlorophenol	87–86–5
perfluorooctanoic acid—ammonium salt	3825–26–1
perfluorooctane sulfonate—potassium salt	2795–39–3
platinum	7440–06–4
polycyclic aromatic hydrocarbon (PAH) mixtures	various
polybrominated diphenyl ethers	
tetraBDE	5436–43–1
pentaBDE	60348–60–9
hexaBDE	68631–49–2
decaBDE	1163–19–5
polychlorinated biphenyls (PCBs) (noncancer)	1336–36–3
propionaldehyde	123–38–6
refractory ceramic fibers	not applicable
styrene	100–42–5
2,3,7,8-tetrachlorodibenzo-p-dioxin	1746–01–6
and related compounds	various
1,1,2,2-tetrachloroethane	79–34–5
tetrachloroethylene (perchloroethylene)	127–18–4
tetrahydrofuran	109–99–9
thallium	7440–28–0
trichloroacetic acid	76–03–9
trichloroethylene	79–01–6
1,2,3-trichloropropane	96–18–4
uranium compounds	7440–61–1
vinyl acetate	108–05–4

The following assessments were completed in FY2006 and FY2007: n-hexane; phosgene; 1,1,1-trichloroethane; 2,2,4-trimethylpentane. The following assessments are being withdrawn from the IRIS agenda at the request of the EPA Office of Water: aldicarb, aldicarb sulfoxide, and aldicarb sulfone. Assessments of these chemicals will be completed by the EPA Office of Pesticide Programs. The following assessments are being withdrawn by the EPA Office of Research and Development: acrolein (acute), benzene (acute), ethylene oxide (acute), phosgene (acute), hexachlorocyclopentadiene (acute), and hydrogen sulfide (acute).

IRIS assessments for all substances listed as on-going assessments will be provided on the IRIS Web site at *http://www.epa.gov/iris* as they are completed. This publicly available Web site is EPA's primary location for IRIS documents. In addition, external peer review drafts of IRIS assessments are posted for public information and comment. These drafts will continue to be accessible via the IRIS and NCEA Web sites. Note that these drafts are intended for public information.

Information Requested on New Assessments for 2008

EPA developed a list of priority chemicals for 2008 from nominations from the EPA programs and from the public received in response to the December 22, 2006, **Federal Register** notice requesting public nominations (71 FR 77017). The following chemicals were nominated and have been selected for inclusion in the IRIS agenda.

Substance name	CAS No.
alkylates	various.
ammonia	7664–41–7
tert-amyl methyl ether	994–05–8

Substance name	CAS No.
bisphenol A	80–05–7
biphenyl	92–52–4
n-butanol	71–36–3
tert-butanol	75–65–0
carbonyl sulfide	463–58–1
chromium VI	18540–29–9
diethyl phthalate	84–66–2
diisopropyl ether	108–20–3
4,4-dimethyl-3-oxahexane	919–94–8
hexabromocyclododecane (mixed stereoisomers)	3194–55–6; 25637–99–4
manganese	7439–9
toxaphene (weathered)	8001–35–2
1,2,4-trimethylbenzene	95–63–6
1,3,5-trimethylbenzene	108–67–8
tungsten	7440–33–7
urea	57–123–6
vanadium pentoxide	1314–62–1

EPA is conducting literature searches for these chemicals in 2008. Based on the results of the literature searches and as EPA resources allow, assessments will be started for those chemicals with data that may support development of one or more toxicity values.

With this IRIS agenda announcement, EPA is starting a new process to actively solicit information from the public at the beginning of assessment development. As literature searches are completed, the results will be posted on the IRIS Web site (*http://www.epa.gov/iris*). The public is invited to review the literature search results and submit additional information to EPA. Literature search results are currently available at *http://www.epa.gov/iris* for tert-amyl methyl ether, biphenyl, n-butanol, tert-butanol, carbonyl sulfide, diethyl phthalate, diisopropyl ether, hexabromocyclodecane, weathered toxaphene, tungsten, and urea. Additional literature searches will be posted in batches as they are completed. Availability will be announced in the **Federal Register**. Instructions on how to submit information are provided below under General Information.

While the annual prioritization process responds to the needs expressed by IRIS users, EPA is also systematically updating the IRIS database. On a cyclical basis, the IRIS Program conducts screening-level reviews of the available scientific literature for all chemicals in the IRIS database that are not under active reassessment. The purpose of EPA's screening level review is to reach preliminary determinations regarding the likelihood that a full reassessment based on an evaluation of new health effects literature could potentially result in significant changes to existing toxicity values or cancer weight-of-evidence designations. The process consists of a preliminary search and review of the literature through standard toxicological bibliographic databases (titles and abstracts) and selected literature compilations to identify new major studies that have become available since the existing IRIS assessment was completed. The results of the screening-level review for an IRIS chemical can be found on the IRIS Web site (*http://www.epa.gov/iris*) by selecting the specific IRIS Summary of Interest.

EPA has started a program to systematically update assessments on the IRIS database. This program addresses assessments that were completed more than 10 years ago and have one or more toxicity values for which new data or new methods of analysis have been identified that could possibly change a toxicity value or a cancer weight-of-evidence descriptor. EPA is developing a protocol for prioritizing and updating these assessments.

We continue to request the submission of any scientific information that you would like EPA to consider in confirming the results of the literature screening review and literature screen verification. Instructions for submitting information are provided below.

General Information

As of Monday, November 28, 2005, EPA's EDOCKET was replaced by the Federal Docket Management System (FDMS), the new federal government-wide system. FDMS was created to provide a single point of access to all federal rulemaking activities. All materials previously found in EDOCKET are now available on the internet at *http://www.regulations.gov*.

A. How Can I Get Copies of Related Information?

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–ORD–2007–0664. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system. EPA Dockets at *http://www.regulations.gov* may be used to submit or view public submissions, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public submissions, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the submission contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute are not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket

materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Information?

Information on chemical substances listed in this notice may be submitted as provided in the **ADDRESSES** section. If you submit electronic information, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your submission and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the information and allows EPA to contact you in case EPA cannot read your information due to technical difficulties or needs further information on the substance of your submission. Any identifying or contact information provided in the body of submitted information will be included as part of the submission information that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your information due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your information.

EPA's preferred method for receiving submissions is via EPA's electronic public docket. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your submission. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send e-mail directly to the docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the submission that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 6, 2007.

Peter Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E7–24844 Filed 12–20–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8509–8; Docket ID No. EPA–HQ–OAR–2007–1145]

Draft Integrated Science Assessment for Oxides of Nitrogen and Sulfur-Environmental Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period for draft Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria.

SUMMARY: The EPA is announcing the public comment period for the draft document titled, ''Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria; First External Review Draft'' (EPA/600/R–07/145A). The draft document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development as part of the Agency's review of the secondary (welfare-based) national ambient air quality standards (NAAQS) for nitrogen dioxide (NO_2) and sulfur dioxide (SO_2). EPA is releasing this draft document solely for the purpose of seeking comment from the public and the Clean Air Scientific Advisory Committee (CASAC). The document is being distributed solely for the purpose of pre-dissemination review under applicable information quality guidelines. It does not represent and should not be construed to represent any Agency policy, viewpoint, or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The public comment period begins on or about December 21, 2007. Comments must be received on or before February 21, 2008.

ADDRESSES: The draft, ''Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria; First External Review Draft,'' will be available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.*

A limited number of CD–ROM or paper copies will be available. Contact Ms. Emily Lee by phone: 919–541–4169, fax: 919–541–1818, or e-mail: (*lee.emily@epa.gov*) to request either of these, and please provide your name, your mailing address, and the draft document title, ''Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria; First External Review Draft'' (EPA/600/R–07/145A) to facilitate processing of your request. Comments may be submitted electronically via *http://www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Emily Lee, NCEA; telephone: 919–541–4169, facsimile: 919–541–1818, or e-mail: *lee.emily@epa.gov.* For technical information, contact Tara Greaver, PhD, NCEA; telephone: 919–541–2435; facsimile: 919–541–1818; or e-mail: *Greaver.Tara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants which ''may reasonably be anticipated to endanger public health and welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air.''

Under section 109 of the Act, EPA is then to establish national ambient air quality standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

Oxides of nitrogen and sulfur are two of six principal (or ''criteria'') pollutants for which EPA has established air quality criteria and NAAQS. EPA periodically reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA) (formerly called an Air Quality Criteria Document). The ISA and supplementary annexes, in conjunction with additional technical and policy assessments, provide the scientific basis for EPA decisions on the adequacy of a current NAAQS and the appropriateness of new or revised standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee established pursuant to section 109 of the Clean Air Act and part of the EPA's Science Advisory Board (SAB), provides

independent scientific advice on NAAQS matters, including advice on EPA's draft ISAs.

EPA formally initiated its current review of the criteria for oxides of nitrogen and sulfur in December 2005 (70 FR 73236) and May 2006 (71 FR 28023) respectively, requesting the submission of recent scientific information on specified topics. In the initial stages of the criteria reviews, EPA recognized the merit of integrating the science assessment for these two pollutants due to their combined effects on atmospheric chemistry, deposition processes, and environment-related public welfare effects. In July 2007 (72 FR 34004), a workshop was held to discuss, with invited scientific experts, initial draft materials prepared in the development of the ISA and supplementary annexes for oxides of nitrogen and sulfur. EPA's ''Draft Plan for Review of the Secondary National Ambient Air Quality Standards for Nitrogen Dioxide and Sulfur Dioxide'' was made available in September 2007 for public comment and was discussed by the Clean Air Scientific Advisory Committee (CASAC) via a publicly accessible teleconference consultation on October 30, 2007 (72 FR 57568). The Plan is being finalized and will be made available on EPA's Web site *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_pd.html.*

The draft, ''Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria; First External Review Draft,'' will be discussed by CASAC at a future public meeting; public comments that have been received prior to the public meeting will be provided to the CASAC review panel. A future **Federal Register** notice will inform the public of the exact date and time of that CASAC meeting.

II. How To Submit Information to the Docket

Submit your comments, identified by Docket ID No. Docket ID EPA–HQ–OAR–2007–1145 by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–1145. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hardcopy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: December 17, 2007.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E7–24906 Filed 12–20–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

December 17, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 22, 2008. If you anticipate that you will be submitting PRA comments, but find it

difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission, or an email to *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection, you may do so by visiting OMB's Web site: *http://www.reginfo.gov/public/do/PRAMain.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0221.

Title: Section 90.155(b) and (d), Time in Which Station Must Be Placed in Operation.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and state, local or tribal government.

Number of Respondents: 1,768 respondents; 1,768 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 1,768 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this information collection to the OMB as a revision during this comment period to obtain the full three-year clearance from them. There is a decrease in the number of respondents/responses and burden hours.

Section 90.155(b) requires that a period longer than 12 months may be granted to local government entities to place their stations in operation on a case-by-case basis upon a showing of need. This rule provides flexibility to state and local governments. An application for extension of time to commence service may be made on FCC Form 601 (OMB Control No. 3060–0798). Extensions of time must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to commence service is due to causes beyond its control.

For the revisions to this submission to the OMB, the Commission is requesting OMB approval for the following:

The Commission adopted and released a *Report and Order* in FCC 95–41, PR Docket No. 93–61 which established construction deadlines for Location and Monitoring Service (LMS) licensees in the MTA-licensed multilateration LMS services. The Commission is adding Section 90.155(d) to this information collection.

On July 8, 2004, the Commission adopted a *Report and Order* in FCC 04–166, WT Docket Nos. 02–381, 01–14, and 03–202 that amended Section 90.155(d) to provide holders of multilateration location service authorizations with five- and ten-year benchmarks to place in operation their base stations that utilize multilateration technology to provide multilateration location service to one-third of the Economic Area's (EAs) population within five years of initial license grant, and two-thirds of the population within ten years. At the five- and ten-year benchmarks, licensees are required to file a map with FCC Form 601 showing compliance with the coverage requirements pursuant to section 1.946 of the Commission's rules.

On January 31, 2007, via an *Order on Reconsideration and Memorandum Opinion and Order,* in DA 07–479, the FCC granted two to three additional years to meet the five-year construction requirements for certain multilateration Location and Monitoring Service Economic Area licenses, and extended the ten-year requirement for such licenses for two years.

Note: The cost and hour burdens for section 90.155(g) and (i) are accounted for under OMB Control No. 3060–0798 and are therefore not part of this information collection.

These requirements will be used by Commission personnel to evaluate whether or not certain licensees are providing substantial service as a means of complying with their construction requirements, or have demonstrated that an extended period of time for construction is warranted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–24793 Filed 12–20–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

December 17, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reductions Act (PRA) comments should be submitted on or before January 22, 2008. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* or by U.S. mail to Leslie F. Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW., Washington, DC 20554 at 202–418–0217.

FOR FURTHER INFORMATION CONTACT: For additional information contact Leslie F. Smith via e-mail at *PRA@fcc.gov* or call 202–418–0217. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/*

PRAMain, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of the ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rule Health Care Support Mechanism; Lifeline and Link-up; and Changes to the Board of Directors for the National Exchange Carrier Association, Inc., WC Docket No. 05–195 *et al.*, FCC 07–150.

Form Number: N/A

Type of Review: New information collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1 respondent; 1 response.

Estimated Time per Response: 1.0 hours.

Frequency of Response: Recordkeeping requirements.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 1.0 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: Respondents may request that information be withheld from disclosure. Requests for confidentiality are processed in accordance with FCC rules under 47 CFR Section 0.459.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On August 29, 2007, the FCC released a *Report and Order* (''*R&O*''), Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rule Health Care Support Mechanism; Lifeline and Link-up; and Changes to the Board of Directors for the National Exchange Carrier Association, Inc., WC Docket No. 05–195 *et al.*, FCC 07–150.

In this *R&O,* the FCC has adopted new and revised information collection requirements that include timely filing for Telecommunications Reporting Worksheets, a reminder that USF contributors must file FCC Forms 499–A and 499–Q on a periodic basis, document retention and recordkeeping requirements and administrative limitation periods for the high-cost, low-income, and rural health care universal service programs, and various other performance measures and reporting requirements for the universal service programs and for the Universal Service Fund (''USF'') Administrator. These recordkeeping and reporting requirements are part of the FCC's continuing process to deter misconduct and inappropriate uses of the universal service funds. It is the FCC's intention that these requirements will both safeguard the USF from waste, fraud, and abuse and improve the management, administration, and oversight of the USF. These information collection requirements are as follows:

Timely Filing for Worksheets: At present, Universal Service Fund contributors must file FCC Form 499–Q, ''Telecommunications Reporting Worksheet'' (''Worksheet''), on a timely filing basis and must not submit inaccurate or untruthful information. In addition, the *R&O* will require the USF Administrator to add information, *e.g.*, a notification requirement, to the monthly invoice sent to contributors. Each monthly invoice must now also include language pertaining to the Debt Collection Improvement Act (DCIA) of 1996, substantially as follows:

A failure to submit payment may result in sanctions, including, but not limited to, the initiation of proceedings to recover the outstanding debt, together with any applicable administrative charges, penalties, and interest pursuant to the provisions of the Debt Collection Act of 1982 (Public Law 97–365) and the Debt Collection Improvement Act of 1996, (Pub. L. 104–134) as amended (the ''DCIA''), as set forth below.

The date of payment on the invoice is the due date. If full payment is not received by the date due, the debt is delinquent. Because the unpaid amount is a debt owed to the United States, we are required by the DCIA to impose interest and to inform you what may happen if you do not pay the full outstanding debt. Under the DCIA, the United States will charge interest at the annual rate equal to the U.S. prime rate as of the date of delinquency plus 3.5 percent from the date the contribution was due. This interest rate incorporates administrative charges of collection pursuant to 47 CFR 54.713. If the debt remains unpaid more than 90 days , you will be charged an additional penalty of 6 percent a year for any part of the debt that is more than 90 days past due. If the debt remains unpaid, the full amount of the outstanding debt may be transferred to the United States Department of Treasury (''Treasury'') for debt collection, and you will be required to pay the administrative costs of processing and handling a delinquent claim as set by the Treasury (currently 28 percent of the debt). However, if you pay the full amount of the outstanding debt and associated administrative fees and penalties within 30 days of the due date, the DCIA Interest will be waived. These requirements are set out at 31 U.S.C. 3717.

In addition to the language in the invoice, the *R&O* has specified that USF Administrator's invoice shall state clearly that the invoiced amount is due on a specific date and that the debt is delinquent if not paid in full by that date. The USF Administrator's invoices and any letters shall also explain the applicable sanction and administrative changes for late payments, *i.e.*, under 31 U.S.C. 3717, a delinquent debt that is not paid in full within 30 days from the date due will incur interest, and if not paid in full within 90 days from the due date, will also incur a penalty of 6 percent per year. In addition, the delinquent contributor will be assessed the administrative costs of collection, pursuant to 47 CFR 54.713 of FCC rules. Finally, an invoice sent after partial payment should show clearly that the payment was applied to outstanding penalties, administrative costs, accrued interest, and then to the oldest outstanding principal (''American Rule'').

Document retention requirements. Having concluded in the *R&O* that document retention and recordkeeping requirements not only prevent waste, fraud, and abuse, but also protect applicants and service providers in the event of vendor disputes, the FCC has adopted or revised several of these requirements that will demonstrate compliance with FCC rules and regulations and be available to the USF Administrator, auditors, and the FCC, as follows:

High-cost program. Recipients of universal service support for high-cost providers must retain all records that they may require to demonstrate to auditors that the support they received was consistent with the Communications Act of 1934, as amended, and FCC rules, assuming that the audits are conducted within five years of disbursement of such support. This *R&O* clarifies that beneficiaries must make available all such documents and records that pertain to them,

including those of NECA, contractors, and consultants working on behalf of the beneficiaries to the Commission's Office of Inspector General (''OIG''), to the USF Administrator, and to their auditors. *See* 47 CFR 54.202(e).[1]

Low-income program. With respect to the two low-income universal service programs Lifeline and Link-Up, the FCC has concluded that it should maintain the current two-tiered document retention requirements. Participating service providers must retain a record verifying the eligibility of a recipient of the program for as long as the recipient continues to receive supported service and three years more, and to make it available in conjunction with any audit to which it may be relevant. However, the *R&O* removes the clause that waives the requirement to retain documentation of eligibility once an audit is completed. The FCC also clarifies that beneficiaries must make available all documentation and records that pertain to them, including those of contractors and consultants working on their behalf, to the Commission's OIG, to the USF Administrator, and to auditors working on their behalf. *See* 47 CFR 54.417(a).[2]

Rural health care and schools and libraries programs. The FCC maintains the current requirement that rural health care providers and schools and libraries must retain their records, which evidence that the funding they receive was proper, for 5 years. In addition, this requirement will now also apply to those service providers that receive support for serving rural health care providers. Furthermore, the FCC clarifies that beneficiaries must make available all documents and records that pertain to them, including those of contractors and consultants, working on their behalf, to the Commission's OIG, to the USF Administrator, and to their auditors, as required by 47 CFR 54.516(a)[3] and 47 CFR 54.619(a).[4]

Contributors. The *R&O* also requires contributors to the Universal Service Fund to retain all documents and records, *e.g.*, financial statements and supporting documentation, *etc.*, that they may require to demonstrate to auditors that their contributions were made in compliance with the program rules, assuming that audits are conducted within 5 years. The FCC clarifies that contributors must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf, to the Commission's OIG, to the USF Administrator, and to their auditors.

Connectivity. The FCC will require the USF Administrator to work with the Commission's Wireline Competition Bureau to modify the relevant FCC Forms or to create additional questions for USF program participants to determine more accurately how schools and libraries connect to the Internet and their precise levels of connectivity.

These new and revised information collection requirements, which include document retention and recordkeeping requirements, etc., will affect numerous information collections that the FCC currently maintains. Once OMB approves these requirements, the FCC will begin to update these information collections as required by the rules adopted in this *R&O.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–24794 Filed 12–20–07; 8:45 am]

BILLING CODE 6712–01–P

[1] 47 CFR § 54.202(e): All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. These rules should include the following: data supporting line count filings; historical customer records; fixed asset property accounting records; general ledgers; invoice copies for the purchase and maintenance of equipment; maintenance contracts for the upgrade or equipment; and any other relevant documentation. This documentation must be maintained for at least five years from the receipt of funding.

[2] 47 CFR § 54.417(a): Eligible telecommunications carriers must maintain records to document compliance with all Commission and state requirements governing the Lifeline/Link Up programs for the three full years preceding calendar years and requiring carriers to retain documentation for as long as the customer receives Lifeline service from the ETC or until audited by the Administrator and provide that documentation to the Commission or Administrator upon request * * *.

[3] 47 CFR § 54.516(a) *Recordkeeping requirements*—(1) *Schools and libraries.* Schools and libraries shall retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least 5 years after the last day of the service delivered in a particular Funding Year. Any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall be retained as well. Schools and libraries shall maintain asset and inventory records of equipment purchased as components of supported internal connections services sufficient to verify the actual location of such equipment for a period of five years after purchase.

[4] 47 CFR § 54.619(d) *Service providers.* Service providers shall retain documents related to the delivery of discounted telecommunications and other supported services for at least five years after the last day of the delivery of discounted services. Any documentation that demonstrates compliance with the statutory or regulatory requirements for the rural health care mechanism shall be retained as well.

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 07–264; DA 07–4675]

Lonnie L. Keeney, Amateur Radio Operator and Licensee of Amateur Radio Station KB9RFO

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document commences a hearing proceeding by directing Lonnie L. Keeney, Amateur Radio Operator and Licensee of Amateur Radio Station KB9RFO, to show why the license of Amateur Radio Station KP9FO should not be revoked and whether, in light of a felony conviction against him, he remains qualified to be a Commission licensee.

DATES: Petitions by persons desiring to participate as a party in the hearing, pursuant to 47 CFR 1.223, may be filed no later than 30 days after publication of this notice in the **Federal Register**. See **SUPPLEMENTARY INFORMATION** section for dates that named parties should file appearances.

ADDRESSES: Please file documents with the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4–C330, 445 12th Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Judy Lancaster, Investigations and Hearings Division, Enforcement Bureau at (202) 418–1420; Jennifer A. Lewis, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau at (202) 418–1420.

SUPPLEMENTARY INFORMATION: This is a summary of the Order to Show Cause, DA 07–4675, released November 20, 2007. The full text of the Order to Show Cause is available for inspection and copying from 8 a.m. until 4:30 p.m., Monday through Thursday or from 8 a.m. until 11:30 a.m. on Friday at the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, NW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or you may contact BCPI at the Web site: *http://www.BCPIWEB.com.* When ordering documents for BCPI, please provide the appropriate FCC document number, FCC 06–124. The Order is also available on the Internet at the Commission's Web site through its Electronic Document Management

System (EDOCS): *http://hraunfoss.fcc.gov/edocs-public/SilverStream/Pages/edocs.html*. Alternative formats are available to persons with disabilities (Braille, large print, electronic files, audio format); send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Order: In the Order to Show Cause, the Commission commences a hearing proceeding to determine the effect of Mr. Keeney's felony conviction(s) on his qualifications to be and to remain a Commission licensee and, in light of the evidence adduced pursuant to the foregoing issue, whether Mr. Keeney is qualified to be and to remain a Commission licensee.

The Commission received a compliant alleging that Mr. Keeney had been convicted of felony child molestation. The Commission conducted an investigation and determined that, in 2002, Mr. Keeney was charged in the Criminal Division of the Putnam Circuit Court, State of Indiana, with two counts of child molestation in violation of Indiana Code section 35–42–4–3, a Class A felony, and section 35–42–4–3, a Class C felony. Pursuant to a plea agreement, Mr. Keeney pled guilty to one count of felony child molestation, and, on December 10, 2002, was sentenced by the Putnam Circuit Court to six years of incarceration with the Indiana Department of Corrections. The Court ordered that Mr. Keeney serve one year of the sentence with credit for 35 days already served, and suspended the remaining five years of that sentence, but placed Mr. Keeney on supervised probation for five years. Mr. Keeney remains on probation.

The Commission determined that Mr. Keeney's felony conviction raises a substantial and material question of fact as to his qualifications to be and to remain a Commission licensee and may warrant revocation of the license of Amateur Station KP9RFO. Thus, pursuant to sections 312(a) and 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a) and (c) and section 1.91 of the Commission's rules, 47 CFR 1.91, the Order to Show Cause directs Lonnie L. Keeney to show cause why the license of Amateur Radio Station KP9FRO should not be revoked, upon the following issues: (a) To determine the effect of Lonnie L. Keeney's felony conviction(s) on his qualifications to be and to remain a Commission licensee; and (b) to determine, in light of the evidence adduced pursuant to the foregoing issue, whether Lonnie L. Keeney is qualified to be and to remain a Commission licensee; and (c) to determine in light of the evidence adduced pursuant to the foregoing issues, whether his Amateur Radio License KP9FRO should be revoked.

Copies of the Order to Show Cause were sent by certified mail, return receipt requested, to Lonnie L. Keeney. To avail himself of the opportunity to be heard, Lonnie L. Keeney, pursuant to section 1.91(c) and section 1.221 of the Commission's rules, 47 CFR 1.91(c) and 47 CFR 1.221, in person or by his attorney, must within 30 days of the release of this Order, file in triplicate a written notice of appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Lonnie L. Keeney pursuant to section 73.3594 of the Commission's rules, 47 CFR 73.3594, shall give notice of the hearing within the time and in the manner prescribed in 47 CFR 73.3594, and shall advise the Commission of the publication of such notice as required by 47 CFR 73.3594(g).

Federal Communications Commission.

Hillary DeNigro,

Chief Investigations and Hearings Division, Enforcement Bureau.

[FR Doc. 07–6175 Filed 12–20–07; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

[Notice 2007–27]

2008 Presidential Candidate Matching Fund Submission Dates and Post Date of Ineligibility Dates To Submit Statements of Net Outstanding Campaign Obligations; (Authority: 11 CFR 9036.2; 11 CFR 9034.5)

AGENCY: Federal Election Commission.

ACTION: Notice of matching fund submission dates and submission dates for statements of net outstanding campaign obligations for 2008 presidential candidates.

SUMMARY: The Federal Election Commission is publishing matching fund submission dates for publicly funded 2008 presidential primary candidates. Eligible candidates may present one submission and/or resubmission per month on the designated date. The Commission is also publishing the dates on which publicly funded 2008 presidential primary candidates must submit their statements of net outstanding campaign obligations (''NOCO statements'') after their dates of ineligibility (''DOI''). Candidates are required to submit a NOCO statement prior to each regularly scheduled date on which they receive Federal matching funds, on dates set forth in the Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Thomas, Audit Division, 999 E Street, NW., Washington, DC 20463, (202) 694–1200 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Matching Fund Submissions

Presidential candidates eligible to receive Federal matching funds may present submissions and/or resubmissions to the Federal Election Commission once a month on designated submission dates. The Commission will review the submissions/resubmissions and forward certifications for eligible candidates to the Secretary of Treasury. Because no payments can be made during 2007, submissions received during 2007 will be certified in late December 2007, for payment in 2008. 11 CFR 9036.2(c). Treasury Department regulations require that funds for the convention and general election grants be set aside before any matching fund payments are made. Information provided by the Treasury Department shows the balance in the fund as of October 31, 2007 was $165,383,063 and the Commission estimates that no funds will be available for matching payments in January 2008. As deposits are made from tax returns in the early months of 2008, matching fund payments will be made from those deposits until all certified amounts have been paid. During 2008 and 2009, certifications will be made on a monthly basis. The last date a candidate may make a submission is March 2, 2009.

The submission dates specified in the following list pertain to non-threshold matching fund submissions and resubmissions after the candidate establishes eligibility. The threshold submission on which that eligibility will be determined may be filed at any time and will be processed within fifteen business days, unless review of the threshold submission determines that eligibility has not been met.

NOCO Submissions

Under 11 CFR 9034.5, a candidate who received Federal matching funds must submit a NOCO statement to the Commission within 15 calendar days after the candidate's date of ineligibility, as determined under 11 CFR 9033.5. The candidate's net outstanding campaign obligations is equal to the total of all outstanding obligations for qualified campaign expenses plus estimated necessary winding down costs less cash on hand, the fair market

value of capital assets, and accounts receivable. 11 CFR 9034.5(a). Candidates will be notified of their DOI by the Commission.

A Candidate who has net outstanding campaign obligations post-DOI may continue to submit matching payment requests as long as the candidate certifies that the remaining net outstanding campaign obligations equal or exceed the amount submitted for matching. 11 CFR 9034.5(f)(1). If the candidate so certifies, the Commission will process the request and certify the appropriate amount of matching funds.

Candidates must also file revised NOCO statements in connection with each matching fund request submitted after the candidate's DOI. These statements are due just before the next regularly scheduled payment date, on a date to be determined by the Commission. They must reflect the financial status of the campaign as of the close of business three business days before the due date of the statement and must also contain a brief explanation of each change in the committee's assets and obligation from the most recent NOCO statement. 11 CFR 9034.5(f)(2).

The Commission will review the revised NOCO statement and adjust the committee's certification to reflect any change in the committee's financial position that occurs after submission of the matching payment request and the date of the revised NOCO statement.

The following schedule includes both matching fund submission dates and submission dates for revised NOCO statements.

SCHEDULE OF MATCHING FUND SUBMISSION DATES AND DATES TO SUBMIT REVISED STATEMENTS OF NET OUTSTANDING CAMPAIGN OBLIGATIONS (NOCO) FOR 2008 PRESIDENTIAL CANDIDATES

Matching fund submission dates	Revised NOCO submission dates
January 2, 2008	December 24, 2007.
February 1, 2008	January 25, 2008.
March 3, 2008	February 25, 2008.
April 1, 2008	March 25, 2008.
May 1, 2008	April 24, 2008.
June 2, 2008	May 23, 2008.
July 1, 2008	June 24, 2008.
August 1, 2008	July 25, 2008.
September 2, 2008	August 25, 2008.
October 1, 2008	September 25, 2008.
November 3, 2008	October 27, 2008.
December 1, 2008	November 21, 2008.
January 5, 2009	December 26, 2008.
February 2, 2009	January 26, 2009.
March 2, 2009	February 23, 2009.

Dated: December 17, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

[FR Doc. E7–24791 Filed 12–20–07; 8:45 am]

BILLING CODE 6715–07–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 February 19, 2008.

ADDRESSES: You may submit comments, identified by FR G–1, FR G–2, FR G–3, FR G–4, FR T–4, FR U–1, FR 2225, FR 2226, or FR 3016 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, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at *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, N.W.) between 9:00 a.m. and 5:00 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 website 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.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. Report titles: Registration Statement for Persons Who Extend Credit Secured by Margin Stock (Other Than Banks, Brokers, or Dealers); Deregistration Statement forPersons Registered Pursuant to Regulation U; Statement of Purpose for an Extension ofCredit Secured by Margin Stock by a Person Subject to Registration Under Regulation U;Annual Report; Statement of Purpose for an Extension of Credit by a Creditor; andStatement of Purpose for an Extension of Credit Secured by Margin Stock.

Agency form numbers: FR G–1, FR G–2, FR G–3, FR G–4, FR T–4, FR U–1

OMB control numbers: 7100–0011: FR G–1, FR G–2, FR G–4; 7100–0018: FR G–3; 7100–0019: FR T–4; and 7100–0115: FR U–1

Frequency: FR G–1, FR G–2, FR G–3, FR T–4, and FR U–1: on occasion FR G–4: annual

Reporters: Individuals and business

Annual reporting hours: 1,366 reporting; 107,757 recordkeeping

Estimated average hours per response: FR G–1: 2.5 hours; FR G–2: 15 minutes; FR G–3: 10 minutes; FR G–4: 2.0 hours; FR T–4: 10 minutes; and FR U–1: 10 minutes

Number of respondents: FR G–1: 61; FR G–2: 36; FR G–3: 602; FR G–4: 602;FR T–4: 5,100; and FR U–1: 6,931

General description of report: These information collections are mandatory (15 U.S.C. § § 78g). The information in the FR G–1 and FR G–4 is given confidential treatment under the Freedom of Information Act (5 U.S.C. § § 552(b)(4) and (6)). The FR G–2 does not contain confidential information. The FR G–3, FR T–4, and FR U–1 are not submitted to the Federal Reserve and, as such, no issue of confidentiality arises.

Abstract: The Securities Exchange Act of 1934 authorizes the Federal Reserve to regulate securities credit extended by brokers and dealers, banks, and other lenders. The purpose statements, FR T–4, FR U–1, and FR G–3, are recordkeeping requirements for brokers and dealers, banks, and other lenders, respectively, to document the purpose of their loans secured by margin stock. Margin stock is defined as (1) stocks that are registered on a national securities exchange or any over-the-counter security designated for trading in the National Market System, (2) debt securities (bonds) that are convertible into margin stock, and (3) shares of most mutual funds. Lenders other than brokers and dealers and banks must register and deregister with the Federal Reserve using the FR G–1 and FR G–2, respectively, and they must file an annual report (FR G–4) while registered. The Federal Reserve uses the data to identify lenders subject to Regulation U, to verify their compliance with the regulation, and to monitor margin credit.

2. Report title: Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks

Agency form number: FR 2225

OMB control number: 7100–0216

Frequency: Annual

Reporters: Foreign banks with U.S. branches or agencies

Annual reporting hours: 54

Estimated average hours per response: 1.0 hour

Number of respondents: 54

General description of report: This information collection is required to respond in order to obtain or retain a benefit, i.e., in order for the U.S. branch or agency of an FBO to establish and maintain a non-zero net debit cap. The information submitted by respondents is not confidential; however, respondents may request confidential treatment for portions of the report. Data may be considered confidential and exempt from disclosure under section (b)(4) of the Freedom of Information Act if it constitutes commercial or financial information and it would customarily not be released to the public by the person from whom it was obtained (5 U.S.C. § 552(b)(4)).

Abstract: This report was implemented in March 1986 as part of the procedures used to administer the Federal Reserve's Payments System Risk (PSR) policy. A key component of the PSR policy is a limit, or a net debit cap, on an institution's negative intraday balance in its Reserve Bank account. The Federal Reserve calculates an institution's net debit cap by applying the multiple associated with the net debit cap category to the institution's capital. For foreign banking organizations (FBOs), a percentage of the FBO's capital measure, known as the U.S. capital equivalency, is used to calculate the FBO's net debit cap. Currently, an FBO with U.S. branches or agencies may voluntarily file the FR 2225 to provide the Federal Reserve with its capital measure. Because an FBO that files the FR 2225 may be able to use its total capital in determining its U.S capital equivalency measure, which is then used to calculate its net debit cap, an FBO seeking to maximize its daylight overdraft capacity may find it advantageous to file the FR 2225. An FBO that does not file FR 2225 may use an alternative capital measure based on its nonrelated liabilities.

3. Report title: Ongoing Intermittent Survey of Households

Agency form number: FR 3016

OMB control number: 7100–0150

Frequency: On occasion

Reporters: Households and individuals

Annual reporting hours: 683 hours

Estimated average hours per response: Division of Research & Statistics, 1.58 minutes; Division of Consumer & Community Affairs, 3 minutes; Other divisions, 5 minutes; and Non-SRC surveys, 90 minutes

Number of respondents: 600

General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, and 15 U.S.C. 1691b). No issue of confidentiality normally arises because names and any other characteristics that would permit personal identification of respondents are not reported to the Federal Reserve Board. However, exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)) would exempt this information from disclosure.

Abstract: The Federal Reserve uses this voluntary survey to obtain household-based information specifically tailored to the Federal Reserve's policy, regulatory, and operational responsibilities. Currently, the University of Michigan's Survey Research Center (SRC) includes survey questions on behalf of the Federal Reserve in an addendum to their regular monthly Survey of Consumer Attitudes and Expectations. The SRC conducts the survey by telephone with a sample of 500 households and asks questions of special interest to Federal Reserve Board staff intermittently, as needed. The frequency and content of the questions depend on changing economic, regulatory, and legislative developments.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following report:

Report title: Report of Net Debit Cap

Agency form number: FR 2226

OMB control number: 7100–0217

Frequency: Annual

Reporters: Depository institutions, Edge and agreement corporations, U.S. branches and agencies of foreign banks

Annual reporting hours: 1,623 hours

Estimated average hours per response: 1.0 hour

Number of respondents: 1,623

General description of report: This information collection is mandatory (12 U.S.C. 248(i), 248–1, and 464). The information submitted by respondents for the payments system risk reduction program may be accorded confidential treatment under the Freedom of Information Act (FOIA) (5 U.S.C. § 552 (b)(4)). In addition, information reported in connection with the second and third resolutions may be protected under Section (b)(8) of FOIA, to the extent that such information is based on the institution's CAMELS rating, and thus is related to examination reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions (5 U.S.C. § 552(b)(8)).

Abstract: Federal Reserve Banks collect these data annually to provide information that is essential for their administration of the Federal Reserve's Payments System Risk (PSR) policy. The reporting panel includes all financially healthy depository institutions with access to the discount window. The Report of Net Debit Cap comprises three resolutions, which are filed by a depository institution's board of directors depending on its needs. The first resolution is used to establish a de minimis net debit cap and the second resolution is used to establish a self-assessed net debit cap. The third resolution is used to establish simultaneously a self-assessed net debit cap and maximum daylight overdraft capacity. Copies of the model resolutions are located in Appendix B, of the PSR policy, that can be found at *http://www.federalreserve.gov/paymentsystems/psr/relpol.htm.*

Current actions: In an effort to streamline the resolutions filed by institutions eligible for maximum daylight overdraft capacity, two former resolutions were combined into one: resolution 3a, collateralized capacity, and resolution 3b, in-transit securities. These resolutions were replaced by the maximum daylight overdraft capacity resolution that combines the board of directors' approval of the institution's self-assessment as well as its maximum daylight overdraft capacity level.

Board of Governors of the Federal Reserve System, December 17, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–24785 Filed 12–20–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

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

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 18, 2008.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Ambage, Inc., Las Vegas, Nevada; to become a bank holding company by acquiring 100 percent of the voting shares of First Financial Services, Inc., and thereby acquire First National Bank and Trust Company, both in Falls City, Nebraska.

Board of Governors of the Federal Reserve System, December 18, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc.E7–24832 Filed 12–20–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM): Ten-Year Anniversary Symposium and Five-Year Plan

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), HHS.

ACTION: Announcement of public symposium and availability of document.

SUMMARY: NICEATM invites attendance at a public symposium to mark the tenth anniversary of ICCVAM. The symposium, entitled ''Celebrating Ten Years of Advancing Public Health and Animal Welfare With Sound Science: Envisioning New Directions in Toxicology'' will be held February 5, 2008, at the U.S. Consumer Product Safety Commission (CPSC) Headquarters in Bethesda, MD. The NICEATM–ICCVAM Five-Year Plan (2008–2012) will also be discussed and made available on February 5.

DATES: The symposium will be held on February 5, 2008. Those interested in attending the symposium are encouraged to register with NICEATM by February 1, 2008, although registration will also be available on-site.

ADDRESSES: The symposium will be held in the CPSC Hearing Room, located at CPSC Headquarters, Bethesda Towers Bldg., 4330 East West Highway, Bethesda, MD. Registration information and other details about the symposium can be found on the NICEATM-ICCVAM Web site at *http://iccvam.niehs.nih.gov/meetings/10thAnnivSymp/10thAnnivSymp.htm* or by contacting NICEATM (see **FOR FURTHER INFORMATION CONTACT** below). The NICEATM–ICCVAM Five-Year Plan will be available at the symposium and electronically on the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/docs/5yearplan.htm* after February 5. Print copies may be obtained by contacting NICEATM.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie McCarley, NICEATM, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709, (telephone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Director of the NIEHS established an *ad hoc* ICCVAM in September 1994 to respond to requirements in the NIH Revitalization Act of 1993 (42 U.S.C. 285*l*-1, Public Law 103–43). This Act required NIEHS to establish criteria for the validation and regulatory acceptance of alternative toxicological testing methods. NIEHS was also required to recommend a process to achieve the regulatory acceptance of scientifically valid alternative test methods. The *ad hoc* ICCVAM was comprised of representatives from 15 Federal agencies, which are now represented on ICCVAM.

In 1997, the *ad hoc* ICCVAM published its final report, *Validation and Regulatory Acceptance of Toxicological Test Methods.* In the same year, NIEHS established a standing ICCVAM committee to implement a process by which new test methods of interagency interest could be evaluated and to coordinate cross-agency issues on development, validation, acceptance, and national and international harmonization of toxicological test methods. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*-3, Public Law 106–545) established ICCVAM as a permanent interagency committee of NIEHS under NICEATM. The law was enacted ''To establish, wherever feasible, guidelines, recommendations, and regulations that promote the regulatory acceptance of new or revised scientifically valid toxicological tests that protect human and animal health and the environment while reducing, refining, or replacing animal tests and ensuring human safety and product effectiveness.''

Over the last 10 years, ICCVAM, with scientific support from NICEATM, has evaluated over 185 test methods with the potential to reduce, refine or replace the use of animals in regulatory safety testing. ICCVAM has developed and transmitted recommendations to Federal agencies for alternative methods for the four most commonly used toxicity tests. These science-based technical evaluations have been used to support adoption of test methods as guidelines by the Organisation for Economic Co-operation and Development and other international organizations. NICEATM and ICCVAM have also worked with Federal agencies and other stakeholders to link research and development activities to the standardization and validation of alternative test methods that may be used in regulatory testing. The symposium on February 5, 2008, will recognize the 10-year anniversary of ICCVAM and discuss future directions in toxicology testing and the NICEATM–ICCVAM Five-Year Plan.

Preliminary Agenda

- Welcome
- ICCVAM and NICEATM: The First Ten Years
- A Vision Towards the Future: The NICEATM–ICCVAM Five-Year Plan
- The Evolution and Future of Toxicology: Where We've Come From and Future Prospects
- Toxicology Testing in the 21st Century: A Vision and a Strategy—A Report of the National Research Council of the National Academies
- Future Directions in Test Method Development—Toxicology Research, Development, Translation, and Validation: Insights and Activities from selected ICCVAM Agencies: NIEHS/NTP, EPA, FDA
- Panel Discussion—Toxicology Research, Development, Translation, and Validation: The Way Forward for ICCVAM and Its Stakeholders
- Closing Remarks

Symposium Attendance and Registration

The symposium will be held on Tuesday, February 5, 2008, from 1–5 p.m., in the CPSC Hearing Room, located at CPSC Headquarters, Bethesda Towers Bldg., 4330 East West Highway, Bethesda, MD. The symposium is open to the public and there is no charge to attend; attendance is limited only by the available space. Individuals who plan to attend are encouraged to register in advance with NICEATM. Registration information is available on the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/meetings/10thAnnivSymp/10thAnnivSymp.htm* or by contacting NICEATM (see **FOR FURTHER INFORMATION CONTACT** above). Persons needing special assistance in order to attend, such as sign language interpretation or other reasonable accommodation, should contact 919–541–2475 voice, 919–541–4644 TTY (text telephone, through the Federal TTY Relay System at 800–877–8339), or e-mail to *niehsoeeo@niehs.nih.gov.* Requests should be made at least seven days in advance of the event.

NICEATM–ICCVAM Five-Year Plan

NICEATM and ICCVAM, working in conjunction with Federal agency program offices, have prepared the NICEATM–ICCVAM Five-Year Plan. The plan describes how NICEATM and ICCVAM will facilitate the research, development, translation (activities carried out to characterize if there is evidence of relevance and applicability of a test method for a specific testing purpose), validation, and regulatory acceptance of alternative test methods. Acceptance of such methods will reduce, refine, and replace the use of animals in testing, while maintaining scientific quality and the protection of human health, animal health, and the environment. Development of the plan took place over a 14-month period during which there were multiple opportunities for comment on the plan by ICCVAM stakeholders, the public, and the Scientific Advisory Committee on Alternative Toxicological Methods (see **Federal Register** notices: Vol. 71, No. 218, pp. 66172–73, November 13, 2006; Vol. 72, No. 83, pp. 23831–32, May 1, 2007; and Vol. 72, No. 83, pp. 23832–33, May 1, 2007).

The plan addresses ICCVAM's vision to play a leading role in fostering and promoting the development, validation, and regulatory acceptance of scientifically sound alternative test methods both within the Federal government and internationally. Implementing this plan involves four key challenges. The first challenge is to identify priority areas for the next five years and to conduct and facilitate activities in those areas. The second challenge involves identifying and promoting research initiatives that are expected to support the future development of innovative alternative test methods. The third challenge is to foster the acceptance and appropriate use of alternative test methods through outreach and communication. The last challenge is to develop partnerships and strengthen interactions with ICCVAM stakeholders in order to facilitate meaningful progress.

The NICEATM–ICCVAM Five-Year Plan will be presented at the February symposium and copies will be available. The NICEATM–ICCVAM Five-Year Plan will also be available electronically after February 5 on the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/docs/5yearplan.htm.* Print copies may be obtained by contacting NICEATM (see **FOR FURTHER INFORMATION CONTACT** above).

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use or generate toxicological information. ICCVAM conducts

technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, or replace animal use. The ICCVAM Authorization Act of 2000 (available at *http://iccvam.niehs.nih.gov/docs/about_docs/PL106545.pdf)* establishes ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM is available on the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov.*

Dated: December 12, 2007.

Samuel H. Wilson,

Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E7–24799 Filed 12–20–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of a New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system titled, ''Money Follows the Person (MFP) Demonstration (MFPD), System No. 09–70–0593.'' The demonstration, created by section 6071 of the Deficit Reduction Act of 2005 (Pub. L. 109–171), provides to states a total of $1.75 billion in competitive grants. MFP demonstration grants have been awarded to 30 states and the District of Columbia. The states and the District of Columbia are using the grant funding to transition Medicaid beneficiaries who need long-term care services from institutional-based care to community-based care. The purpose of the demonstration is to help states continue their efforts to restructure their long-term care systems and shift the historical emphasis from institutional care to community-based care. The demonstration is based on the premise that many Medicaid beneficiaries currently residing in institutions want to live in the community and could do so if they had the adequate support, and that it would cost less than Medicaid currently spends to care for institutional care.

The purpose of this system is to collect and maintain individually identifiable information on Medicaid recipients, those who participate in the MFP demonstration and other comparable Medicaid recipients, and to collect and maintain program level information on grantee implementation of the MFP demonstration. Information retrieved from this system may be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, grantee, or consultant; (2) assist another Federal or state agency with information to contribute to the accuracy of CMS's proper payment of Medicaid benefits, enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support litigation involving the agency; and (5) combat fraud, waste, and abuse in certain Federally-funded health benefits programs. We have provided background information about the new system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

DATES: *Effective Date:* CMS filed a new SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 14, 2007. To ensure that all parties have adequate time in which to comment, the new system will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and the Congress, whichever is later. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to the CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Mail-stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location by appointment during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time.

FOR FURTHER INFORMATION CONTACT: Effie Shockley, Division of Advocacy and Special Initiatives, Disabled and Elderly Health Programs Group, Center for Medicaid and State Operations, Mail Stop S2–14–26, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1849. She can be reached by telephone at 410–786–8639, or via e-mail at *Effie.Shockley@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: The demonstration, created by section 6071 of the Deficit Reduction Act of 2005 (Pub. L. 109–171), provides states a total of $1.75 billion in competitive grants to transition Medicaid beneficiaries who need long-term care services from institutional-based care to community-based care and to use enhanced matching funds to continue their work to restructure their long-term care systems. The purpose of the demonstration is to help states continue their efforts to restructure their long-term care systems and shift the historical emphasis from institutional care to community-based care. The demonstration is based on the premise that many Medicaid beneficiaries currently residing in institutions want to live in the community and could do so if they had adequate support, and it would cost less than Medicaid currently spends to care for institutional care.

I. Description of the Proposed System of Records

A. Statutory and Regulatory Basis for SOR

The statutory authority for this system is given under Section 6071 of the Deficit Reduction Act of 2005.

B. Collection and Maintenance of Data in the System

This system will collect and maintain individually identifiable and other data collected on Medicaid recipients and

state grantees who voluntarily participate in the MFP demonstration as well as program-level information. The individual-level information collected will include but is not limited to: name, address, telephone number, health insurance claims number, Medicaid identification number, social security number, race/ethnicity, gender, date of birth, Medicaid and Medicare eligibility and claims records, and self-reported quality of life (including living situation, choice and control, respect and dignity, access to personal care, community integration and inclusion, satisfaction with quality of life, and health status). The program-level information will include, but is not limited to: program performance measures for mandatory and state-specific benchmarks. States will also report progress on outreach and enrollment in the demonstration, informed consent and guardianship, benefits and services, self-direction programs, quality management systems, housing, and organization factors. This information will be primarily narrative, qualitative information, but will include some aggregate data.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The Government will only release MFPD information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use. We will only collect the minimum personal data necessary to achieve the purpose of MFPD.

CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; e.g., to collect and maintain individually identifiable information on Medicaid recipients, those who participate in the MFP demonstration and other comparable Medicaid recipients, and to collect and maintain program level information on grantee implementation of the MFP demonstration.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy, at the earliest time, all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicaid benefits;

b. Enable such agency to administer a Federal health benefits program, or, as necessary, to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies, in their administration of a Federal health program, may require MFPD information in order to support evaluations and monitoring of Medicaid claims information of beneficiaries, including proper reimbursement for services provided.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The MFPD data will provide for research or support of evaluation projects and a broader, longitudinal, national perspective of the status of Medicaid beneficiaries. CMS anticipates that researchers may have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicaid beneficiaries and the policies that govern their care.

4. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS policies or operations could be

affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

5. To a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual, grantee, cooperative agreement or consultant relationship with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste, and abuse. CMS occasionally contracts out certain of its functions or makes grants or cooperative agreements when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, grantee, consultant or other legal agent whatever information is necessary for the agent to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the agent from using or disclosing the information for any purpose other than that described in the contract and requiring the agent to return or destroy all information.

6. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

Other agencies may require MFPD information for the purpose of combating fraud, waste, and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 Fed. Reg. 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Proposed System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in this system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: December 12, 2007.

Charlene Frizzera,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0593

SYSTEM NAME:

Money Follows the Person (MFP) Demonstration (MFPD),'' HHS/CMS/CMSO.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various co-locations of CMS agents.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will collect and maintain individually identifiable and other data collected on Medicaid recipients and state grantees who voluntarily participate in the MFPD demonstration and evaluation as well as program-level information.

CATEGORIES OF RECORDS IN THE SYSTEM:

The individual-level information collected will include but is not limited to: name, address, telephone number, health insurance claims number (HICN), Medicaid identification number, social security number (SSN), race/ethnicity, gender, date of birth, Medicaid and Medicare eligibility and claims records, and self-reported quality of life (including living situation, choice and

control, respect and dignity, access to personal care, community integration and inclusion, satisfaction with quality of life, and health status). The program-level information will include, but is not limited to: program performance measures for mandatory and state-specific benchmarks. States will also report progress on outreach and enrollment in the demonstration, informed consent and guardianship, benefits and services, self-direction programs, quality management systems, housing, and organization factors. This information will be primarily narrative, qualitative information, but will include some aggregate data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The statutory authority for this system is given under section 6071 of the Deficit Reduction Act of 2005.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect and maintain individually identifiable information on Medicaid recipients, those who participate in the MFPD and other comparable Medicaid recipients, and to collect and maintain program level information on grantee implementation of the MFPD. Information retrieved from this system may be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, grantee, or consultant; (2) assist another Federal or state agency with information to contribute to the accuracy of CMS's proper payment of Medicaid benefits, enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support litigation involving the agency; and (5) combat fraud, waste, and abuse in certain Federally-funded health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicaid benefits;

b. Enable such agency to administer a Federal health benefits program, or, as necessary, to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

4. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

5. To a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such program.

6. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures—To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 Fed. Reg. 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on electronic media.

RETRIEVABILITY:

The collected data are retrieved by the name or other identifying information of the participating beneficiary or grantee, and may be retrieved by a distinct identifier such as the HICN, Medicare identification number, or SSN at the individual beneficiary level. At the program level, data are retrieved by state name.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational

and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records will be retained for a period of 10 years after the demonstration and evaluation project has completed. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER AND ADDRESS

Director, Division of Advocacy and Special Initiatives, Disabled and Elderly Health Programs Group, Center for Medicaid and State Operations, Mail Stop S2–14–26, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1849.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), HICN, and/or SSN (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORDS SOURCE CATEGORIES:

Data will be collected from Medicaid administrative and claims records, and from grantee progress reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E7–24786 Filed 12–20–07; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers For Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of a New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system titled, ''Home and Community-Based Alternatives (CBA) to Psychiatric Residential Treatment Facilities (PRTF) Demonstration (CBA–PRTF), System No. 09–70–0594.'' The demonstration, created by section 6063 of the Deficit Reduction Act of 2005 (Pub. L. 109–171), allows up to 10 states (as defined for purposes of title XIX of the Social Security Act (the Act)) to provide home and community-based services to youth as alternatives to PRTFs. The purpose of the demonstration is to test the effectiveness in improving or maintaining a child's functional level and cost effectiveness of providing coverage of home and community-based alternatives to psychiatric residential treatment for children enrolled in the Medicaid program under title XIX of the Act.

The purpose of this system is to collect and maintain individually identifiable information on Medicaid recipients, and providers of services who voluntarily participate in the national evaluation of the CBA–PRTF. Information retrieved from this system may be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, grantee, or consultant; (2) assist another Federal or state agency with information to contribute to the accuracy of CMS's proper payment of Medicaid benefits, enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support litigation involving the agency; and (5) combat fraud, waste, and abuse in certain Federally-funded health benefits programs. We have provided background information about the new system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

DATES: *Effective Date:* CMS filed a new SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on *December 14, 2007*. To ensure that all parties have adequate time in which to comment, the new system will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and the Congress, whichever is later. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to the CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Mail-stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location by appointment during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time.

FOR FURTHER INFORMATION CONTACT: Effie Shockley, Division of Advocacy and Special Initiatives, Disabled and Elderly Health Programs Group, Center for Medicaid and State Operations, Mail Stop S2–14–26, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1849. She can be reached by telephone at 410–786–8639, or via e-mail at *Effie.Shockley@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION: The demonstration, created by section 6063 of the Deficit Reduction Act of 2005 (Pub. L. 109–171), allows up to 10 states (as defined for purposes of title XIX of the Act) to provide home and community-based services to youth as alternatives to PRTFs. The purpose of the demonstration is to test the effectiveness in improving or maintaining a child's functional level and cost effectiveness of providing coverage of home and community-based alternatives to psychiatric residential treatment for children enrolled in the Medicaid program under title XIX of the Act. Participating states will acquire approved functional outcomes on participants across the following life domains: community living, school functioning, juvenile justice, family functioning, alcohol and other drug use, mental health, social support, program satisfaction and environmental variables. The overall evaluation must directly address the two primary questions posed in the statutes: Does the provision of home and community-based services to youth under this demonstration (1) result in the maintenance or improvement in a child's functional status; and (2) on average, cost no more than anticipated aggregate PRTF expenditures in the absence of the demonstration?

I. Description of the Proposed System of Records

A. Statutory and Regulatory Basis for SOR

The statutory authority for this system is given under Section 6063 of the Deficit Reduction Act of 2005.

B. Collection and Maintenance of Data in the System

This system will collect and maintain individually identifiable and other data collected on Medicaid recipients, and providers of services who voluntarily participate in the national evaluation of the CBA–PRTF. The collected information will include, but is not limited to: name, address, telephone number, health insurance claims number, race/ethnicity, gender, date of birth, patient medical charts, physician records, community living, school functioning, juvenile justice activity, alcohol and other drug use, mental health, social support, family functioning outcomes, program satisfaction and changes in the patient's environment.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The Government will only release CBA–PRTF information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use. We will only collect the minimum personal data necessary to achieve the purpose of CBA–PRTF.

CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; e.g., to collect and maintain individually identifiable information on Medicaid recipients, and providers of services who voluntarily participate in the national evaluation of the CBA–PRTF.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy, at the earliest time, all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicaid benefits;

b. Enable such agency to administer a Federal health benefits program, or, as necessary, to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies, in their administration of a Federal health program, may require CBA–PRTF information in order to support evaluations and monitoring of Medicaid claims information of beneficiaries,

including proper reimbursement for services provided.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The CBA–PRTF data will provide for research or support of evaluation projects and a broader, longitudinal, national perspective of the status of Medicaid beneficiaries. CMS anticipates that researchers may have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicaid beneficiaries and the policies that govern their care.

4. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

5. To a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual, grantee, cooperative agreement or consultant relationship with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste, and abuse. CMS occasionally contracts out certain of its functions or makes grants or cooperative agreements when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, grantee, consultant or other legal agent whatever information is necessary for the agent to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the agent from using or disclosing the information for any purpose other than that described in the contract and requiring the agent to return or destroy all information.

6. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

Other agencies may require CBA–PRTF information for the purpose of combating fraud, waste, and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 Fed. Reg. 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a) (1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of The Proposed System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in this system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: December 7, 2007.

Charlene Frizzera,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0594

SYSTEM NAME:

• ''Home and Community-Based Alternatives (CBA) to Psychiatric Residential Treatment Facilities (PRTF) Demonstration (CBA–PRTF),'' HHS/CMS/CMM.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various co-locations of CMS agents.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will collect and maintain individually identifiable and other data collected on Medicaid recipients, and providers of services who voluntarily participate in the national evaluation of the CBA–PRTF.

CATEGORIES OF RECORDS IN THE SYSTEM:

The collected information will include, but is not limited to: name, address, telephone number, health insurance claims number (HICN), race/ethnicity, gender, date of birth, patient medical charts, physician records, community living, school functioning, juvenile justice activity, alcohol and other drug use, mental health, social support, family functioning outcomes, program satisfaction and changes in the patient's environment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The statutory authority for this system is given under Section 6063 of the Deficit Reduction Act of 2005.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect and maintain individually identifiable information on Medicaid recipients, and providers of services who voluntarily participate in the national evaluation of the CBA–PRTF. Information retrieved from this system may be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, grantee, or consultant; (2) assist another Federal or state agency with information to contribute to the accuracy of CMS's proper payment of Medicaid benefits, enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support litigation involving the agency; and (5) combat fraud, waste, and abuse in certain Federally-funded health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To another Federal or state agency to:

a. contribute to the accuracy of CMS's proper payment of Medicaid benefits;

b. enable such agency to administer a Federal health benefits program, or, as necessary, to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. assist Federal/state Medicaid programs within the state.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

4. To the Department of Justice (DOJ), court or adjudicatory body when:

a. the agency or any component thereof, or

b. any employee of the agency in his or her official capacity, or

c. any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. the United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

5. To a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such program.

6. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures. To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 Fed. Reg. 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on electronic media.

RETRIEVABILITY:

The collected data are retrieved by the name or other identifying information of the participating provider or beneficiary, and may be retrieved by a distinct identifier such as the HICN, at the individual beneficiary level.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records will be retained for a period of 10 years after the demonstration and evaluation project has completed. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Advocacy and Special Initiatives, Disabled and Elderly Health Programs Group, Center for Medicaid and State Operations, Mail Stop S2–14–26, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1849.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), HICN, and/or SSN (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5 (a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORDS SOURCE CATEGORIES:

Data will be collected from Medicaid administrative and claims records, patient medical charts, and physician records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E7–24788 Filed 12–20–07; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy 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: Pulmonary-Allergy 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 February 20, 2008, from 8 a.m to 5 p.m.

Location: National Labor College, Lane Kirkland Center, Solidarity Hall, 10000 New Hampshire Avenue, Silver Spring, MD, 301–431–6400.

Contact Person: Teresa A. Watkins, Center for Drug Evaluation and Research, HFD–21, Food and Drug Administration, 5630 Fishers Lane (for express delivery, 5630 Fishers Lane, Rm. 1093) Rockville, MD 20857, 301–827–7001, fax: 301–827–6776, e-mail: *teresa.watkins@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512545. 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 hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss the new drug application (NDA) 22–150, icatibant solution for injection (proposed tradename FIRAZYR), by Jerini, for the proposed indication of treatment of attacks of hereditary angioedema.

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 2008 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 February 5, 2008. Oral presentations from the public will be scheduled between approximately 12:30 p.m. and 1:30 p.m. Those desiring to make formal oral presentations

should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 28, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 29, 2008.

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 Teresa A. Watkins at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 12, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–24812 Filed 12–20–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0464]

Health Claims and Qualified Health Claims; Dietary Lipids and Cancer, Soy Protein and Coronary Heart Disease, Antioxidant Vitamins and Certain Cancers, and Selenium and Certain Cancers; Reevaluation; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on its intent to reevaluate the scientific evidence for two previously authorized health claims (dietary lipids (fat) and cancer; soy protein and risk of coronary heart disease) and two qualified health claims that were the subject of letters of enforcement discretion (antioxidant vitamins and risk of certain cancers; selenium and certain cancers). The agency is undertaking a reevaluation of the scientific basis for these authorized health claims and qualified health claims because of new scientific evidence that has emerged for these substance-disease relationships. The new scientific evidence may have the effect of weakening the substance-disease relationship for these authorized health claims and either strengthening or weakening the scientific support for the substance-disease relationship for these qualified health claims.

DATES: Submit written or electronic comments by February 19, 2008.

ADDRESSES: You may submit comments, identified by Docket No. 2007N–0464, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

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

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

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''How to Submit Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Claudine Kavanaugh, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1450, FAX: 301–436–2636.

SUPPLEMENTARY INFORMATION:

I. Background

The Nutrition Labeling and Education Act of 1990 (NLEA) (Public Law 101–553) was designed to give consumers more scientifically valid information about foods they eat. Among other provisions, the NLEA directed FDA to issue regulations providing for the use of statements that describe the relationship between a substance and a disease (health claims) in the labeling of foods, including dietary supplements, after such statements have been reviewed and authorized by FDA.[1] For these health claims, that is, statements about substance-disease relationships, FDA has defined the term ''substance'' by regulation as a specific food or food component (§ 101.14(a)(2) (21 CFR 101.14(a)(2))). An authorized health claim may be used on both conventional foods and dietary supplements, provided that the substance in the product and the product itself meet the appropriate standards in the authorizing regulation. Health claims are directed to the general population or designated subgroups (e.g., the elderly) and are intended to assist the consumer in maintaining healthful dietary practices.

Under section 403(r)(4)(A)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(4)(A)(i)), any person may petition FDA to issue a health claim regulation. In evaluating the petition, FDA considers whether there is ''significant scientific agreement'' (SSA) based on the totality of publicly available scientific evidence concerning the relationship that is the

[1] In 1997, Congress enacted the Food and Drug Administration Modernization Act, which established an alternative authorization procedure for health claims based on authoritative statements of certain federal scientific bodies or the National Academy of Sciences. This notice does not address that alternative procedure.

subject of the claim. This standard derives from section 403(r)(3)(B)(i) of the act (21 U.S.C. 343(r)(3)(B)(i)), which provides that FDA shall authorize a health claim to be used on conventional foods if the agency ''determines based on the totality of the publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.'' This scientific standard was prescribed by statute for conventional food health claims; by regulation, FDA adopted the same standard for dietary supplements health claims (see § 101.14(c)).

In evaluating a petition for an authorized health claim, if FDA concludes that the evidence supporting the relationship that is the subject of the claim does not meet the SSA standard, the agency considers whether there is credible evidence to support a qualified health claim. FDA may issue a letter of enforcement discretion for a qualified health claim where the totality of scientific evidence supporting the relationship that is the subject of the claim is credible but does not meet the SSA standard. Qualified health claims contain qualifying language about the level of scientific evidence to ensure consumers receive accurate information about the claim.

The genesis of qualified health claims was the court of appeals decision in *Pearson* v. *Shalala* (Pearson). In that case, the plaintiffs challenged FDA's decision not to authorize health claims for four specific substance-disease relationships in the labeling of dietary supplements. Although the district court ruled for FDA (14 F. Supp. 2d 10 (D.D.C. 1998)), the U.S. Court of Appeals for the D.C. Circuit reversed the lower court's decision (164 F.3d 650 (D.C. Cir.1999)). The appeals court held that the First Amendment does not permit FDA to reject health claims that the agency determines to be potentially misleading unless the agency also reasonably determines that a disclaimer would not eliminate the potential deception.

In the **Federal Register** of October 26, 1999 (64 FR 57700), the agency authorized a health claim for soy protein and risk of coronary heart disease (21 CFR 101.82). Since authorizing this health claim, numerous studies have evaluated the relationship between soy protein and coronary heart disease, and the findings of these studies are inconsistent. The Agency for Healthcare Research and Quality (AHRQ) released a report in July 2005 outlining the effects of soy products on health outcomes including cardiovascular disease and concluded that soy products appear to exert a small benefit on low-density lipoprotein (LDL)-cholesterol (Ref. 1). However, it is not clear whether soy protein (versus other types of soy products) was responsible for such a benefit. The AHRQ report included studies that evaluated substances in addition to soy protein (e.g., isoflavones). In addition, the AHRQ report used markers of cardiac function (e.g., triglycerides, endothelial function, oxidized LDL) that are not validated surrogate endpoints recognized by the agency for heart disease risk. The agency intends to evaluate the scientific evidence on soy protein and the risk of coronary heart disease to determine if the totality of the scientific evidence continues to meet the significant scientific agreement standard.

In the **Federal Register** of January 6, 1993 (58 FR 2787), FDA authorized a health claim on dietary lipids (fat) and cancer (21 CFR 101.73). In the years since authorizing this health claim, numerous studies have been published evaluating this substance-disease relationship. The Institute of Medicine (IOM) of the National Academy of Sciences, an authoritative body, published a report that reviewed the evidence on dietary lipid consumption and cancer risk (Ref. 2). The IOM reported in its review of the literature that the association between diets high in fat and increased cancer risk has been weakened by recent epidemiological studies. The IOM report set an acceptable macronutrient distribution range (AMDR) for total fat, however, it was not set based on cancer as a disease outcome because of insufficient scientific evidence linking consumption of fat with cancer risk. One factor in determining the AMDR is the long-term intake level of a nutrient that can minimize the potential for chronic disease. The agency intends to reevaluate the scientific evidence on dietary lipids and cancer risk and determine if the totality of the evidence continues to meet the significant scientific agreement standard.

Section 10.25(b) (21 CFR 10.25(b)) states that the Commissioner of Food and Drugs may initiate a proceeding to issue, amend, or revoke a regulation or take or refrain from taking any other form of administrative action. FDA intends to evaluate whether the currently available scientific evidence concerning the substance-disease relationship for the authorized health claims, dietary lipids and cancer and soy protein and coronary heart disease, continues to support its previous decisions on these authorized health claims. If the agency decides to take action to amend or revoke one or both of these health claims, after completing its review of the current scientific evidence, the agency will publish its findings and solicit comments on them before the agency takes any action with respect to revising the particular health claim. Interested persons may submit scientific information about these two specific health claims in response to this notice.

In 2003, FDA issued two letters on the use of the agency's enforcement discretion for qualified health claims on antioxidant vitamins (vitamins E and C) and risk of certain cancers (Ref. 3) and selenium and certain cancers and anticarcinogenic effects in the body (Ref. 4). In May 2006, AHRQ issued a report evaluating the use of multivitamin/mineral supplements and the risk of chronic disease (Ref. 5). The report did not identify any studies on the efficacy of vitamin C supplements and cancer risk. In addition, the report concluded that the overall strength of the evidence for vitamin E and selenium supplements on cancer risk is very low (vitamin E) and low (selenium). The agency intends to reevaluate the scientific evidence on these two qualified health claims and determine if the scientific evidence continues to support the qualified health claim, and if so, whether the qualified health claim language should be modified to reflect a stronger or weaker relationship.

If the agency decides a change may be needed with respect to one or both of these claims, the agency intends to publish its findings and solicit comments on them. Interested persons may submit scientific information about these two specific qualified health claims in response to this notice.

Reevaluating Cancer Health Claims by Cancer Site

In the final rule authorizing a health claim for dietary fat and cancer, FDA considered whether such a claim should specifically address the types of cancer affected by a diet that is low in total fat, or whether the claim should not be site-specific (58 FR 2787 at 2788 through 2789). FDA ultimately decided that the identification of specific sites of affected cancers would not be appropriate due, in part, to weaker data on the relationship between dietary fat and breast cancer and the possibility of a wider variety of affected sites for the dietary fat and cancer relationship.

Therefore, FDA required that the terms ''some types of cancer'' or ''some cancers'' be used in specifying the disease for this health claim relationship (id.). The antioxidant and cancer and selenium and cancer qualified health claims also contain similar language, i.e., ''certain forms of cancer,'' to be used in specifying the disease. However, in other qualified health claims for a substance and cancer relationship (Refs. 6, 7, and 8), the agency considered separate qualified health claims for each type of cancer.

Cancer is a constellation of more than 100 different diseases, each characterized by the uncontrolled growth and spread of abnormal cells (Ref. 9). Cancer is categorized into different types of diseases based on the organ and tissue sites (Ref. 10). Cancers at different organ sites have different risk factors, treatment modalities, and mortality risk (Ref. 9). Both genetic and environmental (including diet) risk factors may affect the risk of different types of cancers. Risk factors may include a family history of a specific type of cancer, cigarette smoking, alcohol consumption, overweight and obesity, exposure to ultraviolet or ionizing radiation, exposure to cancer-causing chemicals, and dietary factors. The etiology, risk factors, diagnosis, and treatment for each type of cancer are unique (Refs. 11 and 12). Because each form of cancer is a unique disease based on organ site, risk factors, treatment options, and mortality risk, FDA's current approach is to evaluate each form of cancer individually in a health claim or qualified health claim petition to determine whether the scientific evidence supports the potential substance-disease relationship for any type of cancer, each of which constitutes a disease under § 101.14(a)(5).

The agency intends to consider, as part of its reevaluation of the scientific evidence for dietary fat, antioxidant, and selenium and their association with a reduced risk of cancer, claim language to reflect specific types of cancer rather than ''certain forms of cancer'' (or similar language).

II. How to Submit Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individual may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

III. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Balk E, Chung M, Chew P, Ip S, Raman G, Kupelnick B, Tatsioni A, Sun Y, Wolk B, DeVine D, Lau J. Effects of Soy on Health Outcomes. Summary, Evidence Report/ Technology Assessment No. 126. (Prepared by the Tufts-New England Medical Center Evidence-based Practice Center under Contract No. 290–02–0022.) AHRQ Publication No. 05–E024–1. Rockville, MD: Agency for Healthcare Research and Quality. July 2005.

2. Institute of Medicine, National Academy of Sciences. *Dietary Referece Intakes for energy, carbohydrate, fiber, fat, fatty acids, cholesterol, protein and amino acids, Chapter 11 page 808*. National Academy Press. Washington, D.C. 2005.

3. Antioxidant vitamins and risk of certain cancers, April 1, 2003, *http://www.cfsan.fda.gov/~dms/ds-ltr34.html*.

4. Selenium and certain cancers, February 21, 2003, Docket No. 2002P–0457 (formerly Docket No. 02P–0457), *http://www.cfsan.fda.gov/~dms/ds-ltr35.html*.

5. Huang HY, Caballero B, Chang S, Alberg A, Semba R, Schneyer C, Wilson RF, Cheng TY, Prokopowicz G, Barnes II GJ, Vassy J, Bass EB. Multivitamin/Mineral Supplements and Prevention of Chronic Disease. Evidence Report/Technology Assessment No. 139. (Prepared by The Johns Hopkins University Evidence-based Practice Center under Contract No. 290–02–0018). AHRQ Publication No. 06–E012. Rockville, MD: Agency for Healthcare Research and Quality. May 2006.

6. Tomatoes and prostate, ovarian, gastric and pancreatic cancers, November 8, 2005, Docket No. 2004Q–0201, *http://www.cfsan.fda.gov/~dms/qhclyco.html*.

7. Green tea and prostate and breast cancer risk, June 30, 2005, Docket No. 2004Q–0083, *http://www.cfsan.fda.gov/~dms/qhc-gtea.html*.

8. Calcium and colon/rectal, breast and prostate cancers and recurrent polyps, October 12, 2005, Docket No. 2004Q–0097, *http://www.cfsan.fda.gov/~dms/qhcca2.html*.

9. American Cancer Society, Cancer Facts and Figures, 2004.

10. National Cancer Institute, Dictionary of Cancer Terms, *http://www.cancer.gov/Templates/db_alpha.aspx?CdrID=45333*.

11. Hord NG, Fenton JI. Context is everything: mining the normal and preneoplastic microenvironment for insights into the diet and cancer risk conundrum. *Molecular Nutrition and Food Research*, 2007, 51:100–106.

12. Milner JA. Diet and Cancer: Facts and Controversies. *Nutrition and Cancer*, 2006, 56:216–224.

Dated: December 6, 2007.

Barbara Schneeman,

Director, Office of Nutritional Products, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition.

[FR Doc. E7–24813 Filed 12–20–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Announcement of Potential Eligibility for Compensation Under Public Readiness and Emergency Preparedness Act Declaration and Filing Deadlines

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice.

SUMMARY: This Notice provides notification that individuals who have been injured by pandemic, epidemic, or security countermeasures identified in a declaration issued by the Secretary pursuant to section 319F–3(b) of the Public Health Service Act (PHS Act) (42 U.S.C. 247d–6d) have one (1) year from the time they receive the covered countermeasure to file requests for compensation for injuries directly resulting from administration or use of covered countermeasures under the Public Readiness and Emergency Preparedness Act (PREP Act).

DATES: This Notice is effective on December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857; toll-free telephone number 1–888–496–0338. Electronic inquiries should be sent via Tamara Overby at *toverby@hrsa.gov*.

SUPPLEMENTARY INFORMATION: The PREP Act, which is a part of the ''Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006'' (Pub. L. 109–148), was enacted on December 30, 2005, and confers broad liability protections on covered persons, as defined in section 319F–3(i)(2) of the PHS Act, and compensation to individuals injured by the receipt of covered countermeasures, as defined in section 319F–3(i)(1) of the PHS Act, in the event of designated public health emergencies. A covered countermeasure means: (A) A qualified pandemic or epidemic product (as defined in section 319F–3(i)(7) of the PHS Act); (B) a security countermeasure (as defined in section 319F–2(c)(1)(B) of the PHS Act); or (C) a drug (as such term is defined in section 201(g)(1) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(g)(1)), biological product (as such term is defined by section 351(i) of this Act), or device (as such term is defined by section 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(h)) that is authorized for emergency use in accordance with section 564 of the Federal Food, Drug and Cosmetic Act.

Passed primarily to address the pandemic influenza threat, the PREP Act provides liability protections after a Secretarial declaration of covered countermeasures for any disease or health condition that the Secretary views as constituting a public health emergency, either presently or in the future. Liability protections cover the manufacture, testing, development, distribution, or use of the designated covered countermeasure absent willful misconduct as defined in section 319F–3(c)(1) of the PHS Act. A Secretarial declaration specifies the categories of health threats or conditions for which countermeasures are recommended, the period liability protections are in effect, the population of individuals protected, and the geographic areas for which the protections are in effect.

In addition to liability protections, the PREP Act provides the Secretary the authority, which was delegated by the Secretary on November 8, 2006 to the Administrator of the Health Resources and Services Administration, to compensate eligible individuals for covered injuries from a covered countermeasure.

The first Declaration under the PREP Act was published in the **Federal Register** on February 1, 2007 (72 FR 4710). It designated the pandemic influenza A (H5N1) vaccine as a covered countermeasure, with an effective time period of December 1, 2006–February 28, 2010. As a result of this Declaration, individuals injured by this vaccine can file a request for compensation. Individuals have one (1) year from the time they receive the vaccine to apply for compensation. Currently, no funds have been appropriated to provide compensation. However, all potential claims must still be filed within the one (1) year limit.

This Declaration specifies that the following individuals with covered injuries may be eligible to receive compensation under the PREP Act: (1) All persons who use a covered countermeasure or to whom such a covered countermeasure is administered as an Investigational New Drug in a human clinical trial conducted directly by the Federal Government, or pursuant to a contract, grant or cooperative agreement with the Federal Government; (2) all persons who use a covered countermeasure or to whom such a countermeasure is administered in a pre-pandemic phase; and/or (3) all persons who use a covered countermeasure, or to whom such a covered countermeasure is administered in a pandemic phase. The Pre-Pandemic Phase means the following stages, as defined in the National Strategy for Pandemic Influenza: Implementation Plan (Homeland Security Council, May 2006): (0) New Domestic Animal Outbreak in At-Risk Country; (1) Suspected Human Outbreak Overseas; (2) Confirmed Human Outbreak Overseas; and (3) Widespread Human Outbreaks in Multiple Locations Overseas. The Pandemic Phase means the following stages, as defined in the National Strategy for Pandemic Influenza: Implementation Plan (Homeland Security Council, May 2006): (4) First Human Case in North America; and (5) Spread Throughout United States.

Eligible individuals may be compensated for out-of-pocket medical expenses, lost employment income, and survivor death benefits. Reasonable and necessary medical items and services may be paid or reimbursed to treat a covered countermeasure-related injury of an eligible individual. The payments or reimbursements for services or benefits are secondary to other forms of coverage. The individual may receive compensation for loss of employment income incurred as a result of the covered countermeasure injury. The amount of compensation is based on income at the time of injury. Death benefits may be paid to certain survivors of covered countermeasures recipients who have died as a direct result of the covered countermeasure injury. Since HHS is payer of last resort, payments are reduced by those of other third party payers.

Interested parties may obtain request packages that contain copies of all necessary forms and instructions by writing to the Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857, calling at 1–888–496–0338, or downloading them from the HRSA Web site at *http://www.hrsa.gov/countermeasurescomp.*

Completed request packages must be postmarked by the U.S. Postal Service, a commercial carrier, or a private courier service. HRSA will not accept request packages electronically or by hand-delivery. The postmark date is used to determine whether the filing deadline of one year from receipt of the countermeasure has been met.

Paperwork Reduction Act of 1995

HRSA will submit to the Office of Management and Budget (OMB) an Information Collection Request (ICR) for approval of the required forms.

Dated: December 18, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. 07–6180 Filed 12–19–07; 1:36 pm]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Cancer Care for Uninsured Individuals: A Feasibility Study (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI) of the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Cancer Care For Uninsured Individuals: A Feasibility Study. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The purpose of this information collection is to conduct a pilot study to assess the feasibility of obtaining health insurance information for participants of the Prostate, Lung, Colon and Ovarian (PLCO) Cancer Screening Trial participants from health

care providers and self reports. The ultimate objective is to compare the health care utilization of insured and uninsured PLCO participants. The PLCO data provides a unique opportunity to study health care seeking behavior after an abnormal cancer screening test and the effect of lack of health insurance. Individuals randomized to the intervention arm of the trial received screening for the PLCO cancers. Individuals with positive findings were referred to their doctors for follow-up care, but no additional care was provided by the trial. The PLCO study then collected detailed information on tests received for diagnosis, clinical presentation of disease, and cancer treatment. Since the PLCO original data collection had not recorded the health insurance of participants at the time of their screening, it is necessary to collect it retrospectively. This feasibility study will request information from 50 physicians and 150 participants. The aims are to determine:

(1) The total number of physicians to be contacted to obtain insurance information on all PLCO participants who had a positive cancer screening test;

(2) The percentage of physicians willing and able to provide insurance information;

(3) The percentage of respondents' patients with and without insurance, and possibly distribution of patients by insurance type;

(4) The number of participants for whom the insurance status can be only determined by self report;

(5) The percentage of PLCO participants who are willing to respond to the survey;

(6) The percentage of individuals who are willing to provide information on insurance status and type; and,

(7) The potential proportion of PLCO participants without health insurance at the time of screening.

The results of this feasibility study will be used to design of a larger study to examine the health care behavior of insured and uninsured PLPCO participants. This is relevant to understand the results of the PLCO Cancer Screening Trial and other screening trials currently being conducted in the U.S. The success of these trials is conditional on participants' access to care following a recommendation for follow-up. Uninsured individuals may be more likely to join these trials than insured ones in order to get free preventive care. They may also be more likely to not seek, or delay seeking, care after an abnormal screening test even though they are encouraged to get care and they may be highly motivated to receive the best care possible. It is relevant for other decision makers to understand whether uninsured persons are receiving appropriate care after abnormal screening results. The efforts to control cancer disease and the loss of life associated with it are concentrated on population wide screening. These endeavors may be compromised if a significant proportion of the population does not get appropriate follow-up after screening or does not get the care known to be effective for their disease.

Frequency of Response: One time. *Affected Public:* Individuals or households; Businesses or other for-profit. *Type of Respondents:* Men and women older than 55 who participated in the PLCO Screening trial and physicians who provided care for them. The annual reporting burden is shown in the following table.

Type of respondents	Number of respondents	Frequency of response	Average burden hours per response	Annual hour burden
PLCO participants	150	1	5 minutes (0.08)	12.5
Physicians office staff	50	1	20 minutes (0.33)	16.7
Totals	200			29.2

The annualized cost to respondents is estimated at: $488. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Maria Pisu, Division of Preventive Medicine, University of Alabama at Birmingham, MT 628, 1530 3rd Avenue South, Birmingham, AL 35294–4410, or call non-toll-free number (205) 975–7366 or e-mail your request, including your address to: *mpisu@uab.edu.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: December 11, 2007.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E7–24872 Filed 12–20–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National

Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Clinically Proven Therapeutic Treatment and Diagnostic Tool for Mesothelin Expressing Cancers: A Novel Recombinant Immunotoxin SS1P (anti-mesothelin dsFv–PE38)

Description of Technology: Mesothelin is a cell surface glycoprotein, whose expression is largely restricted to mesothelial cells in normal tissues. Mesothelin has been shown to be highly expressed in many cancers including malignant mesothelioma, ovarian cancer, lung cancer, pancreatic carcinomas, gastric carcinomas, and other cancers. Mesothelin has been shown to be a target for immunotherapy and is also being used as a tumor marker.

The technology relates to the SS1P immunotoxin that can be used to kill cells expressing mesothelin on their surface, such as mesothelioma, ovarian cancer, lung cancer, pancreatic cancer and stomach cancer. Additionally, it can be used for the detection of mesothelin expressing cells present in a biological sample.

The SSIP protein is an immunotoxin generated by the fusion of an anti-mesothelin antibody Fv fragment with a particularly high affinity (SS1), and a ~38 kDa portion of *Pseudomonas Exotoxin* A (PE38).

Applications: SS1P can be used as a therapy for mesothelin expressing cancers. The immunotoxin can be used as a standalone treatment and in combination with standard chemotherapy.

Advantage: SS1P immunotoxin is available for use and has been successfully tested clinically for the treatment of several mesothelin expressing cancers, such as mesothelioma and ovarian cancer with low side effects.

Development Status: Phase 1 studies have been completed for mesothelin expressing cancers such as mesothelioma and ovarian cancer. Phase 2 studies to begin shortly for combination therapy using SS1P and standard chemotherapy.

In addition to an active Investigational New Drug (IND) application, there are two associated orphan drug designations with this agent.

Inventors: Ira Pastan (NCI) *et al.*

Relevant Publications:

1. R Hassan *et al.* Phase I study of SS1P, a recombinant anti-mesothelin immunotoxin given as a bolus I.V. infusion to patients with mesothelin-expressing mesothelioma, ovarian, and pancreatic cancers. Clin Cancer Res. 2007 Sep 1;13 (17):5144–5149.

2. Y Zhang *et al.* Synergistic antitumor activity of taxol and immunotoxin SS1P in tumor-bearing mice. Clin Cancer Res. 2006 Aug 1;12(15):4695–4701.

Patent Status: U.S. Patent No. *7,081,518* issued 25 Jul 2006, entitled ''Anti-Mesothelin Antibodies Having High Binding Affinity'' (HHS Reference No. E–139–1999/0–US–07)

Related Intellectual Property:

1. U.S. Patent No. 4,892,827 entitled ''Recombinant Pseudomonas Exotoxin: Construction of an Active Immunotoxin with Low Side Effects'' [HHS Ref. No. E–385–1986/0];

2. U.S. Patent Nos. 6,051,405, 5,863,745, and 5,696,237 ''Recombinant Antibody-Toxin Fusion Protein'' [HHS Ref. No. E–135–1989/0];

3. U.S. Patents 5,747,654, 6,147,203, and 6,558,672 entitled ''Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity'' [HHS Ref. No. E–163–1993/0];

4. U.S. Patent No. 6,153,430, and U.S. Patent Application No. 09/684,599 ''Nucleic Acid Encoding Mesothelin, a Differentiation Antigen Present on Mesothelium, Mesotheliomas and Ovarian Cancers'' [HHS Ref. No. E–002–1996/0];

5. U.S. Patent 6,083,502 entitled ''Mesothelium Antigen and Methods and Kits for Targeting It'' [HHS Ref. No. E–002–1996/1];

6. U.S. Patent Application 09/581,345: ''Antibodies, Including Fv Molecules, and Immunoconjugates Having High Binding Affinity for Mesothelin and Methods for Their Use'' [HHS Ref. No. E–021–1998/0];

7. PCT Application No. PCT/US01/18503, ''Pegylation of Linkers Improves Antitumor Activity and Reduces Toxicity of Immunoconjugates'' [HHS Ref. No. E–216–2000/2];

8. PCT Application No. PCT/US2006/018502 and U.S. Patent Application No. 60/681,104, entitled ''Anti-Mesothelin Antibodies Useful For Immunological Assays'' [HHS Ref. No. E–015–2005/0–US–01]; and

9. And any related foreign filed national stage applications claiming priority to such patent applications and patents listed above.

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: David A. Lambertson, Ph.D.; 301/435–4632; *lambertsond@mail.nih.gov.*

cDNA Encoding a Gene BOG and Its Protein Product

Description of Invention: Available for licensing is BOG (B5t Over-Expressed Gene) with the gene product pRb of the well-known tumor suppressor gene RB, retinoblastoma susceptibility gene. The complex formed between Rb and BOG typically does not contain E2F–1 *in vivo.* This binding property suggests that cells which are transformed/transfected with cDNA or other functional nucleotide sequences which encode the BOG gene product will be useful as tools for studying cell cycle control and oncogenesis.

Studies using rat liver epithelial cell (RLE) lines which are resistant to the growth inhibitory effects of TGF-beta1 and primary liver tumors have been shown to over-express BOG. Moreover, when normal RLE continuously over-express BOG the cells become transformed and the transformed cells are able to form hepatoblastoma-like tumors when transplanted into nude mice. Therefore, biologics derived from BOG may be useful as diagnostics or therapeutics.

Applications: Method to diagnose and treat liver cancer; Method to study cell cycle control and oncogenesis; Liver cancer therapeutics.

Development Status: The technology is currently in the pre-clinical stage of development.

Market: Liver cancer is the third leading cause of cancer death worldwide, and the fifth most common cancer in the world; Post-operative five year survival rate of HCC patients is 30–40%.

Inventors: Snorri S. Thorgeirsson *et al.* (NCI).

Relevant Publication: JT Woitach *et al.* A retinoblastoma-binding protein that affects cell-cycle control and confers transforming ability. Nat Genet. 1998 Aug;19(4):371–374.

Patent Status: U.S. Patent No. 6,727,079 issued 27 Apr 2004 (HHS Reference No. E–009–1998/2–US–02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong, 301–435–4633; *wongje@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute (NCI), Center for Cancer Research, Laboratory of Experimental Carcinogenesis, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize BOG (B5t Over-Expressed Gene) with the gene product pRb. Please contact John Hewes, Ph.D. at the NCI Technology Transfer Center at

hewesj@mail.nih.gov or (301) 496–0477 for more information.

Dated: December 14, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–24784 Filed 12–20–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

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

Proposed Project: Emergency Response Grants Regulations—42 CFR part 51—(OMB No. 0930–0229)—Extension

This rule implements section 501(m) of the Public Health Service Act (42 U.S.C 290aa), which authorizes the Secretary to make noncompetitive grants, contracts or cooperative agreements to public entities to enable such entities to address emergency substance abuse or mental health needs in local communities. The rule establishes criteria for determining that a substance abuse or mental health emergency exists, the minimum content for an application, and reporting requirements for recipients of such funding. SAMHSA will use the information in the applications to make a determination that the requisite need exists; that the mental health and/or substance abuse needs are a direct result of the precipitating event; that no other local, state, tribal or Federal funding sources available to address the need; that there is an adequate plan of services; that the applicant has appropriate organizational capability; and, that the budget provides sufficient justification and is consistent with the documentation of need and the plan of services. Eligible applicants may apply to the Secretary for either of two types of substance abuse and mental health emergency response grants: Immediate awards and Intermediate awards. The former are designed to be funded up to $50,000, or such greater amount as determined by the Secretary on a case-by-case basis, and are to be used over the initial 90-day period commencing as soon as possible after the precipitating event; the latter awards require more documentation, including a needs assessment, other data and related budgetary detail. The Intermediate awards have no predefined budget limit. Typically, Intermediate awards would be used to meet systemic mental health and/or substance abuse needs during the recovery period following the Immediate award period. Such awards may be used for up to one year, with a possible second year supplement based on submission of additional required information and data. This program is an approved user of the PHS–5161 application form, approved by OMB under control number 0920–0428. The quarterly financial status reports in 51d.10(a)(2) and (b)(2) are as permitted by 45 CFR 92.41(b); the final program report, financial status report and final voucher in 51d.10(a)(3) and in 51d.10(b)(3–4) are in accordance with 45 CFR 92.50(b). Information collection requirements of 45 CFR part 92 are approved by OMB under control number 0990–0169. The following table presents annual burden estimates for the information collection requirements of this regulation.

42 CFR citation	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Immediate award application:				
51d.4(a) and 51d.6(a)(2)	3	1	3	*9
51d.4(b) and 51d.6(a)(2) Immediate Awards	3	1	10	*30
51d.10(a)(1)—Immediate awards—mid-program report if applicable	3	1	2	*6
Final report content for both types of awards:				
51d.10(c)	6	1	3	18
Total	6			18

*This burden is carried under OMB No. 0920–0428.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 *AND* e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: December 13, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–24824 Filed 12–20–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Oral Declarations No Longer Satisfactory as Evidence of Citizenship and Identity

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice.

SUMMARY: U.S., Canadian and Bermudian citizens entering the United States at land or sea ports-of-entry must establish their identity and citizenship to the satisfaction of a U.S. Customs and Border Protection (CBP) Officer. Under current CBP procedures, such individuals may provide any proof of identity and citizenship. While most individuals provide documentary evidence of citizenship, such as a passport or birth certificate, individuals may, depending on the circumstances, be admitted on an oral declaration. Accordingly, CBP is amending its field guidance procedures to instruct CBP officers that citizenship ordinarily may not be established using only an oral declaration.

This Notice informs the public that, effective January 31, 2008, all travelers will be expected to present documents proving citizenship, such as a birth certificate, and government-issued documents proving identity, such as a driver's license, when entering the United States through land and sea ports of entry.

DATES: This notice is effective January 31, 2008.

FOR FURTHER INFORMATION CONTACT: Colleen Manaher, WHTI, Office of Field Operations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 5.4–D, Washington, DC 20229, telephone number (202) 344–3003.

SUPPLEMENTARY INFORMATION: All travelers entering the United States are inspected by a Customs and Border Protection (CBP) Officer. To enter the United States in conformance with the Immigration and Nationality Act (INA), U.S. citizens, Canadians and Bermudians must satisfy the CBP Officer of their identity and citizenship. *See* 8 CFR 235.1(b) and 235.1(f)(1).

In accordance with current CBP operational procedures, a CBP Officer may accept documentary evidence of citizenship from U.S. citizens arriving at land or sea ports of entry from within the Western Hemisphere, such as a passport or birth certificate, or may accept an oral declaration if, depending upon the circumstances presented, such a declaration is deemed sufficient to prove citizenship. When assessing an assertion of citizenship, the CBP Officer may ask for additional identification and proof of citizenship until the CBP Officer is satisfied that the traveler seeking entry into the United States is a U.S. citizen.

Similarly, certain nonimmigrant aliens who are citizens of Canada and Bermuda are exempt from presenting a passport when entering the United States as nonimmigrant visitors from countries in the Western Hemisphere at land or sea ports-of-entry. 8 CFR 212.1(a)(1) and (2). Like U.S. citizens, these travelers are required to satisfy the inspecting CBP officer of their identities and citizenship at the time of their applications for admission. 8 CFR 235.1(f)(1). In accordance with current CBP operational procedures, a CBP Officer may accept documentary evidence of citizenship from Canadian and Bermudian citizens arriving from within the Western Hemisphere, such as a passport or birth certificate, or may, depending upon the circumstances presented, accept an oral declaration.

CBP is now amending its field instructions to direct CBP Officers to no longer generally accept oral declarations as sufficient proof of citizenship and, instead, require documents that evidence identity and citizenship from U.S., Canadian, and Bermudian citizens entering the United States at land and sea ports-of-entry.

Upon implementation, these changes in procedure will reduce the potential vulnerability posed by those who might falsely purport to be U.S., Canadian or Bermudian citizens trying to enter the United States by land or sea in reliance upon a mere oral declaration. Beginning on January 31, 2008, a person claiming U.S., Canadian, or Bermudian citizenship must establish that fact to the examining CBP Officer's satisfaction by presenting a citizenship document such as a birth certificate as well as a government-issued photo identification document. CBP retains its authority to request additional documentation when warranted and to make appropriate individual exceptions.

The instruction for CBP Officers to no longer generally accept oral declarations alone as satisfactory evidence of citizenship is a change in DHS and CBP internal operating procedures, and therefore is exempt from notice and comment rulemaking requirements under the Administrative Procedure Act, 5 U.S.C. 553(b).

On June 26, 2007, the Department of Homeland Security (DHS) and Department of State (DOS) published a joint notice of proposed rulemaking to implement the final phase of the Western Hemisphere Travel Initiative (WHTI) and require persons entering the United States from Western Hemisphere countries to present a passport or other travel document as determined by the Secretary of Homeland Security. *See* 72 FR 35088. In the NPRM, DHS also explained that, separate from WHTI, beginning January 31, 2008, CBP would no longer accept oral declarations alone as proof of citizenship or identity at land and sea border ports-of-entry.

DHS received five comments in response to the NRPM discussion on the change of practice concerning oral declarations. Although, as discussed above, the amendment to CBP procedures does not require notice and comment rulemaking, DHS will address those comments in the WHTI final rule. In summary, those comments were concerned about increased traffic and resulting travel delays at land border ports-of-entry stemming from document requirements. CBP will rely on its operational experience in processing travelers entering the United States by land to ensure that these changes are implemented in a manner that will minimize delays while achieving the security benefit underlying WHTI.

Accordingly, effective January 31, 2008, CBP Officers will no longer generally allow travelers claiming to be U.S., Canadian, or Bermudian citizens to establish citizenship by relying only on an oral declaration. Beginning on that date, all travelers, including those claiming to be U.S., Canadian, or Bermudian citizens arriving by land and sea will generally be expected to present some form of documentation to satisfy the CBP Officer of his or her identity and citizenship. For example, such documentation may include a government-issued photo identification document presented with a citizenship document, such as a birth certificate.

Dated: December 14, 2007.

Jayson P. Ahern,

Acting Commissioner, Customs and Border Protection.

[FR Doc. E7–24691 Filed 12–20–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 07– 95]

Re-Accreditation and Re-Approval of Inspectorate America Corp., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Inspectorate America Corp., of Martinez, California, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Inspectorate America Corp., 3773 Pacheco Blvd., Suite C, Martinez,

California 94553, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml*.

DATES: The re-approval of Inspectorate America Corp., as a commercial gauger and laboratory became effective on March 6, 2007. The next triennial inspection date will be scheduled for March 2010.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D., or Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 7, 2007.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E7–24694 Filed 12–20–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–106]

Section 8 Random Digit Dialing Fair Market Rent Surveys

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.

This survey provides HUD with a fast, inexpensive way to estimate Section 8 Fair Market Rents (FMRs) in areas not covered by the American Community Survey annual reports and in areas where FMRs are believed to be incorrect. The Department has used this random digit dialing (RDD) survey methodology for 15 years, as recently improved to offset low response rates. The affected public would be those renters surveyed and Section 8 voucher holders.

DATES: *Comments Due Date:* January 22, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0142) 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) 708–2374. 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: Section 8 Random Digit Dialing Fair Market Rent Surveys.

OMB Approval Number: 2528–0142.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This survey provides HUD with a fast, inexpensive way to estimate Section 8 Fair Market Rents (FMRs) in areas not covered by the American Community Survey annual reports and in areas where FMRs are believed to be incorrect. The Department has used this random digit dialing (RDD) survey methodology for 15 years, as recently improved to offset low response rates. The affected public would be those renters surveyed and Section 8 voucher holders.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden Hours
Reporting Burden:	23,816	....	1	....	0.248	....	5,928

Total Estimated Burden Hours: 5,928.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 13, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–24775 Filed 12–20–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–107]

Application for the Resident Opportunities and Self Sufficiency (ROSS) Program

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.

Application for the ROSS Grant Program: Service Coordinators Program and Family Self-Sufficiency for Public Housing. Eligible applicants are PHAs, Tribes/TDHEs, Non-Profits and Resident Associations. Information collected will be used to evaluate applications and award grants through the HUD SuperNOFA process.

DATES: *Comments Due Date:* January 22, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0229) 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) 708–2374. 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: Application for the Resident Opportunities and Self Sufficiency (ROSS) Program.

OMB Approval Number: 2577–0229.

Form Numbers: HUD–52752, HUD–52753, HUD–52754, HUD–52755, HUD–52767, HUD–52768, HUD–52769, HUD–96010, SF–424, HUD–2880, HUD–2990, HUD–2991, SF–LLL, HUD–2993, HUD–2994, HUD–60002, SF–269–A.

Description Of The Need For The Information And Its Proposed Use:

Application for the ROSS Grant Program: Service Coordinators Program and Family Self-Sufficiency for Public Housing. Eligible applicants are PHAs, Tribes/TDHEs, Non-Profits and Resident Associations. Information collected will be used to evaluate applications and award grants through the HUD SuperNOFA process.

Frequency Of Submission: On occasion, Annually.

Number of respondents	×	Annual re-sponses	×	Hours per re-sponse	=	Bur-den hours
Reporting Burden:	650		1	6.61		4,300

Total Estimated Burden Hours: 4,300.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 13, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–24879 Filed 12–20–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125-N–51]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus

Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Kathryn Halvorson, Director, Air Force Real Property Agency, 1700 North Moore St., Suite 2300, Arlington, VA 22209–2802; (703) 696–5502; COAST GUARD: Commandant, United States Coast Guard, Attn: Teresa Sheinberg, 2100 Second St., SW., Rm 6109, Washington, DC 20593; (202) 267–6142; ENERGY: Mr. John Watson, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–0072; GSA: Mr. John Smith, Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; NAVY: Mr. Warren Meekins, Associate Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: December 13, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/21/2007

Suitable/Available Properties

Building

Nebraska

Warehouse
Bldg. 1047–15–28–2
McCook Co: Red Willow, NE 69001
Landholding Agency: GSA
Property Number: 54200740013
Status: Surplus
GSA Number: 7–I–NE–0533–AA
Comments: 5000 sq. ft., needs repair, off-site use only

Land

Colorado

Northgate Stockpile Storage
Jackson, CO 80480
Landholding Agency: GSA
Property Number: 54200740011
Status: Surplus
GSA Number: 7–D-CO–0645
Comments: 16.11 acres, uneven terrain, no utilities, restrictions/covenants

Suitable/Available Properties

Land

Washington

Bremerton Lot
E. 16th & Trenton Ave.
Kitsap, WA 98310
Landholding Agency: GSA
Property Number: 54200740012
Status: Excess
GSA Number: 9–G–WA–1237
Comments: 1500 sq. ft., small size

Unsuitable Properties

Building

California

Bldgs. 1492, 1526, 1579
Lawrence Livermore
National Lab
Livermore, CA
Landholding Agency: Energy
Property Number: 41200740005
Status: Excess
Reasons: Secured Area

Bldgs. 1601, 1632
Lawrence Livermore
National Lab
Livermore, CA
Landholding Agency: Energy
Property Number: 41200740006
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

California

Bldgs. 2552, 2685, 2728
Lawrence Livermore
National Lab
Livermore, CA
Landholding Agency: Energy
Property Number: 41200740007
Status: Excess
Reasons: Secured Area

Bldgs. 2801, 2802
Lawrence Livermore
National Lab
Livermore, CA
Landholding Agency: Energy
Property Number: 41200740008
Status: Excess
Reasons: Secured Area

Bldgs. 3175, 3751, 3775
Lawrence Livermore

National Lab
Livermore, CA
Landholding Agency: Energy
Property Number: 41200740009
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

California

4 Bldgs.
Lawrence Livermore
National Lab
Livermore, CA
Landholding Agency: Energy
Property Number: 41200740010
Status: Excess
Directions: 4161, 4316, 4384, 4388
Reasons: Secured Area

Bldgs. 4406, 4475
Lawrence Livermore
National Lab
Livermore, CA
Landholding Agency: Energy
Property Number: 41200740011
Status: Excess
Reasons: Secured Area

Bldgs. 4905, 4906, 4926
Lawrence Livermore
National Lab
Livermore, CA
Landholding Agency: Energy
Property Number: 41200740012
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

California

Bldg. 5425
Lawrence Livermore
National Lab
Livermore, CA
Landholding Agency: Energy
Property Number: 41200740013
Status: Excess
Reasons: Secured Area

Bldg. 84
Naval Base
San Diego, CA
Landholding Agency: Navy
Property Number: 77200740018
Status: Excess
Reasons: Secured Area

Maryland

Bldgs. C11, 365, BB
Naval Air Station
Solomons, MD
Landholding Agency: Navy
Property Number: 77200740019
Status: Excess
Reasons: Extensive deterioration

Unsuitable Properties

Building

Ohio

Naval Reserve Center
Cleveland, OH 44114
Landholding Agency: Coast Guard
Property Number: 88200740002
Status: Unutilized
Reasons: Secured Area, within airport runway clear zone, within 2000 ft. of flammable or explosive material

Land

Florida

Defense Fuel Supply Point
Lynn Haven, FL 32444
Landholding Agency: Air Force
Property Number: 18200740009
Status: Excess
Reasons: Floodway

[FR Doc. E7–24496 Filed 12–20–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by January 22, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Sedgwick County Zoo, Wichita, KS, PRT–169707.

The applicant requests a permit to export one male captive-born Central American tapir (*Tapirus bairdii*) to the Zoologico de Chapultepec, Mexico for the purpose of enhancement of the species through captive breeding and conservation education.

Applicant: Dirk Arthur dba Stage Magic Inc., Las Vegas, NV, PRT–170290.

The applicant requests a permit to export and re-import ''Selbit'' a captive-born male leopard (*Panthera pardus*) to worldwide locations for the purpose of enhancement of the species through conservation education. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: William J. Muzyl, Gaylord, MI, PRT–169697.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal, noncommercial use.

Dated: November 30, 2007.

Lisa J. Lierheimer,

Senior Permit Biologis, Branch of Permits, Division of Management Authority.

[FR Doc. E7–24772 Filed 12–20–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–12436, AA–11074, AA–16678, AA–11142, AA–11143, AA–11038, AA–10750, AA–12592, AA–11034, AA–12463, AA–11033, AA–10723, AA–12558, AA–12462, AA–12563, AA–12562, AA–12591, AA–11008, AA–10964; AK–962–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Chugach Alaska Corporation for lands located in the Prince William Sound, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until January 22, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Resolution Specialist, Resolution Branch.

[FR Doc. E7–24825 Filed 12–20–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1320–EL, WYW172684]

Notice of Intent (NOI) To Prepare an Environmental Impact Statement (EIS) and Notice of Public Meeting on a Federal Coal Lease-by-Application (LBA) in the Decertified Powder River Federal Coal Production Region, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and notice of public meeting.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM), Casper Field Office announces its intent to prepare an EIS on the potential impacts of the application to lease a tract of Federal coal. The EIS will be called the Hay Creek II Coal EIS. Under the provisions of 43 Code of Federal Regulations (CFR) 3425.1, the BLM received the following application to lease a maintenance tract of Federal coal in Campbell County, Wyoming:

- Kiewit Mining Properties Inc. applied for a maintenance coal lease for approximately 1448.873 acres (approximately 148 million tons of recoverable coal) in a maintenance tract of Federal coal adjacent to the Buckskin Mine. The tract, which is referred to as the Hay Creek II Tract, has been assigned case number WYW172684.

DATES: This notice initiates the public scoping process. To provide the public with an opportunity to review the proposal and gain understanding of the coal leasing process, the BLM will host a meeting on January 31, 2008, at 7 p.m. at the Gillette College Presentation Hall, Room 120, 300 West Sinclair, Gillette, Wyoming. At the meeting, the public is invited to submit comments and resource information, plus identify issues or concerns to be considered in the coal LBA process. The BLM can best use public input if comments and resource information are submitted by March 29, 2008. The BLM will announce future public meetings and other opportunities to submit comments on this project at least 15 days prior to the events. Announcements will be made through local news media and the Casper Field Office's Web site, which is: *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.blm.gov/wy/st/en/field_offices/Casper.html.*

FOR FURTHER INFORMATION CONTACT: Teresa Johnson or Mike Karbs, BLM Casper Field Office, 2987 Prospector Drive, Casper, Wyoming 82604. Teresa Johnson or Mr. Karbs may also be reached at (307) 261–7600.

ADDRESSES: Please submit written comments or concerns to the BLM Casper Field Office, Attn: Teresa Johnson, 2987 Prospector Drive, Casper, Wyoming 82604. Written comments or resource information may also be hand-delivered to the BLM Casper Field Office or sent by facsimile to the attention of Teresa Johnson at (307) 261–7510. Comments may be sent electronically to *casper_wymail@blm.gov*. Please include ''Buckskin Mine, Hay Creek II Coal EIS/Teresa Johnson'' in the subject line. Members of the public may examine documents pertinent to this proposal by visiting the Casper Field Office during its business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Kiewit Mining Properties, Inc. submitted an application on March 24, 2006, to lease a maintenance tract of Federal coal adjacent to the company's Buckskin Mine in Campbell County, Wyoming, which is operated by Buckskin Mining Company. A maintenance tract is a parcel of land containing Federal coal reserves that can be leased to maintain production at an existing mine. This tract is known as the Hay Creek II Tract. Consistent with Federal regulations under NEPA and the Minerals Leasing Act of 1920, as amended, the BLM must prepare an environmental analysis prior to holding a competitive Federal coal lease sale. The Powder River Regional Coal Team reviewed this LBA at a public meeting held on April 19, 2006, in Casper, Wyoming, and recommended that the BLM process it.

The Hay Creek II Tract application includes approximately 148 million tons of recoverable Federal coal underlying the following lands in Campbell County, Wyoming:

T. 52 N., R. 72 W., 6th P.M., Wyoming
Section 7: Lots 18 through 20;
Section 8: Lots 13 through 16;
Section 17: Lots 1 through 4, 5 (N½), 6 (N½), 7 (N½), and 8 (N½)
Section 18: Lots 5 through 7, 10, 11, 12 (N½, SW¼), 13 (W½), 14, 15, 18, 19, and 20 (W½);
Section 19: Lots 5 (W½), 6, 7, 10, 11, 12 (W½), 13 (W½), 14, 15, 17 through 19, and 20 (W½).
Containing 1448.873 acres, more or less.

Buckskin Mining Company proposes to mine the tract as a part of the Buckskin Mine. At the mining rate of 25 million tons per year, the coal included in the Hay Creek II Tract would extend

the life of the Buckskin Mine by as many as 6 years.

Lands in the application contain private surface estate overlying the Federal coal.

The Buckskin Mine is operating under approved mining permits from the Land Quality and Air Quality Divisions of the Wyoming Department of Environmental Quality.

The Office of Surface Mining Reclamation and Enforcement (OSM) will be a cooperating agency in the preparation of the EIS. If the tract is leased to the applicant, the new lease must be incorporated into the existing mining and reclamation plan for the mine. Before the Federal coal in the tract can be mined the Secretary of the Interior must approve the revised Mineral Leasing Act (MLA) mining plan for Buckskin Mine. The OSM is the Federal agency that is responsible for recommending approval, approval with conditions, or disapproval of the revised MLA mining plan to the Office of the Secretary of the Interior. Other cooperating agencies may be identified during the scoping process.

The BLM will provide interested parties the opportunity to submit comments or relevant information or both. This information will help the BLM identify issues to be considered in preparing the Hay Creek II Coal EIS. Issues that have been identified in analyzing the impacts of previous Federal coal leasing actions in the Wyoming Powder River Basin (PRB) include the need for resolution of conflicts between existing and proposed oil and gas development and coal mining on the tract proposed for coal leasing; potential impacts to big game herds and hunting; potential impacts to Greater Sage-grouse; potential impacts to listed threatened and endangered species; potential health impacts related to blasting operations conducted by the mine to remove overburden and coal; the need to consider the cumulative impacts of coal leasing decisions combined with other existing and proposed development in the Wyoming PRB; and potential site-specific and cumulative impacts on air and water quality.

Your response is important and will be considered in the EIS process. If you do respond, we will keep you informed of the availability of environmental documents that address impacts that might occur from this proposal. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 5, 2007.

Alan Rabinoff,

Acting State Director.

[FR Doc. E7–24428 Filed 12–20–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1310–DS–OSHL]

Notice of Availability of Draft Oil Shale and Tar Sands Resource Management Plan Amendments To Address Land Use Allocations in Colorado, Utah, and Wyoming and Programmatic Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared the Draft Oil Shale and Tar Sands Resource Management Plan Amendments To Address Land Use Allocations in Colorado, Utah, and Wyoming and Programmatic Environmental Impact Statement (PEIS). By this notice, the BLM is announcing the opening of a 90-day public review and comment period for the PEIS. The planning area lies within the Green River Formation in Colorado, Utah, and Wyoming.

DATES: Please submit written comments on the PEIS within 90 days following the date the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**. The BLM will announce future meetings and/or hearings and any other public participation activities at least 15 days in advance on the internet and through public notices, media news releases, and/or mailings.

ADDRESSES: Copies of the PEIS will be sent to affected Federal, state, and local government agencies and other interested parties. Copies of the PEIS are available for public inspection via the internet at *http://ostseis.anl.gov,* electronic media (on CD–ROM), and paper. Paper and electronic (CD–ROM) copies of the PEIS are available at BLM locations listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

You may submit comments by any of the following methods:

- *Web Site: http://ostseis.anl.gov.*
- *Mail:* BLM Oil Shale and Tar Sands Resources Draft Programmatic EIS Comments, 9700 South Cass Avenue, Argonne, IL 60439.

FOR FURTHER INFORMATION CONTACT: Sherri Thompson, BLM Project Manager, at (303) 239–3758, (*sherri_thompson@blm.gov*), Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215 or Mitchell Leverette, BLM Acting Division Chief, Solid Minerals, at (202) 452–0351, (*mitchell_leverette@blm.gov*), Bureau of Land Management, 1620 L Street NW., Washington, DC 20036.

SUPPLEMENTARY INFORMATION: This Draft Oil Shale and Tar Sands Resources PEIS is being prepared to meet the requirements established by Congress in Section 369 of the Energy Policy Act of 2005 and to meet the requirements of the National Environmental Policy Act of 1969. It will evaluate the amendment of 12 resource management plans to designate public lands in Colorado, Utah, and Wyoming managed by the U.S. Department of the Interior (DOI), BLM as available for application for commercial leasing for oil shale and tar sands development. The PEIS evaluates the amendment of nine land use plans to designate lands as available for commercial oil shale leasing and amendment of six land use plans to designate lands as available for commercial tar sands leasing. Three of the plans that could be amended contain both oil shale and tar sands resources, so a total of 12 plans will be amended.

The Notice of Intent (NOI) to prepare a Programmatic Environmental Impact Statement (PEIS) and Plan Amendments for Oil Shale and Tar Sands Resources Leasing on Lands Administered by the BLM in Colorado, Utah, and Wyoming was published in the **Federal Register** on December 13, 2005 (70 Fed. Reg. 73791–73792). As originally stated in the NOI, this PEIS is to evaluate the potential impacts associated with commercial leasing of oil shale and tar sands resources that are located on public lands in the three states. The scope of the analysis was to include an assessment of the direct, indirect, and cumulative environmental, cultural, and socio-economic impacts associated with commercial leasing of these resources under a range of alternatives. Since the NOI was published, however, initial environmental analysis and input from cooperating agencies has led BLM to

conclude that critical information on which to assess potential impacts, define required mitigation and approve commercial leasing, is not available at this time. Therefore, BLM has limited the purpose and need for the PEIS. The purpose and need for the PEIS now is to:

(1) Identify the most geologically prospective areas where oil shale and tar sands resources are present on public lands and that could be open to application for commercial leasing, exploration, and development; and

(2) Evaluate the environmental effects associated with amendments of 12 land use plans to allow for application for commercial oil shale or tar sands leasing.

In the NOI, the BLM identified planning criteria, initiated the public scoping process, and invited the public to provide comments on the scope and objectives of the PEIS and to identify issues to be addressed in the planning process. During the scoping process, public meetings were held in Salt Lake City, Vernal, and Price, Utah; Rock Springs and Cheyenne, Wyoming; and Rifle and Denver, Colorado. About 5,000 people participated in the scoping process by attending public meetings or submitting comments. The BLM published a scoping report in March 2006, summarizing and categorizing issues, concerns, and comments received. These comments were considered in developing the alternatives in this PEIS.

The study area for the oil shale resources includes the most geologically prospective resources of the Green River Formation located in the Green River, Piceance, Uinta, and Washakie Basins and encompasses approximately 3,540,000 acres. The BLM has identified the most geologically prospective areas for oil shale development on the basis of the grade and thickness of the oil shale deposits. For the purposes of this PEIS, the most geologically prospective oil shale resources in Colorado and Utah are those deposits that yield 25 gallons or more of shale oil per ton of rock (gal/ton) and are 25 feet thick or greater. In Wyoming, where the oil shale resource is not as high quality as in Colorado and Utah, the most geologically prospective oil shale resources are those deposits that yield 15 gallon/ton or more of shale oil and are 15 feet thick or greater.

For the tar sands resources, the study area includes those locations designated as Special Tar Sand Areas (STSAs) by Congress in the Combined Hydrocarbon Leasing Act of 1981 (P.L. 97–78). Eleven STSAs were identified in Utah: Argyle Canyon-Willow Creek (hereafter referred to as Argyle Canyon), Asphalt Ridge-Whiterocks and Vicinity (hereafter referred to as Asphalt Ridge), Circle Cliffs East and West Flanks (hereafter referred to as Circle Cliffs), Hill Creek, Pariette, P.R. Spring, Raven Ridge-Rim Rock and Vicinity (hereafter referred to as Raven Ridge), San Rafael Swell, Sunnyside and Vicinity (hereafter referred to as Sunnyside), Tar Sand Triangle, and White Canyon. The total acreage of the study area is approximately 1,026,000 acres.

The oil shale and tar sands resources within the defined study areas are located within the jurisdiction of 12 separate BLM administrative units. These units include the Glenwood Springs, Grand Junction, and White River Field Offices in Colorado; the Moab, Monticello, Price, Richfield, and Vernal Field Offices and the Grand Staircase-Escalante National Monument in Utah; and the Kemmerer, Rawlins, and Rock Springs Field Offices in Wyoming. With the exception of the Grand Staircase-Escalante National Monument, the final Record of Decision for this PEIS would amend existing land use plans in affected BLM administrative units to designate the lands available for application for commercial leasing, exploration, and development for oil shale and tar sands resources.

Within the above-listed administrative units, and within the defined boundaries of the most geologically prospective resources of the Green River formation and the designated STSAs, public lands managed by the BLM where the Federal Government owns both the surface estate and subsurface mineral rights are included in the scope of the PEIS analysis. Lands where the surface estate is owned by Tribes, States, or private parties but where the federal government owns the subsurface mineral estate (i.e., split estate lands) are also included in the scope of this analysis. Tribal lands on which both the surface estate and subsurface mineral estate are owned by the Tribe are not included in the scope of analysis.

This PEIS examines alternatives for designation of lands as available for application for commercial leasing of oil shale and tar sands resources. For both oil shale and tar sands resources, there are three alternatives: Alternatives A (the no action alternative), B, and C. The alternatives vary in the amount of area available for application for leasing. The BLM has identified Alternative B for oil shale leasing and Alternative B for tar sands leasing as the preferred alternatives in the PEIS.

For oil shale resources, Alternative A, the ''no action'' alternative, continues existing management. Under this alternative, it is assumed that the six existing oil shale Research, Demonstration, and Development (RD&D) projects will proceed on their current 160-acre lease parcels. Alternative A only includes the RD&D activities at these 160-acre sites; it does not evaluate future commercial leasing at these or any other locations. Each of these six projects has an associated preference right lease area for future potential commercial development. Under Alternative A, the RD&D leases require additional land use planning and site-specific NEPA analysis prior to granting the RD&D lessees use of the preference right lease area for commercial development.

Under Alternative A, current BLM land use plans within the study area would not be amended to allow for application for leasing for commercial development of oil shale. Further, the ROD for the PEIS would not identify the most geologically prospective resources, specific exclusion areas, land available for application for lease, and so forth. For commercial oil shale development to occur in the future, specific land use plans would need to be amended to identify areas available for lease. Such leasing would be subject to additional NEPA analyses and the oil shale regulations to be promulgated by the BLM.

The BLM has developed two programmatic alternatives for identifying lands available for application for commercial leasing and for establishing a commercial oil shale leasing program. Programmatic Alternatives B and C apply different approaches to designating lands available for application for commercial oil shale leasing. Under both programmatic oil shale alternatives, nine land use plans would be amended to:

(1) Identify the most geologically prospective oil shale resources within each field office;

(2) Make certain lands within these most geologically prospective areas available for application to lease;

(3) Identify any technology restrictions;

(4) Stipulate requirements for future NEPA analyses and consultation activities; and

(5) Specify that priority will be given to the use of land exchanges to facilitate commercial oil shale development pursuant to Section 369(n) of the Energy Policy Act of 2005.

Under Alternative B, about 2 million acres would be available for application for lease and under Alternative C, about 830,000 acres would be available for

application. Under Alternative C, additional lands would be excluded from the potential area available for leasing. The lands that would be available under Alternative C include some of the lands that are available under Alternative B, but exclude lands that are identified as requiring special management or resource protection in existing land use plans. Site-specific NEPA analyses would be required under both alternatives prior to leasing and approval of plans of operations during the project development phase. These site-specific analyses will identify potential project-specific impacts and define appropriate lease stipulations and required mitigation measures. Included in this PEIS are potentially applicable mitigation measures that would be applied following the site-specific analyses, as appropriate. In addition, conservation measures agreed upon with the U.S. Fish and Wildlife Service (USFWS) and documented in the PEIS would be applicable to all future commercial leases.

For tar sands resources, Alternative A also is the no action alternative. Under this alternative, land use plans would not be amended to allow for leasing for commercial tar sands development, but current plans authorize leasing under the existing Combined Hydrocarbon Leasing (CHL) program. The BLM has assumed no development of tar sands resources on public lands since there has been no tar sands development under the existing CHL in the last 20 years or more. At the time this PEIS was drafted, no commercial tar sands project proposals have been submitted to the BLM on existing CHL leases. On this basis, the BLM has determined that it is unlikely that commercial tar sands development will occur under the CHL program.

The BLM has developed two programmatic alternatives for identifying lands available for application for commercial leasing and for establishing a commercial tar sands leasing program. Programmatic Alternatives B and C consist of different approaches to designating lands available for application for commercial tar sands leasing. Under both alternatives, six land use plans in Utah would be amended to:

(1) Make certain lands within the STSAs available for application to lease;

(2) Stipulate requirements for future NEPA analyses and consultation activities; and

(3) Specify that priority will be given to the use of land exchanges to facilitate commercial tar sands development pursuant to Section 369(n) of the Energy Policy Act of 2005.

Under Alternative B, about 430,000 acres would be available for application for lease and under Alternative C, about 230,000 acres would be available for application. Site-specific NEPA analyses will be required under both alternatives prior to leasing and approval of plans of operations during the project development phase. These site-specific analyses would identify potential project-specific impacts and define appropriate lease stipulations and required mitigation measures. Included in this PEIS are potentially applicable mitigation measures that would be applied following the site-specific analyses, as appropriate. In addition, conservation measures agreed upon with the USFWS and documented in the PEIS would be applicable to all future commercial leases.

The Oil Shale and Tar Sands Resources PEIS is of interest to numerous Federal, Tribal, state, and local governments. The BLM initially invited about 50 agencies to participate in preparation of the PEIS as cooperating agencies. Fourteen agencies expressed an interest, and memorandums of understanding between these agencies and the BLM were executed to set forth the parameters of cooperating agency relationships with these agencies. The following are participating cooperating agencies in the preparation of this PEIS:

- National Park Service
- Bureau of Reclamation
- U.S. Forest Service
- U.S. Fish and Wildlife Service
- State of Colorado, Department of Natural Resources and Department of Public Health and the Environment
- State of Utah
- State of Wyoming
- Garfield County, Colorado
- Mesa County, Colorado
- Rio Blanco County, Colorado
- Duchesne County, Utah
- Uintah County, Utah
- City of Rifle, Colorado
- Town of Rangely, Colorado.

Paper and electronic (CD–ROM) copies of the PEIS are available at the following BLM locations:

- Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215
- Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT 84101
- Wyoming State Office, 5353 Yellowstone, Cheyenne, WY 82009
- Vernal Field Office, 170 South 500 East, Vernal, UT 84078
- Price Field Office, 125 South 600 West, Price, UT 84501
- Richfield Field Office, 150 East 900 North, Richfield, UT 84701
- Monticello Field Office, 435 North Main, P.O. Box 7, Monticello, UT 84535
- White River Field Office, 220 E. Market Street, Meeker, CO 81641
- Glenwood Springs Field Office, 2425 S. Grand Ave., Suite 101, Glenwood Springs, CO 81601
- Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506
- Kemmerer Field Office, 312 Highway 189 North, Kemmerer, WY 83101
- Rawlins Field Office, at 1300 North Third, PO Box 2407, Rawlins, WY 82301
- Rock Springs Field Office, 280 Highway 191 North, Rock Springs, WY 82901.

Before including your address, phone number, e-mail address, or other personal identifying information, 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.

Michael Nedd,

Assistant Director, Minerals, Realty, and Resource Protection.

[FR Doc. E7–24811 Filed 12–20–07; 8:45 am]

BILLING CODE 4210–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan and Environmental Impact Statement, Governors Island National Monument, New York, NY

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service announces the availability of the Draft General Management Plan and Environmental Impact Statement for Governors Island National Monument, New York.

Consistent with National Park Service laws, regulations, and policies, and the purpose of the National Monument, the Draft GMP/EIS describes and analyzes four alternatives (A–D) to guide the management of the Monument over the next 15 to 20 years. The alternatives incorporate various management prescriptions to ensure protection, access and enjoyment of the park's resources. Alternative A is a no action alternative. Alternative D is the National

Park Service's preferred alternative. Alternative D proposes the National Monument be developed as a Harbor Center with partners as a hub of activities and a jumping off point for visitors to explore New York Harbor. The Draft GMP/EIS evaluates potential environmental consequences of implementing the alternatives. Impact topics include the cultural, natural, and socioeconomic environments. This notice also announces that a public meeting will be held to solicit comments on the Draft GMP/EIS during the public review period. The date, time and location will be announced on the park's Web site *http://www.nps.gov/gois*, in local papers and can also be obtained by calling 212.825.4162.

DATES: There are several ways to view the document, which will be publicly available on or about October 15, 2007:

- An electronic version of the document will be available for public review and comment on the National Park Service Planning, Environment and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov*.
- Downloadable PDF from the park's Web site *http://www.nps.gov/gois*.
- Printed copies (these are limited in quantity) and CDs can be requested by contacting the park at 212.825.4162.

The National Park Service will accept comments on the Draft General Management Plan and Environmental Impact Statement from the public for a period of 60 days following publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register**. Interested persons may check the park Web site at *http://www.nps.gov/gois* for date, time, and place(s) of public meetings to be conducted by the National Park Service, or by calling 212.825.4162.

ADDRESSES: The document will be available for public review and comment online at *http://parkplanning.nps.gov*, and can be viewed at the following locations:

Mid-Manhattan Library, 455 5th Avenue, New York, NY 10016.

Science, Industry and Business Library, 188 Madison Avenue, New York, NY 10016.

New Amsterdam Branch Library, 9 Murray Street, New York, NY 10007.

Bronx Library Center, 310 East Kingsbridge Road, New York, NY 10458.

St. George Library Center, 5 Central Avenue, Staten Island, NY 10301.

Business Library, 280 Cadman Plaza West at Tillary St., Brooklyn, NY 11201.

Carroll Gardens Library, 396 Clinton St. at Union St., Brooklyn, NY 11231.

Central Library, Grand Army Plaza, Brooklyn, NY 11238.

Red Hook Library, 7 Wolcott St. at Dwight St., Brooklyn, NY 11231.

Central Library, 89–11 Merrick Boulevard, Jamaica, NY 11432.

Flushing Library, 41–17 Main Street, Flushing, NY 11355.

Jersey City Public Library, Documents Department, 472 Jersey Ave., Jersey City, NJ 07302.

Newark Public Library, 5 Washington St., P.O. Box 0630, Newark, NJ 07101–0630.

New Jersey State Library, U.S. Documents, 185 W. State St., P.O. Box 520, Trenton, NJ 08625–0520.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Superintendent Linda Neal, Governors Island National Monument, Battery Maritime Building, Slip 7, 10 South Street, New York, NY 10004. The preferred method of comment is via the Internet at *http://parkplanning.nps.gov*. You may also fax your comments to 212.825.4161. 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.

SUPPLEMENTARY INFORMATION: For over two centuries, Governors Island has played a vital role in the defense and development of New York City. The island's military history begins with the American Revolution and culminates with the U.S. Coast Guard's departure in 1996. In 1985 the northern 121 acres of the island were designated a National Historic Landmark District. Castle Williams and Fort Jay, within the district, are among the best remaining examples of early American coastal fortifications.

On January 19, 2001, President William J. Clinton established the Governors Island National Monument by Presidential Proclamation 7402. On February 7, 2003, President George W. Bush issued Proclamation 7647, which re-established the monument and clarified its status. The Draft General Management Plan (GMP) sets forth alternative visions (management alternatives) for the development and operation of Governors Island National Monument. This plan is the product of a process that integrates the aspirations of the public with the unique capabilities of the NPS to provide for the preservation and public enjoyment of the National Monument over the next 20 years.

Dated: December 11, 2007.

Dennis R. Reidenbach,

Regional Director, Northeast Region, National Park Service.

[FR Doc. E7–24831 Filed 12–20–07; 8:45 am]

BILLING CODE 4312–14–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statement on Recreational Use of Off-Road Vehicles Along Nine Trails in the Nabesna Area of Wrangell-St. Elias National Park and Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement.

SUMMARY: The National Park Service (NPS) is preparing an EIS on the recreational use of off-road vehicles (ORV) along nine trails in the Nabesna area of Wrangell-St. Elias National Park and Preserve. The purpose of the EIS is to evaluate a range of alternatives for managing recreational off-road vehicle use on the following trails: Caribou Creek, Lost Creek, Trail Creek, Reeve Field, Boomerang Lake, Soda Lake, Suslota Lake, Copper Lake and Tanada Lake. The EIS will be used to guide the management of recreational ORV use on these trails in the Nabesna area of Wrangell-St. Elias National Park and Preserve. It may also form the basis for either a special regulation to designate ORV routes and areas or a compatibility finding to issue permits for ORV use in accordance with current regulations. The EIS will assess potential environmental impacts associated with a range of reasonable alternatives for managing recreational ORV impacts on park resources and values such as soils, vegetation, wetlands, wildlife, visitor experience, scenic quality, cultural resources and subsistence opportunities.

In addition to the No Action alternative, this EIS will evaluate a proposed action that would authorize recreational ORV use on trails that can be maintained to a standard that reduces or eliminates adverse impacts. Other alternatives include: authorizing recreational ORV use on some or all nine trails after making improvements to address degraded conditions along trail alignments, and not authorizing recreational ORV use on any trails. Public input is sought on this range of alternatives.

This EIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*), and its implementing regulations at 40 CFR part 1500.

Scoping: The NPS requests input from federal and state agencies, local governments, private organizations, recreational users, and the public on the scope of issues to be addressed in this EIS. Scoping comments are being solicited. NPS representatives will be available to discuss issues, resource concerns and the planning process at public scoping meetings. Scoping meetings will be held in Anchorage, Fairbanks, Tok, Glennallen, and Slana, Alaska in early 2008. When public meetings have been scheduled, their dates, times, and locations will be announced in local newspapers and posted on the NPS Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/WRST.*

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 to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Comments concerning the scope of this EIS should be received 60 days after the last scoping meeting referenced above. The draft EIS is projected to be available to the public in early 2009. Electronic comments may be submitted to the NPS Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/WRST.* Written comments also may be mailed or faxed to the address and phone number provided below.

FOR FURTHER INFORMATION CONTACT: Meg Jensen, Park Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. Telephone (907) 822–5234, Fax (907) 822–7259.

SUPPLEMENTARY INFORMATION: The 13.2 million acre Wrangell-St. Elias National Park and Preserve was established in 1980 at which time the nine trails under evaluation were already in existence and had use. As part of the general management planning for the park, ORVs were determined to be a means of surface transportation traditionally employed by local rural residents engaged in subsistence uses. In 1983, the park began issuing permits for recreational use of these trails initially in accordance with 36 CFR 13.14(c) which was replaced by 43 CFR 36.11(g)(2) in 1986. The park annually issues approximately 200 recreational permits largely for sport hunters traveling to preserve areas. Subsistence users and inholders (there are 784,000 acres of non-federal lands within the park) also use ORVs on these trails. They are also used by hikers, and in the winter by skiers, mushers and trappers. Snowmachines are the typical motorized use in the winter months. Over the history of the park, research has been conducted to assess the conditions of the trails and to experiment with a variety of trail hardening materials.

On June 29, 2006, the National Parks Conservation Association, Alaska Center for the Environment, and The Wilderness Society (Plantiffs) filed a lawsuit against the NPS in the United States District Court for the District of Alaska regarding recreational ORV use on the nine trails that are the subject of this EIS. The plaintiffs challenged the NPS issuance of recreational ORV permits asserting that the NPS failed to make the finding required by 43 CFR 36.11(g)(2), that such ORV use is compatible with the purposes and values of the Park and Preserve. They also claimed that the NPS failed to prepare an environmental analysis of recreational ORVs.

In the May 15, 2007, settlement agreement, the NPS agreed to endeavor to complete an EIS and Record of Decision (ROD) by December 31, 2010, during which time the NPS can issue permits authorizing recreational use of ORVs on the Suslota Lake Trail, Tanada Lake Trail, and a portion of the Copper Lake Trail only when the ground is frozen. The NPS may continue to issue permits for recreational ORV use of the remaining six trails through the year 2010.

The litigation and settlement did not change the use of ORVs by local rural residents engaged in subsistence uses. The trails remain open to other uses such as hiking, skiing, or horseback riding. Prior to the 2007 summer/fall season, all recreational ORV permit holders were contacted and apprised of the situation.

Executive Order 11644, issued in 1972 and amended by Executive Order 11989 in 1977, states that federal agencies allowing ORV use must designate the specific areas and trails on public lands on which the use of ORVs may be permitted, and areas in which the use of ORVs may not be permitted. Agency regulations to authorize ORV use shall provide that designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. Executive Order 11644 was issued in response to the widespread and rapidly increasing use of ORV on the public lands—''often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity.'' Therefore, the purpose of this EIS is to consider alternative management strategies for the recreational use of ORVs consistent with the park's enabling legislation and other applicable laws and regulations.

Dated: December 12, 2007.

Tim A. Hudson,

Acting Regional Director, Alaska.

[FR Doc. E7–24853 Filed 12–20–07; 8:45 am]

BILLING CODE 4312–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Chesapeake and Ohio Canal National Historical Park.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission will be held at 9:30 a.m., on Friday, January 18, 2008, at the Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Hagerstown, Maryland 21740.

DATES: Friday, January 18, 2008.

ADDRESSES: Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Hagerstown, Maryland 21740.

FOR FURTHER INFORMATION CONTACT: Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740, telephone: (301) 714–2201.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to

the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairperson
Mr. Charles J. Weir
Mr. Barry A. Passett
Mr. James G. McCleaf II
Mr. John A. Ziegler
Mrs. Mary E. Woodward
Mrs. Donna Printz
Mrs. Ferial S. Bishop
Ms. Nancy C. Long
Mrs. Jo Reynolds
Dr. James H. Gilford
Brother James Kirkpatrick
Dr. George E. Lewis, Jr.
Mr. Charles D. McElrath
Ms. Patricia Schooley
Mr. Jack Reeder
Ms. Merrily Pierce

Topics that will be presented during the meeting include:

1. Update on park operations.
2. Update on major construction/development projects.
3. Update on partnership projects.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park. Minutes of the meeting will be available for public inspection six weeks after the meeting at Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Dated: November 1, 2007.

Kevin D. Brandt,

Superintendent, Chesapeake and Ohio Canal, National Historical Park.

[FR Doc. E7–24834 Filed 12–20–07; 8:45 am]

BILLING CODE 4312–JW–P

DEPARTMENT OF THE INTERIOR

National Park Service

Tallgrass Prairie National Preserve Advisory Committee; Notice of Public Meeting

AGENCY: National Park Service, Tallgrass Prairie National Preserve Advisory Committee, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Tallgrass Prairie National Preserve Advisory Committee (the Committee) will be held on Friday, February 8, 2008, at 9:30 a.m. at the Chase County Community Building, Swope Park, 1715 RD 210, Cottonwood Falls, Kansas.

The primary purpose of the meeting will be to receive Committee input on the Environmental Assessment, General Management Plan Revision/Site Development Study for New Visitor Center, Administrative, and Maintenance Facilities and to discuss other current and future topics concerning the preserve.

The meeting will be open to the public. Any person may file with the Committee a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Superintendent Stephen T. Miller at (620) 273–6034.

DATES: February 8, 2008, at 9:30 a.m.

ADDRESSES: Chase County Community Building, Swope Park, 1715 RD 210, Cottonwood Falls, Kansas.

FOR FURTHER INFORMATION CONTACT: Superintendent Stephen T. Miller, (620) 273–6034.

SUPPLEMENTARY INFORMATION: The Committee was established by Public Law 104–333 to advise the Secretary of the Interior and the Director of the National Park Service concerning the development, management, and interpretation of the Tallgrass Prairie National Preserve.

Stephen T. Miller,

Superintendent, Tallgrass Prairie National Preserve.

[FR Doc. E7–24845 Filed 12–20–07; 8:45 am]

BILLING CODE 4312–BE–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Northwest Area Water Supply Project, ND

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement (EIS) and Announcement of Public Hearings.

SUMMARY: The Bureau of Reclamation published a notice in the **Federal Register** on March 6, 2006 (71 FR 11226) announcing the commencement of work under the National Environmental Policy Act on an environmental impact statement for the Northwest Area Water Supply Project (NAWS Project). We are now notifying the public that Reclamation has prepared a Draft EIS which is now available for review and comment. The Draft EIS provides information and analyses related to water treatment for the NAWS Project that would further minimize the transfer of potentially invasive species from the Missouri River basin into the Hudson Bay basin from potential treatment or conveyance failures. The Draft EIS analyzes the potential environmental, cultural, and socioeconomic effects of four alternatives.

DATES: A 60-day public review period begins with the publication of this notice. Written comments on the Draft EIS are due by February 26, 2008, and should be submitted to Reclamation at the address given below.

Public hearings will be held during February 2008 in North Dakota. See the Supplementary Information section for dates of the public hearings.

ADDRESSES: Send comments on the Draft EIS to: Northwest Area Water Supply Project EIS, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck, ND 58502. See **SUPPLEMENTARY INFORMATION** section for meeting addresses.

FOR FURTHER INFORMATION CONTACT: Alicia Waters, Northwest Area Water Supply Project EIS, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck ND 58502; Telephone: (701) 221–1206; or FAX (701) 250–4326. You may submit e-mail to *awaters@gp.usbr.gov*.

SUPPLEMENTARY INFORMATION:

Public Hearing Dates:

- Monday, February 4, 2008, 7 p.m., Bismarck, North Dakota
- Tuesday, February 5, 2008, 7 p.m., Minot, North Dakota
- Thursday, February 7, 2008, 7 p.m., New Town, North Dakota

Public Hearing Locations:

- Bismarck—Best Western Ramkota, 800 South 3rd Street, Bismarck, ND 58504
- Minot—Sleep Inn & Suites, 2400 10th Street SW., Minot, ND 58701
- New Town—Four Bears Casino and Lodge, 202 Frontage Rd, Newtown, ND 58763

Public Review Locations:

Copies of the Draft EIS are available for public review at the following locations:

- Bismarck Public Library, 515 North 5th Street, Bismarck, ND
- Minot Public Library, 516 2nd Avenue SW., Minot, ND

- Dakotas Area Office, Bureau of Reclamation, 304 East Broadway, Bismarck, ND
- Bureau of Indian Affairs, Fort Berthold Agency, 202 Main Street, New Town, ND
- North Dakota State Library, 603 East Boulevard Avenue, Bismarck, ND
- Standing Rock Administrative Service Center, Building #1, North Standing Rock Avenue, Fort Yates, ND
- Mohall Public Library, 112 Main Street East, Mohall, ND
- Bottineau City Hall, 115 West 6th Street, Bottineau, ND
- Millennium Library, 251 Donald Street, Winnipeg, Manitoba, Canada

Background

The Garrison Diversion Unit's Municipal, Rural and Industrial Water Supply (MR&I) program was authorized by the U.S. Congress on May 12, 1986, through the Garrison Diversion Unit Reformulation Act of 1986. This act authorized the appropriation of $200 million of Federal funds for the planning and construction of water supply facilities throughout North Dakota. The NAWS project, initiated in November 1987, is being developed as a result of this authorization.

The NAWS project is designed as a bulk water distribution system that will service local communities and rural water systems in 10 counties in northwestern North Dakota including the community of Minot. The NAWS project is an interbasin transfer of water from Lake Sakakawea, in the Missouri River basin in North Dakota to Minot, North Dakota, in the Hudson Bay basin. Reclamation completed an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the project in 2001. Construction on the project began in April 2002. In October 2002, the Province of Manitoba filed a legal challenge in U.S. District Court in Washington, DC to compel the Department of the Interior to complete an EIS on the project. A Court Order dated February 3, 2005, remanded the case to Reclamation for completion of additional environmental analysis.

During the pendancy of the litigation filed by Manitoba, construction continued on the project. Construction of the 45 miles of raw water core pipeline began in April 2002 and is substantially complete. The Court has also granted permission for the design and construction of other project features for the distribution system. These project features include a high service pump station and distribution pipeline in Minot, North Dakota and a distribution pipeline to the community of Berthold, North Dakota.

Proposed Action

Reclamation proposes to construct a biota water treatment plant for the NAWS project that would reduce the risk of transferring potentially invasive species from the Missouri River basin to the Hudson Bay basin. As a part of this proposed action, Reclamation would implement construction methods and operational measures to further minimize the risk of invasive species transfer that may occur as a result of a failure in the treatment process or conveyance pipeline.

Purpose and Need for the Federal Action

The purpose of the proposed action is to adequately treat water from the Missouri River basin (Lake Sakakawea) using methods and measures that minimize the risk of transferring invasive species into the Hudson Bay basin. Previous environmental analyses have shown that the risk of the NAWS project transferring invasive species between these two drainage basins is very low. However, in response to the legal challenge by the Province of Manitoba, Canada, and the subsequent order from the U.S. District Court, Reclamation has conducted further environmental analyses of this issue.

Alternatives

Four water treatment alternatives are evaluated in the Draft EIS to meet the purpose and need for the proposed action. Each of the alternatives includes a combination of treatment features to form a process that reduces the potential risk of the NAWS project transferring invasive species from the Missouri River basin to the Hudson Bay basin. The alternatives considered in the EIS are generally listed in the order of their relative treatment inactivation/removal capability with the No Action Alternative providing the lowest level of treatment and microfiltration providing the highest level of treatment. The alternatives evaluated in the Draft EIS include:

- No Action. The preferred treatment alternative described in the Final EA would include chemical disinfection of raw Missouri River water prior to transfer into the Hudson Bay basin. This alternative includes additional safeguards of pipeline construction and operation to minimize the risk of transferring invasive species as a result of pipeline failure. Ultraviolet (UV) disinfection is provided along with softening and filtration at the existing Minot water treatment plant.
- Basic Treatment. This treatment alternative would include a pre-treatment (Coagulation, Flocculation, Sedimentation) process followed by chemical and UV disinfection prior to the water crossing the drainage divide. The purpose of the pre-treatment process is to reduce raw water turbidity which can influence the effectiveness of the disinfection processes.
- Conventional Treatment. This treatment process would include a pre-treatment of Dissolved Air Flotation (DAF) followed by media filtration and disinfection using UV and chemicals (chlorine and chloramines) within the Missouri River basin.
- Microfiltration. This treatment alternative would include pre-treatment (coagulation, pin floc) followed by membrane filtration and chemical and UV disinfection processes prior to the water crossing the drainage divide.

Public Disclosure Statement

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 10, 2007.

Michael J. Ryan,

Regional Director, Great Plains Region.

[FR Doc. E7–24575 Filed 12–20–07; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Grassland Bypass Project Extension, Merced and Fresno Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/environmental impact report (EIS/EIR) and notice of scoping meeting.

SUMMARY: The Bureau of Reclamation (Reclamation) and the San Luis & Delta-Mendota Water Authority (Authority) are preparing a joint EIS/EIR, pursuant to the National Environmental Policy Act and the California Environmental Quality Act, to evaluate effects of extending the Grassland Bypass Project (Project) until December 31, 2019. The Project's use of the San Luis Drain (Drain) was only authorized until

December 31, 2009. Additionally, subsurface drainage flows discharged to Mud Slough (North) were to have met water quality objectives by October 1, 2010, as required by the Regional Water Quality Control Board, Central Valley Region's (CVRWQCB) 1998 Water Quality Control Plan (Basin Plan) for the Sacramento River and San Joaquin River Basins. However, difficulty in acquiring final funding has delayed the development and availability of treatment and disposal technology to reduce selenium loads to meet the 2010 deadline. It is anticipated that the extension to 2019 would allow enough time to acquire funds and develop feasible treatment technology to meet Basin Plan objectives and Waste Discharge Requirements.

A scoping meeting will be held to solicit input on alternatives, concerns, and issues to be addressed in the EIS/EIR. Written comments may also be sent.

DATES: A scoping meeting will be held on Thursday, January 17, 2008 from 1:30 to 3:30 p.m. in Los Banos, CA.

Written comments on the scope of the EIS/EIR should be sent by January 25, 2008.

ADDRESSES: The scoping meeting location is the San Luis & Delta-Mendota Water Authority, Board Room, 842 Sixth Street, Suite 7, Los Banos, CA 93635.

Send written comments on the scope of the EIS/EIR to Ms. Laura Myers, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, via e-mail to *lmyers@mp.usbr.gov*, or faxed to 559–487–5130.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Myers, 559–487–5179.

SUPPLEMENTARY INFORMATION: Prior to 1996 when the interim Project was implemented, subsurface agricultural drainage water was conveyed through channels that were also used to deliver water to wetland habitat areas. This dual use limited Reclamation's ability to deliver fresh water to the wetlands.

The interim Project was implemented in November 1995 through an ''Agreement for Use of the San Luis Drain'' (Use Agreement) (Agreement No. 6–07–20–w1319) between Reclamation and the Authority. A Finding of No Significant Impact (FONSI No. 96–1–MP) was approved by Reclamation for the interim Project, and the environmental commitments set forth in the FONSI were made an integral component of the initial Use Agreement. The Use Agreement and its renewal in 1999 allowed for use of the Drain for a 5-year period that concluded September 30, 2001.

A new Use Agreement (Agreement No. 01–WC–20–2075) was completed on September 28, 2001, for the period through December 31, 2009. This original Project, as well as the proposed extension, consolidates subsurface drainage flows on a regional basis (from the 97,000-acre Grassland Drainage Area); applies the drainage to salt tolerant crops to reduce the volume; utilizes a 4-mile channel to place it into the Drain at a point near Russell Avenue (Milepost 105.72, Check 19); and utilizes a 28-mile segment of the San Luis Drain to convey the remaining drainage flows around wetland habitat areas which it discharges it to Mud Slough (North) and subsequently to the San Joaquin River.

The actions to be analyzed in the EIS/EIR include continued use of the Grassland Bypass Channel and a 28-mile segment of the San Luis Drain, continued discharges to Mud Slough (North), sediment management options within that San Luis Drain segment; ongoing use and development of areas utilized for application of subsurface drainage on salt tolerant crops, and programmatic consideration of future phases of the treatment and disposal program. The Project extension also includes a monitoring program with biological, water quality, and sediment components. Results of the monitoring program are currently reviewed by an Oversight Committee quarterly, or as necessary, to implement the Use Agreement.

In order to continue to discharge into Mud Slough (North) in the State's China Island Wildlife Area, the Authority would need to extend or amend a Memorandum of Understanding with the California Department of Fish and Game, Reclamation would need to extend the Use Agreement with the Authority for the continued use of the San Luis Drain after 2009, the CVRWQCB would need to revise their Basin Plan objectives for 2010 and amend the existing Waste Discharge Requirements in order to allow for anticipated drainage discharge into Mud Slough North, and Reclamation and the Authority would need to remove existing and future sediments from the affected portion of the Drain.

Special Assistance for Public Scoping Meeting

If special assistance is required at the scoping meetings, please contact Susan Mussett at 209–826–9696, or via e-mail at susan.mussett@sldmwa.org. Please notify as far in advance of the meeting as possible to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at 559–487–5933.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 17, 2007.

Susan M. Fry,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. E7–24822 Filed 12–20–07; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Red River Valley Water Supply Project, ND

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement (EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Bureau of Reclamation (Reclamation) is notifying the public that Reclamation and the State of North Dakota have prepared a Final EIS for the Red River Valley Water Supply Project (RRVWSP). The purpose of the RRVWSP is to supply water to meet the water needs of the people and industries in the Red River Valley through the year 2050. The project's needs were established by Congress in the Dakota Water Resources Act of 2000. The project needs are defined as municipal, rural, and industrial supplies; water quality; aquatic environment; and water conservation measures. Reclamation published a Draft EIS on December 30, 2005. Following public comments on the Draft EIS and the addition of new information, Reclamation published a Supplemental Draft EIS on January 31, 2007. The comment period for the Draft EIS started on December 30, 2005 and continued through April 25, 2007 with review of the Supplemental Draft EIS. Revisions were made to the Final EIS to incorporate responses to comments on the Supplemental Draft EIS and new

information. However, these revisions do not significantly impact the analysis or results presented in the Supplemental Draft EIS. The primary changes are inclusion of a final biological assessment prepared in compliance with the Endangered Species Act, an analysis of forecasted depletions and sedimentation on the Missouri River mainstem reservoir system, and a literature review of the best available climate change information. The Final EIS includes written responses to all public comments on both the DEIS and SDEIS. It also identifies the GDU Import to Sheyenne River Alternative as Reclamation's and the State of North Dakota's preferred alternative.

DATES: Reclamation will not make a decision on the proposed action until at least 30 days after the release of the Final EIS. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the selected action for implementation and will discuss factors and rationale used in making the decision.

FOR FURTHER INFORMATION CONTACT: Ms. Signe Snortland, telephone: (701) 221–1278, or FAX to (701) 250–4326, or *ssnortland@gp.usbr.gov*. Additional information including a complete copy of the Public Notice, Executive Summary, Final EIS, and Appendices are available on the Red River Valley Water Supply Project Web site at *http://www.rrvwsp.com*.

SUPPLEMENTARY INFORMATION: The final EIS considers five action alternatives and a no action alternative. Three of the action alternatives propose to use water from the Missouri River as an additional source of project water. The DEIS evaluated two treatment methods designed to reduce the risk of invasive species transfer (basic method and microfiltration). In response to comments on the DEIS, an additional treatment method, dissolved air flotation was evaluated in the SDEIS and FEIS. All of these treatment methods would be effective in removing or inactivating a broad range of organisms, including all of the potentially invasive species evaluated in the EIS. Estimated costs for construction, operation and maintenance of the treatment plant are provided. The Final EIS is available for public inspection at the following locations:

Iowa

- Des Moines Public Library, 100 Locust Street, Des Moines, IA

Kansas

- Topeka and Shawnee County Public Library, 1515 SW 10th Street, Topeka, KS

Minnesota

- Breckenridge Public Library, 205 7th Street North, Breckenridge, MN
- East Grand Forks Library, 422 4th Street Northwest, East Grand Forks, MN
- Moorhead Public Library, 118 5th Street South, Moorhead, MN
- Perham Public Library, 225 2nd Ave. NE, Perham, MN
- Red Lake Band of Chippewa Indians, PO Box 550, Red Lake, MN
- St. Paul Public Library, 90 West 4th Street, St. Paul, MN
- Warroad City Library, 202 Main Ave. NW, Warroad, MN
- White Earth Reservation, 26246 Crane Road, White Earth, MN

Missouri

- Kansas City Public Library, 14 West 10th Street, Kansas City, MO
- Missouri River Regional Library, 214 Adams Street, Jefferson City, MO

Montana

- Bureau of Reclamation, Great Plains Regional Office, 316 N. 26th Street, Billings, MT

Nebraska

- Lincoln City Libraries, 136 South 14th Street, Lincoln, NE

North Dakota

- Alfred Dickey Public Library, 105 3rd Street SE, Jamestown, ND
- Bureau of Indian Affairs, Turtle Mountain Agency, PO Box 60, Highway 5 West, Belcourt, ND
- Bureau of Indian Affairs, Fort Berthold Agency, 202 Main Street, New Town, ND
- Bureau of Indian Affairs, Fort Totten Agency, PO Box 270/Main Street, Fort Totten, ND
- Bureau of Reclamation, Dakotas Area Office, 304 E. Broadway Ave., Bismarck, ND
- Fargo Public Library, 102 3rd Street North, Fargo, ND
- Garrison Diversion Conservancy District, 401 Highway 281 NE, Carrington, ND
- Grand Forks Public Library, 2110 Library Circle, Grand Forks, ND
- Leach Public Library, 417 2nd Ave. North, Wahpeton, ND
- North Dakota State Library, 603 East Blvd. Ave., Bismarck, ND
- Standing Rock Administrative Service Center, Bldg. #1, North Standing Rock Avenue, Fort Yates, ND
- West Fargo Public Library, 109 3rd Street East, West Fargo, ND

South Dakota

- Bureau of Indian Affairs, Sisseton Agency, Veterans Memorial D, Agency Village, SD
- South Dakota State Library, 800 Governors Drive, Pierre, SD

Province of Manitoba

- Millennium Library, 251 Donald Street, Winnipeg, Manitoba, Canada

Province of Ontario

- Kenora Branch Library, 24 Main Street South, Kenora, Ontario, Canada

Dated: December 10, 2007.

Michael J. Ryan,

Regional Director, Great Plains Region.

[FR Doc. E7–24590 Filed 12–20–07; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 17, 2007.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: John Kraemer, OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not a toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Gear Certification (29 CFR part 1919).

OMB Control Number: 1218–0003.

Agency Form Number: OSHA–70.

Affected Public: Private Sector: Business or other for-profits.

Estimated Number of Respondents: 1,116.

Estimated Total Annual Burden Hours: 190.

Estimated Total Annual Costs Burden: $1,128,000.

Description: The OSHA–70 Form is used by applicants seeking accreditation from OSHA to be able to test or examine certain equipment and material handling devices, as required under the maritime regulations, 29 CFR part 1917 (Marine Terminals), and 29 CFR part 1918 (Longshoring). The OSHA–70 Form provides an easy means for companies to apply for accreditation. For additional information, see related notice published on September 17, 2007 at 72 FR 52912.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Powered Platforms for Building Maintenance (29 CFR § 1910.66).

OMB Control Number: 1218–0121.

Agency Form Number: None.

Affected Public: Private Sector: Business or other for-profits.

Estimated Number of Respondents: 900.

Estimated Total Annual Burden Hours: 135,656.

Estimated Total Annual Costs Burden: $0.

Description: The recordkeeping requirements of the Powered Platforms for Building Maintenance Standard (29 CFR 1910.66) include written emergency action plans and work plans for training; affixing load rating plates to each suspended unit, labeling emergency electric operating devices with instructions for their use, and attaching a tag to one of the fastenings holding a suspension wire rope; the inspection and testing of, and written certification for, building-support structures, components of powered platforms, powered platform facilities, and suspension wire ropes; and training employees and the preparation and maintenance of written training certification records. OSHA requires this information to be collected by employers in order to assure that employees who operate powered platforms receive uniform and comprehensive instruction and information in the operation, safe use, and inspection of this equipment. For additional information, see related notice published on October 5, 2007 at 72 FR 57072.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Standard on Manlifts (29 CFR 1910.68(e)).

OMB Control Number: 1218–0226.

Agency Form Number: None.

Affected Public: Private Sector: Business or other for-profits.

Estimated Number of Respondents: 3,000.

Estimated Total Annual Burden Hours: 37,801.

Estimated Total Annual Costs Burden: $0.

Description: 29 CFR 1910.68(e) specifies requirements for inspecting manlifts; and developing, maintaining, and disclosing inspection records. OSHA requires this information to be collected by employers for determining the cumulative maintenance status of a manlift and or taking the necessary preventive actions to ensure employee safety. For additional information, see related notice published on September 6, 2007 at 72 FR 51253.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–24777 Filed 12–20–07; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 17, 2007.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not toll-free number) / e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Carolyn Lovett, OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not a toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Request for Information on Earnings, Dual Benefits, Dependents and Third Part Settlements.

OMB Control Number: 1215–0151.

Agency Form Number: CA–1032.

Estimated Number of Annual Respondents: 50,000.

Estimated Total Annual Burden Hours: 16,667.

Total Estimated Annual Cost Burden: $22,000.

Affected Public: Individuals or households.

Description: In accordance with 20 CFR 10.528, DOL periodically requires each employee who is receiving compensation benefits to complete an affidavit as to any work, or activity indicating an ability to work, which the employee has performed for the prior 15 months. If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss under 5 U.S.C. 8105 or 8106 is suspended until DOL receives the requested report.

The information collected through the Form CA–1032 is used to ensure that compensation being paid is correct. Without this information, claimants might receive compensation to which they were not entitled, resulting in an overpayment of compensation. For additional information, see related notice published on August 29, 2007 at 72 FR 49737.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Worker Information—Terms and Conditions of Employment.

OMB Control Number: 1215–0187.

Agency Form Numbers: WH–516 and WH–516–Espanol.

Estimated Number of Annual Respondents: 129,250.

Estimated Total Annual Burden Hours: 77,550.

Total Estimated Annual Cost Burden: $93,060.

Affected Public: Private Sector: Farms.

Description: Various sections of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 et seq., require respondents [i.e., Farm Labor Contractors (FLCs), Agricultural Employers (AGERs), and Agricultural Associations (AGASs)] to disclose employment terms and conditions in writing to: (1) Migrant agricultural workers at the time of recruitment [MSPA section 201(a)]; (2) seasonal agricultural workers, upon request, at the time an offer of employment is made [MSPA section 301(a)(1)]; and (3) seasonal agricultural workers employed through a day-haul operation at the place of recruitment [MSPA section 301(a)(2)]. See 29 CFR 500.75–.76. Moreover, MSPA sections 201(b) and 301(b) require respondents to provide each migrant worker, upon request, with a written statement of the terms and conditions of employment. See 29 CFR 500.75(d). MSPA sections 201(g) and 301(f) require providing such information in English or, as necessary and reasonable, in a language common to the workers and that the U.S. Department of Labor (DOL) make forms available to provide such information. The DOL prints and makes Optional Form WH–516, Worker Information—Terms and Conditions of Employment, available for these purposes. See 29 CFR 500.75(a), 500.76(a).

MSPA sections 201(a)(8) and 301(a)(1)(H) require disclosure of certain information regarding whether State workers' compensation or state unemployment insurance is provided to each migrant or seasonal agricultural worker. See 29 CFR 500.75(b)(6). For example, if State workers' compensation is provided, the respondents must disclose the name of the State workers' compensation insurance carrier, the name of the policyholder of such insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which this notice must be given. See 29 CFR 500.75(b)(6)(i). Respondents may also meet this disclosure requirement, by providing the worker with a photocopy of any notice regarding workers' compensation insurance required by law of the state in which such worker is employed. See 29 CFR 500.75 (b)(6)(ii).

The Form WH–516 is an optional form that allows respondents to disclose employment terms and conditions in writing to migrant and seasonal agricultural workers, as required by the MSPA. Respondents may either complete the optional form and use it to make the required disclosures to workers or use the form as a written reflection of the information workers may request from employers under the MSPA. Disclosure of the information on this form is beneficial to both parties in that it enables workers to understand their employment terms and conditions, while also providing respondents with an easy way to disclose the information required by the MSPA and its regulations. For additional information, see related notice published on September 12, 2007 at 72 FR 52166.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–24810 Filed 12–20–07; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Delinquent Filer Voluntary Compliance Program

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (Pub. L. 104–13, 44 U.S.C. Chapter 35). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration is soliciting comments concerning the proposed extension of a currently approved collection of information included in the Delinquent Filer Voluntary Compliance Program.

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 19, 2008.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Labor has the authority, under section 502(c)(2) of the

Employee Retirement Income Security Act of 1974 (ERISA), to assess civil penalties of up to $1,000 a day [1] against plan administrators who fail or refuse to file complete and timely annual reports (Form 5500 Series Annual Return/Reports) as required under section 101(b)(4) of ERISA related regulations. Pursuant to 29 CFR 2560.502c–2 and 2570.60 *et seq.,* EBSA has maintained a program for the assessment of civil penalties for noncompliance with the annual reporting requirements. Under this program, plan administrators filing annual reports after the date on which the report was required to be filed may be assessed $50 per day for each day an annual report is filed after the date on which the annual report(s) was required to be filed, without regard to any extensions for filing.

Plan administrators who fail to file an annual report may be assessed a penalty of $300 per day, up to $30,000 per year, until a complete annual report is filed. Penalties are applicable to each annual report required to be filed under Title I of ERISA. The Department may, in its discretion, waive all or part of a civil penalty assessed under section 502(c)(2) upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely annual report.

The Department has determined that the possible assessment of these civil penalties may deter certain delinquent filers from voluntarily complying with the annual reporting requirements under Title I of ERISA. In an effort to encourage annual reporting compliance, therefore, the Department implemented the Delinquent Filer Voluntary Compliance (DFVC) Program (the Program) on April 27, 1995 (60 FR 20873). Under the Program, administrators otherwise subject to the assessment of higher civil penalties are permitted to pay reduced civil penalties for voluntarily complying with the annual reporting requirements under Title I of ERISA.

This ICR covers the requirement of providing data necessary to identify the plan along with the penalty payment. This data is the means by which each penalty payment is associated with the appropriate plan. With respect to most pension plans and welfare plans, the requirement is satisfied by sending a photocopy of the delinquent Form 5500 annual report [2] that has been filed, along with the penalty payment.

Under current regulations, apprenticeship and training plans may be exempted from the reporting and disclosure requirements of Part 1 of Title I, and certain pension plans maintained for highly compensated employees, commonly called ''top hat'' plans may comply with these reporting and disclosure requirements by using an alternate method by filing a one-time identifying statement with the Department. The DFVC Program provides that apprenticeship and training plans and top hat plans may, in lieu of filing any past due annual reports and paying otherwise applicable civil penalties, complete and file specific portions of a Form 5500, file the identifying statements that were required to be filed, and pay a one-time penalty.

II. Review Focus

The Department of Labor is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on April 30, 2008. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. Comments submitted in response to this notice will be summarized and/or included in the request for OMB.

Type of Review: Extension of a currently approved collection.

Agency: U.S. Department of Labor, Employee Benefits Security Administration.

Title: Delinquent Filer Voluntary Compliance Program.

OMB Number: 1210–0089.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Average Burden Hours/Minutes Per Response: 21 minutes.

Number of Respondents: 4,100.

Total Annual Responses: 4,100.

Total Annual Burden Hours: 145.

Total Burden Cost (Operating and Maintenance): $107,300.

Dated: December 7, 2007.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E7–24802 Filed 12–20–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 77–4

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments concerning the proposed extension of a currently approved collection of information, Class Exemption 77–4 for certain transactions between investment companies and employee benefit plans.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

[1] Adjusted to $1,100 per day pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 and the Debt Collection Improvement Act of 1996. *See* 62 FR 40696, July 29, 1997.

[2] DFVC information collection provisions originally required submission of the first page of the Form 5500 annual report. Because of the recent revisions to the Form 5500, the information needed to process the DFVC filing is no longer confined to the first page of the Form 5500. DFVC filers using a 1999 or later Form 5500 must submit a copy of all pages of the Form 5500 (generally 4), dated with original signature but without any schedules or attachments.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 19, 2008.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410 Fax: (202) 693–4745 (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Without the relief provided by this exemption, an open-end mutual fund would be unable to sell shares to or purchase shares from a plan when the fiduciary with respect to the plan is also the investment advisor for the mutual fund. As a result, plans would be compelled to liquidate their existing investments involving such transactions and to amend their plan documents to establish new investment structures and policies.

In order to insure that the exemption is not abused and that the rights of participants and beneficiaries are protected, the Department has included in the exemption three basic disclosure requirements. The first requires at the time of the purchase or sale of such mutual fund shares that the plan's independent fiduciary receive a copy of the current prospectus issued by the open-end mutual fund and a full and detailed written statement of the investment advisory fees charges to or paid by the plan and the open-end mutual fund to the investment advisor. The second requires that the independent fiduciary approve in writing such purchases and sales. The third requires that the independent fiduciary, once notified of changes in the fees, re-approve in writing the purchase and sale of mutual fund shares.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's approval of this ICR will expire on April 30, 2008. This notice requests comments on the extension of the ICR. The Department is not proposing or implementing changes to the existing ICR at this time in connection with this extension. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: Prohibited Transaction Class Exemption 77–4 for Certain Transactions Between Investment Companies and Employee Benefit Plans.

Type of Review: Extension of currently approved collections.

OMB Numbers: 1210–0049.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 431.

Total Responses: 82,000.

Frequency of Response: On occasion.

Average Time Per Response: 5 minutes.

Total Annual Burden: 7,000 hours.

Dated: December 10, 2007.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits SecurityAdministration.

[FR Doc. E7–24803 Filed 12–20–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations Prohibited Transaction Class Exemption 81–8

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employee Benefits Security Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, Prohibited Transaction Class Exemption 81–8 on investment of plan assets in certain types of short-term investments. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted on or before February 19, 2008.

ADDRESSES: Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax (202) 693–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 81–8 permits the investment of plan assets that involve the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of an employee benefit plan in certain types of short-term investments. These include investments in banker's acceptances, commercial paper, repurchase agreements, certificates of deposit, and bank securities. Absent the exemption, certain aspects of these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act (ERISA).

Provided that the requirements of the exemption are met, the exemption allows plans to invest in certain short term investments in debt obligations issued by certain persons who provide

services to the plan or who are affiliated with such service providers that otherwise might be prohibited under sections 406 and 407(a) of ERISA. Without this exemption, these types of short term transactions might not be permitted.

In order to ensure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that the conditions of the exemption have been satisfied, the Department has included in the exemption two basic disclosure requirements. Both affect only the portion of the exemption dealing with repurchase agreements. The first requirement calls for the repurchase agreements between the seller and the plan to be in writing. The second requirement obliges the seller of such repurchase agreements to agree to provide financial statements to the plan at the time of the sale and as future statements are issued. The seller must also represent, either in the repurchase agreement or prior to the negotiation of each repurchase agreement transaction, that there has been no material adverse change in the seller's financial condition since the date that the most recent financial statement was furnished which has not been disclosed to the plan fiduciary with whom the written agreement is made.

Without the recording and disclosure requirements included in this ICR, participants and beneficiaries of a plan would not be protected in their investments, the Department would be unable to monitor a plan's activities for compliance, and plans would be at a disadvantage in assessing the value of certain short-term investment activities.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on March 31, 2008. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: Prohibited Transaction Class Exemption 81–8 for Investment of Plan Assets in Certain Types of Short-Term Investments.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0061.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 45,969.

Total Responses: 229,845.

Frequency of Response: On occasion.

Estimated Burden Hours: 31,900.

Estimated Burden Costs: $85,000.

Dated: December 10, 2007.

Joseph S. Piacentini,

Director, Employee Benefits Security Administration, Office of Policy and Research.

[FR Doc. E7–24804 Filed 12–20–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations: Prohibited Transaction Class Exemption 96–62

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration is soliciting comments concerning the extension of a currently approved collection of information, Prohibited Transaction Class Exemption 96–62.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted on or before February 19, 2008.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) provides that the Secretary of Labor may grant exemptions from the prohibited transaction provisions of sections 406 and 407(a) of ERISA, and directs the Secretary to establish an exemption procedure with respect to such provisions. On July 31, 1996, the Department published Prohibited Transaction Exemption 96–62, which, pursuant to the exemption procedure set forth in 29 CFR 2570, subpart B, permits a plan to seek approval on an accelerated basis of otherwise prohibited transactions. A class exemption will only be granted on the conditions that the plan demonstrate to the Department that the transaction is substantially similar to those described in at least two prior individual exemptions granted by the Department and that it presents little, if any, opportunity for abuse or risk of loss to a plan's participants and beneficiaries. This ICR is intended to provide the Department with sufficient information to support a finding that the exemption meets the statutory standards of section 408(a) of ERISA, and to provide affected parties with the opportunity to comment on the proposed transaction, while at the same time reducing the

regulatory burden associated with processing individual exemptions for transactions prohibited under ERISA.

II. Review Focus

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on March 31, 2008. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. Comments submitted in response to this notice will be summarized and/or included in the request for OMB.

Agency: Employee Benefits Security Administration.

Title: Prohibited Transaction Exemption 96–62; Accelerated Approval of an Otherwise Prohibited Transaction.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0098.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals.

Total Respondents: 42.

Total Responses: 42.

Frequency: On occasion.

Estimated Total Burden Hours: 53.

Total Annual Costs (Operating and Maintenance): $43,491.

Dated: December 10, 2007.

Joseph S. Piacentini,

Director, Employee Benefits Security Administration, Office of Policy and Research.

[FR Doc. E7–24806 Filed 12–20–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 98–54—Foreign Exchange Transactions Executed Pursuant to Standing Instructions

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of Prohibited Transaction Exemption 98–54 (PTE 98–54).

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before February 19, 2008.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

PTE 98–54 permits certain foreign exchange transactions between employee benefit plans and certain banks, broker-dealers, and domestic affiliates thereof, which are parties in interest with respect to such plans, pursuant to standing instructions. In the absence of an exemption, foreign exchange transactions pursuant to standing instructions would be prohibited under circumstances where the bank or broker-dealer is a party in interest or disqualified person with respect to the plan under the Employee Retirement Income Securities Act (ERISA) or the Internal Revenue Code (Code).

The class exemption has five basic information collection requirements. The first requires the bank or broker-dealer to maintain written policies and procedures for handling foreign exchange transactions for plans for which it is a party in interest which ensure that the party acting for the bank or broker-dealer knows it is dealing with a plan. The second requires that the transactions are performed in accordance with a written authorization executed in advance by an independent fiduciary of the plan. The third requires that the bank or broker-dealer provides the authorizing fiduciary with a copy of its written policies and procedures for foreign exchange transactions involving income item conversions and *de minimis* purchase and sale transactions prior to the execution of a transaction. The fourth requires the bank or broker-dealer to furnish the authorizing fiduciary a written confirmation statement with respect to each covered transaction within five days of execution. The fifth requires that the bank or broker-dealer maintains records necessary for plan fiduciaries, participants, and the Department and Internal Revenue Service to determine whether the conditions of the exemption are being met for a period of six years from the date of execution of a transaction.

By requiring that records pertaining to the exempted transaction be maintained for six years, this ICR insures that the exemption is not abused, the rights of the participants and beneficiaries are protected, and that compliance with the exemption's conditions can be confirmed. The exemption affects participants and beneficiaries of the plans that are involved in such transactions as well as certain banks, broker-dealers, and domestic affiliates thereof.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on April 30, 2008. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

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

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 98–54 relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0111.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 35.

Responses: 8,400.

Average Response Time: 30 minutes.

Estimated Total Burden Hours: 4,200.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Dated: December 10, 2007.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E7–24807 Filed 12–20–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations: Prohibited Transaction Class Exemption T88–1

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employee Benefits Security Administration is soliciting comments concerning the extension of a currently approved collection of information, Prohibited Transaction Class Exemption T88–1.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted on or before February 19, 2008.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Exemption T88–1 adopts, for purposes of the prohibited transaction provisions of section 8477(c)(2) of the Federal Employees' Retirement System Act of 1986 (FERSA), certain prohibited transaction class exemptions (the Class Exemptions) granted pursuant to section 408(a) of the Employee Income Security Act of 1974.

This existing collection of information should be continued because, without the relief provided by this exemption, certain transactions described in the Class Exemptions might be prohibited under FERSA. The recordkeeping requirements incorporated within the class exemption are intended to protect the interests of plan participants and beneficiaries. This ICR is intended to provide the Department with sufficient information to support a finding that the exemption meets the statutory standards of section 408(a) of ERISA, and to provide affected parties with the opportunity to comment on the proposed transaction, while at the same time reducing the regulatory burden associated with processing individual exemptions for transactions prohibited under ERISA. The exemption affects participants and beneficiaries of the plans that are involved in such transactions as well as the party entering into the transaction with the plan.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on April 30, 2008. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Agency: Employee Benefits Security Administration.

Title: Prohibited Transaction Exemption T88–1.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0074.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals.

Total Respondents: 1.

Total Responses: 1.

Frequency: On occasion.

Estimated Total Burden Hours: 1.

Total Annual Costs (Operating and Maintenance): $0.

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

Dated: December 10, 2007.

Joseph S. Piacentini,

Director, Employee Benefits Security Administration, office of Policy and Research.

[FR Doc. E7–24808 Filed 12–20–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Suspension of Benefits

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments concerning the extension without change of the information collection request (ICR) included in the suspension of pension benefits regulation issued pursuant to the authority of section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA), which governs the circumstances under which pension plans may suspend pension benefit payments to retirees who return to work, or of participants who continue to work beyond normal retirement age (29 CFR 2530.203–3).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 19, 2008.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, D.C. 20210. Telephone: (202) 693–8410 Fax: (202) 693–4745 (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Section 203(a)(3)(B) of ERISA governs the circumstances under which pension plans may suspend pension benefit payments to retirees that return to work or to participants that continue to work beyond normal retirement age. Furthermore, section 203(a)(3)(B) of ERISA authorizes the Secretary to prescribe regulations necessary to carry out the provisions of this section.

In this regard, the Department issued a regulation which describes the circumstances and conditions under which plans may suspend the pension benefits of retirees that return to work, or of participants that continue to work beyond normal retirement age (29 CFR 2530.203–3). In order for a plan to suspend benefits pursuant to the regulation, it must notify affected retirees or participants (by first class mail or personal delivery) during the first calendar month or payroll period in which the plan withholds payment, that benefits are suspended. This notice must include the specific reasons for such suspension, a general description of the plan provisions authorizing the suspension, a copy of the relevant plan provisions, and a statement indicating where the applicable regulations may be found, (i.e., 29 CFR 2530.203–3). In addition, the suspension notification must inform the retiree or participant of the plan's procedure for affording a review of the suspension of benefits.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's approval of this ICR will expire on April 30, 2008. This notice requests comments on the extension of the ICR. The Department is not proposing or implementing changes to the existing ICR at this time in connection with this extension. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: Suspension of Benefits Regulation pursuant to 29 CFR 2530.203–3.

Type of Review: Extension of a currently approved collection.

OMB Number: 1210–0048.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 74,872.

Total Responses: 74,872.

Frequency of Response: On occasion.

Total Annual Burden: 18,718.

Total Burden Cost (Operating and Maintenance): $63,000.

Dated: December 10, 2007.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E7–24809 Filed 12–20–07; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE 07–096]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The need for educational survey(s) is to inform NASA and specific projects about education and programmatic issues and topics leading to improved customer service for stakeholders. The NASA-funded education programs served are primarily from the Earth Science education initiatives.

II. Method of Collection

NASA will utilize a Web-based education survey to inform NASA and specific projects about education and programmatic issues and topics leading to improved customer service for its stakeholders. The NASA education programs served, including those from REASON (Research, Education and Applications Solutions Network) program are primarily from Earth Science initiatives.

III. Data

Title: NASA Education Customer Survey.

OMB Number: 2700–XXXX.

Type of Review: New Collection.

Affected Public: Individuals or households, business and other for-profit, and Federal Government.

Estimated Number of Respondents: 5000.

Estimated Time Per Response: 0.25 hours.

Estimated Total Annual Burden Hours: 1250.

Estimated Total Annual Cost: $31,500.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

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

Gary Cox,

Executive Officer.

[FR Doc. E7–24773 Filed 12–20–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (07–097)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JE0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is an application form to be considered for an undergraduate or graduate scholarship. Students are required to submit an application package consisting of an application form, academic background, proposed area of study, curriculum vitae or personal statement, three letters of reference, and an essay or research proposal.

II. Method of Collection

NASA will utilize a Web-based application form with instructions and other application materials also on-line. All data will be collected via this web-based application (separate under graduate and graduate forms) and unless the user chooses to download the application form and other application materials and mail them in.

III. Data

Title: NASA Aeronautics Scholarship Program.

OMB Number: 2700–XXXX.

Type of review: New Collection.

Affected Public: Individuals.

Estimated Number of Respondents: 250.

Estimated Time Per Response: 1.0 hour.

Estimated Total Annual Burden Hours: 250 hours.

Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and

included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Executive Officer.

[FR Doc. E7–24774 Filed 12–20–07; 8:45 am]

BILLING CODE 7510–13–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 January 22, 2008. 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: *requestschedule@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.

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 Health and Human Services, Centers for Medicare & Medicaid Services (N1–440–07–1, 11 items, 4 temporary items). Records created and maintained by the Office of the Administrator. Proposed for permanent retention are recordkeeping copies of the Administrator's calendar, public speeches, correspondence, and official briefing books.

2. Department of Homeland Security, Science and Technology Directorate (N1–563–07–23, 2 items, 2 temporary items). Master file for an electronic information system used to manage applications for anti-terrorism technologies to be protected from certain liability claims.

3. Department of Homeland Security, United States Coast Guard (N1–26–08–1, 3 items, 3 temporary items). Master files for an electronic information system used to monitor maritime activities of non-Coast Guard vessels.

4. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (N1–436–08–1, 2 items, 2 temporary items). Master files and outputs for the Automated Commercial System, which monitors imports of listed products to track fraud and trafficking.

5. Department of the Navy, United States Marine Corps (N1–NU–07–13, 4 items, 4 temporary items). Logistics activity and analysis reports relating to education, training, property control, accountability, and readiness.

6. Department of the Navy, United States Marine Corps (N1–NU–07–16, 2 items, 2 temporary items). Master file and outputs associated with an electronic information system used to track the development, maintenance, and administration of utilities and services.

7. Department of State, Overseas Buildings Operations (N1–59–07–9, 4 items, 2 temporary items). Director's calendar and daily schedule and copies of thank-you notes and letters of condolence, commendation, or congratulation sent by the Director. Proposed for permanent retention are recordkeeping copies of the Director's correspondence files and travel briefing books.

8. Department of State, Overseas Buildings Operations (N1–59–07–14, 3 items, 2 temporary items). Chief of

Staff's calendar and daily schedule and administrative announcements distributed Bureau-wide. Proposed for permanent retention are recordkeeping copies of the Director's management and policy files.

9. Department of the Treasury, Financial Crimes Enforcement Network (N1–559–08–1, 1 item, 1 temporary item). Master files of the Foreign Travel Data Base.

10. Barry M. Goldwater Scholarship and Excellence in Education Foundation, Agency-wide (N1–508–08–1, 7 items, 4 temporary items). Records include chronological files, scholar files, master copies of form letters, and compliance reports. Proposed for permanent retention are recordkeeping copies of Board of Trustees files, general correspondence, and publications files.

11. Environmental Protection Agency (N1–412–07–54, 12 items, 7 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to a number of records series regardless of the recordkeeping medium. The record series include local government reimbursement program records, indemnification requests from states for response action contractors, administrative decision records, claims against the fund documents, Resource Conservation and Recovery Act (RCRA) corrective action files, emergency planning case files background documents and emergency operations test files background documents. Paper recordkeeping copies of these files were previously approved for disposal. Also included are RCRA corrective action files for land disposals, emergency planning directives and plans, emergency operations test reports, and Section 103 notifications for the Comprehensive Environmental Response, Compensation, and Liability Act, for which paper recordkeeping copies previously were approved as permanent.

12. Environmental Protection Agency (N1–412–07–55, 5 items, 5 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to a number of records series regardless of the recordkeeping medium. The record series include formerly used defense sites documents, emergency prevention risk management plan implementation records, emergency planning trade secret files, solid waste management plans, and underground storage tanks site and facility files. Paper recordkeeping copies of these files were previously approved for disposal.

13. Environmental Protection Agency, Headquarters (N1–412–07–56, 8 items, 7 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to a number of records series regardless of the recordkeeping medium. The record series include environmental impact assessments of nongovernmental activities, **Federal Register** report files, federal facilities data system reports, federal facilities referrals files, federal agency liaison files, and executive orders and Office of Management and Budget circulars review and comments files. Paper recordkeeping copies of these files were previously approved for disposal. Also included are environmental impact statement files, for which paper recordkeeping copies previously were approved as permanent.

14. Environmental Protection Agency (N1–412–07–68, 27 items, 18 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to a number of records series regardless of the recordkeeping medium. The record series include administrative law judge's case files for routine cases, administrative law judge's repository files, **Federal Register** documents signed by the administrator, external discrimination complaints, congressional committees files, state territories and interstate group files, agency proposed legislation files, weekly legislative reports, public awareness background or working paper files, public affairs project files, program and program activity evaluation work files and reports, and agency program plans review files. Paper recordkeeping copies of these files were previously approved for disposal. Also included are administrative law judges' case files for landmark cases, legislative history files, congressional hearing testimony files, press releases and other public awareness official files, and program policy planning files, for which paper recordkeeping copies previously were approved as permanent.

15. Environmental Protection Agency, Headquarters (N1–412–08–3, 1 item, 1 temporary item). This schedule authorizes the agency to apply the existing disposition instructions to records regardless of the recordkeeping medium. The records relate to notification of hazardous waste imports into the United States and hazardous waste exports to foreign countries. Paper recordkeeping copies of these files were previously approved for disposal.

16. Federal Election Commission, Office of the General Counsel (N1–339–06–1, 4 items, 3 temporary items). Records relating to litigation cases filed by or against the Commission, including working papers and copies used for revisions. Proposed for permanent retention are the official case files. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

17. Federal Mediation and Conciliation Service, Agency-wide (N1–280–07–5, 6 items, 6 temporary items). Content records and management or support records of the agency's public Web site and intranet Web site.

18. Federal Mediation and Conciliation Service, Office of Arbitration Services (N1–280–08–1, 4 items, 4 temporary items). Arbitration case administration data, R–19 arbitrator's report and statement of fees forms case files, official roster of arbitrators and personal data questionnaire forms, and notice processing records.

19. Helping to Enhance the Livelihood of People around the Globe (HELP) Commission, Agency-wide (N1–220–08–1, 8 items, 4 temporary items). Travel briefing materials, audio recordings of selected meetings, and web site. Proposed for permanent retention are recordkeeping copies of meeting minutes and notes, drafts and final copies of the Commission's report, and outreach materials.

20. National Archives and Records Administration, National Personnel Records Center (N1–64–08–1, 2 items, 2 temporary items). Master files and analytic/data warehouse for the Case Management and Reporting System, which manages response to customer requests for military records.

21. United States Institute of Peace, Task Force on UN Reform (N1–573–08–1, 8 items, 3 temporary items). Administrative records associated with the task force. Proposed for permanent retention are recordkeeping copies of background files, the final report, meeting and briefing books, congressional hearing files, and electronic program records.

Dated: December 17, 2007.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E7–24805 Filed 12–20–07; 8:45 am]

BILLING CODE 7515–01–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Paperwork Reduction Act; Notice of Intent To Collect; Comment Request

AGENCY: Office of National Drug Control Policy (ONDCP).

ACTION: ONDCP provides opportunity for public comment concerning the collection of information to identify the

Federal, State, and local resources assigned to drug control programs in our nation's largest cities.

SUMMARY: This action proposes the collection of drug control information from federal, state, and local governments.

SUPPLEMENTARY INFORMATION:

I. Background

ONDCP previously collected information to establish a baseline of federal, state, and local drug control funding levels in the nation's largest metropolitan areas. The collection of this data will help ONDCP measure spending level changes, coordinate services, and develop National Drug Control Strategies.

The project identifies in each affected city significant movements in key drug use measures, and encourages city administrators to use proven programs that increase efficiencies and effectiveness; promote coordination and collaboration; develop commitments; and, gather accurate performance measurement data.

Type of Collection: Reinstatement with change of an approved data collection that expired.

Title of Information Collection: Survey of drug treatment, drug use prevention, and law enforcement resources available to cities.

Frequency: Annually by fiscal year.

Affected Public: Instrumentalities of State, local, and tribal governments.

Estimated Burden: Minimal since providers maintain the data for other purposes.

II. Special Issues for Comment

ONDCP especially invites comments on: (a) Whether the proposed collection is necessary for the proper performance of ONDCP functions, including whether the information has practical utility; (b) ways to enhance information quality, utility, and clarity; and (c) ways to ease the burden on respondents, including the use of automated collection techniques or other forms of information technology.

ADDRESSES: Address all comments in writing within 60 days to Michael Reles. Facsimile and e-mail are the more reliable means of communication. Mr. Reles's facsimile number is (202) 395–5176, and his e-mail address is *mreles@ondcp.eop.gov*. The Web site for the ONDCP is *http://www.whitehousedrugpolicy.gov*. Mailing address is Executive Office of the President, Office of National Drug Control Policy, Washington, DC 20503. For further information, contact Mr. Reles at (202) 395–6608.

Signed at Washington DC on December 18, 2007.

Daniel R. Petersen,

Assistant General Counsel.

[FR Doc. E7–24870 Filed 12–20–07; 8:45 am]

BILLING CODE 3180–02–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 36, ''Licenses and Radiation Safety Requirements for Irradiators.''

2. *Current OMB approval number:* 3150–0158.

3. *How often the collection is required:* On occasion. It is estimated that there are approximately 2 NRC and 8 Agreement State reports submitted annually.

4. *Who is required or asked to report:* Irradiator licensees licensed by NRC or an Agreement State.

5. *The number of annual respondents:* 75 (15 NRC Licensees and 60 Agreement State Licensees).

6. *The number of hours needed annually to complete the requirement or request:* 35,08 hours (6,988 hours for NRC Licensees [6,878 recordkeeping + 110 reporting] and 28,020 hours for Agreement State Licensees [27,510 recordkeeping + 510 reporting]), or 467 hours per licensee.

7. *Abstract:* 10 CFR part 36 contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption, design and performance criteria for irradiators; and radiation safety requirements for opening irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection and maintenance. Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is being safely operated so that it poses no danger to the health and safety of the general public and the irradiator employees.

Submit, by February 19, 2008, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirement may be directed to the NRC Clearance Officer, Margaret A. Janney (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7245, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 17th day of December 2007.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–24873 Filed 12–20–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–6563]

Notice of License Amendment Request by Mallinckrodt Inc., St. Louis, MO, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment, and opportunity to request a hearing.

DATES: A request for a hearing must be filed by February 13, 2008.

FOR FURTHER INFORMATION CONTACT: John Buckley, Senior Project Manager, Reactor Decommissioning Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Mail Stop T–8F5, Washington, DC 20555–0001. Telephone: (301) 415–6607; fax number: (301) 415–5369; e-mail: *jtb@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) has received, by letter dated November 20, 2007, a license amendment application from Mallinckrodt Inc. (Mallinckrodt), requesting authorization to excavate unreacted Columbium-Tantalum (C–T) ore (URO) from an area of its St. Louis, Missouri downtown site. Mallinckrodt holds License No. STB–401, a 10 CFR part 40, Possession-Only license. The buried URO at issue comprises approximately 300 cubic yards of material located at the area known as ''Plant 6W''. Mallinckrodt plans to package and dispose of the material at an NRC-approved off-site disposal facility. An NRC administrative review, documented in a letter to Mallinckrodt dated December 10, 2007 (ML073400250), found the application acceptable to begin a technical review. If the NRC approves the amendment, the approval will be documented in an amendment to NRC License No. STB–401. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations. These findings will be documented in a Safety Evaluation Report. Environmental findings will be documented in a separate Environmental Assessment.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment regarding Mallinckrodt's request to excavate, and dispose of, URO located at its St. Louis, Missouri site. Any person whose interest may be affected by this proceeding, and who desires to participate as a party, must file a request for a hearing and, a specification of the contentions, which the person seeks to have litigated in the hearing, in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 FR 49139 (August 28, 2007). The E-Filing rule requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include

social security numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3)), then the requirements for paper documents set forth in 10 CFR 2.304(b) must be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by February 13, 2008. In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. Emergency Planning—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.

4. Physical Security—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.

5. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for Mallinckrodt's Request for License Amendment to Remove URO from Plant 6W, is ML073390035. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, MD, this 14th day of December 2007.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–24878 Filed 12–20–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–012 and 52–013]

South Texas Project Nuclear Operating Company South Texas Project Site, Units 3 & 4; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

South Texas Project Nuclear Operating Company (STPNOC) has submitted an application for combined licenses (COLs) for its South Texas Project (STP) site to build Units 3 & 4, located on approximately 12,200 acres in a rural area of Matagorda County, Texas, approximately 12 miles south-southwest of the city limits of Bay City, Texas, and 10 miles north of Matagorda Bay, along the west bank of the Colorado River. The application for the COLs was submitted by STPNOC by letter dated October 1, 2007, pursuant to 10 CFR Part 52. A notice of receipt of application, including the environmental report (ER), was published in the **Federal Register** on October 24, 2007 (72 FR 60394). A notice of acceptance for docketing of the application for COLs for STP was published in the **Federal Register** on December 5, 2007, (72 FR 68597). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the application for COLs and to provide the public with an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with 10 CFR 51.45 and 51.50, STPNOC submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Parts 51 and 52 and is available for public inspection at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records component of NRC's Agency-wide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html,* which provides access through the NRC's Electronic Reading Room (ERR) link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.* The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/new-licensing/col/south-texas-project.html.* In addition, the Bay City Public Library, 1100 7th Street, Bay City, Texas 77414 has agreed to make the ER available for public inspection.

The following key reference documents related to the application and the NRC staff's review process are available through the NRC's Web site at *http://www.nrc.gov:*

a. 10 CFR part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;

b. 10 CFR part 52, Early Site Permits (ESP); standard design certifications; and combined licenses for nuclear power plants;

c. 10 CFR part 100, Reactor Site Criteria;

d. NUREG–1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants;

e. NUREG/BR–0298, Brochure on Nuclear Power Plant Licensing Process;

f. Regulatory Guide 4.2, Preparation of Environmental Reports for Nuclear Power Stations;

g. Regulatory Guide 4.7, General Site Suitability Criteria for Nuclear Power Stations; and

h. Fact Sheet on Nuclear Power Plant Licensing Process.

The regulations, NUREG-series documents, regulatory guide(s), and fact sheet can be found under Document Collections in the ERR on the NRC webpage.

This notice advises the public that the NRC intends to gather the information necessary to prepare an EIS in support of the review of the application for COLs at the STP site. Possible alternatives to the proposed action (issuance of the COLs at the STP site) include no action and alternate sites. The NRC is required by 10 CFR 52.18 to prepare an EIS in connection with the issuance of COLs. This notice is being published in accordance with NEPA and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the COLs and, as soon as practicable thereafter, will prepare a draft EIS for public comment. Participation in this scoping process by members of the public, local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the draft EIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the EIS;

b. Determine the scope of the EIS and identify the significant issues to be analyzed In-depth;

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to but are not part of the scope of the EIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies; and

h. Describe how the EIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards including the State Historic Preservation Officer;

d. Any affected Indian tribe including the Tribal Historic Preservation Officer;

e. The Advisory Council on Historic Preservation;

f. Any person who requests or has requested an opportunity to participate in the scoping process; and

g. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC will hold a public scoping meeting for the EIS regarding STPNOC's COL applications. The scoping meeting will be held at the Bay City Civic Center, 201 7th Street, Bay City, Texas 77414, on Tuesday, February 5, 2008. The meeting will convene at 1:30 p.m., and will continue until 4:30 p.m., and again at 7:00 p.m., and will continue until 10:00 p.m., as necessary. The

meeting will be transcribed and will include the following:

(1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the EIS, and the proposed review schedule; (2) the opportunity for interested Government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the EIS. Additionally, the NRC staff will host informal discussions for one hour prior to the start of each public meeting at the Bay City Civic Center. No formal comments on the proposed scope of the COLs will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may register to attend or present oral comments at the meeting on the NEPA scoping process by contacting Ms. Cristina Guerrero by telephone at 1 (800) 368–5642, extension 2981, or by Internet to the NRC at *STP_COL@nrc.gov,* no later than January 29, 2008. Members of the public may also register to speak at the meeting within 15 minutes of the start of the session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the EIS. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Ms. Guerrero's attention no later than January 29, 2008, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scoping process for the EIS to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. To be considered in the scoping process, written comments must be postmarked or delivered by February 18, 2008. Electronic comments may be sent by the Internet to the NRC at *STP_COL@nrc.gov.* Electronic submissions must be sent no later than February 18, 2008, to be considered in the scoping process. The staff will not consider comments submitted later than as specified above unless time permits. Comments will be available electronically and accessible through the NRC's ERR link *http://www.nrc.gov/reading-rm/adams.html* at the NRC Homepage.

Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates. Notice of a hearing regarding the application for COLs will be the subject of a future **Federal Register** notice.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection through the ERR link. The staff will then prepare and issue for comment the draft EIS, which will be the subject of separate notices and a separate public meeting. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final EIS, which will also be available for public inspection.

Information about the proposed action, the EIS, and the scoping process may be obtained from Paul Kallan at (301) 415–2809 or *PBK1@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of December, 2007.

For the Nuclear Regulatory Commission.

James E. Lyons,

Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. E7–24875 Filed 12–20–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Independent External Review Panel To Identify Vulnerabilities in the U.S. Nuclear Regulatory Commission's Materials Licensing Program: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: NRC will convene a meeting of the Independent External Review Panel to Identify Vulnerabilities in the U.S. Nuclear Regulatory Commission's (NRC) Materials Licensing Program from January 14 through January 18, 2008. A sample of agenda items to be discussed during the public session includes: (1) The NRC's license reviewer training and oversight programs and (2) the NRC's Agreement State program. A copy of the agenda for the meeting can be obtained by e-mailing Mr. Aaron T. McCraw at the contact information below.

Purpose: Continue the panel's assessment of the NRC's licensing program by exploring license reviewer training and oversight and the Agreement State program.

Date and Time for Closed Sessions: January 18, 2008, from 9 a.m. to 12 p.m. This session will be closed so that NRC staff and the Review Panel can discuss safeguards information and pre-decisional information pursuant to 5 U.S.C. 552b (c)(3) and 5 U.S.C. 552b (c)(9)(B), respectively.

Date and Time for Open Sessions: January 14, 2008, from 2 p.m. to 4:30 p.m; and January 15–17, from 9 a.m. to 4:30 p.m.

Address for Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building, 11545 Rockville Pike, Rockville, Maryland 20852. Specific room locations will be indicated for each day on the agenda.

Public Participation: Any member of the public who wishes to participate in the meeting should contact Mr. McCraw using the information below.

FOR FURTHER INFORMATION CONTACT: Aaron T. McCraw, e-mail: *atm@nrc.gov,* telephone: (301) 415–1277.

Conduct of the Meeting

Mr. Thomas E. Hill will chair the meeting. Mr. Hill will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Mr. McCraw at the contact information listed above. All submittals must be received by January 7, 2008, and must pertain to the topics on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland 20852–2738, telephone (800) 397–4209, on or about May 8, 2008.

4. Persons who require special services, such as those for the hearing impaired, should notify Mr. McCraw of their planned attendance.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section

161a); the Federal Advisory Committee Act (5 U.S.C. App.); and the Commission's regulations in Title 10, *U.S. Code of Federal Regulations,* Part 7.

Dated: December 17, 2007.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E7–24869 Filed 12–20–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Personnel Demonstration Project; Pay Banding and Performance-Based Pay Adjustments in the National Nuclear Security Administration

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of approval of a demonstration project final plan.

SUMMARY: Chapter 47 of title 5, United States Code, authorizes the U.S. Office of Personnel Management (OPM), directly or in agreement with one or more agencies, to conduct demonstration projects that experiment with new and different human resources management concepts to determine whether changes in human resources policy or procedures would result in improved Federal human resources management. The National Nuclear Security Administration (NNSA) and OPM will test a pay banding system in which within-band pay progression is based on performance. The final project plan has been approved by NNSA, the Department of Energy, and OPM.

DATES: This demonstration project will be implemented on March 16, 2008.

FOR FURTHER INFORMATION CONTACT: National Nuclear Security Administration: Rosa Benavidez, Demonstration Project Leader, (202–586–1622), Office of Human Capital Management Programs, 1000 Independence Ave., SW., Washington, DC 20585. U.S.

Office of Personnel Management: Patsy Stevens, Systems Innovation Group Manager, U.S. Office of Personnel Management, (202) 606–1574, 1900 E Street, NW., Room 7456, Washington, DC 20415.

SUPPLEMENTARY INFORMATION:

1. Background

In May 2006, NNSA responded to OPM's solicitation of interest in undertaking a demonstration project to experiment with and test the concept of performance-based pay increases. NNSA already had substantial experience with such a mechanism. NNSA's enabling statute *(National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106–65, as amended)* provided the NNSA Administrator with the authority to establish not more than 300 scientific, engineering, and technical positions as necessary to carry out the Administrator's responsibilities, and to appoint individuals to these positions and fix their compensation without regard to title 5, United States Code (U.S.C.) [hereafter in this notice referred to as the ''NNSA excepted service system'']. In developing an employment system to support this authority, NNSA opted for pay banding and designed a performance-based pay system. NNSA has made full use of its excepted service system authority and considers pay-for-performance a highly effective tool to attract, reward, and retain high performers. OPM's solicitation was opportune. NNSA now desires to test the feasibility of expanding pay-for-performance among the ranks of its larger General Schedule (GS) workforce. At the same time, NNSA sees the demonstration project as an opportunity to streamline the traditional position classification system that governs GS positions by banding together one or more GS grades. NNSA had done similar banding when it established its excepted service system some years before. When NNSA submitted its official proposal to OPM in August 2006, pay banding was a vital part of the plan.

2. Overview

The NNSA Demonstration Project proposal was approved by OPM and publicized in the **Federal Register** on February 28, 2007. With OPM's preliminary approval given, and knowing that NNSA would receive critical comments from the public and have about 6 months to refine its plan, NNSA's Administrator asked the agency's top program managers to re-examine projected career paths and proposed pay bands to ensure they effectively met the varying mission requirements and management needs found in NNSA's primary nuclear weapons, nuclear nonproliferation, and naval reactors propulsion programs. NNSA's Office of Human Capital Management Programs facilitated this re-examination. The agency's top managers were briefed on the various management and mission implications of the project, and discussions with managerial stakeholder groups were held to elicit insights and perspectives on how to ensure the project makes credible and meaningful contributions to enhancing the overall excellence of NNSA's twenty-first century workforce.

Meanwhile, there was a 30-day public comment period immediately following publication of the proposed demonstration project plan in the **Federal Register**, culminating in a public hearing on April 4, 2007, held at the Department of Energy (DOE) headquarters in Washington, DC. A total of 55 individuals, mostly NNSA employees, one NNSA sub-organization, and one labor organization, submitted written comments and questions. Two additional individuals provided comments and asked questions at the public hearing. Many of these commenters offered multiple comments and questions. A total of 170 different comments and questions were received, with some of them duplicative. Comments covered a number of different management and human resources topical areas, and in some cases, pertained to more than one topic. Two broad topics relating to pay bands and pay-related issues received the largest number of comments and questions by a considerable margin. There were 45 comments on pay-related issues and 39 on issues relating to pay bands. Other topical issues earning numerous comments/questions included staffing (17), position classification (14), management accountability (14), excepted service (10), employee relations (7), employee equity (6), performance management (5), and reduction in force (4). An additional 25 comments and questions did not fall into one of the above topical areas. Every comment and question received was extremely important, as each helped to focus NNSA's top leadership during the Administrator's re-examination of the project plan and helped the leadership to better understand the long-term management and employee implications of the project. Public comments and questions often served as a catalyst to raising additional questions on the part of top management. As a result of public comments received, NNSA has made a number of substantive refinements to its plan and a few clarifying editorial and textual changes as well.

3. Summary of Comments and Responses

Comments are arranged into 11 broad topical areas that correspond to the topics identified in the previous section and are presented not in an order dictated by the number of comments received, but in an order that reflects the logic of the project's design scheme and contents; i.e., in a topical order beginning with pay banding and devolving through pay, position classification, staffing, performance

management, employee matters, and management matters. NNSA's responses are generic summaries relative to the major issues raised by comments/questions, rather than point-by-point responses.

(a) Career Paths and Pay Bands

There were several comments about proposed career paths, several comments about the constituent job series in each career path, several comments about proposed pay band pay rates, many comments about the lack of pay band symmetry across career paths, and many comments about the structure of proposed pay bands relative to the pay band structure in NNSA's excepted service system.

(1) Career Paths

Comments: Several commenters wondered why NNSA didn't establish a supervisory career path to recognize and reward supervision or have more targeted and occupationally narrower career paths, as the Defense Department's National Security Personnel System does.

Response: In designing proposed career paths, NNSA wanted to take the broadest approach that made sense, given the nature of the work performed and the nature of the occupations requiring this work. The broader the design approach, the more employees are treated alike and the simpler it is to administer pay banding. Employee equity and systemic simplification are central goals of this project. In deciding on the original career path proposal, NNSA opted to essentially build its career paths around OPM's white-collar ''PATCO'' categories with one exception. The PATCO scheme encompasses extremely broad groupings of white-collar occupational categories, largely based on differences in the nature of work and the essential job knowledge required to successfully perform the work (for instance, whether work accomplishment requires certain educational attainments, or analytical ability, or subject-matter competencies, and so on). OPM defines each distinct occupational job series according to whether work is professional (''P''), administrative (''A''), technical (''T''), clerical (''C''), or falls into a miscellaneous others (''O'') category. NNSA's original proposal simply lumped into two broad primary career paths all ''professional'' occupations and all ''administrative'' occupations, respectively, while combining all ''clerical'' and ''technician'' occupations into a third composite career path, irrespective of whether positions in these career paths possessed classifiable supervisory duties. There is no distinct PATCO category for supervision. The notable exception to this extremely broad general approach was an extremely narrow fourth career path, which covered only the GS–084 Nuclear Material Courier occupation. Notwithstanding the inclusion of only one job series, this career path covers a sizable block of employees. There are about 300 couriers scattered throughout the United States.

In light of the comments received regarding career paths, NNSA's top managers have reconsidered and refined certain elements of the original proposal, including career paths. NNSA has reconstituted its two primary career paths into an *Engineering and Scientific Career Path* and a *Professional, Technical, and Administrative Career Path* and is establishing a fifth career path for interns enrolled in NNSA's Future Leaders Program.

The most populous jobs in NNSA are engineering, followed by scientific. As of August 2007, there were 205 GS–801 employees, 64 GS–840 employees, and another 24 employees in positions classified in other GS–0800 occupations. There were also 64 GS–1301 employees and 7 in other GS–1300 occupations. All together, there were 364 General Schedule employees in engineering and scientific occupations, in complement to the additional 425 engineering and scientific employees appointed under NNSA's excepted service system authority and through two other DOE excepted service authorities. Because engineering and scientific employees perform work vital to NNSA's primary nuclear weapons, nuclear nonproliferation, and naval reactors missions, and because this cadre—engineers and scientists serving under either the General Schedule or the excepted service system—predominates in NNSA in comparison to other professional occupations (e.g., foreign affairs specialists, industrial hygienists, attorneys, and the like), the agency's top managers have decided to reconstitute the *Engineering and Scientific Career Path* to exclude other ''professional'' occupations. These other professional occupations are now incorporated into the reconstituted *Professional, Technical, and Administrative Career Path*.

Future Leaders are recruited with academic achievement and diversity in mind and traditionally have been appointed under several competitive and excepted service authorities, with varying conditions of employment and advancement opportunities unique to each respective appointing authority. Establishing a *Future Leaders Career Path*, into which all interns will be appointed and advanced, and making all participants subject to pay banding will be of great benefit to NNSA and the interns. Not only will the human capital management practices attendant to these employees be standardized, but so will development and advancement opportunities—one set of rules and expectations for all Future Leader interns.

In lieu of a supervisory career path, or a supervisory pay differential, NNSA will seek to recognize and reward supervisory performance by providing supervisory bonuses as described in the project plan.

(2) Occupational Series in Career Paths

Comments: Several commenters wanted to know how NNSA decided which job series to assign to which career paths. In particular, there were questions relating to why certain ''administrative'' occupations were treated separately from ''professional'' occupations, since in the opinion of some commenters, the work accomplished in NNSA, regardless of whether performed, for example, by an engineer or program analyst, or an accountant or budget analyst, was pretty much the same.

Response: As explained in the response immediately above, NNSA's original career path proposal conformed generally to OPM's PATCO categories. OPM assigns each authorized job series to one of these categories for definitional and pay purposes. In constructing its three broad career paths in the original proposal, NNSA simply used the same PATCO series assignments as does OPM. In light of comments received regarding the proposed demonstration project plan, NNSA has reconsidered and refined certain elements of the original proposal, including the constituent job series that make up respective career paths. For instance, only professional positions whose occupational job series are found in OPM's ''GS–0800 Engineering and Architecture Group'' and ''GS–1300 Physical Sciences Group'' are to be included in NNSA's redesigned *Engineering and Scientific Career Path*. After further reflection, NNSA could not agree that such professional occupations as GS–510 accountants, GS–690 industrial hygienists, and GS–905 attorneys, employees who primarily ''support'' the main missions of NNSA, belonged in the same career path as engineers and scientists, those who do the pre-eminent mission work of NNSA. Further, it was not felt that GS–130 foreign affairs specialists, with their significantly

''non-technical'' knowledge base, albeit professional employees who perform primary mission work, should be grouped in the same career path as engineers and scientists. Similarly, such professional occupations as GS–1102 contract specialist and GS–1515 operations research analyst are to be included in NNSA's redesigned and expanded *Professional, Technical, and Administrative Career Path*.

(3) Pay Rates

Comments: Some commenters pointed out that the pay rates associated with NNSA's proposed pay bands were lesser in value than corresponding pay rates found in the demonstration projects and alternative personnel systems of other Federal agencies, or even in comparison with the pay rates in NNSA's own excepted service system. Several commenters felt this rendered NNSA uncompetitive in the labor market versus these other systems, and several considered lower pay rates unfair and not consistent with the principle of ''equal pay for equal work.''

Response: NNSA looked at two basic occupational questions in considering these comments:

1. Historically, has NNSA been able to attract and retain critical skills to carry out important work within the traditional GS grade and pay structure?

2. Is NNSA losing employees to pay-banded agencies with enhanced pay rates?

In looking at the first question, what NNSA found was that there is no directly correlative data relating to ability ''to attract and retain critical skills,'' but there is plenty of anecdotal information. NNSA experiences instances of recruitment difficulty in two basic circumstances, (1) when a local private employer successfully competes for a top prospect by offering a higher starting salary than NNSA can, and (2) at locations that are considered geographically isolated and remote, and where top candidates are scarce. But despite these instances, NNSA has not experienced a general pattern of recruitment difficulty because NNSA's important national security work has an intrinsic attraction to prospective candidates, and because NNSA makes selective good use of Government-wide recruitment incentives. The second question was answered through a straightforward analysis of the data: NNSA is not losing current employees to any significant degree to agencies with enhanced pay rates, such as to the National Security Personnel System (NSPS) in the Department of Defense. In fact, during the past two years, NNSA has gained 13 employees (not including senior executives) from NSPS, while losing only 9 to NSPS.

Based on these findings, NNSA's initial approach to establishing pay band pay rates is affirmed. NNSA remains committed to its demonstration project principle to construct pay band thresholds and boundaries, and associated pay rates, consistent with OPM's official classification criteria and the Government's prevailing pay structure.

While the notion of pay rates in excess of the current rates permissible under the traditional GS pay system is attractive to many managers and employees, implementing enhanced pay rates on a broad scale is not compelling now on the evidence in hand. Nor is NNSA prepared at this time to undertake systematic occupational market studies to validate the need for enhanced pay rates or to develop NNSA-only position classification criteria and standards, which are prerequisites to obtaining OPM's approval to institute enhanced pay rates. However, we note that the demonstration project includes an authority to establish special staffing supplements, in lieu of locality payments, in order to increase pay when necessary to address serious recruitment and retention difficulties associated with a particular category of jobs.

(4) Pay Band Structures

Comments: Perhaps no other topic generated so many comments and often conflicting opinions. Many commenters felt that NNSA's proposal failed to live up to the project's goal to achieve greater parity with NNSA's own excepted service pay-banded system, not only due to differences in pay band pay rates but also due to differences in how GS grades were to be bundled. Others took strong exception to the differences in proposed pay-band structures for ''professional'' and ''administrative'' positions, feeling that because, in their opinions, such work was of equivalent value to NNSA, it was unfair not to have identical pay bands, while others took a contrary view, feeling that engineers and scientists should not be in the same career path as other professional and administrative occupations. Still others offered that when NNSA proposed only single-grade pay bands (such as a GS–13 pay band, a GS–14 pay band, and a GS–15 pay band in the proposed ''administrative'' career path), this defeated the purpose of pay banding, that in fact it was not ''pay banding'' at all but just more of the same bureaucratic classification practice. Some commenters proposed their own pay band structures. Several commenters suggested that NNSA establish supervisory pay bands with higher pay rates to recognize the value of supervision and to incentivize the voluntary movements of technical employees into leadership positions.

Response: NNSA found much to agree with in the many comments received on this topic. These comments led NNSA to reconsider the proposed pay-band structures, while recognizing that no matter what NNSA did in response to comments, there was no practical way to reconcile all viewpoints or satisfy everyone's concerns. Consequently, NNSA revised some, though not all, of its earlier pay-band structures, where the work and employee promotional patterns supported doing so. NNSA agreed that the exercise of supervision compounds the complexities and value of a position's work and should be recognized in some way. NNSA is therefore adopting a supervisory bonus mechanism as part of its performance policies.

In reconsidering NNSA's fundamental approach to pay bands, NNSA weighed the various and often competing arguments, only to affirm in the end the original approach. Upon closer study, NNSA found that lying just beneath the surface of a seemingly attractive ''equity'' argument on behalf of identical pay bands was the more powerful reality that all work is not equivalent in grade value across occupations and organizations, that in fact there can be meaningful differences in the inherent level of work performed by professional and administrative employees, and that fulfilling the principle of ''equal pay for substantially equal work'' actually results in pay band structures that reflect these meaningful differences. Positions attributable to a given career path will have traditional grading patterns, and employee recruitment and promotion patterns, in common with other positions in the career path, but not in common with positions in other career paths.

Consequently, NNSA not only revised its career paths but is revising the attendant pay band structures, as follows:

I. Engineering and Scientific Career Path: Encompasses all professional positions classified in the GS–0800 and GS–1300 job series, subdivided into the following pay bands:

- Pay Band I (GS–5 through GS–8)
- Pay Band II (GS–9 through GS–11)
- Pay Band III (GS–12/GS–13)
- Pay Band IV (GS–14/GS–15)

II. Professional, Technical, and Administrative Career Path: Encompasses all OPM-recognized professional occupations, except GS–

0800 engineers and GS–1300 scientists, requiring positive education requirements, and all other subject-matter, business, and administrative occupations characterized by a traditional two-grade interval pattern of grade progression. All positions encompassed within this career path are subdivided into the following pay bands:

- Pay Band I (GS–5 through GS–8)
- Pay Band II (GS–9 through GS–12)
- Pay Band III (GS–13/GS–14)
- Pay Band IV (GS–15)

III. Technician and Administrative Support Career Path: Encompassing technician, secretarial, assistant, and clerical occupations, and similar positions characterized by a traditional one-grade interval pattern of grade progression. All positions encompassed within this career path are subdivided into the following pay bands:

- Pay Band I (GS–1 through GS–4)
- Pay Band II (GS–5 through GS–8)
- Pay Band III (GS–9)

IV. Nuclear Materials Couriers Career Path: Encompassing all positions classified into the GS–084 job series, subdivided into the following pay bands:

- Pay Band I (GS–8 through GS–10)
- Pay Band II (GS–11)
- Pay Band III (GS–12)
- Pay Band IV (GS–13)

V. Future Leaders Career Path: Encompassing the positions of all interns enrolled in NNSA's 2-year Future Leaders Program, in various engineering, scientific, professional, technical, and administrative occupations. All positions encompassed within this career path are subdivided into the following pay bands:

- Pay Band I (GS–5 through GS–8)
- Pay Band II (GS–9 through GS–11)
- Pay Band III (GS–12/GS–13) [1]

The arguments in favor of readjusting NNSA's original pay-band proposals were several. (The only pay bands not altered from the original are those associated with career path III.) The readjustment in the *Engineering and Scientific Career Path* not only better reflects the pre-eminent work done in NNSA by engineers and scientists, but is more consistent with the actual promotional patterns found in the demographics of the workforce. Most General Schedule engineers and scientists in NNSA are either at GS–14, or GS–15, with development patterns that often see GS–14 positions advance to GS–15 levels of work. Such advancement occurs traditionally under both competitive and noncompetitive promotional procedures, when such traditional job factors as Guidelines, Complexity, Scope and Effect, and others, have evolved under the weight of natural employee growth and maturation to the highest levels creditable (e.g., levels 2–5, 3–5, 4–6, and so on) under respective engineering and scientific standards and guides. In an agency with highly technical national security missions and one-of-a-kind nuclear weapons, nonproliferation, and naval reactor propulsion programs, it is not surprising to find engineering and scientific positions expanding in scope and responsibility due to recognizable increases in technical job expertise and project authority, which so often accrue to such positions over time. Out of 364 GS engineers and scientists, there are 147 GS–14 and 148 GS–15 positions that are graded in almost every case, including many classified supervisors, on their paramount non-supervisory work assignments.

Similarly, agency program managers, agreeing with many of the comments received on this subject, questioned the validity and effectiveness of the separate single-grade ''bands'' at the GS–13, –14, and –15 levels previously proposed for the now reconstituted *Professional, Technical, and Administrative Career Path*. As NNSA looked at the actual distributions of professional, subject-matter, and administrative positions that would be covered within this broad career path, as well as relevant employee promotional patterns, NNSA realized that this path's pay-band structure also required adjusting. The new pay-band patterns in this career path are more consistent with the demographics of the actual workforce today; the majority of positions found in this career path are graded at GS–13 and GS–14, about 640 encumbered positions at this writing. Combining GS–13 and –14 into band III therefore makes better sense to NNSA than the original proposal did, given the relationship between these two grades among the many occupations covered by the career path. Generally, the main difference in NNSA between GS–13 and GS–14 in actual classification practice is that the Supervisory Controls and Guidelines factors are credited one level higher at GS–14, the two factors most readily influenced by the greater freedom from supervision and guidelines that invariably comes to a position through seasoning, through greater maturity of judgment, and through a derivatively more confident and authoritative incumbent performance. Combining these two grades into a single pay band, covering the majority of employees serving in positions in this important career path, shifts the focus of employee pay advancement from position classification and merit promotion criteria to performance-based criteria, one of the chief goals of this demonstration project. This shift in pre-eminence from classification and promotion criteria to performance also occurs, of course, in the examples of other pay bands in other occupational career paths, and serves in the aggregate to underscore how pay-banding intrinsically enhances the potential effectiveness of a performance-based pay system.

A review of actual promotional patterns supports combining GS–13 and –14 into one pay band. Of the 328 GS–14 employees serving in occupations that will be covered by the *Professional, Technical, and Administrative Career Path*, 80 were promoted from NNSA GS–13 positions in the same occupational series and line of work.

With respect to the *Nuclear Materials Couriers Career Path*, NNSA's Office of Human Capital Management Programs worked diligently with the top managers from the Office Secure Transportation, the NNSA organization in which the couriers are assigned, to arrive at a pay-band pattern that better met both management's mission needs and employee advancement expectations. In developing pay bands for the new *Future Leaders Career Path*, the Future Leaders Program Manager was heavily consulted.

(5) Comparisons With NNSA Excepted Service System Pay Bands

Comments: Many commenters questioned why NNSA proposed pay bands for General Schedule engineering and scientific positions that did not correspond to the pay band structure in NNSA's own excepted service system, pointing out, in their opinions, that the work was identical.

Response: To understand the different pay band structures between General Schedule and NNSA's excepted service system engineering and scientific positions, the fundamental distinction between these two systems must be understood. While it is true that many current excepted service system engineers and scientists are former General Schedule engineers and scientists, and that both General

[1] Although all Future Leaders will have career ladders to pay band III in either the *Engineering and Scientific Career Path*, or the *Professional, Technical, and Administrative Career Path*, a control point equating to the salary of GS–12 step 10 will be established for those Future Leaders with a Masters Degree in business-related and administrative fields to enable these individuals to be converted from band III of the *Future Leaders Career Path* to band II of the *Professional, Technical, and Administrative Career Path* upon successful completion of the 2-year program.

Schedule and excepted service system employees can currently be found working in the same facilities and offices, what needs to be kept in mind when comparing the two systems is the very nature of the authorities through which respective employees are appointed and paid. The NNSA Act (P.L. 106–65, as amended) gives the Administrator the authority to appoint employees to scientific and engineering positions and to pay them without regard to title 5, United States Code, when the Administrator deems it necessary to accomplish his statutory responsibilities. By design, these positions are established in unusual occupational circumstances (either extreme difficulty of work, or extreme difficulty in recruitment), and do not represent the engineering and scientific work common to many occupational settings in NNSA. Furthermore, excepted service system employees in concept have been held to a higher performance threshold (as befitting a performance-based pay system) than their General Schedule counterparts, which NNSA believes has resulted in an overall improvement in excellence and mission accomplishment—the reason NNSA now seeks to expand the applicability of pay-for-performance. At the same time, these excepted service system employees do not possess traditional civil service entitlements, such as ''career status,'' or certain protections having to do with reduction in force and other employment matters—a key design difference between the two systems. Although it is true that NNSA could request that OPM approve pay rates exceeding those traditionally associated with GS grades under the authority of the demonstration project, as discussed in subsection C above, NNSA is not now prepared to undertake systematic occupational market studies to validate the need for enhanced pay rates or to develop NNSA-only position classification criteria and standards.

(b) Excepted Service

Comments: There were other comments comparing the demonstration project to NNSA's existing excepted service system, aside from concerns relating to proposed pay bands and pay rates. A number of commenters expressed the view that NNSA's current General Schedule employees be permitted the opportunity to volunteer for the demonstration project, just as General Schedule engineers and scientists had the opportunity to volunteer to enter the NNSA excepted service system at the time of its inception a few years ago. Similarly, others suggested that NNSA provide an opportunity for current excepted service employees to volunteer for the demonstration project, and in essence, volunteer out of the excepted service system. There were various reasons given for this latter suggestion. The absence of ''career status'' (and the resulting inability to apply for many of NNSA's promotional opportunities), and the absence of ''second-round'' RIF protections, were mentioned. Also, some excepted service employees feel topped out in terms of pay potential.

Response: Providing an opportunity to volunteer in or out of the demonstration project, or the excepted service system for that matter, is not tenable today. Because NNSA is experimenting with a pay-banding and pay-for-performance system that, were it to be successful, would replace entire segments of the General Schedule workforce, allowing employees to volunteer to participate in the demonstration project would be unwieldy to manage, impractical to administer, and, more compelling, not in the best interest of efficient Government. Furthermore, NNSA intends to continue to make full use of its unique excepted service employment authority in those circumstances and for those purposes that the *NNSA Act* envisions. From a practical standpoint, excepted service employees who have not previously competed for competitive appointment and who do not already have career status will have to apply for demonstration project positions through an appropriate appointing authority.

(c) Pay and Pay Pools

Comments: This was the other topical issue receiving many comments. The most frequent pay comment, by far, had to do with the issue of annual comparability pay increases, locality pay, and the effects of performance on these annual pay events. NNSA had proposed one pay pool from which general pay adjustments and performance-based pay increases were to have been funded and paid out all at one time, and many commenters felt the plan was unclear in describing the interrelationships among these pay events. Other comments concerned (1) the effects of budgetary constraints on the amounts and timing of payouts; (2) the apparent lack of pay-setting guidelines with respect to hiring new employees and promoting existing employees; (3) the apparent lack of a financial incentive for an NNSA employee to be reassigned to another NNSA job or location to fill a critical need; (4) the pay implications of supervisory incompetence, caprice, or favoritism in appraising employee performance; and (5) the effect of pay banding on premium pay for overtime work for the courier workforce, the payment of night differential for work performed beyond the first-40-hour tour of duty, and other pay matters relating to the unique irregular work schedules of the couriers.

Response: NNSA agrees that the original proposal was not as clearly presented as it should have been, and furthermore, has reconsidered certain mechanical features of its pay provisions, making several changes to the plan accordingly. NNSA will establish two pay pools, one from which to fund annual general pay adjustments and the second from which to fund performance-based payouts. Each pay pool will have its own payout schedule, though in close proximity to the end of the calendar year and to each other. In conjunction with establishment of two pay pools, NNSA is increasing the maximum number of shares for performance payouts, from 3 shares to 4. NNSA is also changing the share distribution pattern (number of shares linked to performance level) from 3–2–1–0 to 4–3–2–1–0. An employee with a Significantly Exceeds Expectation (level ''5'' performance under NNSA's performance management program) may receive 3 or 4 shares, an employee with a Fully Meets Expectations (level ''3'' performance under NNSA's performance management program) rating and no critical element rate at the Needs Improvement level may receive 1 or 2 shares, and all other employees receive 0 shares. As under the original proposal, any increased locality pay or staffing supplement percentages will be applied on top of eligible employees' adjusted base rates outside of the pay pool process.

Furthermore, NNSA will provide a limited flexibility to increase an employee's pay upon accepting an intra-pay band reassignment. These changes, along with NNSA's pay-setting guidelines, will be described in detail in *NNSA's Demonstration Project Policies and Procedures Manual*, which shall be published in accompaniment to this project plan. The pay-setting guidelines will ensure that the use of demonstration project pay flexibilities will be judicious and appropriate. NNSA's administration of the demonstration project will be under OPM's continuous oversight, with rigorous evaluations of pay-setting and other project provisions and applications. Supervisors will be afforded extensive training to ensure they have the competence to make fair

and valid employee appraisals, and they will be held accountable for doing so during their own performance appraisals. As for the courier workforce, pay banding will have no effect whatsoever on their tours of duty, their administrative work schedules, or on their eligibility under current law and regulation to receive premium pay, night differentials, and other pay benefits and incentives.

(d) Position Classification

Comments: Several commenters wondered how upholding the use of OPM's traditional position classification criteria and standards will lend itself to streamlining the ''cumbersome, labor-intensive, and difficult to comprehend'' system, as the project plan calls it. They imply that part of the problem with the present system is just these criteria and standards, and they don't see how NNSA will be able to reduce documentation requirements, eliminate use of the Factor Evaluation System format (which typically increases the length of position descriptions threefold), or reduce traditional procedural steps. Others wondered how NNSA's pay-banding system would safeguard equal pay for equal work when a selecting official will be free to set pay for a new appointee anywhere in a band. Some noted that current employees might be penalized in comparison to a new hire's potential for a pay increase, as pay increases for internal promotees are limited to 8 percent, and this limitation may actually offer an employee less money than customarily received when moving from one GS grade to the next during a conventional promotion. Others were concerned about the effect on an employee's existing promotion potential in a traditional career-ladder position when converting to a pay-banded position, when that potential falls outside the band of the position to which the employee converts. One person asked what impact there would be on the conversion to pay banding of a position currently graded outside the proposed maximum band range of a given career path. Others were concerned about the right of employees to appeal their placement into a career path and pay band.

Response: The comments in this topical area, while more process oriented than comments in other topical areas, underscore the need to clarify just how position classification works in a pay-banding environment. The comments, especially those about career ladders and equal pay for equal work, warrant more discussion.

In general, OPM's position classification standards and guides remain the single most concise and valuable analytical tools with respect to defining occupations and evaluating assignments of white-collar work, not only in the Federal sector, but in general. They remain models for other levels of Government, and even private industry, to emulate in developing their own local job-evaluation schemes. OPM's standards and guides do not in themselves contribute to the classification system's breakdown and inefficiency. Rather, it is the towering emphasis today on compensation as a tool for attracting and retaining the best talent in a hypercompetitive labor market that has hammered the rigid grade-bound classification system into a contorted and broken program. All the hammering has brought resistance, inertia, and resignation among managers and classifiers alike. Pay banding, in bundling several grades and pay rates together into one band when appropriate, will go a long way to lift the deadly onus off the classification program. But this is only the start of the classification program's streamlining. There will be a number of genuine and potentially significant opportunities under the demonstration project to simplify the administration of the classification program. Not delegating classification authority to managers, as most other demonstration projects and alternative personnel systems have done, is a significant simplification. Job analysis is no less sophisticated than are most other technical disciplines in the modern workplace. Efficient classification practice requires substantial training and years of seasoning. NNSA believes that it makes far better sense not to expend countless resources and endless hours trying to train and encourage supervisors to become seasoned classifiers, but rather, to hone their skills as leaders of the men and women they supervise and to retain classification authority and skills in the personnel office. Furthermore, there is nothing in OPM's existing doctrines and requirements that will not permit the simplification of position description formats or the synopsizing of traditional evaluation documents. Add pay banding to the flexibility that already exists, and there is a significant opportunity to streamline. Pay banding can group two or more levels of traditional work and associated pay rates into one pay band when appropriate, thereby compressing expanses of work and pay rates into fewer classification units and easing attendant classification practices and protocols, with less documentation, particularly when future automation comes on line.

It is true that successful streamlining doesn't happen by itself and won't happen overnight. NNSA has considerable design and development work to do in building an effective pay-banding classification system, but not having to develop its own classification standards and guides will contract NNSA's design and development challenges immeasurably. This system will be built around demonstration project career paths and will feature two unique concepts, the ''core pay band descriptor'' and the ''core position description.'' A descriptor is a generic benchmark description used to illustrate the ranges of complementary work levels within a pay band. The assignment of a specific position to a particular pay band will be made on the basis of a core pay band descriptor. Core pay band descriptors will be based on the OPM job family standard and functional classification guide that most directly corresponds to the work encompassed within an occupational series. A core position description is simply an abbreviated benchmark description of a common set of core duties and responsibilities typical of large numbers of positions within each career path and pay band across NNSA's various organizational and functional settings. NNSA will publish its pay-banding classification policies in its companion document to this project plan, *NNSA's Demonstration Project Policies and Procedures Manual*, and will supplement these policies with handbook guidance as needed. This guidance will more fully describe NNSA's streamlined pay-banding classification system and will better describe the simplified position description concept with samples. Briefings tailored to managers, employees, and the personnel staff, respectively, will also be developed to accompany the development of the system and application of NNSA's classification policies.

The compressed occupational construct of a pay band renders concerns about undermining the civil service system's classification principles unfounded, as several gradations of work are possible within a given pay band. In essence, pay banding assumes that different employees in the same career path, job series, and pay band of a properly classified position can operate at differing levels—within reason—due to variations in incumbent maturity (seasoning), and performance. In this circumstance, equal pay for substantially equal work is not compromised, even though one

employee may be earning higher pay than another employee in the same pay band. In a fundamental respect, this is really no different than the disparities in pay that occur between employees in the same properly classified GS–13 position where one employee is earning a GS–13, step 2, rate and another is earning a GS–13, step 9, rate.

The 8 percent limitation on a pay increase as a result of internal promotion is a standardized policy that will apply in most situations. Most other pay-banding systems set similar controls on pay increases. NNSA considered a higher percentage, and even considered a range of percentages, from lower to higher, but decided on the fixed 8 percent minimum increase to mitigate the opportunity for disparate employee treatment at such an important career event. While NNSA expects most internal promotion actions to adhere to this standard, like most rules, there will be the flexibility to allow an exception, with proper justification, and higher-management approval. This flexibility will be described in detail in the staffing and pay policies that will be published in accompaniment to this project plan.

There will continue to be ''career ladders'' under NNSA's pay-banding system, though instead of grade intervals, there will be band intervals. A ''laddered'' position is simply a position advertised during recruitment at a certain level of full performance that is filled through selection and appointment at a lower pay band. NNSA is developing staffing policies that will ''grandfather'' employees who at the time of conversion to the appropriate pay band have not reached their promotion potential. These employees will be eligible for an in-band pay increase similar to a promotion increase under the General Schedule system until they reach their full promotion potential. ''Full promotion potential'' is a traditional position classification and personnel staffing concept that will continue to have validity under NNSA's demonstration project, and it means the highest grade, or pay band, of a career-ladder position for which an incumbent previously competed under the Government's merit system principles and an agency's merit promotion plan. Once an NNSA employee who converted to pay banding under this demonstration project receives an in-band pay increase or a promotion that takes him or her to a pay level equivalent to the highest GS grade in the formerly applicable career ladder, the employee will be considered to have reached the full performance level, and the grandfather provision will cease to apply. Future in-band pay increases for such an employee would then be based solely on performance, consistent with all other demonstration project employees. Of course, just as a GS employee is not guaranteed a career-ladder promotion without the supervisor's certification, the promotions and special grandfathered in-band increases for demonstration project employees will not be guaranteed, and they will be issued new performance plans with each pay increase. Only current NNSA employees who convert at the inception of pay banding will be afforded the benefit of having their career ladders grandfathered. The specific terms and conditions of this benefit will be published in the policies and procedures manual that will implement this project plan.

As NNSA prepares to implement the demonstration project, NNSA is reviewing current position classification outcomes, and potential discrepancies and inconsistencies, with the intent to correct any that are found prior to implementation to assure a smooth conversion process.

Under the demonstration project, employees retain their traditional position classification appeal rights. A classification appeal is a formal request by an employee in writing for a review of the official job series, pay band, or pay system, of the employee's current position to correct what the employee believes is an erroneous classification. Any employee in a position covered by chapter 51 of 5 U.S.C., and by NNSA's Demonstration Project, can file a classification appeal.

(e) Staffing

Comments: Most of the 17 staffing comments crossed over into other topical areas already treated, such as the structure of relative pay bands across career paths, and the impact of employee conversion to pay banding on pre-existing promotion potential as a result of having successfully competed for a career-ladder position. Other comments concerned such issues as pay-setting and band and grade assignment upon converting to a pay-banding position from a GS position, and vice versa, upon converting back to GS from pay banding. Many commenters pointed out that the language in the February 28 **Federal Register** notice pertaining to such practical staffing and pay matters was vague. One person expressed concern at the quality of applicants under pay banding, should candidates only need to meet the minimum qualification requirements associated with the lowest grade level in a multi-graded band, and believed that the candidate screening process would suffer as a result.

Response: It is understandable that many commenters found NNSA's proposed project plan vague and unclear in parts. NNSA's demonstration project plan, in both its proposed and final incarnations, is designed to mainly answer the ''what'' of a matter, not the ''how.'' This is why there have been many references in these responses, as well as throughout the text of the project plan, to a policies and procedures manual. But this response is not to dodge the issues. Most of the comments received during the public comment period have been invaluable in guiding NNSA's development of its companion policies and procedures. By design, a demonstration project is an experiment. Frankly, there is more than one way to execute and effect almost any feature of this experiment, and though modeling previous successful experiments and viable alternative personnel systems can be extremely useful, there are still mechanical subtleties and finer points of interpretation in matters of pay banding, staffing, and pay that NNSA must come to terms with. Having said this, it can be said after the past 6 months of rigorous development and refinement, that NNSA has gained competence and sureness about how to effectively execute the innumerable features and applications of this project. With respect to questions about conversion, NNSA GS employees will be converted to the career path and pay band that is equivalent to their current job series and grade, irrespective of pre-existing promotion potential, as discussed in the preceding subsection. In no case will an employee lose pay upon conversion; in fact, at conversion, most employees will receive an increase in pay reflecting the prorated value of their next scheduled within-grade increase (WIGI) based on the amount of time they have served in their respective waiting period.

The project plan gives NNSA authority to establish the rules governing pay-setting for employees who convert out of the demonstration project and move to a GS position. Those technical conversion-out rules will be provided in NNSA's manual of implementing policies and procedures and will be forwarded to other Federal agencies should an NNSA pay-banded employee move to a GS position in another agency. In general, demonstration project employees moving to a GS position will be converted to a GS-equivalent grade and rate before they leave the demonstration

project and thus will be treated as GS employees under GS pay-setting rules.

NNSA is also developing staffing guidelines to aid managers, selecting officials, and personnel office staff on processes to use in evaluating candidate qualifications, and to identify the more qualified candidates from among applicants. We expect that this will take time as we train staff, develop operating procedures, and evaluate their effectiveness. This will be true of most other operational features and applications of the project. It will be some time following project implementation and employee conversion before NNSA is proficient in most demonstration project matters, though NNSA is taking great pains and care to ensure that start-up and transition are implemented as smoothly as possible.

(f) Performance Management

Comments: Most of the several comments received on performance management concerned the adaptability of NNSA's existing performance management program to the demonstration project. There were concerns expressed about the timing of implementation—too soon—about the readiness of NNSA's supervisors to fulfill their responsibilities to appraise their subordinates fairly—not ready—about the subjectivity of NNSA's four-level rating scheme—can't make distinctions—and so on. A labor union suggested ways to improve NNSA's appraisal program.

Response: The project is scheduled to be implemented on March 16, 2008. Once implementation occurs, there will be complete instructions on what to expect, and how to proceed, midway through the rating year as it will be. As NNSA prepares to implement the demonstration project, agency management holds many of the same reservations as did commenters. When NNSA was established seven years ago as a separately organized agency within DOE, NNSA inherited a variety of then existing performance management programs, between headquarters and a multitude of field offices. Four appraisal cycles ago, NNSA consolidated and standardized all GS and equivalent appraisal programs into one. At the onset of each new rating year since then, NNSA has made changes in its program based on the lessons learned from the previous rating cycle. As NNSA's program has evolved from year to year, it has been necessary to conduct focus groups and supervisory training. This upcoming year, during the transition to the demonstration project, will be no exception. And NNSA thinks this is a good thing. It is doubtful there would ever be an ideal time to embark on such a project. NNSA believes waiting for such a time will be a precious opportunity lost. By design, the demonstration project is an experiment. Many things are supposed and anticipated, but few things are known for sure in advance. They need to be tried and tested. This NNSA intends to do, realizing that it is likely that there will continue to be a need for improvements in design and execution for the next several years to come, not only concerning the existing performance management program, but to the demonstration project as a whole.

(g) Reduction in Force

Comments: There were several questions concerning the mechanics of reduction in force (RIF) under the demonstration project, and the impact on employee RIF entitlements. One person asked whether demonstration project employees and excepted service employees would compete together in a RIF. Another asked whether employee protections would be lessened under the demonstration project. A third person asked specifically whether there would be ''bumping'' rights.

Responses: Not only will there be bumping rights for demonstration project employees, but all other traditional employee protections are retained under the demonstration project. There is only one substantive change from traditional rules, having to do with a further subdivision of an NNSA competitive area by career path. Currently in NNSA, the decision to undertake RIF is made by the Administrator, respective Site Office Managers, the Service Center Director, and the heads of the Naval Reactors Offices in Pittsburgh, PA, and Schenectady, NY. Consequently, each of these management officials is considered to be the head of a competitive area for RIF purposes. (The Administrator has actually delegated the authority to take and direct personnel actions to these officials, while retaining this authority for all headquarters components, except Naval Reactors, which has a unique dual reporting arrangement with the Secretaries of Energy and Navy.) What this means from a practical management standpoint is that Site Offices, the Service Center, and the Pittsburgh and Schenectady Naval Reactors Offices are considered to be under separate administration for RIF purposes, while the Administrator remains the head of the headquarters competitive area. The existing competitive area standard in NNSA under current Federal regulation, and DOE policy, is ''a subdivision of the agency under separate administration within the local commuting area [5CFR351.402].'' The concept of ''local commuting area'' further defines the competitive area standard. Regulations permit agencies to subdivide competitive areas according to commuting area, the geographic proximity within which normal patterns of applicant recruitment and worker commutation can be expected to occur, even when the management official with the authority to take and direct personnel actions is located elsewhere. This is what NNSA does currently, and this part won't change under the demonstration project. Therefore, employees in one NNSA competitive area would not now compete with employees in another competitive area, nor would employees in different commuting areas within the same competitive area compete with each other. Under the demonstration project, NNSA will institute one additional competitive area subdivision, by career path, so that the employees in one career path would not compete with employees in another career path in a given RIF. NNSA's non-demonstration project employees, such as bargaining unit employees at headquarters, or all excepted service employees, are not affected by this competitive area change. They continue to be subject to traditional RIF rules, and applicable collective bargaining agreements, and would not compete with demonstration project employees in a given RIF.

(h) Employee Relations

Comments: The several comments in this topical area concerned whether employees have the right of appeal, or to grieve, their performance ratings, and whether employees whose ratings are less than Fully Meets Expectations will have an opportunity to improve.

Response: The demonstration project has no direct bearing on NNSA's performance management program, though the program continues to be refined based on lessons learned from previous rating cycles. Under NNSA's performance management policies, employees whose ratings are less than Fully Meets Expectations are provided structured opportunities to improve their performance. An employee who is dissatisfied with an official rating can request a reconsideration, under NNSA's policies and procedures.

(i) Employee Equity

Comments: Commenters generally felt that the demonstration project will actually produce contrary results. Instead of encouraging workers to

higher levels of excellence, it will actually discourage workers who benefit now from the employment stability that the traditional civil service system provides. They suggested that the net effect of basing pay increases on performance will allow for faster pay progression in the short-term, with the ultimate effect of increasing salary costs to such a degree that there won't be sufficient funds to properly reward employees in the future. Two persons agreed with basing pay increases on performance, but had concerns about the equity of the process, and disagreed that performance pay increases should be combined with the annual comparability pay adjustment.

Response: NNSA shares some of these same concerns, and views these concerns as challenges. Perhaps the biggest challenge the agency faces is earning and keeping the trust of its employees during this time of profound change, while ensuring that the demonstration project is not perceived as a disincentive. Perhaps the next biggest challenge is ensuring that supervisors are properly trained in their key responsibilities under the demonstration project, and that they are held accountable when they don't uphold these responsibilities. And two other significant challenges are ensuring that there are adequate cost controls in place, and that ample funds are appropriated to support meaningful levels of performance-based pay increases. NNSA does not minimize the significance of these challenges, but does not shrink from them either.

As already discussed, NNSA is establishing two pay pools, and will administer annual pay adjustments and performance-based pay increases separately.

(j) Management Accountability

Comments: A uniform thread runs through the many comments submitted on management accountability. Commenters expressed disbelief that managers will be held accountable for not rendering objective and fair performance ratings, and some said they have yet to see measures put in place, or actions taken, to assure accountability. One person wanted to know how OPM will oversee accountability and conduct ongoing evaluations.

Response: Chapter 47 of title 5 requires an evaluation of the results of each demonstration project and its impact on improving public management. This project plan has been revised to include additional details about the project evaluation. In addition, NNSA will be held to scrutiny under DOE's human capital management accountability regimen. Aside from these layers of oversight, NNSA is dedicated to changing the management culture. One of the Administrator's highest goals is to make NNSA an Employer of Choice. NNSA will encourage openness between managers and employees, will provide extensive training to supervisors, will institute a regimen of employee communications, and will hold supervisors accountable through the performance management process. Supervisors, like everyone else in NNSA, will be held to higher standards.

(k) Other

Comments: The comments in this category did not fall neatly under any other topic, and mainly reflected employee anxiety, or asked extremely process-oriented questions that will be responded to via other media. A general concern in various comments was the desire for more specificity. In some cases, NNSA has made changes that provide more specific information. (See section 4, ''Changes to Demonstration Project Plan.'')

Two specific comments warrant NNSA's response: a letter from a labor organization, and a thoughtful comment about the merit system principles.

Response: The labor organization offered an extensive critique of recent pay-for-performance initiatives in Government, and then offered suggestions concerning NNSA's proposal. NNSA shares the union's deep concern for the welfare of affected employees, and for advancing the public's interest in protecting nuclear security. NNSA will consider all suggestions for improving the demonstration project, and for making it a success. Should NNSA decide to apply the demonstration project to its bargaining unit employees in the future, it will honor its collective bargaining obligations.

One person expressed concern that NNSA and OPM were not giving due adherence to the statutory merit system principles [5 U.S.C. 2301]. We disagree. As explained earlier, NNSA is relying on OPM's position classification criteria and standards and is adhering to the classification principle in 5 U.S.C. 5101(1) of ''equal pay for substantially equal work,'' which is akin to the merit principle in 5 U.S.C. 2301(b)(3) of ''equal pay should be provided for work of equal value.'' NNSA has a profound regard for the merit system principles and has taken great pains in the design of this project to safeguard these principles. We note that the merit principle in 5 U.S.C. 2301(b)(3) also states that ''appropriate incentives and recognition should be provided for excellence in performance.'' Thus, the performance-based pay features of this demonstration project support this merit principle.

4. Changes to Demonstration Project Plan

What follows is a list enumerating the substantive changes to NNSA's demonstration project, and major textual changes to the plan. The page numbers referenced are those found in the February 28, 2007, **Federal Register** Notice. Some of the changes have been described in the preceding responses to specific comments. Other changes provide additional detail, provide clarification, or correct technical problems.

(1) *Page 9038:* The Table of Content is revised to reflect the addition of three new sections, III.A. 3., ''Position Classification Appeals,'' III.D., ''Supervisory Bonuses'', and VII., ''Project Modification.''

(2) *Page 9039:* The ''executive summary'' is rewritten to reflect NNSA's final project goals.

(3) *Page 9040:* NNSA has decided to create separate pay pools for comparability adjustments and performance payouts.

(4) *Page 9041:* August 2006 data is superseded with August 2007 data in the table, ''Covered Employees by Occupational Series and Grade.''

(5) *Page 9042:* The design principles are rewritten to eliminate ill-defined and inadequately developed principles.

(6) *Page 9043:* Career path and pay band structures are revised, consistent with the NNSA's response herein under the ''pay band structures'' subsection.

(7) *Page 9043:* A new section III.A.3., ''Position Classification Appeals,'' is added.

(8) *Page 9044:* The pay increase preclusion for maximum rate employees who receive less than an SEE performance rating is modified to permit a 50 percent increase.

(9) *Page 9044:* A locality rate cap 5 percent higher than the statutory pay cap is provided for top-rated performers in the upper range extension.

(10) *Page 9044:* The section ''rate of basic pay upon promotion'' is clarified.

(11) *Page 9044:* The date of performance-based pay adjustment is changed to ''the first day of the last full pay period in each calendar year.''

(12) *Page 9044:* The pay retention provisions in the section ''other pay administration provisions'' are modified to provide 100 percent of the annual comparability pay adjustment for up to

2 years for employees who are reduced in band through no fault of their own.

(13) *Page 9045:* NNSA clarifies that it may request that OPM establish a new staffing supplement for a category of NNSA employees.

(14) *Page 9045:* The performance-rating reconsideration process is to be referenced, rather than stipulated, in the plan.

(15) *Page 9046:* There are to be two pay pools.

(16) *Page 9046:* The share distribution pattern (linked to levels of performance) is revised to take into account the effect of the establishment of separate pay pools for comparability adjustments and performance payouts and to provide additional flexibility.

(17) *Page 9046:* The section ''pay adjustments'' is modified to reflect the impact of establishing two pay pools, with staggered payouts.

(18) *Page 9047:* The section ''employees who do not receive a pay adjustment'' is modified to eliminate general references to employee notification and redress procedures, which will be handled through NNSA's own performance-rating reconsideration process.

(19) *Page 9047:* The mechanism for withholding a pay increase from an employee who receives a less than fully Meets Expectations rating is modified; in the unlikely event that an employee whose basic pay is frozen as a result of a less than Fully Meets Expectations rating moves to another demonstration project position with a different locality pay schedule or staffing supplement, the employee's frozen base and locality pay or staffing supplement would be adjusted in accordance with *NNSA's Demonstration Project Policies and Procedures Manual*.

(20) *Page 9047:* A new section III.D., ''Supervisory Bonuses,'' is added.

(21) *Page 9048:* A new section VII, ''Project Modification,'' is added.

(22) *Page 9049:* Several changes are made and citations are added in the ''waiver of laws and regulations required'' segments.

Linda M. Springer,

Director.

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I. Executive Summary

This project was designed by NNSA in consultation with OPM. The goals of this demonstration project are to—

(1) Improve hiring by allowing NNSA to compete more effectively for high quality employees through the judicious use of higher entry salaries;

(2) Motivate and retain staff by providing faster pay progression for high-performing employees;

(3) Improve the usefulness and responsiveness of the position classification system to managers;

(4) Increase the efficiency of administering the position classification system through a simplified pay-banded application of the current General Schedule grade structure, and reduce the procedural steps and documentation requirements traditionally associated with classifying positions;

(5) Eliminate automatic pay increases (i.e., annual adjustments that normally take effect the first day of the first pay period beginning on or after January 1) by making pay increases performance-sensitive, so that only Fully Successful (known as ''Fully Meets Expectations'' in NNSA) and higher performers will receive pay adjustments, and the best performers will receive the largest pay adjustments;

(6) Integrate with, build upon, and advance the work of several key human capital management improvement initiatives and projects currently underway in NNSA, including—

a. Advancing the ongoing refinement of NNSA's four-year old enterprise-wide performance management program, which currently features a pilot for automating yearly performance ratings, to the next logical level, encompassing performance-based pay adjustments,

b. Achieving greater parity, though not complete harmony, with NNSA's mature excepted service pay-banded and pay-for-performance system (e.g., will have lower pay band maximum rates; no automatic pay increases, etc.),

c. Building on the simplified position description (PD) format and automated PD library that are already in place,

d. Continuing to develop improved performance management skills among first-line supervisors through increased program rigor, additional training, and better guidance materials, to better develop standards that reflect differences in performance,

e. Establishing a system of career-enhancing career paths for the purpose of developing, advancing, and retaining employees,

f. Building on the new workforce analysis and planning system, already in place to identify FTE needs and competency needs and skills gaps, to conduct a valid occupational analysis to construct meaningful pay bands.

The demonstration project will modify the General Schedule (GS) classification and pay system by identifying several broad career paths, establishing pay bands which may cover more than one grade in each career path, eliminating longevity-based step progression, and providing for annual pay adjustments based on performance. The proposed project will test (1) the effectiveness of multi-grade pay bands in recruiting, advancing, and retaining employees, and in reducing the processing time and paperwork traditionally associated with classifying positions at multiple grade levels, and (2) the application of meaningful distinctions in levels of performance to the allocation of annual pay increases.

II. Introduction

A. Purposes and Approach

The purposes of the proposed project are to—

(1) Modify the GS classification system by establishing pay bands which may cover more than one grade; and

(2) Modify the GS pay system to provide larger annual pay increases to employees who are better performers

based on performance distinctions made under a credible, strategically-aligned performance appraisal system/program and thereby improve the results-oriented performance culture within the organization.

NNSA's approach to achieving these purposes is to integrate with and build upon the several ongoing human capital management initiatives and projects that are already underway, and to design a GS pay banding and performance-based pay adjustment system that—

(1) Complements and increases parity with the statutory NNSA excepted service employment system already in place, and

(2) Profits from the successes, mistakes, and lessons of other agency demonstration projects, past and current.

B. Problems With the Present System

Position Classification Rigidity, Incomprehensibility, and Procedural Excesses

Although the GS classification system is not a compensation system per se, the classification and pay systems are inextricably intertwined. In practice, the GS classification system is the primary determinant of an employee's basic pay. Furthermore, NNSA believes in the principles underlying the GS classification system (i.e., equal pay for substantially equal work, and variations in pay based on the work actually performed, rather than on who performs the work) and believes that these principles are as valid and applicable to the Federal civil service system today as when originally enacted into law in 1923, and when the General Schedule was established in 1949. As Ismar Baruch wrote in a classic groundbreaking 1941 report, *Position Classification in the Public Service:*

* * * the very nature of governmental jurisdictions places them in a position of peculiar responsibility to the public at large. Individual actions without plan or system and based merely upon the expediency of the moment are undesirable. Public personnel policies and transactions affecting positions and employees should be supportable by facts and logic in the light of broad considerations applicable to the service as a whole. Further, in the management of public personnel affairs, considerations of fairness and equity require uniform action under like circumstances, particularly in the establishment of pay rates.

This in essence is what the Federal position classification system was designed to achieve, and has achieved in principle, if not practice, ever since these words were first written. Thus, rather than ''scrapping'' the current GS classification system and starting over, NNSA believes that modifying the system to accommodate the work and workforce of the 21st century is a more prudent and workable approach.

Pay banding does this. The current GS classification system is cumbersome, labor intensive, and difficult to comprehend. As OPM's April 2002 white paper, *A Fresh Start for Federal Pay: The Case for Modernization*, points out, the GS classification system was designed during the World War II years when civil servants were predominantly ''process-obsessed'' file clerks. Public servants in the middle of the 20th century performed work that tended to be mechanical and repetitive in nature, consisting of job tasks readily observable and measurable. Today, work tends to be knowledge-based and highly specialized, and does not lend itself to easy categorization based on readily observable characteristics. Nonetheless, as an employee progresses from the entry level to the full-performance level in a given occupation today, under the traditional classification system, a separate position description is still required for each grade. For example, an entry level GS–5 Engineer with promotion potential to GS–12 requires five different position descriptions (or statements of differences) covering grade intervals GS–5, GS–7, GS–9, GS–11, and GS–12. Additionally, each position description should be accompanied by a position evaluation report certifying that the duties and responsibilities of the position meet the requirements for classification into the series and grade. Often, the difference between a higher-graded and lower-graded position in the same career progression may be the level of supervision an employee receives, or the increasing gradations in the scope and effect of an employee's work on agency missions and programs, or some other interpretative degree of occupational difficulty and responsibility. As a result, managers who assign work and who are responsible for describing such assignments of work, and the position classifiers who evaluate assignments of work against OPM's and applicable agency classification criteria, often view the practice attendant to the current GS classification system as an exercise in semantics, and PD writing, for the purpose of ''beating the system'' to award the highest grade possible to a position, instead of as a management tool by which to make meaningful and significant distinctions between levels of work.

The current GS classification system also directly impacts the effectiveness of agency recruitment activities. Recruiting for a vacancy which may be filled at any level from the entry level to the full-performance level requires a separate position description for each grade, separate qualifications requirements for each grade, separate applicant assessment and rating tools (often referred to as ''crediting plans'') for each grade, and separate lists of best-qualified candidates (often referred to as ''certificates'') for each grade. For example, recruiting for a single GS–5/12 Engineer vacancy requires five different position descriptions (GS–5, GS–7, GS–9, GS–11, and GS–12) and five different ''crediting plans,'' and will result in the agency issuing multiple ''certificates.'' Thus, Federal managers and applicants for Federal employment often view the system as cumbersome, time consuming, and unresponsive.

Modifying the current system to supplant sequential grade progression with valid, rational, and credible pay bands will (1) provide much needed management relief from the seeming arbitrariness, rigidity, and document heaviness of the current classification system, (2) provide managers with much needed flexibility, and (3) offer applicants and employees greater opportunities for advancement and inducements to retention, while retaining the public policy principles and management values underlying the current civil service system.

A Need for Performance-Based Pay Increases

Additionally, the current GS pay system provides annual pay increases to all employees, even those whose performance is less than Fully Successful. Similarly, periodic within-grade pay increases are virtually automatic. Although an employee's performance must be determined to be at an ''acceptable level of competence'' in order for the employee to receive a within-grade increase (WGI), this is only a single-level threshold and no further distinctions in levels of performance play a role. All performance levels above the threshold are treated the same for purposes of determining the amount of the increase and the rate at which an employee advances through the rate range of his or her grade. NNSA and OPM do not believe it is a wise use of the limited resources available for the compensation of Federal employees—nor does it serve taxpayers effectively or treat employees fairly—to pass on the same pay adjustments, year after year, to all employees regardless of differences in their performance.

The current GS pay system does provide one limited tool to address distinctions in levels of performance—

namely, quality step increases (QSIs). QSIs are discretionary adjustments that are not integrated into the normal pay adjustment process; thus, limited funds are available to provide QSIs, and the decision-making process may not be very transparent. In addition, there is no flexibility as to the amount of the QSI; a full step increase is required. Also, QSIs may be used only for those with the highest rating of record. In summary, QSIs alone cannot be relied upon to establish an effective link between pay and performance based on meaningful distinctions among different levels of performance.

Under these constraints of the GS pay system, agencies are severely limited in their ability to establish a results-oriented performance culture as contemplated under the Human Capital Assessment and Accountability Framework (HCAAF). Within the HCAAF, a results-oriented performance culture effectively plans, monitors, develops, rates, and rewards employee performance, consistent with the merit system principle that ''appropriate incentives and recognition should be provided for excellence in performance'' (5 U.S.C. 2301(b)(3)).

C. Changes Required/Expected Benefits

The proposed demonstration project will respond to the GS classification system problems identified above by compressing the 15 GS grades into pay bands that may cover multiple grades. Although this ''compression'' is neither designed nor intended to eliminate the fundamental statutory grading distinctions embedded in the traditional position classification system, it will considerably reduce the excessive rigidity inherent in the current system, making it substantially less cumbersome, less labor intensive, less time consuming, and easier to comprehend and apply.

Importantly, banding the GS grade structure shifts the emphasis for employee pay advancement from position classification factors and merit promotion criteria to performance factors, one of the chief goals of this demonstration project. Because a pay banding system uses broader work levels, the system can be viewed as having more of a rank-in-person emphasis; that is, it permits a more direct relationship between an incumbent's actual (or anticipated) individual level of job performance and a given position's particular level of pay.

By permitting the advancement of employees within given bands without the necessity of advertising promotional opportunities, and without the need for handling employee applications in accordance with publicized merit promotion procedures, the attainment of some of the project's process simplification and streamlining objectives is also furthered.

The proposed demonstration project will respond to the pay problem identified above by eliminating fixed steps within each of the pay bands and by making annual GS pay adjustments performance-sensitive. Pay adjustments will be funded from two pay pools: One consisting of the amount that would otherwise be used to pay the annual GS pay adjustment, and the second consisting of the amounts that would otherwise be used to pay WGIs and QSIs to employees covered by the demonstration project. The second pay pool also may include funds saved through the elimination of promotion increases for promotions between grades that are consolidated into the same band. A share mechanism will be used to allocate pay increases among employees with different levels of performance, and managers will be expected to control costs (and will be held accountable for doing so in their own performance plans). Implementation of the proposed pay system will result in larger pay increases going to employees who demonstrate higher performance. By regularly rewarding better performance with better pay, participating organizations will strengthen their results-oriented performance cultures. Among other things, they will be better able to retain their good performers and recruit new ones.

D. Participating Organizations

It is expected that every major headquarters and field organization in NNSA will participate. This includes HQ, program, and support components, including NNSA's cadre of nuclear materials couriers, who are deployed at various locations in the United States, eight geographically dispersed Site Offices and two special purpose Naval Reactors Offices (in Pittsburgh, PA, and Schenectady, NY), and the Service Center in Albuquerque, NM. Each of these units is committed to operating a credible, robust performance appraisal program aligned to the organization's strategic goals and objectives, by providing the necessary training and resources. These organizations have demonstrated this commitment the past three years, as NNSA implemented a comprehensive performance management program enterprise-wide.

E. Participating Employees

The demonstration project will cover all GS non-bargaining unit employees in the participating organizations identified in the preceding paragraph. (The only bargaining unit in NNSA is at headquarters, and currently includes 16 positions.) Included in the coverage are Schedule A and B Excepted Service employees. Not included are Schedule C Excepted Service employees and Excepted Service employees authorized under the NNSA Act, National Defense Authorization Acts, and the DOE Organization Act. Table 1 shows the number of employees available through September 2007 who are subject to coverage under this project by occupational series and grade.

TABLE 1.—COVERED EMPLOYEES BY OCCUPATIONAL SERIES AND GRADE

OCC Series	GS Grade															GS total
	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	
00018												1	7	3		11
00028											1	1	3		2	7
00080							1		6		3	36	30	40	12	128
00084								30	54	80	66	52	22			304
00086						2	2									4
00099				1												1
00130											3	4	14	40	43	104
00132												3	5	2		10
00201							1		2		2	7	19	9	7	47
00203						1	6	1								8
00260												1	3	1		5
00299					1		2									3
00301							3		24		39	41	49	29	26	211
00303	4	5	4	10	3	14	22	6								68
00318					2	10	10	5	2							29
00326			2	5												7
00335						1										1
00340														1	20	21
00341														1	1	2
00342												2				2
00343									5		6	21	36	49	30	147
00344								1								1
00346												2	3	3		8
00361								1								1
00391													1			1
00399			1	2												3
00401														1		1
00501											1	4	3	3	1	12
00505															3	3
00510											1	10	15	22	3	51
00511											1	4		1		6
00525						1		1								2
00560									1		1	9	15	18	7	51
00561							1									1
00599					2											2
00610									1		1					2
00671													1			1
00690													2	2		4
00801												6	26	91	82	205
00802									1		1		1			3
00803														2		2
00804													1	2		3
00810												1	2			3
00819													3	1		4
00830											1					1
00840											2	3	10	14	35	64
00850													1			1
00854									1			2	4	1	2	10
00905												1	3	8	14	26
00950											3					3
00986								1								1
00999							2									2
01035												1		5	1	7

01082												1				1
01099			1		1											2
01101							1		2		1	1	5	5	3	18
01102									6			13	29	36	15	99
01103											3	4	1	2		10
01106							1									1
01150													1			1
01170											1		1	1	1	4
01176													1			1
01199			1	1			1		1							4
01222											1			2	1	4
01301													5	33	26	64
01306													1	3		4
01310															3	3
01412													1			1
01515														1		1
01712												11	10	4		25
01750													1			1
01910											1	6	5	1	1	14
02003														1		1
02010												1		1		2
02101													4	15	6	25
02130													9	1		10
02210									1		2	2	15	13	2	35
Grand Total	4	5	9	19	9	29	53	46	107	80	141	251	368	468	347	1936

Management has provided initial notice to affected employees and will continue consultation throughout project implementation.

F. Project Design

The project is designed to (1) fundamentally simplify the position classification system as the key to improving recruitment, retention, and classification activities, (2) ensure that no participating employee with a rating of record of less than Fully Meets Expectations will receive a pay increase, and (3) ensure that funds available for pay adjustments will be allocated on the basis of performance, the better performers receiving the greater performance payouts.

To ensure expeditious and effective project implementation and completion, NNSA will model, to the extent feasible and appropriate, programmatic features and operating systems and procedures relating to NNSA's own pay-banded, pay-for-performance excepted service system; in addition, NNSA will review the successes, mistakes, and lessons from the experiences of other agency demonstration projects, notably the current Department of Defense (DoD) laboratory projects, which are based on the foundational China Lake project; the National Institute of Standards and Technology permanent Alternative Personnel System; and DoD's new National Security Personnel System (one of the participating Air Force labs shares Kirtland AFB with NNSA).

Two basic design principles will underpin this project:

- NNSA will not establish its own classification standards, but rather, will construct band thresholds and boundaries consistent with OPM's official classification criteria. To streamline documentation, NNSA will establish core pay band descriptors and core position descriptions based on the OPM job family standard and functional classification guide that most directly corresponds to the work encompassed within an occupational series. The descriptor is a generic benchmark description used to illustrate the ranges of complementary work levels within a pay band. The assignment of positions to pay bands will be made on the basis of the core pay band descriptor.
- NNSA will not delegate classification authority to managers. NNSA understands that not delegating classification authority runs counter to the experiences of other agency demonstration projects. Nonetheless, it is much more efficient to leave the exercise of this authority and all attendant administration activities in the trained hands of the resident human resources (HR) staff. NNSA sees little value in turning managers into classifiers, but rather, believes the value is in preparing managers to become better supervisors. NNSA's pre-eminent managerial goal is to develop a seasoned cadre of Federal managers who can practice the art of supervision at an uncommonly high level (i.e., the supervisor who is more mentor than taskmaster, who can nurture subordinates and unleash their potential for superior performance through the instruments of performance appraisal and reward programs).

III. Personnel System Changes

The 15-grade GS position classification system established under 5 U.S.C. chapter 51 and the GS pay system established under 5 U.S.C. chapter 53, subchapter III, will be modified as described in the following sections. Except as otherwise provided in this plan, demonstration project employees will be considered to be GS employees in applying other laws, regulations, and policies. NNSA does not currently have employees covered by law enforcement officer (LEO) special base rates. Should any law enforcement officers be covered by this demonstration project in the future, they will not be considered to be General Schedule employees for the purposes of applying LEO special base rates authorized by section 403 of the Federal Employees Pay Comparability Act of 1990; a separate career path would be established for these employees, and band ranges for any such LEOs will take LEO special base rates into account.

A. Pay Banding Classification and Pay System

1. Establishment of Career Paths and Pay Bands

NNSA may establish, and adjust over time, career paths that group one or more occupational categories together and provide a common banding structure (*i.e.*, set of work levels and rate ranges) for occupations within a given career path. Initially, NNSA intends to establish five career paths.

Each career path will be subdivided into pay bands. Each pay band will correspond to one or more GS grades. NNSA may establish, and adjust over time, a career path's pay band structure.

NNSA's initial career path and pay bands are:

(1) *Engineering and Scientific Career Path:* Encompasses all professional positions (with the exception of professional positions in the Future Leaders Career Path) classified in the GS–800 and GS–1300 job series, subdivided into the following pay bands:

- Pay Band I (GS–5 through GS–8)
- Pay Band II (GS–9 through GS–11)
- Pay Band III (GS–12/GS–13)
- Pay Band IV (GS–14/GS–15)

(2) *Professional, Technical, and Administrative Career Path:* Encompasses all OPM-recognized two-grade interval occupations, except GS–800 engineers and GS–1300 scientists. All positions in this career path are subdivided into the following pay bands:

- Pay Band I (GS–5 through GS–8)
- Pay Band II (GS–9 through GS–12)
- Pay Band III (GS–13/GS–14)
- Pay Band IV (GS–15)

(3) *Technician and Administrative Support Career Path:* Encompasses all OPM-recognized one-grade interval occupations, excepting positions classified in the GS–084 Courier series (see below). All positions in this career path are subdivided into the following pay bands:

- Pay Band I (GS–1 through GS–4)
- Pay Band II (GS–5 through GS–8)
- Pay Band III (GS–9)

(4) *Nuclear Materials Couriers Career Path:* Encompasses all positions classified into the GS–084 job series, subdivided into the following pay bands:

- Pay Band I (GS–8 through GS–10)
- Pay Band II (GS–11)
- Pay Band III (GS–12)
- Pay Band IV (GS–13)

(5) *Future Leaders Career Path:* Encompasses the positions of all interns enrolled in NNSA's 2-year Future Leader Program, in various engineering, scientific, business, and administrative occupations. All positions in this career path are subdivided into the following pay bands:

- Pay Band I (GS–5 through GS–8)
- Pay Band II (GS–9 through GS–11)
- Pay Band III (GS–12/GS–13) [2]

NNSA will coordinate changes in career paths or pay banding structures with OPM. After coordination with OPM, NNSA will give affected employees advance notice and an opportunity to comment before effecting a change with respect to career paths or banding structure.

[2] Although all Future Leaders will have career ladders to pay band III in either the *Engineering and Scientific Career Path,* or the *Professional, Technical, and Administrative Career Path,* a control point equating to the salary of GS–12 step 10 will be established for those Future Leaders with a Masters Degree in business-related and administrative fields to enable these individuals to be converted from band III of the *Future Leaders Career Path* to band II of the *Professional, Technical, and Administrative Career Path* upon successful completion of the 2-year program.

2. Position Classification

Application of the 15-grade GS position classification system established under 5 U.S.C. chapter 51 will be simplified by allowing a position to be assigned to a specific pay band if the duties and responsibilities of the position meet (or exceed) the requirements for classification into the lowest grade included in that specific pay band. For example, an 801, Engineer, position assigned to Pay Band 1 (GS–5 through GS–8), need only meet the requirements for classification at the GS–5 level. Position descriptions will include examples of higher-level duties and responsibilities to which employees are fully intended to progress. NNSA will establish pay band boundaries consistent with OPM's existing position classification standards, grade-evaluation criteria, and grading practices.

3. Position Classification Appeals

An individual employee may request that NNSA or OPM reconsider the classification (i.e., pay system, occupational series, official title, or pay band) of his or her official position of record at any time, consistent with procedures currently prescribed under 5 CFR part 511, subpart F. A full description of the classification appeals process for the NNSA demonstration project will be included in the *Demonstration Project Policies and Procedures Manual* that will accompany this project plan.

4. Minimum Qualifications Requirements

Application of the *OPM Operating Manual: Qualification Standards for General Schedule Positions* is simplified by allowing a candidate to qualify for a specific pay band if the candidate meets (or exceeds) the requirements for the lowest grade included in that specific pay band. For example, a candidate for an 801 Engineer position assigned to Pay Band 1 (GS–5 through GS–8), need only meet the qualifications requirements for a GS–801 Engineer position at the GS–5 level.

For NNSA demonstration project employees and employees of other Federal agencies who are in sufficiently similar pay banding systems, the common OPM requirement of one year of experience ''at the next lower grade in the normal line of progression for the occupation'' is changed to ''at the next lower pay band in the normal line of progression for the occupation.''

Federal employees in the General Schedule pay system, Federal employees in other pay systems comparable to the General Schedule, and non-Federal applicants must meet the common OPM requirement of one year of experience ''at the next lower grade in the normal line of progression for the occupation.''

5. Elimination of Fixed Steps

The 10 fixed steps of each GS grade will not apply to employees participating in the demonstration project. The fixed-step system was designed to reward longevity. A pay banding system is an important element of any effort to make pay more performance-sensitive. No employee's pay will be reduced as a result of becoming covered by the demonstration project. However, demonstration project employees will no longer receive longevity-based within-grade pay increases at prescribed intervals. Instead, they will be granted annual performance adjustments as described in section III.C. below.

6. Rate Range

The normal minimum and maximum rates of the rate range for each pay band will equal the applicable step 1 rate and step 10 rate, respectively, for the lowest and highest grades, respectively, in the General Schedule that are included in the pay band. The minimum rate of the pay band is extended 5 percent below the normal minimum for employees with a rating of record below Fully Meets Expectations (FME). Such an employee's rate may fall below the normal pay band minimum when that minimum increases as a result of a pay band adjustment, but the employee cannot receive a pay adjustment, or performance pay increase, because the employee's rating of record is below Fully Meets Expectations, as described in section III.C.4.

The maximum rate of each pay band is extended 5 percent above the normal maximum for all employees with a rating of record at the highest level (currently called ''Significantly Exceeds Expectations'' (SEE) in NNSA). This upper range extension will help ensure that the range of available pay rates will be adequate to recognize truly outstanding performance. The upper range extension is reserved for employees with a SEE rating. If an employee in the upper range extension is rated below the SEE level, special provisions apply, as described in section III.A.10.

In addition to rates of basic pay, employees may receive locality payments or staffing supplements as described in section III.A.10 or III.A.11, respectively.

7. Rate of Basic Pay Upon Initial Appointment

Upon appointment to a demonstration project position under Delegated Examining, Direct-Hire Authorization, or other authority primarily designed for initial entry into the Federal service (e.g., Veterans Employment Opportunity Act, 30% Disabled Veteran Appointment), an appointee's pay rate may be set at any rate within the normal pay band range. In exercising this flexibility, NNSA will consider the appointee's qualifications, competing job offers, NNSA's need for the appointee's talents, the appointee's potential contributions to NNSA mission accomplishment, and the rates received by on-board employees. This flexibility will allow NNSA to compete more effectively with private industry for the best talent available, though managers will be expected to use this flexibility with great judiciousness and prudence.

8. Rate of Basic Pay Upon Promotion

Upon promotion to a higher pay band, an appointee's pay rate generally will be set at a rate within the normal pay band range to which the appointee is being promoted that provides a pay increase of 8 percent, unless a greater increase is necessary to set pay at the normal range minimum. NNSA may establish exceptions to this policy to deal with employees receiving a retained rate, employees who are re-promoted shortly after a demotion, employees with exceptional performance warranting a larger increase with higher management approval, etc. In exercising this flexibility, NNSA will consider the appointee's qualifications, competing job offers, NNSA's need for the appointee's talents, and the appointee's potential contributions to NNSA mission accomplishment. A demonstration project employee who moves to a higher pay band (defined as a pay band with a maximum base rate for the normal range that is higher than the maximum rate of the normal range of the employee's pay band before the move) in a different career path is considered to have been promoted under policies prescribed by NNSA. NNSA may adopt policies providing a promotion-equivalent increase to a Federal employee outside the demonstration project who is selected, through merit promotion plan procedures, to fill a higher-level position (as defined in NNSA policies) covered by the demonstration project.

NNSA employees, who at the time of conversion into the demonstration project are in a career ladder to a higher

GS grade (i.e., have not reached the top level of that career ladder), will be eligible for special in-band pay increases under the authority of this demonstration project. The in-band pay increases will be sufficient to ensure that an employee's base rate under the demonstration project is equivalent to the base rate which the employee would have received had the employee and position remained in the General Schedule. Only one in-band pay increase may be received in a 52-week period. This ''grandfathering'' benefit will cease to be applicable when the employee reaches equivalence with the top GS grade of the formerly applicable career ladder. Only current NNSA employees who convert at the inception of pay banding will be afforded this ''grandfathering'' benefit. The specific terms and conditions of this benefit will be established by NNSA in *NNSA's Demonstration Project Policies and Procedures Manual* that will implement this project plan.

NNSA may establish special rules for computing the promotion increase for promotions involving positions covered by a staffing supplement that take into account the staffing supplement and locality pay, subject to guidance provided by OPM.

9. Rate of Basic Pay in Competitive and Noncompetitive Lateral Actions

When a non-demonstration project employee from NNSA or DOE is reassigned into a demonstration project position, NNSA may provide an immediate increase in the rate of basic pay to reflect the prorated value of the employee's next scheduled within-grade increase or similar within-range adjustment under the former pay system, consistent with the requirements in section V.A. Similarly, when an employee transfers into NNSA from another Federal agency, NNSA may provide an immediate increase in the rate of basic pay to reflect the prorated value of the employee's next scheduled within-grade increase or similar within-range adjustment, also consistent with section V.A. When a demonstration project employee is selected through competitive procedures to fill another demonstration project position that is at the same pay band as the employee's current position, or has no greater pay potential, NNSA may provide an immediate pay increase up to 5 percent upon reassignment. The increase to pay must be based on a review of the employee's current salary, salary history, performance evaluations, and qualifications. Justification and review requirements for such an increase will be reflected in the staffing and pay-setting policies found in *NNSA's Demonstration Project Policies and Procedures Manual.*

10. Other Pay Administration Provisions

Performance-based pay increases described in section III.C will be made to the scheduled annual rate of pay. These increases will be made on the first day of the last full pay period in each calendar year. Annual general pay adjustments will be effective on the first day of the first full pay period in January of each year.

Locality-based comparability payments under 5 U.S.C. 5304 will be paid on top of the scheduled annual rate of pay in the same manner as those payments apply to other GS employees (except as described in the following paragraph). Staffing supplements may apply as described in section III.A.11.

A locality rate cap 5 percent higher than the normal EX–IV statutory cap is established to accommodate those employees in the upper rate range extension, whose current rating of record is SEE. This higher cap will only apply to employees whose pay rate is in the upper range extension. If the locality rate for an employee at the normal band maximum is affected by the EX–IV cap, resulting in an ''effective locality pay percentage'' that is less than the regular locality pay percentage, the locality rate for an employee in the upper rate range extension of the same band will be computed using that same effective locality pay percentage. (For example, if the regular locality pay percentage is 30 percent, but the EX–IV cap causes the amount of locality pay actually received by an employee at the regular band maximum to be 20 percent, that effective locality pay percentage of 20 percent would be used to compute locality pay for an employee in the upper range extension of the same band.)

If an employee in the upper range extension receives a Fully Meets Expectations (FME) annual rating of record following the previous year's SEE rating, the employee will be converted to a retained rate status and will receive 50 percent of the increase in the adjusted rate for the normal range maximum (including any applicable locality payment or staffing supplement). The employee will receive the 50 percent adjustment each year he or she receives an FME rating of record until the employee's pay falls at or below the normal maximum rate of the pay band.

Employees receiving a rating of record below Fully Meets Expectations are prohibited from receiving any increase in basic pay including any annual adjustment in the scheduled rate of pay, locality pay, or staffing supplement, except as necessary to prevent their frozen rate from falling below the 5 percent threshold of the lower band extension. A frozen rate of pay does not result in a reduction in pay and therefore is not subject to adverse action procedures in chapter 75 of title 5, United States Code. In no case may an employee's rate of basic pay fall below the 5 percent lower band extension. If an employee's frozen rate of pay falls below the bottom threshold of the lower range extension, it will be adjusted by the dollar amount of the annual adjustment in the scheduled rate of pay necessary to bring their adjusted frozen rate back within the lower extended range. *NNSA's Demonstration Project Policies and Procedures Manual* will address how a frozen locality payment or staffing supplement will be adjusted if an employee moves to a demonstration project position with a different locality pay schedule or staffing supplement.

When an employee receives a rating of record below Fully Meets Expectations, their existing rate of basic pay including any applicable locality pay or staffing supplement is frozen until they receive a new rating of record of Fully Meets Expectations. If NNSA chooses to give such an employee a new rating of record of FME before the end of the current appraisal period, the employee is entitled to an increase in the rate of basic pay effective on the first day of the first pay period beginning on or after the date the new rating is final, as described in section III.C.4.

Subject to guidance provided by OPM, NNSA will establish supplemental pay administration rules for determining an employee's rate of pay upon initial appointment, promotion, demotion, transfer, reassignment, or other position change, as needed. In addressing geographic conversions and simultaneous pay actions, such rules must be consistent with 5 CFR 531.205 and 5 CFR 531.206, respectively.

The grade retention provisions in 5 U.S.C. 5362 and 5 CFR part 536 are not applicable (i.e., no band retention). The pay retention rules in 5 U.S.C. 5363 and 5 CFR part 536 apply to demonstration project employees, subject to the following exceptions:

(1) Enhanced pay retention (as described in the next paragraph) applies to an employee who is entitled to a retained rate as a result of an involuntary reduction in band through no fault of his or her own;

(2) An employee with a rating of record below Fully Meets Expectations

may not receive an increase in his or her retained rate under 5 U.S.C. 5363(b)(2)(B);

(3) An employee in the upper range extension who is rated below Significantly Exceeds Expectations will be converted to a retained rate before processing any other pay action;

(4) The cap on retained rates is equal to the rate for level IV of the Executive Schedule plus 5 percent (instead of the EX–IV cap established under 5 CFR 536.306) in order to accommodate employees in the upper range extension whose rating of record falls below SEE; and

(5) The range maximum rate used in computing retained rate adjustments will always be the applicable adjusted rate for the normal range maximum (including any applicability locality payment or staffing supplement), not the upper range extension maximum, regardless of the employee's rating of record.

Enhanced pay retention applies to employees who become entitled to a retained rate as a result of an involuntary reduction in band under conditions that would have met the requirements for grade retention if the employee were covered by 5 CFR 536.201–536.202. Under enhanced pay retention, an employee's retained rate will be determined as prescribed in 5 CFR 536.304. However, an employee's retained rate will be increased by 100 percent (instead of 50 percent) of the dollar amount of any increase in the normal maximum rate of the employee's band during the 2-year (i.e., 104-week) period beginning on the date the employee's retained rate is established. After the 2-year period of enhanced pay retention, the regular 50-percent adjustment rule in 5 U.S.C. 5363(b)(2)(B) and 5 CFR 536.305 will apply, as modified by the provisions in this section. The 50-percent adjustment rule will be applied by measuring the dollar change in the applicable adjusted rate for the normal maximum rate of the band (linked to applicable GS step 10 rate).

If an employee is receiving a retained rate that is less than the applicable adjusted maximum rate (including any applicable locality payment or staffing supplement) for the upper range extension for the employee's band, and if that employee receives a rating of record of Significantly Exceeds Expectations, the employee's retained rate will be terminated and converted to an equal adjusted rate (base rate in upper range extension plus applicable locality payment or staffing supplement). This conversion must be processed before any other pay adjustment.

For a retained rate employee with a rating of record of Significantly Exceeds Expectations, if a retained rate adjustment provided at the time of a range adjustment results in the retained rate falling below the applicable adjusted rate for the upper range extension maximum, the employee's retained rate will be terminated, and the employee's pay will be set at the maximum rate of the upper range extension.

For a retained rate employee with a rating of record of Fully Meets Expectations, if a retained rate increase provided at the time of a range adjustment results in the retained rate falling below the applicable adjusted rate for the normal band maximum, the employee's retained rate will be terminated, and the employee's pay will be set at the normal band maximum rate.

For a retained rate employee with a rating of record below Fully Meets Expectations, the retained rate is frozen and not subject to adjustment. When such an employee's retained rate falls below the applicable adjusted rate for the normal band maximum, the employee's retained rate will be terminated, and the employee's pay will be set at an adjusted rate equal to the retained rate (i.e., the rate is not set at the range maximum).

As required by 5 CFR 536.304(a)(2) and 536.305(a)(2), any general pay adjustment, including a retained rate adjustment as described in the preceding paragraphs, must be processed before any other simultaneous pay action (such as a geographic pay conversion).

When applicable, the saved pay rules in 5 U.S.C. 3594 and 5 CFR 359.705 for former SES members continue to apply to demonstration project employees, except that (1) an employee with a rating of record below Fully Meets Expectations may not receive an increase in his or her saved rate under 5 U.S.C. 3594(c)(2); and (2) the 50-percent adjustment rule must be applied in the same manner as it is applied for a retained rate under 5 U.S.C. 5363, subject to the modifications described in the preceding paragraphs. The rules regarding termination of a saved rate when it falls below the applicable adjusted maximum rate must be parallel to those governing termination of a retained rate under 5 U.S.C. 5363, subject to the modifications described in the preceding paragraphs. The enhanced pay retention provisions described in the preceding paragraphs do not apply to saved rates under 5 U.S.C. 3594.

NNSA may adopt supplemental pay administration policies governing matters not specifically addressed in this plan, subject to any OPM guidance.

11. Staffing Supplements

An employee who is assigned to an occupational series and geographic area covered by an OPM-established special rates schedule, and who meets any other applicable coverage requirements, will be entitled to a staffing supplement if the maximum adjusted rate for a covered position in the GS grades corresponding to the employee's band is a special rate that exceeds the applicable maximum GS locality rate. The staffing supplement is added on top of the rate of basic pay in the same manner as locality pay. An employee will receive the higher of the applicable locality payment or staffing supplement.

For employees being converted into the demonstration project, the employee's total pay immediately after conversion will be the same as immediately before, but a portion of the total will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process as there will be no change in the total salary rate. The staffing supplement is calculated as described below.

Upon conversion, the demonstration base rate will be established by dividing the employee's former GS adjusted rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS base rate corresponding to that special rate (step 10 GS base rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base rate by the staffing factor minus one. Therefore, the employee's final demonstration special staffing rate equals the demonstration base rate plus the special staffing supplement; this amount will equal the employee's former GS adjusted rate.

Simplified, the formula is this:

Staffing factor = (Maximum special rate for banded grades) / (GS base rate corresponding to that special rate)

Demonstration base rate = (Former GS adjusted rate [special or locality rate]) / (Staffing factor)

Staffing supplement = demonstration base rate × (staffing factor − 1)

Salary upon conversion = demonstration base rate + staffing supplement [sum will equal existing rate]

If a special rate employee is converted to a band where the maximum GS adjusted rate for the banded grades is a

locality rate, when the employee is converted into the demonstration project, the demonstration base rate is derived by dividing the employee's former special rate by the applicable locality pay factor (for example, in the Washington-Baltimore area, the locality pay factor is 1.175 in 2006). The employee's demonstration locality-adjusted rate will equal the employee's former GS adjusted rate.

Any General Schedule or special rate schedule adjustment will require recomputation of the staffing supplement. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied, as appropriate. Upon geographic movement, an employee who receives the special staffing supplement will have the supplement recomputed; any resulting reduction in the supplement will not be considered an adverse action or a basis for pay retention.

Established salary including the staffing supplement will be considered basic pay for the same purposes as a special rate under 5 CFR 530.308—e.g., for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute workers' compensation payments and lump-sum payments for accrued and accumulated annual leave. Staffing supplement adjusted rates are subject to the Executive Schedule level IV cap that applies to GS locality rates and special rates (except as provided in the following paragraph).

Adjusted rates that include a staffing supplement are subject to an Executive Schedule level IV cap, except for employees in the upper range extension whose rating of record is SEE. For those with a base rate in the 5 percent upper range extension, an adjusted rate cap 5 percent higher than the normal EX–IV cap is established. This higher cap will apply only to employees receiving a rate within the upper range extension. If the adjusted rate for an employee at the normal band maximum is affected by the EX–IV cap, resulting in an ''effective staffing supplement percentage'' that is less than the regular staffing supplement percentage, the adjusted rate for an employee in the upper rate range extension of the same band will be computed using that same effective staffing supplement percentage. (For example, if the regular staffing supplement percentage is 35 percent, but the EX–IV cap causes the amount of the staffing supplement actually received by an employee at the regular band maximum to be 20 percent, that effective staffing supplement percentage of 20 percent would be used to compute the staffing supplement for an employee in the upper range extension of the same band.)

OPM may approve staffing supplements for categories of employees within the NNSA demonstration project who are not in approved special rate categories for GS employees, consistent with the provisions in 5 U.S.C. 5305(a) and (b).

B. Performance Appraisal

NNSA recognizes the importance of maintaining highly credible performance management systems. NNSA will use a performance management program under the Department of Energy appraisal system that has been approved by OPM consistent with chapter 43 of title 5, United States Code. Throughout the duration of the demonstration project, the effectiveness of performance management within the project will be monitored by examining metrics and assessments that will be included in the demonstration project evaluation plan.

1. Program Requirements

The NNSA performance appraisal program requires written performance plans for each covered employee containing the employee's performance elements and standards. The performance plan links the performance elements and standards for individual employees to the organization's strategic goals and objectives. Ongoing feedback and dialogue between employees and their supervisors regarding performance is required. In addition, the program provides for, at a minimum, one mid-year progress review.

The NNSA appraisal program, including its performance levels and standards, provides for making meaningful distinctions in performance. The program currently uses a four-level rating pattern to both summarize performance and to appraise performance at the element level. Its summary level pattern under 5 CFR 430.208(d) uses Levels 1, 2, 3, and 5, which NNSA has labeled Does Not Meet Expectations, Needs Improvement, Fully Meets Expectations, and Significantly Exceeds Expectations, respectively. Employees must be covered by their performance plan for at least 90 days before they can be assigned a rating of record. Supervisors and managers apply the appraisal program in a way that makes appropriate differentiations in performance. These differentiations reflect overall organizational performance. Employees receive a written performance appraisal (i.e., a rating of record) annually. Forced distributions of ratings are prohibited. Each annual appraisal period will begin on October 1 and end on the following September 30. Performance appraisals will be completed in a timely manner to support pay decisions in accordance with section III.C.

Additional guidance on the NNSA performance appraisal program is provided through internal operations manuals. Performance appraisal is an evolutionary process, and changes may be made during the course of the demonstration project based on findings from our ongoing evaluations and reviews. Any changes will be communicated to affected employees, and they will be given a chance to comment before NNSA implements the changes.

2. Supervisory Accountability

Supervisors are responsible for providing appropriate consequences for employee performance by addressing poor performance and recognizing exceptional performance. The performance plans for supervisors and managers include the degree to which supervisors and managers plan, assess, monitor, develop, correct, rate, and reward subordinate employees' performance. It is recognized that specific training must be provided to prepare supervisors and managers to exercise these responsibilities. NNSA has provided supervisory training each of the past three years on philosophical and procedural aspects of its new and still evolving performance management program (*i.e.*, the lessons learned in the administration of each performance appraisal cycle have resulted in refinements each subsequent year). NNSA understands that this demonstration project will heighten the need for continuing supervisory training to support the accurate and realistic appraisal of performance.

3. Reconsideration of Ratings

To support fairness and transparency for the program and its consequences, employees have an opportunity to request reconsideration of a rating of record. Such requests will be administered through a reconsideration process outlined in NNSA's Demonstration Project Policies and Procedures Manual. This procedure will be the sole process for addressing complaints regarding overall summary ratings and ratings of individual elements.

C. Performance-Based Pay Increases

1. Pay Pools

Funds that otherwise would be spent on the annual GS pay adjustment, WGIs, and QSIs for demonstration project employees will instead be placed into two pay pools: (1) the general pay increase pool will include funds that otherwise would be spent on the annual scheduled rate pay adjustment and (2) the performance pay pool will include funds that would otherwise be used to pay WGIs and QSIs. The performance pay pool also may include funds saved through the elimination of promotion increases for promotions between grades that are consolidated into the same band.

All employees with a rating of Fully Meets Expectations or higher are entitled to an adjustment in the scheduled rate of pay equal to the annual pay adjustment, which is also used to adjust NNSA pay ranges. This general increase is funded by the general increase pool. Employees who receive a rating below FME will be eligible for the annual pay adjustment, should a new rating be assigned after a period of time under a performance improvement plan.

Additional pay increases will be funded from the performance pay pool using a share mechanism (1) to ensure that employees with higher ratings of record receive greater pay increases than employees with relatively lower ratings of record and (2) to control costs without resorting to a forced distribution of ratings. Each employee will be assigned a certain number of shares, based on his or her rating of record in accordance with section III.C.2.

Participating organizations will establish pay pools for allocating performance pay increases. NNSA will determine which participating employees are covered by any pay pool and determine the dollar value of each pay pool. In setting the value of pay pools, NNSA will initially allocate an amount for performance pay increases equal to the estimated value of the WGIs, QSIs, and applicable promotion increases that otherwise would have been paid to participating employees. In computing the estimated value of WGIs and QSIs, NNSA may use estimated Governmentwide averages as computed by OPM.

2. Performance Shares

NNSA will establish rating/share patterns for each pay pool—that is, the relationship between a rating of record and the number of shares. NNSA rating/share patterns will ensure that a higher rating of record receives a higher performance payout percentage for employees in the normal rate range.

NNSA may adjust rating/share patterns over time after coordination with OPM and after giving affected employees advance notice. A change in the rating/share pattern may be applied in computing performance-based pay adjustments based on an appraisal period only if it takes effect at least 120 days before the end of that appraisal period. Initially, the number of shares for each rating level will be as follows: 4 shares are assigned to a Significantly Exceeds Expectations summary rating when an employee receives SEE ratings in all critical elements; 3 shares are assigned when an employee receives a summary rating of SEE, but one or more critical elements are rated at FME; 2 shares are assigned to an FME summary rating when one or more critical elements are rated at SEE; and 1 share is assigned to an FME summary rating when no critical element is rated below FME. Employees who receive a final summary rating of FME with one critical element rated at the NI level are not eligible for any shares from the performance pay pool.

No shares may be assigned to any rating of record below Fully Meets Expectations, since no pay increase is payable to employees with such a rating of record. After the ratings of record and shares are assigned to employees, the value of a single share can be calculated.

In addition to performance-based pay increases, demonstration project employees remain eligible to receive both monetary and non-monetary forms of recognition, so long as employees are not rewarded twice for the same contributions using incentive awards authorities under chapter 45 of title 5. Additionally, supervisors may receive supervisory bonuses, as referenced in section III.D. of this plan. NNSA will adopt supplemental award administration policies not specifically covered by this plan.

3. Performance Payout

In general: NNSA will determine the value of one performance share, expressed as a percentage of the employee's rate of basic pay, based on the value of the pay pool and the distribution of shares among pay pool employees. An individual employee's performance payout is determined by multiplying the determined percentage value of a performance share by the number of shares assigned to the employee. The performance payout is computed as a percentage of the employee's rate of base pay as in effect on the date determined in NNSA policies. On the first day of the last full pay period in each calendar year, this amount must be paid as an increase in the employee's rate of basic pay, but only to the extent that it does not cause the employee's rate to exceed the maximum rate of the employee's rate range. Notwithstanding the preceding sentence, employees in the upper band extension rated below the highest rating level are subject to special rules as described in section III.A.6 and III.A.10. Any portion of an employee's performance payout amount that cannot be delivered as a basic pay increase will be paid out as a lump sum (with no charge to the pay pool). Such a lump-sum payment is not basic pay for any purpose and is not a cash award under chapter 45 of title 5, United States Code.

An employee who does not have a rating of record for the appraisal period most recently completed will be treated the same as employees in the same pay pool who received the modal rating for that period, subject to NNSA proration policies.

NNSA may establish policies on prorating the performance pay increases and/or lump-sum payments for an employee who, during the period between annual pay adjustments, was (1) hired or promoted, (2) in leave-without-pay status, (3) on a part-time work schedule, or (4) in other circumstances that make proration appropriate. Those policies may establish a minimum employment period as a condition to receive any amount of a performance payout.

If an employee's rating of record that is the basis for a performance payout is retroactively revised (after the regular effective date of performance payouts) through the reconsideration process, the employee's performance payout must be retroactively recomputed using the share value as originally determined. This also applies to the retroactive correction of a critical element previously rated as Needs Improvement, when that element rating resulted in zero shares being given to an employee with a Fully Meets Expectations rating of record. Any such retroactive corrections are not funded out of the pay pool and do not affect the performance payouts provided to other employees in the pay pool. In setting the size of a future pay pool, management will take into account past and projected corrections.

Special provisions for employees returning to duty after a period of service in the uniformed services or in receipt of workers' compensation benefits: Special pay-setting provisions apply to employees who do not have a rating of record to support a pay

adjustment but who are returning to duty status after a period of leave without pay or separation during which the employee (1) was serving in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) with legal restoration rights (e.g., 38 U.S.C. 4316), or (2) was receiving workers' compensation benefits under 5 U.S.C. chapter 81, subchapter I. In these cases, NNSA will determine the employee's prospective rate of basic pay upon return to duty by making performance pay adjustments for the intervening period based on the modal rating of record for employees in the same pay pool. The performance pay increases during the intervening period may not be prorated based on periods covered by this provision. In addition, a performance pay increase that is effective after the employee's return to duty may not be prorated based on periods covered by this provision. A lump-sum payment for a period including actual service performed after the employee's return to duty must be prorated (based on service covered by this provision) under the same agency proration policies that apply generally to periods of leave without pay.

Special provisions for employees receiving a retained rate: An employee receiving a retained rate under 5 U.S.C. 5363 or 5 U.S.C. 3594 is not eligible for a basic pay increase except in conjunction with a rate range adjustment, as described in section III.A.10. At the discretion of the Administrator or the Administrator's designee, a retained rate employee may receive the same lump-sum payment approved for an employee in the same pay pool who is at the applicable range maximum and who has the same performance rating of record and number of shares.

4. Employees Who Cannot Receive a Performance Pay Increase

Employees with a rating of record at Fully Meets Expectations with one or more elements rated at the Needs Improvement level are prohibited from receiving a performance payout. Employees with a rating of record below Fully Meets Expectations are prohibited from receiving a performance payout or general pay adjustment. When an employee's pay is frozen because of performance below Fully Meets Expectations, his or her pay rate may fall below the normal minimum rate of the pay band, since that range minimum may be increasing. However, in no case may an employee's rate of basic pay be reduced more than 5 percent below the normal range minimum. Details on adjusting the basic rate of pay to stay within the 5 percent extended minimum rate range can be found in III.A.10.

If NNSA later chooses to give such an employee a new rating of record of Fully Meets Expectations before the end of the next appraisal period, as a result of the successful completion of a formal improvement plan, the employee is entitled to the same *percentage* of basic pay as the percentage that would have applied if the employee had been rated FME at the time the general pay adjustment was denied. This provision only applies to the annual general pay adjustment and is not retroactive. Under no circumstances is an employee eligible for a performance payout based on share distribution until the next appraisal period closes.

D. Supervisory Bonuses

NNSA may provide supervisors with annual supervisory bonuses. A supervisory bonus may not exceed 5 percent of the employee's rate of basic pay. A supervisory bonus is not basic pay for any purpose, nor may it be used in computing a lump-sum annual leave payment under 5 U.S.C. 5551–5552. A supervisory bonus is not an award under 5 U.S.C. chapter 45; it is a special lump-sum payment established under the demonstration project authority. Bonus expenditures will be funded through other NNSA funding sources. NNSA may establish supplementary policies and procedures to implement these bonuses, subject to OPM guidance.

E. Reduction-in-Force

1. If, during the life of the demonstration project, NNSA enters into a reduction-in-force (RIF), the RIF will be conducted in accordance with 5 U.S.C. 1302, 3502, and 3508 and 5 CFR part 351, except as follows:

(a) Each of the five career paths in each NNSA local commuting area will constitute separate competitive areas (i.e., separate from the other career paths, and separate from the competitive areas of other NNSA employees);

(b) NNSA will establish competitive levels consisting of all positions in a competitive area which are in the same pay band and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one position may be reassigned to any of the other positions in the level without undue interruption. Each demonstration project competitive level will become a Retention List for purposes of competition when employees are released from their competitive levels, displaced by higher-standing employees, or placed during the exercise of assignment rights.

(c) Assignment rights will be modified by substituting ''one pay band'' for ''three grades'' and ''two pay bands'' for ''five grades.''

(d) NNSA will use retention standing when it chooses to offer vacant positions within the meaning of 5 CFR 351.704.

2. Prior to conducting a RIF, NNSA will issue and implement a policy for the establishment and operation of an agency-level reemployment priority list (RPL) designed to assist current NNSA competitive service demonstration project employees who will be separated as a result of a RIF and, subsequently, former NNSA competitive service demonstration project employees who have been separated as a result of a RIF, or who have fully recovered from a compensable injury after more than one year, in their efforts to be reemployed at NNSA, by affording them priority consideration over certain outside job applicants for NNSA competitive service demonstration project vacancies.

NNSA will develop and adopt supplemental RIF administration procedures to augment the RIF policies stipulated by this plan.

IV. Training

As NNSA has learned during the past three years of implementing and refining a new performance management program, training for all involved will be essential to the success of the demonstration project. Training will be provided to employees, supervisors, and managers before the project is launched and throughout the life of the project. It is important that employees perceive the performance management program as fair and transparent; therefore, supervisors and managers will be trained extensively in setting and communicating performance expectations; monitoring performance and providing timely feedback; developing employee performance and addressing poor performance; rating employees' performance based on expectations; and involving employees in the development and implementation of the performance appraisal program. Supervisors and managers will be held accountable for the effective management of the performance of employees they supervise through performance expectations set for and appraisals made of their own performance in this regard.

All employees will be trained in the performance appraisal process and the pay adjustment mechanism. Various types of training are being considered,

including videos, on-line tutorials, and train-the-trainer concepts.

V. Conversion

A. Conversion to the Demonstration Project

1. Employees whose positions become covered by the demonstration project will convert into the career path and pay band covering the occupational series and grade of their position of record. Employees will convert to the demonstration project with no change in their total rate of pay (including basic pay, plus any applicable locality payment, special rate supplement, or staffing supplement). Special conversion rules apply to special rate employees as described in section III.A.10, Staffing Supplements. Any simultaneous pay action that is scheduled to take effect under the GS pay system on the date of conversion must be processed before processing the conversion to the pay banding system. NNSA implementing policies will provide procedures for converting an employee on grade retention under 5 U.S.C. 5362 or receiving a retained rate under 5 U.S.C. 5363 or a saved rate under 5 U.S.C. 3594 to the demonstration project.

2. Immediately after conversion, eligible employees will receive an increase in basic pay reflecting the prorated value of the next scheduled within-grade increase (WGI). The prorated value is determined by calculating the portion of the time-in-step employees have completed towards the waiting period for their next WGI. This WGI ''buy-in'' adjustment will not be paid to (1) employees who are at the step 10 rate for their grade immediately before conversion to the demonstration project, (2) employees who are receiving a retained rate of pay under 5 U.S.C. 5363 or saved rate under 5 U.S.C. 3594 immediately before conversion to the demonstration project, or (3) employees whose rating of record is below Fully Meets Expectations.

3. Adverse action provisions under 5 U.S.C. chapter 75, subchapter II, do not apply to reductions in pay upon conversion into the demonstration project as long as the employee's total rate of pay (including basic pay, plus any applicable locality payment, special rate supplement, or staffing supplement) is not reduced upon conversion.

4. The first performance-based pay increase under the project's pay adjustment mechanism will be effective on the first day of the last full pay period in calendar year 2008.

5. For employees who enter the demonstration project by lateral reassignment or transfer (i.e., not by conversion of position), NNSA may apply parallel pay conversion rules, including rules for providing a prorated adjustment reflecting time accrued toward a GS within-grade increase or similar within-range adjustment under another pay system. If conversion into the demonstration project is accompanied by a geographic move, the employee's pay entitlements under the former pay system in the new geographic area must be determined before performing the pay conversion.

B. Conversion to the General Schedule System

NNSA implementing policies will provide procedures for converting an employee's pay band and pay rate to a GS-equivalent grade and rate of pay if the employee moves out of the demonstration project to a GS position. The converted GS-equivalent grade and rate of pay will be determined before any geographic move, promotion, or other simultaneous action that occurs simultaneously with conversion back to the GS system. The new employing organization must use the converted GS-equivalent grade and rate of pay in applying various pay administration rules that govern how pay is set in the GS position (e.g., rules for promotion and highest previous rate under 5 CFR part 531, subpart B, and pay retention under 5 CFR part 536). The converted GS grade and rate of pay are deemed to have been in effect at the time the employee left the demonstration project pay banding system. The rules for determining the converted GS grade for pay administration purposes do not apply to the determination of an employee's GS-equivalent grade for other purposes, such as reduction-in-force or adverse action. NNSA will perform the computations for employees who remain within NNSA and DOE. NNSA may perform the computations, as a courtesy, for employees who move to other Federal agencies. At a minimum, NNSA will provide a copy of the conversion procedures to gaining Federal agencies for their use. If an employee moves out of the demonstration project to a non-GS system, the employee's pay will be set under the pay-setting rules governing that system.

VI. Project Duration

The initial implementation period for the demonstration project will be 5 years. However, with OPM's concurrence, the project may be extended for additional testing or terminated before the expiration of the 5-year period.

VII. Project Modification

Demonstration projects require modification from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. NNSA may modify and adjust over time features and elements of this project plan. NNSA will coordinate such modifications with OPM and gain its approval prior to implementing the modification. Depending on the nature and extent of the modification, OPM may require that the modification be published as a notice in the **Federal Register**.

VIII. Project Evaluation

Chapter 47 of title 5, United States Code, requires an evaluation of the results of the demonstration project. NNSA, in coordination with OPM, will develop a plan to evaluate the demonstration project to determine the extent to which the pay increases paid to participating employees reflect meaningful distinctions among their levels of performance and the extent to which the project is achieving its other stated goals. Workforce data will be analyzed to make this assessment and to determine whether the project is resulting in any adverse impact on particular groups of employees. Key indicators, including leadership commitment, communication, stakeholder involvement, training, planning, mission alignment, and the rewarding of performance, will be assessed to ensure compliance with stated project goals.

To evaluate and assess this project, NNSA intends to use a new approach developed by OPM and piloted during OPM's 2007 assessments of the Department of Defense's and Department of Homeland Security's Alternative Personnel Systems (APSs). This new approach is entitled the ''Alternative Personnel Systems Objectives-Based Assessment Framework.'' Because demonstration projects are APSs, this Framework will be applicable.

The Assessment Framework is an evaluation structure for determining the extent to which an agency is adequately preparing for and progressing on the goals and objectives of its APS. It describes assessment components, dimensions, elements, and indicators that may be adapted to address the project's specific requirements. The Framework complements the approach used in previous demonstration projects where the evaluation assessed both the implementation and impact of specific interventions and determined whether

these interventions were effective and likely to be beneficial Governmentwide. It uses a standard approach that assesses project implementation and the extent to which personnel system changes are meeting their intended objectives. The Assessment Framework allows stakeholders, including OPM, to draw conclusions about the success of the project. It includes a set of qualitative and quantitative standards which, based on past experience in both the public and private sectors, and input from key stakeholders in both OPM and other agencies, are essential to successfully implementing significant human capital reforms.

There are two major components to the Framework: Preparedness and Progress. The Preparedness component assesses an agency's readiness to implement a demonstration project. The Progress component assesses the extent to which the agency has achieved, or is in the process of achieving, the project's goals and objectives.

Each of the components includes five dimensions or key attributes. The dimensions of the Preparedness component are Leadership Commitment, Open Communication, Training, Stakeholder Involvement, and Implementation Planning. Agencies that provide adequate emphasis and effort in the Preparedness dimensions are well positioned to successfully implement a demonstration project or other APS. The dimensions of the Progress component are Mission Alignment, Results-Oriented Performance Culture, Workforce Quality, Equitable Treatment, and Implementation Plan Execution. Agencies that demonstrate Progress in achieving these broad goals are successfully implementing their APS.

The following table depicts the Assessment Framework, including the dimensions (key attributes of the Preparedness and Progress components) and elements (specific features that define dimensions) for each component.

APS OBJECTIVES-BASED ASSESSMENT FRAMEWORK

Dimension	Element
Preparedness	
LEADERSHIP COMMITMENT: Agency leaders are actively engaged in promoting and gaining workforce acceptance of the program, as well as prioritizing program implementation. Agency leaders provide appropriate resources for program implementation and are held accountable for effective execution.	Engagement—The extent and sufficiency of senior leader efforts to promote, provide information about, and gain widespread acceptance of the APS across an agency workforce via leadership outreach and communication programs. Accountability—Agency leaders identify APS implementation as an agency priority, and are responsible for playing an active role in the design, development and/or implementation of the APS. Resources—Agency leaders ensure an agency has established an appropriate organizational framework with sufficient resources and authorities to effectively design, develop, and implement the APS. Governance—Agency leaders ensure a clear governance process is established for the APS program, including an effective mechanism for resolving conflicts and finalizing decisions, and this governance process is being used to address disagreements regarding APS design, development, and implementation issues.
OPEN COMMUNICATION: Agency provides accurate, up-to-date information on system features and implementation plans. Active outreach efforts are undertaken to provide information to employees and to address questions and concerns. Effective mechanisms are in place for gathering and considering feedback.	Information Access—Agencies ensure comprehensive information is available via a website accessible by all employees regarding key APS design features, training materials, rollout schedules, and other APS issues. Outreach—Agencies conduct regular outreach sessions such as town meetings, webinars, electronic newsletters and other information channels that provide employees with up-to-date information on APS status and issues. Feedback—Agencies provide employees with an accessible mechanism for providing feedback on APS features and issues, and establish practical procedures for considering this feedback.
TRAINING: Agency developers and executes a comprehensive training strategy for effective training on relevant components of the program to users via a range of delivery methods.	Planning—An agency establishes a comprehensive training strategy that addresses the full range of APS components, tools, and roles. Delivery—An agency implements the training strategy to ensure all staff receive training appropriate for their role in the APS, with special emphasis on ensuring supervisors acquire the performance management competencies required to administer the APS effectively.
STAKEHOLDER INVOLVEMENT: Stakeholders are actively involved in the program design and evaluation process and play a supportive role in the implementation of the program.	Inclusion—Agencies engage a broad spectrum of key stakeholder groups to capture a wide range of perspectives regarding APS design features, and to foster buy-in and support for the APS across these stakeholder groups.

APS OBJECTIVES-BASED ASSESSMENT FRAMEWORK—Continued

Dimension	Element
IMPLEMENTATION PLANNING: Agency establishes and implements a comprehensive planning process that coordinates activities across key work streams, such as HR business processes and procedures, tools and technology infrastructure, and change management, while providing mechanisms for assessing status and managing risk.	Work Stream Planning and Coordination—Agencies require an effective planning process that identifies and defines key work streams, highlights critical dependencies, provides for the management and mitigation of risk, and facilitates regular assessments of status against key milestones. HR Business Processes and Procedures—Prior to rolling out an APS, an agency documents the business processes and procedures associated with all APS components, such as staffing, pay pool administration, and performance management. Tools and Technology Infrastructure—Agencies develop appropriate technology tools and infrastructure to enable administering the APS. Structured Approach—Agencies develop a comprehensive change management strategy that addresses managing the mechanisms for people side of change.
Progress	
MISSION ALIGNMENT: The program effectively links individual, team, and unit performance to organizational goals and desired results.	Line of Sight—The degree to which employee performance expectations are linked to agency mission. Accountability—Identifies not only whether or not the linkage is present in performance plans, but also whether or not employees are actually accountable for achieving them.
RESULTS-ORIENTED PERFORMANCE CULTURE: The program promotes a high performance workforce by differentiating between high and low performers and rewarding employees on the basis of performance while effectively managing payroll costs.	Differentiating Performance—The extent to which performance ratings cover a full distribution of likely levels, versus clustering at the higher end of the scale. Pay for Performance—The relationship between pay raises and awards/bonuses and performance rating levels. Cost Management—The extent to which reliable cost estimates are associated with decisions and the extent to which decision makers are accountable for cost management.
WORKFORCE QUALITY: Agency retains its high performers, keeps employees satisfied and committed, attracts high-quality new hires, and transitions its low performers out of the organization.	Recruitment—The extent to which the agency can improve its ability to recruit employees with the appropriate skills, based on the perceptions of supervisory employees. Flexibility—The agency's Progress in providing supervisors with the personnel flexibility needed to re-deploy their staff, and the extent to which this flexibility is used. Retention—The ability of an agency to use the tools provided by the APS to increase the rewards to high performers, thereby helping assure that they remain with the agency, and to provide appropriately lower rewards to lower performers such that they either improve their performance or decide to leave the agency. Satisfaction and Commitment—Based on the premise that an agency's mission performance is increased when its workforce is both committed and satisfied.
EQUITABLE TREATMENT: The program promotes an environment of fairness and trust for employees, consistent with the Merit System Principles and free of Prohibited Personnel Practices.	Fairness—The objective is to measure the impact of the APS on the perceived fairness of agency-related practices. Transparency—This element will assess whether pay for performance processes and procedures are available and understood by stakeholders. Trust—The literature and historical data suggest that employee trust is essential to success not only of the APS, but also an agency's overall effectiveness. This element will assess the impact of the APS on the level of trust employees have for their supervisors.
IMPLEMENTATION PLAN EXECUTION: Agency demonstrates Progress in implementing the program in accordance with its comprehensive planning process.	Work Stream Planning and Status—This element will assess the execution of the implementation process in accordance with the planning process, with attention to key work streams, critical dependencies, management and mitigation of risk, and regular assessment of status. Performance Management System Execution—This element will provide an assessment of the extent to which the performance management components of the APS are being as intended. Employee Support for APS—While not definitive as to the overall effectiveness of the APS, employee support is a strong indicator of implementation Progress and will be assessed.

In addition to dimensions and elements, NNSA's final Evaluation Plan, to be approved by OPM, will stipulate the indicators (characteristics used to measure or assess the agency's performance against the elements), the assessment criteria (standards by which the individual indicators are judged), and planned data sources to be used to evaluate the project. Assessment criteria will be used to assess indicators; indicators will be used to assess elements, and elements will be used to assess dimensions. An example of indicators, assessment criteria, and data sources is included in the table below:

PROGRESS

Dimension	Element	Indicator	Assessment criteria	Data sources
Results-Oriented Performance Culture.	Pay for Performance	Extent to which pay/bonuses are linked to performance (e.g., mean pay increases and bonuses by performance level/band).	Following program implementation, there is a high association between performance ratings and salary increases (allowing for pay band limits).	Payout matrices, salaries, bonuses, and performance ratings from workforce data.
			Following program implementation, there is a high association between performance ratings and bonuses.	
		Perception of association between performance rating and financial reward.	Continuing improvement over baseline/prior year's work.	Employee Survey.
				Awards/pay raises in my work unit depend on how well employees perform their jobs.

The evaluation process will be conducted in two main phases over a 5-year period—formative and summative evaluation. The formative evaluation phase will include baseline data collection (i.e., collecting ''current state'' measures prior to the implementation of the project) and analyses, implementation and progress evaluation, and interim assessments. The formal reports and interim assessments will provide information on the project implementation and operation, as well as current information on the impact of the project on veterans and EEO groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of the demonstration project outcomes after five years. The final report will provide information on how well the interventions achieved the desired goals and will provide recommendations on broader Federal Government application.

The project will be examined during each phase of the evaluation to assess that costs are being managed effectively. Moreover, cost discipline will be examined during each phase of the evaluation to ensure spending remains within acceptable limits. The evaluation will also address the extent to which the project has incorporated the elements required by section 1126 of Public Law 108–136 (5 U.S.C. 4701 note) for pay-for-performance systems in demonstration projects: (1) Adherence to merit principles set forth in section 2301 of title 5; (2) a fair, credible, and transparent employee performance appraisal system; (3) a link between elements of the pay-for-performance system, the employee performance appraisal system, and the agency's strategic plan; (4) a means for ensuring employee involvement in the implementation and operation of the pay-for-performance system; (5) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay-for-performance system; (6) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review; (7) effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance; and (8) a means of ensuring that adequate agency resources are allocated for the design, implementation, and administration of the pay-for-performance system.

IX. Costs

A. Buy-in Costs

There will be added costs resulting from the within-grade increase ''buy-in'' provision described in section V; however, those costs will be offset to some degree by the elimination of within-grade step increases that otherwise would have occurred.

B. Recurring Costs

All funding will be provided through the organization's budget. No additional funding will be requested specifically for this project; all costs will be charged to available funds through existing appropriations, including those incurred in the areas of project development, training, and project evaluation.

X. Waiver of Laws and Regulations Required

A. Title 5, United States Code

Chapter 35, section 3594: Saved pay for former members of the Senior Executive Service (only to the extent necessary to (1) bar employees with a rating of record lower than Fully Meets Expectations from receiving saved rate increases under 5 U.S.C. 3594(c)(2); (2) provide a saved rate that is less than the maximum rate (including any locality adjustment or staffing supplement) of the upper range extension for an employee who receives a rating of record of Significantly Exceeds Expectations will be terminated and converted to an equal adjusted rate; (3) provide the range maximum rate used to compute saved rate adjustments is the normal range maximum rate (including any locality adjustment or staffing supplement); and (4) provide when a frozen saved rate for an employee with a rating of record below Fully Meets Expectations falls below the applicable adjusted rate for the normal band maximum, the saved rate will be terminated and the employee's pay will be set at an adjusted rate equal to the saved rate).

Chapter 51: Classification (except that (1) sections 5111 and 5112 are retained with ''grade'' replaced by ''pay bands'' and (2) for the purpose of applying any other laws, regulations, or policies that refer to GS employees or to chapter 51

of title 5, United States Code, the modified classification system established under this plan must be considered to be a GS classification system under chapter 51; this includes, but is not limited to, the reference to the General Schedule in section 5545(d) (relating to hazard pay)).

Chapter 53, section 5302(1)A, (8) and (9): Definitions (only to the extent necessary to provide that employees under the demonstration project are not considered to be GS employees for the purposes of annual adjustments under section 5303 or similar provisions of law governing annual adjustments for employees covered by section 5303).

Chapter 53, section 5303: Annual adjustments to pay schedules.

Chapter 53, section 5304: Locality-based comparability payments (only to the extent necessary to (1) provide a locality rate that may not exceed the rate for EX–IV plus 5 percent for employees in the upper range extension; (2) apply an ''effective'' locality pay percentage for employees in the upper range extension under circumstances described in the plan); and (3) allow a frozen locality pay percentage for employees with a rating of record below Fully Meets Expectations, as provided in the plan

Chapter 53, section 5305: Special pay authority.

Chapter 53, sections 5331–5336: General Schedule pay rates (except that, for purposes of applying any other laws, regulations, or policies that refer to GS employees or to subchapter III of chapter 53 of title 5, United States, Code, the modified pay system established under this plan must be considered to be a GS pay system established under such subchapter III; this includes, but is not limited to, references to the General Schedule in section 5304 (relating to locality pay), section 5545(d) (relating to hazard pay), and sections 5753–5754 (dealing with recruitment, relocation, and retention incentives)).

Chapter 53, section 5362: Grade retention.

Chapter 53, section 5363: Pay retention (only to the extent necessary to (1) replace ''grade'' with ''band;'' (2) bar employees with a rating of record lower than Fully Meets Expectations from receiving retained rate increases under 5 U.S.C. 5363(b)(2)(B); (3) provide that pay retention provisions do not apply to conversions into the demonstration project from the General Schedule or other pay system, as long as the employee's total pay rate is not reduced; (4) provide the pay (including any locality adjustment or staffing supplement) of an employee in the upper range extension who is rated below Significantly Exceeds Expectations will be converted to a retained rate before processing any other actions; (5) provide a retained rate that is less than the maximum rate (including any locality adjustment or staffing supplement) of the upper range extension for an employee who receives a rating of record of Significantly Exceeds Expectations will be terminated and converted to an equal adjusted rate; (6) provide the range maximum rate used to compute retained rate adjustments is the normal range maximum rate (including any locality adjustment or staffing supplement); (7) provide a retained rate under the enhanced pay retention provisions in section III.A.10. will be increased by 100 percent of the dollar amount of any increase in the normal maximum rate of the employee's band during the two-year period beginning on the date the employee's retained rate is established; and (8) provide when a retained rate for an employee with a rating of record below Fully Meets Expectations falls below the applicable adjusted rate for the normal band maximum, the retained rate will be terminated and the employee's pay will be set at an adjusted rate equal to the retained rate)

Chapter 55, section 5542(a): Overtime rates (only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category that would otherwise apply to an employee (but for the existence of the demonstration project) is deemed to be the ''applicable special rate of pay'' in determining the overtime hourly rate cap)

Chapter 55, section 5547: Limitation on premium pay (only to the extent necessary to provide that an applicable staffing supplement is added to the GS–15, step 10, rate in lieu of the applicable locality payment)

Chapter 75, section 7512(34): Adverse actions (only to the extent necessary to replace ''grade'' with ''band'')

Chapter 75, section 7512(4): Adverse actions (only to the extent necessary to provide that adverse action provisions do not apply to conversions into the demonstration project from the General Schedule or other pay system, as long as the employee's total rate of pay is not reduced)

Note: If any of the provisions of title 5, United States Code, listed above are amended during the period this demonstration project is in effect, NNSA may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. NNSA must notify OPM when any such waiver is terminated.

B. Title 5, Code of Federal Regulations

Part 210, subpart A, section 210.102(b)(12): Reassignment (only to the extent necessary to modify the definition of reassignment to include the movement of an NNSA demonstration project employee from one position to another position with a pay adjustment).

Part 300, subpart F, section 300.604: Restrictions (only to the extent necessary to restrict advancement to a higher pay band to candidates who have completed a minimum of 52 weeks in positions no more than one pay band lower than the position to be filled)

Part 330, subpart B, section 330.201: Establishment and maintenance of Reemployment Priority List (RPL) (only to the extent necessary to establish and maintain a reemployment priority list exclusively for NNSA competitive service demonstration project employees)

Part 351, subpart D, section 351.402: Competitive area (only to the extent necessary to permit the use of career paths in conjunction with organizational units and geographic locations when establishing competitive areas)

Part 351, subpart D, section 351.403: Competitive level (only to the extent necessary to substitute ''same pay band'' for ''same grade'')

Part 351, subpart G, section 351.701: Assignment involving displacement (only to the extent necessary to substitute ''one pay band'' for ''three grades'' and ''two pay bands'' for ''five grades'')

Part 359, subpart G, section 359.705: Pay (only to the extent necessary to (1) bar employees with a rating of record lower than Fully Meets Expectations from receiving a saved rate increase under 5 CFR 359.705(d)(1); (2) provide a saved rate that is less than the maximum rate (including any locality adjustment or staffing supplement) of the upper range extension for an employee who receives a rating of record of Significantly Exceeds Expectations will be terminated and converted to an equal adjusted rate; (3) provide the range maximum rate used to compute saved rate adjustments is the normal range maximum rate (including any locality adjustment or staffing supplement); and (4) provide when a saved rate for an employee with a rating of record below Fully Meets Expectations falls below the applicable adjusted rate for the normal band maximum, the saved rate will be terminated and the employee's pay will be set at an adjusted rate equal to the saved rate)

Part 430, subpart B, section 430.203: Definitions (only to the extent necessary to allow an additional rating of record to support a pay decision under section III.C.3 or 4 of this project plan)

Part 511, subpart B: Coverage of the General Schedule

Part 530, subpart C: Special Rate Schedules for Recruitment and Retention

Part 531, subpart B: Determining Rate of Basic Pay

Part 531, subpart D: Within-Grade Increases

Part 531, subpart E: Quality Step Increases

Part 531, section 531.604: Determining an employee's locality rate (only to the extent necessary to (1) allow a frozen locality pay percentage for employees with a rating of record below Fully Meets Expectations, as provided in the plan; and (2) apply an ''effective'' locality pay percentage for employees in the upper range extension under circumstances described in the plan)

Part 531, section 531.606: Maximum limits on locality rates (only to the extent necessary to provide a locality rate may not exceed the rate for EX-IV plus 5 percent for employees in the upper range extension).

Part 536, subpart B: Grade Retention

Part 536, subpart C: Pay Retention (only to the extent necessary to (1) replace ''grade'' with ''band;'' (2) bar employees with a rating of record lower than Fully Meets Expectations from receiving retained rate increases under 5 CFR 536.305; (3) provide that pay retention provisions do not apply to conversions into the demonstration project from the General Schedule or other pay system, as long as the employee's total pay rate is not reduced); (4) provide that a retained rate may not exceed the rate for EX-IV plus 5 percent; (5) provide the pay (including any locality adjustment or staffing supplement) of an employee in the upper range extension who is rated below Significantly Exceeds Expectations will be converted to a retained rate before processing any other actions; (6) provide a retained rate that is less than the maximum rate (including any locality adjustment or staffing supplement) of the upper range extension for an employee who receives a rating of record of Significantly Exceeds Expectations will be terminated and converted to an equal adjusted rate; (7) provide the range maximum rate used to compute retained rate adjustments is the normal range maximum rate (including any locality adjustment or staffing supplement); (8) provide a retained rate under the enhanced pay retention provisions in section III.A.10. will be increased by 100 percent of the dollar amount of any increase in the normal maximum rate of the employee's band during the two-year period beginning on the date the employee's retained rate is established; and (9) provide when a retained rate for an employee with a rating of record below Fully Meets Expectations falls below the applicable adjusted rate for the normal band maximum, the retained rate will be terminated and the employee's pay will be set at an adjusted rate equal to the retained rate).

Part 550, sections 550.106–107: Biweekly and annual maximum earnings limitation (only to the extent necessary to provide that an applicable staffing supplement is added to the GS–15, step 10, rate in lieu of the applicable locality payment.

Part 550, section 550.113(a): Computation of overtime pay (only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category that would otherwise apply to an employee (but for the existence of the demonstration project) is deemed to be the ''applicable special rate of pay'' in determining the overtime hourly rate cap).

Part 550, section 550.703: Definitions (to the extent necessary to modify paragraph (c)(4) of the definition of ''reasonable offer'' by replacing ''two grade or pay levels'' with ''one pay band level'' and ''grade or pay level'' with ''pay band level'').

Part 752, section 752.401(a)(3): Adverse actions (only to the extent necessary to replace ''grade'' with ''band'').

Part 752, section 752.401(a)(4): Adverse actions (only to the extent necessary to provide that adverse action provisions do not apply to conversions into the demonstration project from the General Schedule or other pay system, as long as the employee's total rate of pay is not reduced.

Note: If any of the provisions of title 5, Code of Federal Regulations, listed above are revised during the period this demonstration project is in effect, NNSA may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. NNSA must notify OPM when any such waiver is terminated.

[FR Doc. 07–6144 Filed 12–20–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of: Score One, Inc., Physical Property Holdings, Inc.; Order of Suspension of Trading

December 19, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of the issuers listed below. For each issuer, questions have arisen regarding the adequacy and accuracy of press releases and other publicly-disseminated information concerning, among other things: (1) The companies' assets; (2) the companies' current business operations; (3) the companies' current financial condition; (4) the issuance of the companies' securities; and (5) transactions in the companies' securities by insiders, consultants, and other individuals and entities.

1. *Score One, Inc.* is a Nevada corporation headquartered in Hong Kong. The company is dually quoted on the Over-the-Counter Bulletin Board and Pink Sheets under the ticker symbol ''SREA.'' The company has recently been the subject of spam e-mails touting the company's shares.

2. *Physical Property Holdings, Inc.* is a Delaware corporation headquartered in Hong Kong. The company is dually quoted on the Over-the-Counter Bulletin Board and Pink Sheets under the ticker symbol ''PPYH.'' The company has recently been the subject of spam e-mails touting the company's shares.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Score One, Inc. and Physical Property Holdings, Inc.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Score One, Inc. and Physical Property Holdings, Inc. is suspended for the period commencing at 9:30 a.m. EST, December 19, 2007, and terminating at 11:59 p.m. EST, on January 3, 2008.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 07–6174 Filed 12–19–07; 10:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56974; File No. SR–Amex–2007–132]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Include Volume Executed by Remote Quoting Towards the Earning of Remote Quoting Rights

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 30, 2007, the American Stock Exchange LLC (''Amex'' 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 substantially prepared by the Exchange. On December 13, 2007, Amex filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, proposes to include the volume executed by specialists and registered options traders (''ROTs'') as a result of remote quoting towards the earning of remote quoting rights in the Exchange's remote registered options trader (''RROT'') program (the ''RROT Program'').

The text of the proposed rule change is available at *http://www.amex.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to include the volume executed by specialists and ROTs as a result of remote quoting, towards the earning of remote quoting rights in the Exchange's RROT Program.

The Exchange's RROT Program currently allows members or member organizations designated by the Exchange to be awarded remote quoting rights to enter bids and offers electronically from locations other than the trading crowd where the applicable options class is traded on the Exchange's physical trading floor.[3] ROTs and specialists are currently awarded remote quoting rights based on quantitative criteria set forth in Amex Rule 994–ANTE. Specifically, specialists are awarded remote quoting rights based on Exchange floor volume executed, and their percentage of industry market share in the options which they specialize. ROTs are awarded remote quoting rights based solely on floor volume executed.

Currently, volume executed as a result of quoting remotely is not included in the calculation of remote quoting rights in Rule 994–ANTE. However, since the implementation of the RROT Program in May of 2006, volume is increasingly executed as a result of remote quotes entered by ROTs and specialists. The Exchange believes it is appropriate to reward those ROTs and specialists for the volume they execute as a result of quoting remotely, by including such volume towards the earning of additional remote quoting rights.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[4] in general, and section 6(b)(5) of the Act,[5] 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

[3] *See* Securities Exchange Act Release No. 53652 (April 13, 2006), 71 FR 20422 (April 20, 2006) (approving the Exchange's RROT Program).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Amex consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disproved.

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–Amex–2007–132 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–132. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–Amex–2007–132 and should be submitted on or before January 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24801 Filed 12–20–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56971; File No. SR–CBOE–2007–106]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Relating to CBOE Rules Governing Doing Business With the Public

December 14, 2007.

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] on September 5, 2007, Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange''), filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change relating to the Exchange's rules governing doing business with the public. On September 21, 2007, the Commission issued a release noticing the proposed rule change, which was published for comment in the **Federal Register** on September 27, 2007.[3] The comment period expired on October 18, 2007. The Commission received one comment letter in response to the proposed rule change.[4] On November 13, 2007, CBOE filed Amendment No. 1 to amend the proposed rule change and respond to the comment letter.[5] This order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposed rule change as amended on an accelerated basis.

II. Description of the CBOE Proposal

The Exchange proposes to amend certain rules that govern an Exchange member's conduct in doing business with the public. Specifically, the proposed rule change would require member organizations to integrate the responsibility for supervision of a member organization's public customer options business into its overall supervisory and compliance program. In addition, the Exchange proposes to amend certain rules to strengthen member organizations' supervisory procedures and internal controls as they relate to a member's public customer options business.

A. Integration of Options Supervision

The purpose of the proposed rule change is to create a supervisory structure for options that is similar to that required by New York Stock Exchange (''NYSE'') and National Association of Securities Dealers (''NASD'') rules.[6] The proposed rule change would eliminate the requirement that member organizations qualified to do a public customer business in options must designate a single person to act as Senior Registered Options Principal (''SROP'') for the member organization and that each such member organization designate a specific individual as a CROP. Instead, member organizations would be required to integrate the SROP and CROP functions into their overall supervisory and compliance programs.

The SROP concept was first introduced by CBOE during the early years of the development of the listed options market. Previously, under CBOE rules, member organizations were required to designate one or more persons qualified as ROPs having supervisory responsibilities in respect to the member organization's options business. As the number of ROPs at larger member organizations began to increase, CBOE imposed an additional requirement that member organizations designate one of their ROPs as the SROP. This was intended to eliminate confusion as to where the compliance and supervisory responsibilities lay by centralizing in a single supervisory officer overall responsibility for the supervision of a member organization's options activities.[7] Subsequently, following the recommendation of the Commission's Options Study, CBOE and other options exchanges required member organizations to designate a CROP to be responsible for the member organization's overall compliance program in respect to its options activities.[8] The CROP may be the same person who is designated as SROP.

Since the SROP and CROP requirements were first imposed, the supervisory function in respect to the options activities of most securities firms has been integrated into the matrix of supervisory and compliance functions in respect to the firms' other securities activities. According to CBOE, this not only reflects the maturity of the options market, but also recognizes the ways in which the uses of options themselves have become more integrated with other securities in the implementation of particular strategies. Thus, the current requirement for a separately designated senior supervisor in respect to all aspects of a member organization's options activities, rather than clarifying the allocation of supervisory responsibilities within the member organization, may have just the opposite effect by failing to take into account the way in which these

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56492 (Sept. 21, 2007), 72 FR 54952 (Sept. 27, 2007).

[4] *See* Letter to Nancy Morris, Secretary, Commission, from Melissa MacGregor, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association (Oct. 16, 2007) (''SIFMA Letter'').

[5] Amendment No. 1 proposes revisions to CBOE Rule 9.2.02 to clarify the review of the acceptance of an options discretionary account must be performed by a Series 4 Registered Options Principal (''ROP'') and to CBOE Rule 9.21 to replace references to a Compliance Registered Options Principal (''CROP'') with references to a ROP. In addition, Amendment No. 1 responds to the SIFMA Letter.

[6] *See* NYSE Rule 342 and NASD Rule 3010. On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007). The FINRA rulebook currently consists of both NASD Rules and certain NYSE Rules that FINRA has incorporated. *See* FINRA Rules, *http://www.finra.org/RulesRegulation/FINRARules/index.htm* (last visited Dec. 10, 2007).

[7] Report of the Special Study of the Options Market (''Options Study''), p. 316, n. 11 (December 22, 1978).

[8] *Id.* at p. 335.

responsibilities are actually assigned. In addition, according to CBOE, by permitting supervision of a member organization's options activities to be handled in the same manner as the supervision of its other securities activities as well as its futures activities, the proposed rule change ensures that supervisory responsibility over each segment of the member organization's business is assigned to the best qualified persons in the member organization, thereby enhancing the overall quality of supervision. The same holds true for the compliance function.

For example, most member organizations have designated one person to have supervisory responsibility over the application of margin requirements and other matters pertaining to the extension of credit. The proposed rule change would enable a member organization to include within the scope of such a person's duties the supervision over the proper margining of options accounts, thereby assuring that the most qualified person is charged with this responsibility and at the same time eliminating any uncertainty that might now exist as to whether this responsibility lies with the senior credit supervisor or with the SROP.

Similarly, the proposed rule change would allow a member organization to specifically designate one or more individuals as being responsible for approving a ROP's acceptance of discretionary accounts [9] and exceptions to a member organization's suitability standards for trading uncovered short options.[10] The proposed rule change would allow member organizations the flexibility to assign such responsibilities, which formerly rested with the SROP and/or CROP, to more than one ROP-qualified individual where the member organization believes it advantageous to do so to enhance its supervisory or compliance structure. Typically, a member organization may wish to divide these functions on the basis of geographic region or functional considerations. The proposed amendment to Rule 9.2 would clarify the qualification requirements for individuals designated as ROPs.[11] The proposed amendment to Rule 9.3 would specify the registration requirements for individuals who accept orders from non-broker-dealer customers.[12]

The proposed rule change would require options discretionary accounts, the acceptance of which must be approved by a ROP-qualified individual (other than the ROP who accepted the account), to be supervised in the same manner as the supervision of other securities accounts that are handled on a discretionary basis. The proposed rule change would eliminate the requirement that discretionary options orders be approved on the day of entry by a ROP (with one exception, as described below). According to CBOE, this requirement predates the Options Study and is not consistent with the use of supervisory tools in computerized format or exception reports generated after the close of a trading day. No similar requirement exists for supervision of other securities accounts that are handled on a discretionary basis.[13] Discretionary orders must be reviewed in accordance with a member organization's written supervisory procedures. According to CBOE, the proposed rule change would ensure that supervisory responsibilities are assigned to specific ROP-qualified individuals, thereby enhancing the quality of supervision.

The proposed rule change would revise Exchange Rule 9.10 by adding, as Interpretation and Policy .01, a requirement that any member organization that does not utilize computerized surveillance tools for the frequent and appropriate review of discretionary account activity must establish and implement procedures to require ROP-qualified individuals who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered. The Exchange believes that any member organization that does not utilize computerized surveillance tools to monitor discretionary account activity should continue to be required to perform the daily manual review of discretionary orders.

Under the proposed rule change, options discretionary accounts would continue to receive frequent appropriate supervisory review by designated ROP-qualified individuals. Additionally, member organizations would continue to be required to designate ROP-qualified individuals to review and approve the acceptance of options discretionary accounts in order to determine whether the ROP accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the proposed strategies or transactions. According to CBOE, this requirement would provide an additional level of supervisory audit over options discretionary accounts that does not exist for other securities discretionary accounts.

In addition, the proposed rule change would require that each member organization submit to the Exchange a written report by April 1 of each year that details the member organization's supervision and compliance effort, including its options compliance program, during the preceding year and reports on the adequacy of the member organization's ongoing compliance processes and procedures.[14]

Proposed Rule 9.8(h) would require that each member organization submit, by April 1 of each year, a copy of the Rule 9.8(g) annual report to one or more of its control persons or, if the member organization has no control person, to the audit committee of its board of directors or its equivalent committee or group.[15]

Proposed Rule 9.8(g) would provide that a member organization that specifically includes its options compliance program in a report that complies with substantially similar requirements of NYSE and NASD rules will be deemed to have satisfied the requirements of Rules 9.8(g) and 9.8(h).

Additionally, where appropriate, the proposed rule change would delete references to SROP and CROP in Exchange Rules 3.6A and 26.10.[16]

Although the proposed rule change would eliminate entirely the positions and titles of the SROP and CROP, member organizations would still be required to designate a single general partner or executive officer to assume overall authority and responsibility for internal supervision, control of the member organization and compliance with securities laws and regulations.[17] Member organizations would also be required to designate specific qualified individuals as having supervisory or compliance responsibilities over each aspect of the member organization's options activities and to set forth the names and titles of these individuals in their written supervisory procedures.[18] This is consistent with the integration of options supervision into the overall supervisory and compliance structure of a member organization. In connection with the approval of the proposed rule change, the Exchange intends to review member organizations' written supervisory and compliance procedures

[9] *See* proposed Rule 9.10(a).

[10] *See* proposed Rule 9.7(f)(3).

[11] *See* proposed Rules 9.2.01 and 9.2.02.

[12] *See* proposed Rule 9.3.01.

[13] *See, e.g.*, NYSE Rule 408.

[14] *See* proposed Rule 9.8(g), which is modeled after NYSE Rule 342.30.

[15] Proposed Rule 9.8(h) is modeled after NYSE Rule 354.

[16] For example, the proposed rule change, as amended, replaces references to CROP in Rule 9.21 with references to ROP.

[17] *See* proposed Rule 9.8(a).

[18] *See* proposed Rule 9.8.01.

in the course of the Exchange's routine examination of member organizations to ensure that supervisory and compliance responsibilities are adequately defined.

The Exchange believes that the proposed rule change recognizes that options are no longer in their infancy, have become more integrated with other securities in the implementation of particular strategies, and thus should not continue to be regulated as though they are a new and experimental product. The Exchange believes that the proposed rule change is appropriate and does not materially alter the supervisory operations of member organizations. The Exchange believes the supervisory and compliance structure in place for non-options products at most member organizations is not materially different from the structure in place for options.

B. Supervisory Procedures and Internal Controls

The Exchange also proposes to amend certain rules to strengthen member and member organizations' supervisory procedures and internal controls as they relate to a member's public customer options business. The proposed rule changes described below are modeled after NYSE and NASD rules approved by the Commission in 2004.[19] The Exchange believes the following proposal to strengthen member supervisory procedures and internal controls is appropriate and consistent with the preceding proposal to integrate options and non-options sales practice supervision and compliance functions.

The proposed revisions to Exchange Rule 9.8(a)(3) require the development and implementation of written policies and procedures reasonably designed to supervise sales managers and other supervisory personnel who service customer options accounts (i.e., who act in the capacity of a registered representative).[20] This requirement applies to branch office managers, sales managers, regional/district sales managers, or any person performing a similar supervisory function. Such policies and procedures are expected to encompass all options sales-related activities. Proposed Rule 9.8(a)(3)(i) would require that supervisory reviews of producing sales managers be conducted by a qualified ROP who is either senior to, or otherwise ''independent of,'' the producing manager under review.[21] This provision is intended to ensure that all options sales activity of a producing manager is monitored for compliance with applicable regulatory requirements by persons who do not have a personal interest in such activity.

Proposed Rule 9.8(a)(3)(ii) would provide a limited exception for members so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager to conduct the review. In this case, the reviews may be conducted by a qualified ROP to the extent practicable. Under proposed Rule 9.8(a)(3)(iii), a member relying on the limited size and resources exception would be required to document the factors used to determine that compliance with each of the ''senior'' or ''otherwise independent'' standards of Rule 9.8(a)(3)(i) is not possible, and that the required supervisory systems and procedures in place with respect to any producing manager comply with the provisions of Rule 9.8(a)(3)(i) to the extent practicable.

Proposed paragraph (a)(3)(iv) of Rule 9.8 would provide that a member organization that complies with requirements of NYSE or NASD rules that are substantially similar to the requirements in Rules 9.8(a)(3)(i), (a)(3)(ii) and (a)(3)(iii) will be deemed to have met such requirements.

Proposed Rule 9.8(c)(i) would require member organizations to develop and maintain adequate controls over each of their business activities. The proposed rule further would require that such controls include the establishment of procedures to independently verify and test the supervisory systems and procedures for those business activities. Member organizations are required to include in the annual report prepared pursuant to Rule 9.8(g) a review of the member organization's efforts in this regard, including a summary of the tests conducted and significant exceptions identified. The Exchange believes proposed Rule 9.8(c)(i) would enhance the quality of member organizations' supervision.[22] Proposed paragraph (c)(ii) of Rule 9.8 would provide that a member organization that complies with requirements of NYSE or NASD rules that are substantially similar to the requirements in Rule 9.8(c)(i) will be deemed to have met such requirements.

Proposed Rule 9.8(d) would establish requirements for branch office inspections similar to the requirements of NYSE Rule 342.24. Specifically, proposed Rule 9.8(d) would require a member organization to inspect each supervisory branch office at least annually and each non-supervisory branch office at least once every three years.[23] The proposed rule further would require that persons who conduct a member organization's annual branch office inspection must be independent of the direct supervision or control of the branch office (i.e., not the branch office manager, or any person who directly or indirectly reports to such manager, or any person to whom such manager directly reports). The Exchange believes that requiring branch office inspections be conducted by someone who has no significant financial interest in the success of a branch office should lead to more objective and vigorous inspections.

Under proposed Rule 9.8(e), any member organization seeking an exemption, pursuant to Rule 9.8(d)(1)(ii), from the annual branch office inspection requirement would be required to submit to the Exchange written policies and procedures for systematic risk-based surveillance of its branch offices, as defined in Rule 9.8(e). Proposed Rule 9.8(f) would require that annual branch office inspection programs include, at a minimum, testing and verification of specified internal controls.[24] Proposed paragraph (d)(3) of Rule 9.8 would provide that a member organization that complies with requirements of NYSE or NASD rules that are substantially similar to the requirements in Rules 9.8(d), (e) and (f)

[19] *See* Securities Exchange Act Release No. 49882 (June 17, 2004), 69 FR 35108 (June 23, 2004) (SR–NYSE–2002–36) (Approval Order), and Securities Exchange Act Release No. 49883 (June 17, 2004), 69 FR 35092 (June 23, 2004) (SR–NASD–2002–162) (Approval Order).

[20] Proposed Rule 9.8(a)(3) is modeled after NYSE Rule 342.19.

[21] An ''otherwise independent'' person is defined in proposed Rule 9.8(a)(3)(i) as one who: may not report either directly or indirectly to the producing manager under review; must be situated in an office other than the office of the producing manager; must not otherwise have supervisory responsibility over the activity being reviewed; and must alternate such review responsibility with another qualified person every two years or less. Further, if a person designated to review a producing manager receives an override or other income derived from that producing manager's customer activity that represents more than 10% of the designated person's gross income derived from the member organization over the course of a rolling twelve-month period, the member organization must establish alternative senior or otherwise independent supervision of that producing manager to be conducted by a qualified ROP other than the designated person receiving the income.

[22] Proposed Rule 9.8(c)(i) is modeled after NYSE Rule 342.23.

[23] Proposed Rules 9.8(d)(1)(i) and (ii) would provide members with two exceptions from the annual branch office inspection requirement: a member may demonstrate to the satisfaction of the Exchange that other arrangements may satisfy the Rule's requirements for a particular branch office, or based upon a member organization's written policies and procedures providing for a systematic risk-based surveillance system, the member organization submits a proposal to the Exchange and receives, in writing, an exemption from this requirement pursuant to Rule 9.8(e).

[24] Proposed Rules 9.8(e) and (f) are modeled after NYSE Rules 342.25 and 342.26.

will be deemed to have met such requirements.

In conjunction with the proposed changes to Rules 9.8(d), (e) and (f), the Exchange proposes to amend Rule 9.6 to define ''branch office'' in a way that is substantially similar to the definition of branch office in NYSE Rule 342.10.

Proposed Rule 9.8(g)(4) would require a member organization to designate a Chief Compliance Officer (''CCO'').[25] Proposed Rule 9.8(g)(5) would require each member organization's chief executive officer (''CEO''), or equivalent, to certify annually that the member organization has in place processes to: (1) Establish and maintain policies and procedures reasonably designed to achieve compliance with applicable Exchange rules and federal securities laws and regulations; (2) modify such policies and procedures as business, regulatory, and legislative changes and events dictate; and (3) test the effectiveness of such policies and procedures on a periodic basis, the timing of which is reasonably designed to ensure continuing compliance with Exchange rules and federal securities laws and regulations.

Proposed Rule 9.8(g)(5) further would require the CEO to attest that the CEO has conducted one or more meetings with the CCO in the preceding 12 months to discuss the compliance processes in proposed Rule 9.8(g)(5)(i), that the CEO has consulted with the CCO and other officers to the extent necessary to attest to the statements in the certification, and the compliance processes are evidenced in a report, reviewed by the CEO, CCO, and such other officers as the member organization deems necessary to make the certification, that is provided to the member organization's board of directors and audit committee (if such committee exists).[26]

Under proposed Rule 9.8(b)(2), a member, upon a customer's written instructions, may hold mail for a customer who will not be at his or her usual address for no longer than two months if the customer is on vacation or traveling, or three months if the customer is going abroad. This provision helps ensure that members that hold mail for customers who are away from their usual addresses, do so only pursuant to the customer's written instructions and for a specified, relatively short period of time.[27]

Proposed Rule 9.8(b)(3) would require that, before a customer options order is executed, the account name or designation must be placed upon the memorandum for each transaction. In addition, only a qualified ROP may approve any changes in account names or designations. The ROP also must document the essential facts relied upon in approving the changes and maintain the record in a central location. A member is required to preserve any account designation change documentation for a period of not less than three years, with the documentation preserved for the first two years in an easily accessible place, as the term ''easily accessible place'' is used in SEC Rule 17a–4. The Exchange believes the proposed rule would help to protect account name and designation information from possible fraudulent activity.[28]

Rule 9.10(d) allows member organizations to exercise time and price discretion on orders for the purchase or sale of a definite number of options contracts in a specified security. The Exchange proposes to amend Rule 9.10(d) to limit the duration of this discretionary authority to the day it is granted, absent written authorization to the contrary. In addition, the proposed rule would require any exercise of time and price discretion to be reflected on the customer order ticket. The proposed one-day limitation would not apply to time and price discretion exercised for orders effected with or for an institutional account[29] pursuant to valid Good-Till-Cancelled instructions issued on a ''not held'' basis. The Exchange believes that investors will receive greater protection by clarifying the time such discretionary orders remain pending.[30]

III. Summary of Comment Received and CBOE Response

The Commission received one comment on the proposal which generally supported the proposed rule change while raising issues with respect to certain aspects of the proposed rule change. First, the commenter requested that CBOE clarify how the proposed rule change would affect compliance with CBOE Rule 9.21, which requires CROP approval for options-related communications with the public.[31] Second, the commenter suggested that CBOE allow a Branch Office Manager with a Series 8 or Series 9/10 license to approve discretionary options accounts, instead of requiring approval by a Series 4 Registered Options Principal.[32] Third, the commenter urged NYSE, American Stock Exchange and FINRA to adopt changes similar to those included in the CBOE proposal and questioned the compatibility of the proposed changes with other self-regulatory organizations' rules unless similar changes are adopted.[33]

In Amendment No. 1, CBOE responded to the issues raised by the commenter.[34] With respect to the first issue regarding CROP approval under CBOE Rule 9.21, CBOE proposed to amend the rule to permit a ROP designated by the member or member organization's written supervisory procedures to perform such functions. With respect to the second issue regarding discretionary options accounts, CBOE proposed to amend proposed Rule 9.2.02 to clarify that the review of the acceptance of a options discretionary account must be performed by a Series 4 qualified ROP. However, members would be free to assign the function of accepting options discretionary accounts to individuals who are Series 9/10 qualified ROPs. With respect to the third issue dealing with rules of other self-regulatory organizations, CBOE stated that comments concerning changes to rules administered by other self-regulatory organizations were outside the scope of the proposed rule change.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.[35] In particular, the Commission finds the

[25] The proposed rule change would revise Rule 3.6A(b) to add Chief Compliance Officer as a new associated person status under Chapter 9 of Exchange Rules.

[26] Proposed Rule 9.8(g)(5) is modeled after NASD Rule 3013 and NYSE Rule 342.30(e).

[27] Proposed Rule 9.8(b)(2) is modeled after NASD Rule 3110(i).

[28] Proposed Rule 9.8(b)(3) is modeled after NASD Rule 3110(j).

[29] ''Institutional account'' is defined in proposed Rule 9.10(d) as ''the account of: (i) a bank, savings and loan association, insurance company, or registered investment company; (ii) an investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (iii) any other entity (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.''

[30] Proposed Rule 9.10(d) is modeled after NASD Rule 2510(d)(1).

[31] *See* SIFMA Letter.

[32] *See id.*

[33] *See id.*

[34] The text of Amendment No. 1 is available at CBOE, the Commission's Public Reference Room and *http://www.cboe.org/legal.*

[35] In approving this rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

proposed rule change, as amended, would integrate the supervision and compliance functions relating to member organizations' public customer options activities into the overall supervisory structure of a member organization, thereby eliminating any uncertainty over where supervisory responsibility lies. In addition, the proposed rule change would foster the strengthening of members' and member organizations' internal controls and supervisory systems. As such, the Commission finds the proposal to be consistent with and further the objectives of section 6(b)(5) of the Act,[36] in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and in general, to protect investors and the public interest.

The Commission also finds good cause for approving Amendment No. 1 to the proposed rule change prior to the 30th day after its publication in the **Federal Register**. Amendment No. 1 clarifies the operation of the proposed rule change in response to a comment. Amendment No. 1 does not contain major modifications and these modifications would not appreciably affect the protection to investors provided by the proposed rule change as published in the **Federal Register**. The Commission finds that it is in the public interest to approve the proposed rule change as soon as possible to expedite its implementation. Accordingly, the Commission believes good cause exists, consistent with sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments Concerning Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–106 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–106. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–106 and should be submitted on or before January 11, 2008.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[37] that the proposed rule change (SR–CBOE–2007–106), as amended by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24790 Filed 12–20–07; 8:45 am]

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[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56973; File No. SR–ISE–2007–109]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Rule 2213, Market Maker Trading Licenses

December 17, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 14, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the ISE. On December 13, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Rule 2213, ''Market Maker Trading Licenses,'' to eliminate the limitation that a foreign exchange options primary market maker (''FXPMM'') in the Exchange's foreign currency options (''FX options'') cannot make a market in more than four (4) currency pairs. The text of the proposed rule change is available on the Exchange's Web site (*http://www.iseoptions.com*), at 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 ISE 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 ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to amend its Rule 2213, ''Market Maker Trading Licenses,'' to eliminate the limitation that an FXPMM in the Exchange's FX options cannot make a market in more than four currency pairs.[3] Under the Exchange's current rules, FXPMMs are limited to making a market in no more than four currency pairs.[4] All four of the FX options currently listed by the Exchange are served by the same FXPMM. As a result of the limitation in ISE Rule 2213, that FXPMM is prevented from serving as a primary market maker in additional currency pairs. The Exchange intends to launch additional currency pairs in the near future. In order for the Exchange to allow the current FXPMM to participate in the auction for those additional currency pairs, ISE proposes to eliminate the limitation in Rule 2213 that a FXPMM cannot act as a primary market maker in more than four currency pairs. The Exchange believes that removing this limitation from its rules will (1) allow the Exchange to launch additional currency pairs, (2) permit the current FXPMM to participate in the auction for the additional currency pairs the Exchange intends to launch, and (3) provide market participants with an opportunity to trade those additional currency pairs as a means to diversify their portfolio.

2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5),[5] in that the proposed change is designed to promote just and equitable principles of trade, will serve to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by permitting members to become market makers in a greater number of the Exchange's FX options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2007–109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–109 and should be submitted on or before January 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

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[3] The Exchange began trading FX options on the euro, the British pound, the Japanese yen and the Canadian dollar on April 17, 2007. *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR–ISE–2006–59).

[4] FXPMMs are permitted to quote and trade in FX options only.

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56952; File No. SR–NASDAQ–2007–097]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Trade the Shares of 45 Funds of the Rydex ETF Trust Based on Numerous Domestic Securities Indexes Pursuant to Unlisted Trading Privileges

December 12, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 6, 2007, The NASDAQ Stock Market LLC (''Nasdaq'' 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 substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves it on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to trade, pursuant to unlisted trading privileges (''UTP''), shares (''Shares'') of 45 funds of the Rydex ETF Trust (''Trust'').

The text of the proposed rule change is available from the Exchange's Web site (*http://nasdaq.complinet.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 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

Nasdaq proposes to trade pursuant to UTP the Shares of the 45 new funds of the Trust that are designated as Rydex Leveraged Funds (the ''Leveraged Funds''), Rydex Inverse Funds (the ''Inverse Funds''), and Rydex Leveraged Inverse Funds (the ''Leveraged Inverse Funds''). Each of the Funds has a distinct investment objective. Each Fund attempts, on a daily basis, to achieve its investment objective by corresponding to a specified multiple of the performance, or the inverse performance, of a particular equity securities index (individually referred to as the ''Underlying Index'' and collectively referred to as the ''Underlying Indexes''). The American Stock Exchange LLC (''Amex'') filed a proposal with the Commission to list and trade the Shares, which was approved by the Commission on October 29, 2007 (the ''Amex Proposal'').[3]

The Funds are based on the following benchmark indexes: (1) The S&P 500 Index (the ''S&P 500''); (2) the S&P MidCap 400 Index; (3) the S&P Small Cap 600 Index; (4) the Russell 1000 Index; (5) the Russell 2000 Index; (6) the Russell 3000 Index; (7) the S&P 500 Consumer Discretionary Index; (8) the S&P 500 Consumer Staples Index; (9) the S&P 500 Energy Index; (10) the S&P 500 Financials Index; (11) the S&P 500 Healthcare Index; (12) the S&P 500 Industrials Index; (13) the S&P 500 Information Technology Index; (14) the S&P 500 Materials Index; and (15) the S&P 500 Utilities Index. Certain Funds seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the Underlying Indexes (the ''Leveraged Funds''). Such a Fund, if successful in meeting its objective, should gain, on a percentage basis, approximately twice as much as the Fund's Underlying Index when the prices of the securities in such Index increase on a given day, and should lose approximately twice as much when such prices decline on a given day.

In addition, Nasdaq proposes to trade pursuant to UTP shares of the Funds that seek daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (−100%) of the Underlying Indexes (the ''Inverse Funds''). If such a Fund is successful in meeting its objective, the net asset value (the ''NAV'') of shares of the Fund should increase approximately as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately as much as the respective Index gains when the prices of the securities in the index rise on a given day.

Finally, Nasdaq proposes to trade pursuant to UTP shares of the Funds that seeks daily investment results, before fees and expenses that correspond to twice the inverse (−200%) of the daily performance of the Underlying Indexes (the ''Leveraged Inverse Funds''). If such a Fund is successful in meeting its objective, the NAV of shares of the Fund should increase approximately twice as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when the prices of the securities in the index rise on a given day.

The Underlying Indexes and the operation of the Funds are described further in the Amex Proposal.

The Trust's Web site (*http://www.rydexinvestments.com*), which is and will be publicly accessible at no charge, will contain the following information for each Fund's Shares: (1) The prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV; (2) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts; (3) its prospectus and/or product description; and (4) other quantitative information such as daily trading volume. The prospectus and/or product description for each Fund will inform investors that the Trust's Web site has information about the premiums and discounts at which the Fund's Shares have traded.

According to the Amex Proposal, Amex will disseminate for each Fund on a daily basis by means of Consolidated Tape Association (''CTA'') and CQ High Speed Lines information with respect to an Indicative Intra-Day Value (''IIV'') (as defined and discussed below), the recent NAV, the number of shares outstanding, the estimated cash amount, and the total cash amount per Creation Unit (as defined in the Amex Proposal). Amex will make available on its Web site daily trading volume, the closing price, the NAV, and the final dividend amounts to be paid for each Fund. Amex represented in the Amex Proposal that it will obtain a representation from the Trust (for each Fund), prior to listing, that the NAV per share for each Fund will be calculated daily and made available to all market participants at the same time.[4]

According to the Amex Proposal, each Fund's total portfolio composition is disclosed on the Web site of the Trust or another relevant Web site as determined by the Trust and/or Amex. The Trust expects that Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the names and number of shares held of each specific types of financial instruments and characteristics of such instruments, cash equivalents, and the amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of each Fund will coincide with the disclosure by Rydex Investments (''Advisor'') of the ''IIV File'' and the ''PCF File'' provided to an

[3] *See* Securities Exchange Act Release No. 56713 (October 29, 2007), 72 FR 61915 (November 1, 2007) (SR–Amex–2007–74).

[4] If Amex halts trading in the Shares of the Funds because the NAV is not being disseminated to all market participants at the same time, then Nasdaq would do so as well.

''Authorized Participant,'' a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation (''NSCC'') or a Depositary Trust Company participant, which has entered into a participant agreement with the distributor, Rydex Distributors, Inc.[5] The format of the public Web site disclosure and the IIV File and PCF File will differ because the public Web site will list all portfolio holdings while the IIV File and PCF File will similarly provide the portfolio holdings but in a format appropriate for Authorized Participants, *i.e.*, the exact components of a Creation Unit.[6] Accordingly, each investor will have access to the current portfolio composition of each Fund through the Trust's Web site, at *http://www.rydexinvestments.com*, and/or at the Amex's Web site at *http://www.amex.com*.

Beneficial owners of Shares will receive all of the statements, notices, and reports required under the Investment Company Act of 1940[7] and other applicable laws. They will receive, for example, annual and semiannual fund reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of fund distributions, and Form 1099-DIVs. Some of these documents will be provided to beneficial owners by their brokers, while others will be provided by the Fund through the brokers.

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index is publicly available on various Web sites, *e.g.*, *http://www.bloomberg.com*. Data regarding each Underlying Index is also available from the respective index provider to subscribers. Several independent data vendors also package and disseminate index data in various value-added formats (including vendors displaying both securities and index levels and vendors displaying index levels only). The value of each Underlying Index is updated intra-day as its individual component securities change in price. These intra-day values of each Underlying Index are disseminated at least every 15 seconds though the trading day by Amex or another organization authorized by the relevant Underlying Index provider.

According to the Amex Proposal, to provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, Amex will disseminate though the facilities of the CTA: (1) Continuously throughout the trading day, the market value of a Share; and (2) at least every 15 seconds throughout the trading day, a calculation of the Indicative Intra-Day Value or ''IIV'' as calculated by Amex (the ''IIV Calculator''). Comparing these two figures helps an investor to determine whether, and to what extent, the Shares may be selling at a premium or a discount to NAV.

The IIV Calculator (Amex) calculates an IIV for each Fund in the manner discussed in the Amex Proposal. The IIV is designed to provide investors with a reference value that can be used in connection with other related market information. The IIV does not necessarily reflect the precise composition of the current portfolio held by each Fund at a particular point in time. Therefore, the IIV on a per-Share basis disseminated during Amex trading hours should not be viewed as a real-time update of the NAV of a particular Fund, which is calculated only once a day. While the IIV that will be disseminated by Amex is expected to be close to the most recently calculated Fund NAV on a per-Share basis, it is possible that the value of the portfolio held by a Fund may diverge from the IIV during any trading day. In such case, the IIV will not precisely reflect the value of the Fund portfolio.

Nasdaq will halt trading in the Shares of the Fund under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Shares will also be governed by provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of the IIV or the value of the underlying index. Additionally, Nasdaq may cease trading the Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq will stop trading the Shares if the listing market delists them.

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares only from 9:30 a.m. until 4:15 p.m. until the Commission acts on Nasdaq's proposal to generally allow trading in ETFs on Nasdaq during the Pre-Market and Post-Market Sessions, which would permit trading in the Shares from 7 a.m. until 8 p.m.[8]

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Shares on Nasdaq. Trading of the Shares through Nasdaq facilities is currently subject to FINRA'S surveillance procedures for equity securities in general and ETFs in particular.[9]

Nasdaq will be able to obtain information regarding trading in the Shares through its members in connection with the proprietary or customer trades that such members effect on any relevant market. In addition, Nasdaq may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG.[10] In addition, Nasdaq also has a general policy prohibiting the distribution of material, non-public information by its employees.

Prior to the commencement of trading, Nasdaq will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information

[5] According to the Amex Proposal, at the end of each business day, the Trust will create a portfolio composition file (''PCF'') for each Fund, which it will transmit to NSCC before the open of business the next business day. The information in the PCF will be available to all participants in the NSCC system. Because the NSCC's system for the receipt and dissemination to its participants of the PCF is not currently capable of processing information with respect to financial instruments, the Advisor has developed an ''IIV File,'' which it will use to disclose the Funds' holdings of financial instruments. The IIV File will contain, for each Leveraged Fund (to the extent it holds financial investments) and Inverse and Leveraged Inverse Fund, information sufficient by itself or in connection with the PCF File and other available information for market participants to calculate a Fund's IIV and effectively arbitrage the Fund. The Trust or the Advisor will post the IIV File to a password-protected Web site before the opening of business on each business day, and all Authorized Participants and Amex will have access to a password and the Web site containing the IIV File.

[6] The composition will be used to calculate the NAV later that day.

[7] 15 U.S.C. 80a.

[8] *See* SR–NASDAQ–2007–098 (filed on December 7, 2007).

[9] FINRA surveils trading pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA'S performance under this regulatory services agreement.

[10] For a list of the current members and affiliate members of ISG, see *http://www.isgportal.com.*

regarding the IIV is disseminated; (5) the requirement that Nasdaq members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the registration statement for the Fund. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from section 11(d)(1) of the Act [11] and certain rules under the Act, including Rule 10b–10, Rule 14e–5, Rule 10b–17, Rule 11d1–2, Rules 15cl–5 and 15cl–6, and Rules 101 and 102 of Regulation M. The Information Circular will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern Time each trading day.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, Nasdaq believes that the proposed rule change is consistent with the section 6(b)(5) [12] requirements that an exchange have rules designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, Nasdaq believes that the proposal is consistent with Rule 12f–5 under the Act [13] because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

[11] 15 U.S.C. 78k(d)(1).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 240.12f–5.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2007–097 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–097. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2007–097 and should be submitted on or before January 11, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[15] which requires that an exchange have rules designed, among other things, 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 Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with section 12(f) of the Act,[16] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[17] The Commission notes that it previously approved the listing and trading of the Shares on Amex.[18] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[19] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with section 11A(a)(1)(C)(iii) of the Act,[20] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information

[14] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78*l*(f).

[17] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[18] *See supra* note 3.

[19] 17 CFR 240.12f–5.

[20] 15 U.S.C. 78k–1(a)(1)(C)(iii).

with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. In addition, Amex will calculate and disseminate the IIV per Share for each Fund through the facilities of the Consolidated Tape Association at least every 15 seconds throughout the trading hours for the Shares. The value of each Underlying Index will also be updated intra-day on a real-time basis as its individual component securities change in price and will be disseminated at least every 15 seconds throughout the trading hours for the Shares. Finally, the Trust's Web site provides various information for each Fund's Shares.

The Commission also believes that the proposal appears reasonably designed to preclude trading of the Shares when transparency is impaired. Trading in the Shares will be subject to Nasdaq Rule 4120(b), which provides that, if the listing market halts trading when the IIV or value of the underlying index is not being calculated or disseminated, the Exchange also would halt trading.

In support of this proposal, the Exchange has made the following additional representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

2. Prior to the commencement of trading, the Exchange would inform its members in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

3. The Information Bulletin also would discuss the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

This approval order is based on the Exchange's representations.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted above, the Commission previously found that the listing and trading of the Shares on Amex is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NASDAQ–2007–097) be, and it hereby is, approved on anaccelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24789 Filed 12–20–07; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Taga Air Charter Service, Inc. for Commuter Air Carrier Authorization

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2007–12–11), Docket DOT–OST–2006–25577.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Taga Air Charter Service, Inc., is not a U.S. citizen, as defined in 49 U.S.C. 40102(a)(15), and that its application for Commuter Air Carrier Authorization under section 41738 of the Statute is denied. In addition, we propose to cancel its existing air taxi registration pursuant to 49 U.S.C. 40109(f) and 14 CFR part 298.

DATES: Persons wishing to file objections should do so no later than January 22, 2008.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2006–25577, and addressed to U.S. Department of Transportation, Docket Operations, West Building Ground Floor, (M–30, Room W12–140) 1200 New Jersey Avenue, SE., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ronâle Taylor, Air Carrier Fitness Division (X–56, West Building, 8th Floor), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–9721.

Dated: December 17, 2007.

Andrew B. Steinberg,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. E7–24868 Filed 12–20–07; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Alternatives Analysis/Environmental Impact Statement for Rapid Transit in Utah County, UT

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of Intent To Prepare an Alternatives Analysis/Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA), Utah Transit Authority (UTA), and Mountainland Association of Governments (MAG) intend to prepare an Alternatives Analysis/Environmental Impact Statement (AA/EIS) for potential high-capacity fixed-guideway transit improvements and roadway infrastructure improvements in Utah County, Utah. The project's purposes are to serve transit markets along the corridor including two universities (Brigham Young University and Utah Valley State College), existing and planned student housing, retail malls, several employment centers, historic downtown Provo, and two major regional intermodal centers; provide circulation and distribution for future transit projects including commuter rail; and to accommodate future travel demand while maintaining efficient traffic flow. The project termini are the planned Orem intermodal center near Utah Valley State College (UVSC) on the north and a location near the Provo Towne Center Mall and East Bay Business Complex (Novell Campus) on the south. The general location of the corridor is on or near University Parkway and University Avenue in Utah County and length of the project is approximately 9 miles. The timeframe for the environmental review process is from January 2008 to January 2010.

The AA/EIS will be prepared in accordance with section 102(2)c of the National Environmental Policy Act of 1969 (NEPA) and pursuant to the Council on the Environmental Quality's regulations (40 CFR parts 1500–1508), FTA/FHWA joint regulations (23 CFR 771) as well as provisions of the Safe,

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

Accountable, Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The purpose of this notice is to alert interested parties regarding the intent to prepare the AA/EIS, to provide information on the nature of the proposed project and possible alternatives, to invite public participation in the NEPA process (including providing comments on the scope of the AA/EIS), and to announce that a public scoping meeting will be conducted.

The AA/EIS will examine and evaluate a number of transit alternatives in the corridor. Any additional alternatives generated by the scoping process as well as the proposed station locations for the Build alternatives will also be considered. The alternatives will be compared to a No-Action Alternative for evaluation purposes.

Scoping for the AA/EIS will be accomplished through a public meeting; e-mail and hard copy correspondence with interested individuals and organizations, Federal, State, and local agencies, and Native American Tribes; and through a meeting with cooperating and participating public agencies. Interested parties may comment by: (1) E-mailing *provo-oremrapidtransit@hwlochner.com*; (2) visiting the project Web site at *http://www.provo-oremrapidtransit.info*; (3) mailing written comments to the address below, or (4) attending the public scoping meeting, described below under *Meeting Dates*. A scoping information packet will be posted on the project Web site at *http://www.provo-oremrapidtransit.info* and hard copies of the packet will be distributed on request.

Meeting Dates

Public Scoping Meeting: A public scoping meeting will be held Thursday, January 24, 2008 from 5 p.m. to 7 p.m. at the Provo City Library (550 N University Ave, Provo).

The project's purpose and need, and the initial set of alternatives proposed for study will be presented at this meeting. Comments may be given verbally or in writing at the scoping meeting. Every reasonable effort will be made to meet special needs. The meeting location will be accessible to persons with disabilities. Individuals who require special accommodations, such as sign language interpreter, to participate in the meeting should contact Ms. Sherry L. Repscher, ADA Compliance Officer, Utah Transit Authority, 3600 South 700 West, Salt Lake City, UT 84119–0810 or by telephone at (801) 262–5626 or TDD at (801) 287–4657.

Agency Scoping Meeting: An agency scoping meeting will be held on Wednesday, January 23, 2008, from 9:15 a.m. to 12 p.m. at the Provo City Library (Bullock Room 309), 550 North University Ave, Provo, Utah. The purpose of the meeting is to provide an overview of the project, to allow agencies to determine their level of interest in the project, and to allow agencies to help identify the proposed project's level of impact on environmental, social, and economic resources. The scoping meeting will include a bus tour of the project study area. The bus tour will depart at 9:30 a.m. from the Provo City Library parking lot.

ADDRESSES: Written comments should be sent to the following address by February 28, 2008: Laynee Jones, HW Lochner, 310 East 4500 South, Murray, Utah 84107 or *provo-oremrapidtransit@hwlochner.com*. The location of the public scoping meeting is given above under *Meeting Dates*.

FOR FURTHER INFORMATION CONTACT: Charmaine Knighton, Deputy Regional Administrator, Region VIII, Federal Transit Administration, 12300 West Dakota Avenue, Suite 310, Denver, CO 80228. Telephone: 720–963–3327.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA, UTA, and MAG invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the AA/EIS including the project's purpose and need, alternatives, impacts to be evaluated, and evaluation methods to be used. Comments should focus on refining the purpose and need statement, developing alternatives to meet the purpose and need, and on identifying specific social, economic, or environmental impacts to be evaluated. The scoping period will end February 28, 2008. A scoping information packet will be posted on the project Web site at *http://www.provo-oremrapidtransit.info* and hard copies of the packet will be distributed on request.

II. Description of Project Study Area and Its Purpose and Need

Known as the Provo-Orem Rapid Transit AA/EIS, this project consists of increasing transit opportunities and maintaining efficient traffic flow in an area that contains two universities, retail malls, employment centers, a historic downtown, and two major regional intermodal centers. The proposed project originated from the Inter-Regional Corridor Alternatives Analysis (IRCAA) completed in 2002 and the Provo/Orem Rapid Transit Corridor Feasibility Study (Feasibility Study) completed in 2005. The Feasibility Study selected Bus Rapid Transit (BRT) as the solution for the increasing transportation demand in Utah County. The BRT project is included in the Mountainland Association of Government's fiscally constrained Long Range Transportation Plan.

Preliminary statement of purpose of and need for the proposed project: The purpose of the project is to serve transit markets along the corridor; provide circulation and distribution for future transit projects including commuter rail; and to accommodate future travel demand while maintaining efficient traffic flow. The needs identified in the previous studies include: enhancing community character, accommodating the ultimate cross-section of the road, meeting traffic demand on the travel lanes, encouraging economic development, and providing a system that is safe, easy, and convenient to use. The public and participating and cooperating agencies are invited to consider and comment on this preliminary statement of the purpose and need for the proposed project.

Projected Ridership. According to preliminary estimates in the Feasibility Study, the project is anticipated to serve 17,000 boardings per day. Brigham Young University is located near the center of the study area and has an enrollment of over 35,000. Most of its students live within 3.5 miles of campus and the feasibility study indicates that 67 percent of students walk to campus. The project area has a strong local ridership base; an on-board survey of UTA bus routes serving Utah County concluded that approximately 52 percent of riders live in Provo and 19 percent live in Orem. Approximately 35 percent of riders were students.

Local Land Use and Economic Development. Provo and Orem are the two largest cities in Utah County. Based on a comparison of Census data from 1990 to 2000, Provo was shown to be the fourth fastest-growing metropolitan area for job creation and the tenth fastest-growing for population. By 2030, Provo is expected to grow to a population of almost 137,000 and Orem is expected to grow to a population of over 107,000. Although the entire study area is growing, population and employment growth are dispersed in different densities along the project corridor. Employment density is projected to increase in particular along University Avenue.

Environmental Process: In accordance with NEPA, SAFETEA–LU section 6002 and FTA's section 5309 New Starts requirements, the project's environmental process has been divided into three general phases: (1) Scoping; (2) Alternatives Analysis/ EIS, selection of the Locally Preferred Alternative (LPA); selection of the Preferred Alternative and (3) Final EIS.

III. Alternatives

The Feasibility Study conducted in 2005 recommended Bus Rapid Transit (BRT) along University Parkway and University Avenue with a detour off University Avenue to serve Brigham Young University (BYU). Because population and employment densities have changed in the study area since 2005, the AA/EIS will evaluate a wide range of fixed guideway alternatives including light rail and Bus Rapid Transit. Bus Rapid Transit includes exclusive transit lanes (either center-running or side-running) and queue jump lanes. The preliminary alternatives will be narrowed to a locally preferred alternative based on updated ridership forecasts. The locally preferred alternative and a No-Action alternative will be evaluated in detail in the EIS resulting in the selection of a Preferred Alternative.

IV. Probable Effects

NEPA requires FTA and UTA to evaluate the significant impacts of the alternatives selected for study in the AA/EIS. Primary issues identified thus far include additional right-of-way takes, business impacts, potential impacts to historic properties, and traffic and accessibility impacts. The impacts will be evaluated for both the construction period and for the long-term period of operation. Measures to mitigate adverse impacts will be developed.

V. FTA Procedures

The regulation implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), call for public involvement in the NEPA process. Section 6002 of SAFETEA–LU requires that the lead agencies (FTA, UTA, and MAG) do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project to become ''participating agencies;'' (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An invitation to become a participating or cooperating agency, with scoping materials appended, will be extended to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project. It is possible that the lead agencies will not be able to identify all Federal and non-Federal agencies and Native American tribes that may have such an interest. Any Federal or non-Federal agency or Native American tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify Pat Rothacher, Utah Transit Authority, at 3600 South 700 West, Salt Lake City, UT 84119 or *prothacher@rideuta.com.*

UTA is seeking federal assistance from the FTA to fund the proposed project under 49 United States Code 5309 and will, therefore, be subject to regulations (49 Code of Federal Regulations (CFR) Part 611) related to New Starts projects.

The AA/EIS will be prepared in accordance with NEPA and its implementing regulation issued by the Council on Environmental Quality (40 CFR Parts 1500–1508) and with the FTA/Federal Highway Administration regulations ''Environmental Impact and Related Procedures'' (23 CFR part 771). In accordance with 23 CFR 771.105(a) and 771.133, FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process. These requirements include, but are not limited to, the environmental and public hearing provisions of Federal transit laws (49 U.S.C. 5301 (e), 5323 (b), and 5324); the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR Part 93); The section 404 (b)(1) guidelines of EPA (40 CFR Part 230); the regulation implementing section 106 of the National Historic Preservation Act (36 CFR Part 800); the regulation implementing section 7 of the Endangered Species Act (50 CFR Part 402); section 4(f) of the Department of Transportation Act (23 CFR 771.135); and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands.

Issued on: December 14, 2007.

Charmaine Knighton,

Deputy Regional Administrator, Region VIII.

[FR Doc. E7–24861 Filed 12–20–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2006–24058]

Pipeline Safety: Grant of Special Permit; TransCanada Pipelines Limited

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice; Grant of Special Permit.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is granting TransCanada Pipelines Limited (TransCanada) a special permit waiving compliance from the Federal pipeline safety regulation in 49 CFR 192.611 for two pipeline segments in the Portland Natural Gas Transmission System, described below under ''Pipeline System Affected.'' The regulation requires natural gas pipeline operators to confirm or revise the maximum allowable operating pressure of a pipeline after a change in class location.

FOR FURTHER INFORMATION CONTACT: Alan Mayberry at (202) 366–5124, or by e-mail at *Alan.Mayberry @dot.gov;* or Wayne Lemoi at (404) 832–1160 or by e-mail at *Wayne.Lemoi@dot.gov.*

SUPPLEMENTARY INFORMATION:

Special Permit Request

Pipeline Operator: TransCanada petitioned PHMSA on April 8, 2005, for a special permit to waive compliance from the Federal pipeline safety regulation in 49 CFR § 192.611 for two pipeline segments of the Portland Natural Gas Transmission System (PNGTS) 24-inch mainline operated by TransCanada and described below under ''Pipeline System Affected.'' The regulation requires natural gas pipeline operators to confirm or revise the maximum allowable operating pressure (MAOP) of a pipeline after a change in class location.

Pipeline System Affected: This special permit request covers two segments of a single 24-inch pipeline known as the PNGTS pipeline in and near the town of North Windham, Maine. *Special permit segment* 1 includes 615 feet that changed from a Class 1 location to a Class 3 location on March 1, 2004, and an additional 2,298 feet that

TransCanada anticipates will change from a Class 1 location to a Class 3 location for a total of 2,913 feet. *Special permit segment* 2 is just upstream of *special permit segment* 1 and includes 4,766 feet anticipated by TransCanada to change from a Class 1 location to a Class 3 location. Anticipated class location change for both *special permit segments* is due to residential and commercial development anticipated by TransCanada. The two ''*special permit segments*'' are defined as follows:

- *Special Permit Segment* 1: 2,913 feet, mile post (MP) 132.20 to MP 132.75
- *Special Permit Segment* 2: 4,766 feet, MP 130.88 to MP 131.78

A *special permit inspection area* is defined as the area within 220 yards of each side of a pipeline centerline along the entire length of the *special permit segment* and along the pipeline up to 25 miles upstream and downstream of the *special permit segment.* The ''*special permit inspection area*'' for this special permit consists of the area within 220 yards of each side of the PNGTS pipeline centerline along the entire length of the pipeline from 25 miles upstream of *special permit segment* 2 to approximately 10 miles downstream of *special permit segment* 1 and is inclusive of both special permit segments.

Public Notice

On September 7, 2006, PHMSA published a notice of the TransCanada request in the **Federal Register** (71 FR 52871) inviting interested persons to comment on the request. On February 8, 2007, PHMSA posted another notice in the **Federal Register** (72 FR 6042) informing the public that we have changed the name granting a waiver to a special permit. We did not receive any public comments for or against this special permit request. We also requested and received supplemental information from TransCanada. The special permit petition, **Federal Register** notice, supplemental information from TransCanada and all other documents pertinent to this special permit request are available for review by the public in Docket Number PHMSA–2006–24058 in the Federal Docket Management System (FDMS) located on the internet at *www.Regulations.gov.*

Special Permit Analysis

Background: On June 29, 2004, PHMSA published in the **Federal Register** (69 FR 38948) the criteria it uses for the consideration of class location change special permits. First, certain threshold requirements must be met for a pipeline section to be further evaluated for a class location change special permit. Second, the age and manufacturing process of the pipe; system design and construction; environmental, operating and maintenance histories; and integrity management program (IMP) elements are evaluated as significant criteria. These significant criteria are presented in matrix form and can be reviewed in the FDMS, Docket Number PHMSA-RSPA–2004–17401. Third, such special permits will only then be granted when pipe conditions and active integrity management provides a level of safety greater than or equal to a pipe replacement or pressure reduction.

Threshold Requirements: Each of the threshold requirements published by PHMSA in the June 29, 2004 FR notice is discussed below for the TransCanada special permit petition.

(1) No pipeline segments in a class location changing to Class 4 location will be considered. This special permit request is for two pipeline segments in class locations that have changed or are anticipated to change from Class 1 to Class 3. This requirement has been met for both PNGTS *special permit segments.*

(2) No bare pipe will be considered. Both *special permit segments* of the PNGTS pipeline are coated with Fusion Bond Epoxy (FBE), meeting this requirement.

(3) No pipe containing wrinkle bends will be considered. There are no wrinkle bends in the *special permit segments.* This requirement has been met for both PNGTS *special permit segments.*

(4) No pipe segments operating above 72 percent of the specified minimum yield strength (SMYS) will be considered for a Class 3 special permit. The PNGTS pipeline operates at or below 72 percent SMYS. This requirement has been met for both PNGTS *special permit segments.*

(5) Records must be produced that show a hydrostatic test to at least 1.25 × MAOP. The PNGTS pipeline has been hydrostatically tested to 1,846 pounds per square inch gauge (psig), 1.28 × MAOP. This requirement has been met for both PNGTS *special permit segments.*

(6) In-line inspection (ILI) must have been performed with no significant anomalies identified that indicate systemic problems. The PNGTS pipeline has been ILI inspected with no significant anomalies in the *special permit segments,* thus meeting this requirement.

(7) The *special permit inspection* area must be inspected according to the operator's IMP and periodically inspected with an in-line inspection technique. This special permit will include conditions requiring TransCanada to perform additional inspections in the *special permit inspection area* on a frequency consistent with the integrity management regulations contained in 49 CFR Part 192, Subpart O. The special permit conditions will also require TransCanada to incorporate both *special permit segments* in its written IMP as ''covered segments'' in a ''high consequence area (HCA)'' per 49 CFR 192.903.

Criteria Matrix: The original and supplemental data submitted by TransCanada for the *special permit segments* have been compared to the class location change special permit criteria matrix. The data falls within the ''*probable acceptance*'' column of the criteria matrix for all criteria except for a change, from a Class 1 location to a Class 3 location, which falls within the ''*possible acceptance*'' column of the criteria matrix, and the ILI Time Frame Requirement which falls within the ''possible acceptance'' column of the criteria matrix.

(1) Pipe design and construction, including pipe manufacture, material, design stress and weld radiography: the pipe of both *special permit segments* was manufactured in 1998–1999 of American Petroleum Institute Specification 5L, *Specification for Line Pipe* (API 5L), X–70 steel, using a 72 percent SMYS design factor per § 192.111, with documented 100 percent circumferential field weld radiographic inspection. The pipe coating is mill-applied FBE with field-applied FBE on circumferential welds. All of these factors fall within the ''*probable acceptance*'' column of the criteria matrix.

(2) Pressure testing: both *special permit segments* were pressure tested in 1998 to 1,846 psig corresponding to 128 percent MAOP and 92 percent SMYS. No test failures occurred. These factors fall within the ''*probable acceptance*'' column of the criteria matrix.

(3) Environmental considerations: the depth of cover is given as 48 inches for both *special permit segments*, exceeding the requirements of § 192.327(a). Both *special permit segments* are located in stable terrain that does not contain any major slopes. These factors fall within the ''*probable acceptance*'' column of the criteria matrix.

(4) Operational considerations: according to TransCanada, there were no leaks or failures in the two *special permit segments* of the pipeline. The pipeline transports only dry gas with light pressure fluctuations. Cathodic protection (CP) was operational in the fall of 1999 on both pipeline *special*

permit segments, which was within 9 months of the in-service date of the pipeline. A baseline close interval survey (CIS) of the entire PNGTS pipeline was performed during the summer of 2000. No low potentials or CP anomalies were identified in the *special permit segments*. No safety related condition reports (SRCR) have been issued for the *special permit segments*. These factors fall within the ''*probable acceptance*'' column of the criteria matrix.

(5) Integrity management program: *special permit segment* 1 is currently within an HCA, while *special permit segment* 2 is anticipated by TransCanada to become an HCA in its entirety due to anticipated development. The entire PNGTS pipeline (including both *special permit segments*) transports odorized gas. Leakage surveys using leak detection equipment are performed annually on the entire pipeline including the *special permit segments*. PNGTS performed an ILI on November 1, 2002, which was more than two years but less than five years prior to the special permit application date, placing this criterion in the ''*possible acceptance*'' column of the criteria matrix. Two minor (less than 4 percent) anomalies identified in the 2002 ILI were excavated in 2005; no active corrosion was found. A high resolution magnetic flux leakage (MFL) ILI is scheduled for 2009 on the pipeline sections including the *special permit segments*. A baseline CIS was performed in 2002 on the entire PNGTS pipeline system. TransCanada annually performs a CIS of 15–20 percent of the system and proposes to perform a CIS on the *special permit segments* annually. TransCanada has not identified any coating or corrosion issues. TransCanada proposes to perform a direct current voltage gradient (DCVG) survey on both *special permit segments* and 1,000 feet upstream and downstream of the *special permit segments*. TransCanada also proposes to perform weekly aerial patrols and quarterly ground road crossing patrols, including leakage surveys, using leak detection equipment in the proposed *special permit segments*. TransCanada additionally proposes to install buried excavation warning tape over the pipeline comprising the *special permit segments*. All of these factors, with the exception of the ILI time frame criterion, fall within the ''*probable acceptance*'' column. The ILI time frame falls within the ''*possible acceptance*'' column because it was several months outside the two year requirement prior to the special permit application.

Special Permit Findings

PHMSA finds that granting this special permit is not inconsistent with pipeline safety and will provide a level of safety equal to or greater than pipe replacement or pressure reduction. We do so because the special permit analysis shows the following:

(1) The *special permit segments* meet six of the seven threshold requirements. The seventh threshold requirement, that the *special permit inspection area* be inspected according to the operator's IMP and periodically inspected with an in-line inspection technique, will be addressed in the special permit conditions. The special permit conditions will also include annual inspection requirements of the *special permit inspection area* and both *special permit segments* on a frequency consistent with 49 CFR 192, Subpart O; the Integrity Management regulations.

(2) The *special permit segments* fall in the ''*probable acceptance*'' column of the criteria matrix for all criteria except for class location change and ILI time frame. The class location change for both *special permit segments* is from a Class 1 location to a Class 3 location, which places this parameter in the ''*possible acceptance*'' column. The last ILI that was performed on the entire PNGTS pipeline containing the *special permit segments* was on November 1, 2002, which is longer than two but less than five years preceding the special permit petition. This places the ILI time frame parameter in the ''*possible acceptance*'' column.

(3) The special permit conditions will require TransCanada to implement enhanced IMP actions for the entire *special permit inspection area*.

Special Permit Grant

PHMSA grants a special permit of compliance from 49 CFR 192.611 to TransCanada Pipelines Limited for two pipeline segments defined below in or near North Windham, Maine in the Portland Natural Gas Transmission System. The *special permit segments* are where the class locations along the pipeline have changed or are anticipated to change in the future from a Class 1 location to a Class 3 location. As of July 1, 2007, only 615 feet of *special permit segment* 1 has actually changed to Class 3 location. PHMSA is nevertheless granting this special permit for both the actual and the anticipated class location change along both *special permit segments* because the additional integrity management program actions required by this special permit for the entire *special permit inspection area* will enhance the safety of operation of the PNGTS pipeline. This special permit applies to the pipeline *special permit segments* defined as follows:

- *Special permit segment* 1: 2,913 feet, mile post (MP) 132.20 to MP 132.75
- *Special permit segment* 2: 4,766 feet, MP 130.88 to MP 131.78

A *special permit inspection area* is defined as the area within 220 yards of each side of a pipeline centerline along the entire length of the special permit segment and along the pipeline up to 25 miles upstream and downstream of the *special permit segment*. The ''*special permit inspection area*'' for this special permit consists of the area within 220 yards of each side of the PNGTS pipeline centerline along the entire length of the pipeline from 25 miles upstream of *special permit segment* 2 to approximately 10 miles downstream of *special permit segment* 1 and inclusive of both special permit segments.

Special Permit Conditions

This special permit is granted with the following conditions:

(1) TransCanada must continue to operate the *special permit segments* at or below the existing MAOP.

(2) TransCanada must incorporate both *special permit segment* 1 and *special permit segment* 2 into its written IMP as ''covered segments'' in an HCA as defined in 49 CFR Subpart O, § 192.903, except for the reporting requirements contained in 49 CFR 192.945. The *special permit segments* included in this special permit need not be included in TransCanada's IMP baseline assessment plan.

(3) TransCanada must perform a CIS of the entire length of the *special permit inspection area* not later than one year after the grant of special permit and remediate any areas of inadequate cathodic protection. A CIS and remediation need not be performed on the *special permit inspection area* if a CIS and remediation have been performed within 6 years of the grant of special permit. If factors beyond TransCanada's control prevent the completion of the CIS and remediation within one year, a CIS and remediation must be completed as soon as practicable and a letter justifying the delay and providing the anticipated date of completion must be submitted to the Director, PHMSA Eastern Region not later than one year of the grant of special permit.

(4) TransCanada must perform ongoing CIS of both *special permit segment* 1 and *special permit segment* 2 at the applicable reassessment interval(s) for a ''covered segment'' determined in accordance with 49 CFR 192.939.

(5) TransCanada must perform a Direct Current Voltage Gradient (DCVG) survey of both *special permit segment* 1 and *special permit segment* 2 not later than one year after the grant of special permit to verify the pipeline coating conditions and to remediate any integrity issues in the *special permit segments*. If factors beyond TransCanada's control prevent the completion of the DCVG and remediation within one year, a DCVG and remediation must be performed as soon as practicable and a letter justifying the delay and providing the anticipated date of completion must be submitted to the Director, PHMSA Eastern Region not later than one year of the grant of special permit.

(6) TransCanada must evaluate the potential for stress corrosion cracking (SCC), according to 49 CFR 192.929 within one year after the grant of special permit. If the potential for SCC is identified, TransCanada must perform a stress corrosion cracking direct assessment (SCCDA) of the *special permit inspection area* in accordance with 49 CFR 192.929.

(7) TransCanada must submit the CIS, DCVG and SCCDA findings including remediation actions in a written report to the Director, PHMSA Eastern Region not later than two years after the grant of special permit.

(8) TransCanada must amend applicable sections of its operations and maintenance (O&M) manual(s) to incorporate the inspection and reassessment intervals by ILI along the entire length of the *special permit inspection area* at a frequency consistent with 49 CFR § 192, Subpart O.

(9) TransCanada must amend applicable sections of its O&M manual(s) to incorporate the inspection and reassessment intervals by CIS of both *special permit segment* 1 and *special permit segment* 2 at a frequency consistent with 49 CFR Part 192, Subpart O.

(10) The assessments of the *special permit segments* and the *special permit inspection area* using ILI must conform to the required maximum reassessment intervals specified in 49 CFR 192.939.

(11) TransCanada must schedule future reassessment dates for the *special permit inspection area* according to 49 CFR § 192.939 by adding the required time interval to the previous assessment date.

(12) TransCanada must ensure their damage prevention program incorporates the applicable best practices of the Common Ground Alliance (CGA) within the *special permit inspection area*.

(13) TransCanada must give sufficient notice to the Director, PHMSA Eastern Region to enable observation of any or all special permit related activities in the *special permit inspection area*.

(14) TransCanada must determine and provide certification that all inspections and activities associated with this special permit will not impact or defer any of the operator's assessments for HCAs under 49 CFR part § 192, subpart O, particularly those associated with the most significant 50 percent.

(15) Within three months following approval of this special permit and annually thereafter, TransCanada must report the following to the Director, PHMSA Eastern Region:

(a) The economic benefits of the special permit to TransCanada. This should address both the costs avoided from not replacing the pipe and the added costs of the inspection program (required for the initial report only).

(b) In the first annual report, fully describe how the public benefits from energy availability. This should address the benefits of avoided disruptions as a consequence of pipe replacement and the benefits of maintaining system capacity. Subsequent reports must indicate any changes to this initial assessment.

(c) The number of new residences, other structures intended for human occupancy and public gathering areas built within the *special permit inspection area*.

(d) Any new integrity threats identified during the previous year and the results of any in-line inspections or direct assessments performed during the previous year in the *special permit inspection area*.

(e) Any reportable incident, any leak normally indicated on the DOT Annual Report and all repairs on the pipeline that occurred during the previous year in the *special permit inspection area*.

(f) On-going damage prevention initiatives affecting the *special permit inspection area* and a discussion on the success of the initiatives.

(g) Any mergers, acquisitions, transfer of assets, or other events affecting the regulatory responsibility of the company operating the pipeline.

(16) At least one CP pipe-to-soil test station must be located within each HCA with a maximum spacing between test stations of one-half mile within an HCA. In cases where obstructions or restricted areas prevent test station placement, the test station must be placed in the closest practical location. This requirement applies to any HCA within the *special permit inspection area*.

(17) If any annual test station readings within the *special permit inspection area* fall below 49 CFR part 192, subpart I requirements, remediation must occur within six months and include a CIS on each side of the affected test station to the next test station and identified corrosion system modifications to ensure corrosion control. If factors beyond TransCanada's control prevent the completion of remediation within six months, remediation must be completed as soon as practicable and a letter justifying the delay and providing the anticipated date of completion must be submitted to the Director, PHMSA Eastern Region not later than one year after the grant of special permit.

(18) Anomaly Evaluation and Repair:

(a) *General:* TransCanada shall account for ILI tool tolerance and corrosion growth rates in scheduled response times and repairs.

(b) *Dents:* TransCanada shall repair dents in the *special permit segments* and *special permit inspection area* in accordance with 49 CFR § 192.933.

(c) *Repair Criteria:* Repair criteria applies to anomalies located within the *special permit inspection area* when they have been excavated and investigated in accordance with 49 CFR 192.485 and 192.933 as follows:

(i) Special permit segments—repair any anomaly with a failure pressure ratio (FPR) less than or equal to 1.39 for pipe operating at a stress level up to 72 percent of SMYS and any anomaly greater than 50 percent of pipe wall thickness.

(ii) Special permit inspection area—the response time must be in accordance with 49 CFR § 192, subpart O, the applicable edition of the American Society of Mechanical Engineers Standard B31.8S, *Managing System Integrity of Gas Pipelines* (ASME B31.8S) and TransCanada's IMP.

(d) *Response Time for ILI Results:* The following guidelines provide the required timing for excavation and investigation of anomalies based on ILI results. Reassessment by ILI will ''reset'' the timing for anomalies not already investigated and/or repaired. TransCanada must evaluate ILI data by using either the ASME Standard B31G, *Manual for Determining the Remaining Strength of Corroded Pipelines* (ASME B31G), or the Modified B31G (0.85dL) for calculating the predicted failure pressure ratio to determine anomaly responses.

(i) Special permit segment:

—*Immediate response:* FPR equal to or less than 1.1 or anomalies equal to and greater than 80 percent of pipe wall thickness;

—*1-year response:* pipe operating at a stress level up to 72 percent of SMYS—FPR equal to or less than 1.39 and anomalies equal to or greater than 60 percent of pipe wall thickness;

—*Scheduled reponse:* pipe operating at a stress level up to 72 percent of SMYS—FPR greater than 1.39 and anomalies less than 60 percent of pipe wall thickness.

(ii) Special permit inspection area: The response time must be in accordance with 49 CFR § 192, subpart O, ASME B31.8S (applicable edition) and TransCanada's IMP.

(19) PHMSA may extend either or both of the original *special permit segments* to include contiguous segments of pipeline up to the limits of the *special permit inspection area* pursuant to the following conditions. TransCanada must:

(a) Provide at least 90 days advance written notice to the Director, PHMSA Eastern Region and PHMSA Headquarters of a requested extension of either or both of *special permit segment* 1 and *special permit segment* 2 based on an actual class location change and include a schedule of inspections and of any anticipated remedial actions. If PHMSA Headquarters makes a written objection before the effective date of the requested special permit segment (90 days from receipt of the above notice), the requested special permit segment extension does not become effective.

(b) Complete all inspections and remediation of the proposed special permit segment extension to the extent required of the original special permit segment.

(c) Apply all the special permit conditions and limitations included herein to all future extensions.

Special Permit Limitations

PHMSA has the sole authority to make all determinations on whether TransCanada has complied with the specified conditions. Should TransCanada fail to comply with any conditions of this special permit, or should PHMSA determine this special permit is no longer appropriate or that this special permit is inconsistent with pipeline safety, PHMSA may revoke this special permit and require TransCanada to comply with the regulatory requirements of 49 CFR 192.611.

Authority: 49 U.S.C. 60118 (c)(1) and 49 CFR 1.53.

Issued in Washington, DC on December 17, 2007.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E7–24776 Filed 12–20–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35087]

Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement (EIS); Notice of Initiation of the Scoping Process, Including Notice of Availability of Draft Scope of Study for Environmental Impact Statement; Request for Comments on Draft Scope; and Notice of Open-House Meetings.

SUMMARY: On October 30, 2007, Canadian National Railway Corporation (CNR) and Grand Trunk Corporation (GTC), a noncarrier holding company through which CNR controls its U.S. rail subsidiaries, filed an application with the Surface Transportation Board (Board) seeking the Board's approval of the acquisition of control of EJ&E West Company (EJ&EW), a wholly owned noncarrier subsidiary of Elgin, Joliet and Eastern Railway Company (EJ&E). In this document, the action before the Board will be referred to as the proposal or the proposed acquisition and CNR and GTC will be referred to collectively as CN or as Applicants.

CN is one of Canada's two major railroads. It extends from Halifax, Nova Scotia, to Vancouver and Prince Rupert, British Columbia. EJ&E is a Class II railroad that currently operates over 198 miles of track in northeastern Illinois and northwestern Indiana, consisting primarily of an arc of roughly 190 miles around Chicago, IL, extending from Waukegan, IL, southwards to Joliet, IL, then eastward to Gary, IN, and then northwest to South Chicago along Lake Michigan. EJ&E provides rail service to approximately 100 customers, including steel mills, coal utilities, plastics and chemical producers, steel processors, distribution centers, and scrap processors.

Applicants' proposed acquisition of the EJ&E would shift rail traffic currently moving over CN's rail lines inside the EJ&E arc in Chicago to the EJ&E, which traverses the suburbs generally to the west and south of Chicago. Rail traffic on CNR lines inside the EJ&E arc would generally decrease. The decreases in rail traffic would be offset by increases in the number of trains operating on the EJ&E rail line outside of Chicago (approximately 15–27 more trains would operate on various segments of the EJ&E). Applicants also proposed to construct six new rail connections and approximately 19 miles of new sidings/double tracking. Applicants give three primary reasons for seeking approval of the proposed acquisition: Improved rail operations in the Chicago area; availability to EJ&E's Kirk Yard in Gary, Indiana, and other smaller facilities in Joliet, Illinois, and Whiting, Indiana; and improved service to companies dealing in steel, chemicals, and petrochemicals, as well as Chicago area utilities.

To thoroughly assess the potential environmental impacts that may result from the proposed acquisition, the Board, through its Section of Environmental Analysis (SEA), will prepare an Environmental Impact Statement (EIS). The purpose of this Notice is to give all interested persons the opportunity to actively participate in the forthcoming environmental review, the first step of which is ''scoping.'' Scoping is an open process for determining the range of issues that should be examined and assessed in the EIS. In addition to announcing that the Board will prepare an EIS for this proceeding, this Notice also announces the availability of a draft scope of study, requests comments on the draft scope of study, and presents the schedule of Open-House meetings to be held in the project area.

DATES, TIMES, AND LOCATIONS: Scoping Open House meetings will be held at the dates and locations listed below. Each location will have an afternoon and an evening session at the following times: The afternoon Open House is scheduled from 1p.m. to 4 p.m. and the evening Open House is scheduled from 6 p.m. to 8 p.m. There is no need to attend more than one meeting, but all are welcome to attend as many meetings as desired.

Date	Location
January 8, 2008	Crown Plaza, Salon A/C Room, 510 E. Route 83, Mundelein, IL 60060, 847–949–5100.
January 9, 2008	Makray Memorial Golf Club, Grand Ballroom, 1010 S. NW., Highway, Barrington, IL 60010, 847–381–6500.

Date	Location
January 10, 2008	Jacob Henry Mansion, Ballroom, 15 South Richards Street, Joliet, IL 60433, 815–722–2465.
January 15, 2008	Holiday Inn, Willow Room, 500 Holiday Plaza Drive, Matteson, IL, 708–747–3500.
January 16, 2008	Genesis Convention Center, Gary Lakes Room, One Genesis Center Plaza, Gary, IN 46402, 219–882–5505.
January 17, 2008	St. Andrews Golf Club, St. Andrews Room, 3N441 Route 59, West Chicago, IL 60185, 630–231–3100.
January 22, 2008	Crowne Plaza Chicago-Metro, Ballroom, 733 West Madison, Chicago, IL 60661, 312–602–2106.

The public scoping meetings will be informal meetings in an open house format. Interested persons may ask questions about the proposal and the Board's environmental review process, and discuss the potential environmental effects of the proposal with SEA staff. In keeping with the open house format of the scoping meetings, there will be no formal presentations made by the agency. Rather, SEA staff members will be available to answer questions and receive comments individually. A court reporter will be available for those persons who wish to submit oral comments. Writing stations will be available to those who wish to submit written comments at the Open House. SEA staff will be available to listen and make notes of comments. Additional copies of the draft scope will be available at all Open House meetings.

The meeting locations comply with the Americans with Disabilities Act. Persons who need special accommodations should telephone SEA's toll-free number for the project at 1–800–347–0689. Please leave a message and someone will return your call promptly.

SEA will issue a final Scope of Study shortly after the close of the scoping comment period. Written comments on the draft scope are due February 1, 2008. Directions on how to submit comments of the draft scope are set forth below.

Summary of the Board's Review Processes for this Proceeding: The Board will review the proposed transaction through two parallel but distinct processes: (1) The economic process that examines the competitive, transportation, and economic implications of the acquisition on the national rail system, and (2) the environmental process conducted by SEA that assesses the potential environmental effects of the proposed acquisition on the human and natural environment through preparation of an EIS. Interested persons may participate in either, or both, processes, but if interests are focused on potential impacts on communities, including grade crossing safety, air emissions, emergency vehicle access, noise, vibration, and other similar environmental issues, then the appropriate forum is SEA's environmental review process.

Environmental Review Process: The National Environmental Policy Act (NEPA) process is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on that proposed action is made. SEA is responsible for ensuring that the Board complies with NEPA and related environmental statues. The first stage of the EIS process is scoping. Scoping is an open process for determining the scope of environmental issues to be addressed in the EIS and their potential for significance.

SEA has developed a draft scope of study for the EIS for public review and comment, which incorporates the issues and concerns raised in the comment letters SEA has received thus far. SEA is soliciting written comments on this draft scope of study. After the close of the comment period on the draft scope of study, SEA will review all comments received and then issue a final scope of study (final scope) for the EIS.

Following the issuance of the final scope, SEA will prepare a Draft EIS (DEIS) for the project. The DEIS will address those environmental issues and concerns identified during the scoping process. It will also contain SEA's preliminary recommendations for environmental mitigation measures. Upon its completion, the DEIS will be made available for public and agency review and comment for 45 days. SEA will then prepare a Final EIS (FEIS) that will address the comments on the DEIS from the public and agencies. Then, in reaching its decision in this case, the Board will take into account the DEIS, the FEIS, the public comments, and the environmental analysis and recommendations, including any environmental mitigation proposed by SEA.

The Procedural Schedule set for this proceeding in Decision No. 2 establishes the date of April 25, 2008 for the Board's proposed final decision. This date will be extended if additional time is needed to complete the full EIS process.

Submitting Comments on the Draft Scope: SEA encourages broad participation in the EIS process. All interested agencies, organizations, communities, and members of the public are invited to participate in the scoping process by reviewing and commenting on the draft scope of the EIS. Written comments on the draft scope of the EIS may be submitted to the Board within the comment period, as described below, no later than February 1, 2008. To file comments on the draft scope and participate in the environmental review process, it is not necessary to be a Party of Record (as detailed in Decision 2[1]). If you wish to submit written comments regarding the attached proposed draft scope, please send your comments to:

Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, Attention: Phillis Johnson-Ball, Environmental Filing, STB Finance Docket No. 35087.

Environmental comments may also be filed electronically on the Board's Web site, *http://www.stb.dot.gov,* by clicking on the ''E_FILING'' link.

Please refer to STB Finance Docket No. 35087 in all correspondence, including E-filings, addressed to the Board.

Following these directions will help ensure that your comments are considered in the environmental review process for this proposed acquisition. SEA will add your name to its mailing list for distribution of the final scope of the EIS, the DEIS, and Final EIS (FEIS). Interested persons who wish to receive individual copies of Board decisions, orders, and notices served in this proceeding but do not want to be a party of record are encouraged to contact the Board's copy contractor as soon as possible: Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706, telephone number (202) 306–4004, or e-mail address:

[1] Board Decision No. 2 was issued November 26, 2007.

asapdc@verizon.net. All Board decisions, orders, and notices in this proceeding will also be available on the Board's Web site at *http://www.stb.dot.gov* under ''E-Library,'' and ''Decisions & Notices'' or ''Filings.''

FOR FURTHER INFORMATION CONTACT: Phillis Johnson-Ball, Section of Environmental Analysis, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001, 1–800–347–0689 (project information line) . Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. The Web site for the Surface Transportation Board is *http://www.stb.dot.gov*.

By the Board, Victoria J. Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

Appendix A

Draft Scope of the EIS

Proposed Action and Definition of Alternatives

Applicants' proposed acquisition of the EJ&E would result in shifting of rail traffic from rail lines in Chicago to rail lines on the EJ&E. Rail traffic on CNR lines inside the EJ&E arc would generally decrease. These decreases in rail traffic would be offset by substantial increases in the number of trains operated on the EJ&EW line outside Chicago. The increase in train traffic on the EJ&E would vary from approximately 15 to 27 additional trains per day. Applicants state that the proposed transaction would not impair CNR's ability to handle commuter trains, passenger trains, or trackage/haulage trains currently operating on its lines. Finally, on the integrated CNR/EJ&EW system, four train pairs would be added to EJ&E terminals: Three inbound and three outbound switch trains at Kirk Yard, and one inbound and one outbound switch train at East Joliet Yard. Applicants' projections for the changes in rail operations as a result of the acquisition are set forth in the Application, available on the Board's Web site. The proposed transaction also includes construction of seven rail connections, siding extensions, and installation of second track (double-tracking).

Reasonable or feasible alternatives that will be evaluated in the EIS are (1) approval of the transaction as proposed; (2) disapproval of the proposed transaction in whole (No-Action alternative); or (3) approval of the proposed transaction with conditions, including environmental mitigation conditions.[2]

If deemed necessary, alternative configurations of proposed connections may be considered. Proposed modifications to the proposed transaction as requested by other parties in their inconsistent or responsive applications will also be addressed in the EIS.

Environmental Impact Analysis

Analysis in the EIS will address proposed activities and their potential environmental impacts, as appropriate. Existing rail operations are the baseline from which the potential environmental impacts of the proposed transaction will be evaluated. SEA will evaluate only the potential environmental impacts of operational and physical changes that are directly related to the proposed transaction. SEA will not consider environmental impacts relating to existing rail operations and existing railroad facilities.[3]

The scope of the analysis will include the following types of activities:

1. Anticipated changes in level of operations on rail lines (e.g., an increase in average trains per day) for those rail line segments that meet or exceed the Board's thresholds for environmental review in 49 CFR 1105.7.

2. Proposed changes in activity at rail yards to the extent such changes may exceed the Board's thresholds for environmental analysis in 49 CFR 1105.7.

3. Proposed physical construction of improved rail connections, siding extensions, and installation of second rail track (double-tracking).

Environmental Impact Categories

The EIS will address potential impacts on the environment that will include the areas of safety, transportation systems, land use, energy, air quality, noise, biological resources, water resources, socioeconomic effects related to physical changes in the environment, environmental justice, and cultural and historic resources, as described below.

1. Safety

The EIS will:

A. Consider at-grade rail crossing accident probability and safety factors. This will generally include grade crossings with average daily traffic levels of 2,500 or more trips. Accident probability analysis will address the potential for rail and vehicle accidents.

B. Consider increased probability of train accidents and derailments due to increased traffic on a system-wide basis.

C. Address potential effects of increased freight traffic on commuter and intercity passenger service operations.

D. Discuss the potential environmental impacts of the proposed transaction on public health and safety with respect to the transportation of hazardous materials, including:

(1) Changes in the types of hazardous materials and quantities transported or re-routed;

(2) Nature of the hazardous materials being transported;

(3) Applicants' safety practices and protocols;

(4) Applicants' relevant safety data on derailments, accidents and hazardous materials spills;

(5) Contingency plans to address accidental spills;

(6) Probability of increased spills given railroad safety statistics and applicable Federal Railroad Administration requirements; and

(7) Location and types of hazardous substances at hazardous waste sites or hazardous materials spills on the right-of-way of any proposed connection or rail line abandonment site.

E. Address local truck traffic increases attributable to increased intermodal activities.

F. Address safety issues associated with the integration of differing rail operating systems and procedures.

2. Transportation Systems

The EIS will:

A. Describe system-wide and localized effects of the proposed operational changes, construction of improved connections, siding extensions, and installation of second track, and evaluate potential impacts on commuter rail service and intercity passenger (Amtrak) service.

B. Evaluate those commuter rail line segments that would experience increased freight traffic as a result of the proposed transaction for the capability of the rail line segments to accommodate the reasonably foreseeable addition of commuter trains.

C. Discuss potential effects on proposed passenger rail service where such future rail operation inception or expansion is reasonably foreseeable (i.e., where capital improvements are planned, approved, and funded).

D. Discuss potential diversions of freight traffic from trucks to rail and from rail to trucks, as appropriate.

E. Address vehicular delays at rail crossings and intermodal facilities due to increases in rail-related operations as a result of the proposed transaction. Estimates of typical delays at grade crossings will be made for crossings that have vehicle traffic levels of 2,500 ADT or more and that exceed train traffic increases of three trains per day for non-attainment areas or eight trains per day for attainment areas.

F. Discuss potential effects of increased train traffic on railroad bridges that cross navigation channels to the extent that such bridges allow only one mode of transportation to pass at a time.

3. Land Use and Socioeconomics

The EIS will:

A. Describe whether the proposed construction of improved rail connections,

[2] The Board has broad authority to impose conditions in railroad control transactions under 49 U.S.C. 11324 (c). However, the Board's power to impose conditions is not limitless: there must be a sufficient nexus between the condition imposed and the transaction before the agency, and the condition imposed must be reasonable. *See United States* v. *Chesapeake & O. Ry.*, 426 U.S. 500, 514–15 (1976); *Consolidated Rail Corp.* v. *ICC,* 29 F.3d 706, 714 (D.C. Cir. 1994).

[3] In proceedings similar to this proposed acquisition, the Board's practice consistently has been to mitigate only those environmental impacts that result directly from the transaction. The Board, like its predecessor, the Interstate Commerce Commission, has not imposed mitigation to remedy preexisting conditions such as those that might make the quality of life in a particular community better, but are not a direct result of the merger (i.e., congestion associated with the existing rail line traffic, or the traffic of other railroads).

siding extensions, and installation of second track (double-tracking) are consistent with existing land use plans.

B. Describe environmental impacts associated with the proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) as to acres of prime farmland potentially removed from production.

C. Discuss consistency of proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) with applicable zoning requirements.

D. Address socioeconomic issues related to changes in the physical environment as a result of the proposed transaction.

E. Propose mitigative measures to minimize or eliminate potential project adverse impacts to social and economic resources, as appropriate.

4. Energy

The EIS will:

A. Describe the potential environmental impact of the proposed transaction on transportation of energy resources and recyclable commodities to the extent that such information is available.

B. Evaluate potential changes in fuel use arising from the transaction.

5. Air Quality

The EIS will:

A. Evaluate air emissions increases where the proposed post-acquisition activity would exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(i), for air quality nonattainment areas as designated under the Clean Air Act. Thresholds are as follows since the Chicago Metropolitan area is a nonattainment area:[4]

(1) A 50 percent increase in rail traffic (measured in gross-ton miles annually) or an increase of three trains a day on any segment of rail line affected by the proposal; or

(2) An increase in rail yard activity of at least 20 percent or more in carload activity (rail car switching and block swapping).

(3) Increase in truck traffic greater than 10 percent of ADT or 50 trucks per day.

B. Discuss the net increase in emissions from increased railroad operations associated with the proposed transaction. Net emissions changes will be calculated for counties with projected transaction-related emissions increases of:

- 100 tons per year or more of any pollutant

C. Discuss the following information regarding the anticipated transportation of ozone depleting materials (such as nitrogen oxide and freon):

(1) Materials and quantity;

(2) Applicants' safety practices;

(3) Applicants' safety record (to the extent available) on derailments, accidents, and spills;

(4) Contingency plans to address accidental spills; and

(5) Likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

D. Discuss potential air emissions increases from vehicle delays at rail crossings where the rail crossing is projected to experience an increase in rail traffic over the thresholds described above in Section 5(A) for attainment and maintenance areas, and in Section 5(B) for non-attainment areas, and which have an average daily vehicle traffic level above 2,500. Such increases will be factored into the net emissions estimates for the affected area.

E. Examine local impacts from the transaction caused by increases or decreases in diesel particulate emissions.

6. Noise and Vibration

The EIS will:

A. Describe potential noise and vibration impacts of the proposed transaction for those areas that exceed the Board's environmental thresholds identified in Section 5A of the Air Quality discussion.

B. Identify whether the proposed transaction-related increases in rail traffic will cause an increase to a noise level of 65 decibels L_{dn} or greater. If so, an estimate of the number of sensitive receptors (e.g., schools and residences) within such areas will be made.

C. Identify transaction-related activities that have the potential to result in an increase in noise level of 3 decibels L_{dn} or more which occur in areas exposed to less than 65 dBA L_{dn}.

D. Assess potential vibration effects based on Federal Transit Administration (FTA) vibration methodology in areas where it appears there may be vibration sensitive receptors within or immediately adjacent to the railroad right of way.

7. Biological Resources

The EIS will:

A. Discuss the potential environmental impacts of proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) on federal endangered or threatened species or designated critical habitats.

B. Discuss the effects of proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) on wildlife sanctuaries or refuges, and national or state parks or forests.

8. Water Resources

The EIS will:

A. Discuss whether potential impacts from proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) may be inconsistent with applicable federal or state water quality standards.

B. Discuss whether permits may be required under Sections 404 or 402 of the Clean Water Act (33 U.S.C. 1344) for any proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking), and whether any such projects have the potential to encroach upon any designated wetlands or 100-year floodplains.

9. Environmental Justice

The EIS will:

A. Report on the demographics in the immediate vicinity of any area where major activity such as construction of improved rail connections, siding extensions, and installation of second track (double-tracking) is proposed.

B. Report on the demographics in the vicinity of rail lines with projected rail traffic increases above eight trains per day.

C. Evaluate whether such activities potentially have a disproportionately high and adverse health effect or environmental impact on any minority or low-income group.

10. Cultural and Historic Resources

The EIS will:

A. Address potential impacts from proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) on cultural and historic resources that are on, or immediately adjacent to, a railroad right-of-way.

11. Secondary and Cumulative Effects

The EIS will:

A. Address secondary and cumulative effects of environmental impacts that have regional or system-wide ramifications. This analysis will be done for environmental impacts that warrant such analysis given the context and scope of the proposed transaction. The environmental effects to be analyzed include air quality and energy.

B. Evaluate secondary and cumulative effects, as appropriate, for other projects or activities that relate to the proposed transaction, where information is provided to the Board that describes (1) those other projects or activities, (2) their interrelationship with the proposed transaction, (3) the type and severity of the potential environmental impacts; and SEA determines that there is the likelihood of significant environmental impacts. This information must be provided to the Board within sufficient time to allow for review and analysis within the schedule for the preparation of the EIS.

C. Discuss the potential environmental impacts of construction or facility modification activities within railroad-owned property affected by the proposed merger, and additional environmental impacts related to the proposed transaction but not subject to Board approval, in order to identify secondary and cumulative impacts.

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[4] Nonattainment areas are areas that do not comply with one or more ambient air quality standards. Ozone non-attainment areas are further classified as Marginal, Moderate, Serious, Severe, or Extreme Areas. These classifications are based on the level, in parts per million (ppm), of ozone measured for each area. Moderate areas are defined as .092 to .107 ppm, Serious Areas are defined as containing 0.107 ppm to 0.120 ppm, and Severe Areas are defined as containing 0.120 to 0.187 ppm. The Chicago area is currently classified as moderate non-attainment for ozone and non-attainment for $PM_{2.5}$

Corrections

Federal Register

Vol. 72, No. 245

Friday, December 21, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0214; Directorate Identifier 2007–NM–224–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

Correction

In proposed rule, document E7–22727 beginning on page 65478 in the issue of Wednesday, November 21, 2007, make the following correction:

§ 39.13 [Corrected]

On page 65480, in § 39.13, in the second column, in the third line, ''appropriate'' should read ''appropriate action''.

[FR Doc. Z7–22727 Filed 12–20–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
December 21, 2007

Part II

Department of State
Department of Commerce

National Oceanic and Atmospheric Administration

New and Revised Conservation and Management Measures and Resolutions for Antarctic Marine Living Resources Under the Auspices of CCAMLR; Notice

DEPARTMENT OF STATE

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE04

New and Revised Conservation and Management Measures and Resolutions for Antarctic Marine Living Resources Under the Auspices of CCAMLR

AGENCIES: Office of Ocean Affairs, Department of State and National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: At its Twenty-Sixth Meeting in Hobart, Tasmania, from October 22 to November 2, 2007, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted conservation and management measures and resolutions, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area. All the measures were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. Measures adopted restrict overall catches of certain species of finfish, squid, krill and crabs, restrict fishing in certain areas, restrict use of certain fishing gear, specify implementation and inspection obligations supporting the Catch Documentation Scheme of Contracting Parties, and promote compliance with CCAMLR measures by non-Contracting Party vessels. This notice includes the full text of the new and revised conservation measures adopted at the Twenty-Sixth meeting of CCAMLR. This notice also includes a listing of conservation measures that carry over from last year without change. The full text of these measures was published in the **Federal Register** on January 29, 2007. NMFS suggests that the public view these measures along with the measures contained in this Federal notice for a complete listing of all the measures adopted by CCAMLR at its recent meeting. The full text of all the measures adopted by CCAMLR can also be found on CCAMLR's Web site—*http://www.ccamlr.org*. This notice, therefore, together with the U.S. regulations referenced under the **SUPPLEMENTARY INFORMATION**, provides a comprehensive register of all current U.S. obligations under CCAMLR.

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments by January 22, 2008.

FOR FURTHER INFORMATION CONTACT: Robert Gorrell, Office of Sustainable Fisheries, Room 13463, 1315 East-West Highway, SSMC3, NMFS, Silver Spring, MD 20910; tel: 301–713–2341; fax 301–713–1193; e-mail *Robert.Gorrell@noaa.gov.*

SUPPLEMENTARY INFORMATION: Individuals interested in CCAMLR should also see 15 CFR Chapter III—International Fishing and Related Activities, Part 300—International Fishing Regulations, Subpart A—General; Subpart B—High Seas Fisheries; and Subpart G—Antarctic Marine Living Resources, for other regulatory measures related to conservation and management in the CCAMLR Convention area. Subpart B notes the requirements for high seas fishing vessel licensing. Subparts A and G describe the process for regulating U.S. fishing in the CCAMLR Convention area, which NMFS uses to implement CCAMLR Conservation Measures that are not expected to change from year to year. The regulations in Subpart G include sections on: Purpose and scope; Definitions; Relationship to other treaties, conventions, laws, and regulations; Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites; Scientific Research; Initiating a new fishery;

Exploratory fisheries; Reporting and recordkeeping requirements; Vessel and gear identification; Gear disposal; Mesh size; Harvesting permits; Scientific observers; Dealer permits and preapproval; Appointment of a designated representative; Requirements for a vessel monitoring system; Prohibitions; Facilitation of enforcement and inspection; and Penalties.

Review of existing conservation measures and resolutions (the date in parenthesis indicates the last year in which the measure was amended by CCAMLR): The Commission noted that the following conservation measures will lapse on 30 November 2007: 32–09 (2006), 33–02 (2006), 33–03 (2006), 41–01 (2006), 41–02 (2006), 41–04 (2006), 41–05 (2006), 41–06 (2006), 41–07 (2006), 41–08 (2006), 41–09 (2006), 41–10 (2006), 41–11 (2006), 42–02 (2006), 52–01 (2006), 52–02 (2006) and 61–01 (2006). Conservation Measure 42–01 (2006) will lapse on 14 November 2007. All of these conservation measures dealt with general fishery matters for the 2006/07 season and are replaced by new measures mentioned below.

The Commission agreed that Conservation Measure 91–03 (2004) be rescinded to delete the Seal Islands as CCAMLR Ecosystem Monitoring Program Protected Sites.

The following unchanged conservation measures and resolutions will remain in force in 2007/08:

Compliance: 10–01 (1998), 10–03 (2005), 10–05 (2006), 10–06 (2006), 10–07 (2006) and 10–08 (2006).

General fishery matters: 21–01 (2006), 21–02 (2006), 22–01 (1986), 22–02 (1984), 22–03 (1990), 22–04 (2006), 22–05 (2006), 23–01 (2005), 23–02 (1993), 23–03 (1991), 23–04 (2000), 23–05 (2000), 24–01 (2005), 24–02 (2005), 25–03 (2003), and 26–01 (2006).

Fishery regulations: 31–01 (1986), 32–01 (2001), 32–02 (1998), 32–03 (1998), 32–04 (1986), 32–05 (1986), 32–06 (1985), 32–07 (1999), 32–08 (1997), 32–10 (2002), 32–11 (2002), 32–12 (1998), 32–13 (2003), 32–14 (2003), 32–15 (2003), 32–16 (2003), 32–17 (2003), 32–18 (2006), 33–01 (1995), 41–03 (2006), and 51–02 (2006).

Protected areas: 91–01 (2004) and 91–02 (2004).

Resolutions: 7/IX, 10/XII, 14/XIX, 15/XXII, 16/XIX, 17/XX, 18/XXI, 19/XXI, 20/XXV, 21/XXIII, 22/XXV, 23/XXIII, and 25/XXV.

The full text of these unchanged conservation measures and resolutions were published in the January 29, 2007 **Federal Register** (72 FR 4068).

The Commission revised the following conservation measures:

Compliance: 10–02 (2006) and 10–04 (2006) were revised as—

CM 10–02 (2007) 1 thnsp;2 thnsp;3
Licensing and inspection obligations of Contracting Parties with regard to their flag vessels operating in the Convention Area
CM 10–04 (2007)
Automated satellite-linked Vessel Monitoring Systems (VMS)

General fisheries matters: 21–03 (2006), 23–06 (2005) and 25–02 (2005) were revised as—

CM 21–03 (2007)
Notifications of intent to participate in a fishery for *Euphausia superba*
CM 23–06 (2007)
Data Reporting System for *Euphausia superba* Fisheries
CM 25–02 (2007) 1 thnsp;2 thnsp;3
Minimisation of the incidental mortality of seabirds in the course of longline fishing or longline fishing research in the Convention Area

Fishery regulations: 51–01 (2006) and 51–03 (2006) were revised as—

Krill: CM 51–01 (2007)
Precautionary catch limitations on *Euphausia superba* in Statistical Subareas 48.1, 48.2, 48.3 and 48.4
Krill: CM 51–03 (2007)

Precautionary catch limitation on *Euphausia superba* in Statistical Division 58.4.2

In addition, the Commission adopted 20 new measures and one new resolution:

General fisheries matters:

Gear Regulations: CM 22–06 (2007) [1] [2] [3]

Bottom fishing in the Convention Area

Fishery regulations:

General Measures: CM 31–02 (2007) [1] [2] [3]

General measure for the closure of all fisheries

Fishing Seasons, Closed Areas and Prohibition of Fishing: CM 32–09 (2007)

Prohibition of directed fishing for *Dissostichus* spp. except in accordance with specific conservation measures in the 2007/08 season

By-catch Limits: CM 33–02 (2007)

Limitation of by-catch in Statistical Division 58.5.2 in the 2007/08 season

By-catch Limits: CM 33–03 (2007) [1] [2] [3]

Limitation of by-catch in new and exploratory fisheries in the 2007/08 season

Finfish Fisheries—Toothfish: CM 41–01 (2007) [1] [2] [3]

General measures for exploratory fisheries for *Dissostichus* spp. in the Convention Area in the 2007/08 season

Finfish Fisheries—Toothfish: CM 41–02 (2007)

Limits on the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2007/08 and 2008/09 seasons

Finfish Fisheries—Toothfish: CM 41–04 (2007)

Limits on the exploratory fishery for *Dissostichus* spp. in Statistical Subarea 48.6 in the 2007/08 season

Finfish Fisheries—Toothfish: CM 41–05 (2007)

Limits on the exploratory fishery for *Dissostichus* spp. in Statistical Division 58.4.2 in the 2007/08 season

Finfish Fisheries—Toothfish: CM 41–06 (2007)

Limits on the exploratory fishery for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction in the 2007/08 season

Finfish Fisheries—Toothfish: CM 41–07 (2007)

Limits on the exploratory fishery for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction in the 2007/08 season

Finfish Fisheries—Toothfish: CM 41–08 (2007)

Limits on the fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2 in the 2007/08 and 2008/09 seasons

Finfish Fisheries—Toothfish: CM 41–09 (2007)

Limits on the exploratory fishery for *Dissostichus* spp. in Statistical Subarea 88.1 in the 2007/08 season

Finfish Fisheries—Toothfish: CM 41–10 (2007)

Limits on the exploratory fishery for *Dissostichus* spp. in Statistical Subarea 88.2 in the 2007/08 season

Finfish Fisheries—Toothfish: CM 41–11 (2007)

Limits on the exploratory fishery for *Dissostichus* spp. in Statistical Division 58.4.1 in the 2007/08 season

Finfish Fisheries—Icefish: CM 42–01 (2007)

Limits on the fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 2007/08 season

Finfish Fisheries—Icefish: CM 42–02 (2007)

Limits on the fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2007/08 season

Crustacean Fisheries—Crab: CM 52–01 (2007)

Limits on the fishery for crab in Statistical Subarea 48.3 in the 2007/08 season

Crustacean Fisheries—Crab: CM 52–02 (2007)

Experimental harvest regime for the crab fishery in Statistical Subarea 48.3 in the 2007/08 season

Mollusc Fisheries—Squid: CM 61–01 (2007)

Limits on the exploratory fishery for *Martialia hyadesi* in Statistical Subarea 48.3 in the 2007/08 season

[1] Except for waters adjacent to the Kerguelen Islands

[2] Except for waters adjacent to the Crozet Islands

[3] Except for waters adjacent to the Prince Edward Islands.

Resolutions:

Resolution 26/XXVI (International Polar Year/Census of Antarctic Marine Life)

For further information, see the CCAMLR Web site at *http://www.ccamlr.org* under Publications for the Schedule of Conservation Measures in Force (2007/2008), or contact the Commission at the CCAMLR Secretariat, P.O. Box 213, North Hobart, Tasmania 7002, Australia. Tel: (61) 3–6210–1111).

Conservation Measures and Resolutions Adopted at CCAMLR–XXVI

Conservation Measure 10–02 (2007) [1] [2]

Licensing and inspection obligations of Contracting Parties with regard to their flag vessels operating in the Convention Area

(Species: all; Area: all; Season: all; Gear: all)

1. Each Contracting Party shall prohibit fishing by its flag vessels in the Convention Area except pursuant to a licence [3] that the Contracting Party has issued setting forth the specific areas, species and time periods for which such fishing is authorised and all other specific conditions to which the fishing is subject to give effect to CCAMLR conservation measures and requirements under the Convention.

2. A Contracting Party may only issue such a licence to fish in the Convention Area to vessels flying its flag, if it is satisfied of its ability to exercise its responsibilities under the Convention and its conservation measures, by requiring from each vessel, *inter alia*, the following:

(i) Timely notification by the vessel to its Flag State of exit from and entry into any port;

(ii) Notification by the vessel to its Flag State of entry into the Convention Area and movement between areas, subareas/divisions;

(iii) Reporting by the vessel of catch data in accordance with CCAMLR requirements;

(iv) Reporting, where possible as set out in Annex 10–02/A by the vessel of sightings of fishing vessels [4] in the Convention Area;

(v) Operation of a VMS system on board the vessel in accordance with Conservation Measure 10–04;

(vi) Noting the International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management Code), from 1 December 2009:

(a) Adequate communication equipment (including MF/HF radio and carriage of at least one 406MHz EPIRB) and trained operators on board. Wherever possible, vessels should be fitted with Global Maritime Distress and Safety System (GMDSS) equipment;

(b) Sufficient immersion survival suits for all on board;

(c) Adequate arrangements to handle medical emergencies that may arise in the course of the voyage;

(d) Reserves of food, fresh water, fuel and spare parts for critical equipment to provide for unforseen delays and besetment;

(e) An approved [5] Shipboard Oil Pollution Emergency Plan (SOPEP) outlining marine pollution mitigation arrangements (including insurance) in the event of a fuel or waste spill.

3. Each Contracting Party shall provide to the Secretariat within seven days of the issuance of each licence the following information about licences issued:

- Name of the vessel
- Time periods authorised for fishing (start and end dates)
- Area(s), subareas or divisions of fishing
- Species targeted
- Gear used

4. Each Contracting Party shall provide to the Secretariat within seven days of the issuance of each licence the following information about licences issued:

(i) Name of fishing vessel (any previous names if known) [6], registration number [7], IMO number (if issued), external markings and port of registry;

(ii) The nature of the authorisation to fish granted by the Flag State, specifying time periods authorised for fishing (start and end dates), area(s) of fishing, species targeted and gear used;

(iii) Previous flag (if any);[6]

(iv) International Radio Call Sign;

(v) Name and address of vessel's owner(s), and any beneficial owner(s) if known;

(vi) Name and address of licence owner (if different from vessel owner(s));

(vii) Type of vessel;

(viii) Where and when built;

(ix) Length (m);

(x) Colour photographs of the vessel which shall consist of:

- One photograph not smaller than 12 x 7 cm showing the starboard side of the vessel displaying its full overall length and complete structural features;
- One photograph not smaller than 12 x 7 cm showing the port side of the vessel displaying its full overall length and complete structural features;
- One photograph not smaller than 12 x 7 cm showing the stern taken directly from astern;

(xi) Where applicable, in accordance with Conservation Measure 10–04, details of the implementation of the tamper-proof requirements of the satellite monitoring device installed on board.

5. Each Contracting Party shall, to the extent practicable, also provide to the Secretariat at the same time as submitting information in accordance with paragraph 4, the following additional information in respect to each fishing vessel licensed:

(i) Name and address of operator, if different from vessel owners;

(ii) Names and nationality of master and, where relevant, of fishing master;

(iii) Type of fishing method or methods;

(iv) Beam (m);

(v) Gross registered tonnage;

(vi) Vessel communication types and numbers (INMARSAT A, B and C numbers);

(vii) Normal crew complement;

(viii) Power of main engine or engines (kW);

(ix) Carrying capacity (tonnes), number of fish holds and their capacity (m^3);

(x) Any other information in respect of each licensed vessel they consider appropriate (e.g. ice classification) for the purposes of the implementation of the conservation measures adopted by the Commission.

6. Contracting Parties shall communicate without delay to the Secretariat any change to any of the information submitted in accordance with paragraphs 3, 4 and 5.

7. The Executive Secretary shall place a list of licensed vessels on the public section of the CCAMLR Web site.

8. The licence or an authorised copy of the licence must be carried by the fishing vessel and must be available for inspection at any time by a designated CCAMLR inspector in the Convention Area.

9. Each Contracting Party shall verify, through inspections of all of its fishing vessels at the Party's departure and arrival ports, and where appropriate, in its Exclusive Economic Zone, their compliance with the conditions of the licence as described in paragraph 1 and with the CCAMLR conservation measures. In the event that there is evidence that the vessel has not fished in accordance with the conditions of its licence, the Contracting Party shall investigate the infringement and, if necessary, apply appropriate sanctions in accordance with its national legislation.

10. Each Contracting Party shall include in its annual report pursuant to paragraph 12 of the CCAMLR System of Inspection, steps it has taken to implement and apply this conservation measure; and may include additional measures it may have taken in relation to its flag vessels to promote the effectiveness of CCAMLR conservation measures.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.
[2] Except for waters adjacent to the Prince Edward Islands.
[3] Includes permit and authorisation.
[4] Including support vessels such as reefer vessels.
[5] Shipboard Oil Pollution Emergency Plan to be approved by the Maritime Safety Authority of the Flag State.
[6] In respect of any vessel reflagged within the previous 12 months, any information on the details of the process of (reasons for) previous deregistration of the vessel from other registries, if known.
[7] National registry number.

Annex 10–02/A

Reporting of Vessel Sightings

1. In the event that the master of a licensed fishing vessel sights a fishing vessel [4] within the Convention Area, the master shall document as much information as possible on each such sighting, including:

(a) Name and description of the vessel;

(b) Vessel call sign;

(c) Registration number and the Lloyds/IMO number of the vessel;

(d) Flag State of the vessel;

(e) Photographs of the vessel to support the report;

(f) Any other relevant information regarding the observed activities of the sighted vessel.

2. The master shall forward a report containing the information referred to in paragraph 1 to their Flag State as soon as possible. The Flag State shall submit to the Secretariat any such reports that meet the criteria of paragraph 3 of Conservation Measure 10–06 or paragraph 8 of Conservation Measure 10–07.

Conservation Measure 10–04 (2007)

Automated Satellite-Linked Vessel Monitoring Systems (VMS)

(Species: all; Area: all; Season: all; Gear: all)

The Commission,

Recognising that in order to promote the objectives of the Convention and further improve compliance with the relevant conservation measures,

Convinced that illegal, unreported and unregulated (IUU) fishing compromises the objective of the Convention,

Recalling that Contracting Parties are required to cooperate in taking appropriate action to deter any fishing activities which are not consistent with the objective of the Convention,

Mindful of the rights and obligations of Flag States and Port States to promote the effectiveness of conservation measures,

Wanting to reinforce the conservation measures already adopted by the Commission,

Recognising the obligations and responsibilities of Contracting Parties under the Catch Documentation Scheme for *Dissostichus* spp. (CDS),

Recalling provisions as made under Article XXIV of the Convention,

Committed to take steps, consistent with international law, to identify the origins of *Dissostichus* spp. entering the markets of Contracting Parties and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into their territories was caught in a manner consistent with CCAMLR conservation measures,

hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall ensure that its fishing vessels, licensed [1] in accordance with Conservation Measure 10–02, are equipped with a satellite-linked vessel monitoring device allowing for the continuous reporting of their position in the Convention Area for the duration of the licence issued by the Flag State. The vessel monitoring device shall automatically communicate at least every four hours to a land-based fisheries monitoring centre (FMC) of the Flag State of the vessel the following data:

(i) Fishing vessel identification;

(ii) The current geographical position (latitude and longitude) of the vessel, with a position error which shall be less than 500 m, with a confidence interval of 99%; and

(iii) The date and time (expressed in UTC) of the fixing of the said position of the vessel.

2. Each Contracting Party as a Flag State shall ensure that the vessel monitoring device(s) on board its vessels are tamper proof, i.e. are of a type and configuration that prevent the input or output of false positions, and that are not capable of being over-ridden, whether manually, electronically or otherwise. To this end, the on-board satellite monitoring device must:

(i) Be located within a sealed unit; and

(ii) Be protected by official seals (or mechanisms) of a type that indicate whether the unit has been accessed or tampered with.

3. In the event that a Contracting Party has information to suspect that an on-board vessel monitoring device does not meet the requirements of paragraph 2, or has been tampered with, it shall immediately notify the Secretariat and the vessel's Flag State.

4. Each Contracting Party shall ensure that its FMC receives Vessel Monitoring System (VMS) reports and messages, and that the FMC is equipped with computer hardware and software enabling automatic data processing and electronic data transmission. Each Contracting Party shall provide for backup and recovery procedures in case of system failures.

5. Masters and owners/licensees of fishing vessels subject to VMS shall ensure that the vessel monitoring device on board their vessels within the Convention Area is at all times fully operational as per paragraph 1, and that the data are transmitted to the Flag State. Masters and owners/licensees shall in particular ensure that:

(i) VMS reports and messages are not altered in any way;

(ii) The antennae connected to the satellite monitoring device are not obstructed in any way;

(iii) The power supply of the satellite monitoring device is not interrupted in any way; and

(iv) The vessel monitoring device is not removed from the vessel.

6. A vessel monitoring device shall be active within the Convention Area. It may, however, be switched off when the fishing vessel is in port for a period of more than one week, subject to prior notification to the Flag State, and if the Flag State so desires also to the Secretariat, and providing that the first position report generated following the repowering (activating) shows that the fishing vessel has not changed position compared to the last report.

7. In the event of a technical failure or non-functioning of the vessel monitoring device on board the fishing vessel, the master or the owner of the vessel, or their representative, shall communicate to the Flag State every six hours, and if the Flag State so desires also to the Secretariat, starting at the time that the failure or the non-functioning was detected or notified in accordance with paragraph 11, the up-to-date geographical position of the vessel by electronic means (e-mail, facsimile, telex, telephone message, radio).

8. Vessels with a defective vessel monitoring device shall take immediate steps to have the device repaired or replaced as soon as possible and, in any event, within two months. If the vessel during that time returns to port, it shall not be allowed by the Flag State to commence a further fishing trip in the Convention Area without having the defective device repaired or replaced.

9. When the Flag State has not received for 12 hours data transmissions referred to in paragraphs 1 and 7, or has reasons to doubt the correctness of the data transmissions under paragraphs 1 and 7, it shall as soon as possible notify the master or the owner or the representative thereof. If this situation occurs more than two times within a period of one year in respect of a particular vessel, the Flag State of the vessel shall investigate the matter, including having an authorised official check the device in question, in order to establish whether the equipment has been tampered with. The outcome of this investigation shall be forwarded to the CCAMLR Secretariat within 30 days of its completion.

10.[2,3,4] Each Contracting Party shall forward VMS reports and messages received, pursuant to paragraph 1, to the CCAMLR Secretariat as soon as possible:

(i) But not later than four hours after receipt for those exploratory longline fisheries subject to conservation measures adopted at CCAMLR–XXIII; or

(ii) But not later than 10 working days following departure from the Convention Area for all other fisheries.

11. With regard to paragraphs 7 and 10(i), each Contracting Party shall, as soon as possible but no later than two working days following detection or notification of technical failure or non-functioning of the vessel monitoring device on board the fishing vessel, forward the geographical positions of the vessel to the Secretariat, or shall ensure that these positions are forwarded to the Secretariat by the master or the owner of the vessel, or their representative.

12. Each Flag State shall ensure that VMS reports and messages transmitted by the Contracting Party or its fishing vessels to the CCAMLR Secretariat, are in a computer-readable form in the data exchange format set out in Annex 10–04/A.

13. Each Flag State shall in addition separately notify by e-mail or other means the CCAMLR Secretariat within 24 hours of each entry to, exit from and movement between subareas and divisions of the Convention Area by each of its fishing vessels in the format outlined in Annex 10–04/A. When a vessel intends to enter a closed area, or an area for which it is not licensed to fish, the Flag State shall provide prior notification to the Secretariat of the vessel's intentions. The Flag State may permit or direct that such notifications be provided by the vessel directly to the Secretariat.

14. Without prejudice to its responsibilities as a Flag State, if the Contracting Party so desires, it shall ensure that each of its vessels communicates the reports referred to in paragraphs 10 and 13 in parallel to the CCAMLR Secretariat.

15. Each Flag State shall notify to the CCAMLR Secretariat any changes without delay to the name, address, e-mail, telephone and facsimile numbers, as well as the address of electronic

communication of the relevant authorities of their FMC.

16. In the event that the CCAMLR Secretariat has not, for 48 consecutive hours, received the data transmissions referred to in paragraph 10(i), it shall promptly notify the Flag State of the vessel and require an explanation. The CCAMLR Secretariat shall promptly inform the Commission if the data transmissions at issue, or the Flag State explanation, are not received from the Contracting Party within a further five working days.

17. If VMS data received by the Secretariat indicate the presence of a vessel in an area or subarea for which no license details have been provided by the Flag State to the Secretariat as required by Conservation Measure 10–02, or in any area or subarea for which the Flag State or fishing vessel has not provided prior notification as required by paragraph 13, then the Secretariat shall notify the Flag State and require an explanation. The explanation shall be forwarded to the Secretariat for evaluation by the Commission at its next annual meeting.

18. The CCAMLR Secretariat and all Parties receiving data shall treat all VMS reports and messages received under paragraph 10 or paragraphs 19, 20, 21 or 22 in a confidential manner in accordance with the confidentiality rules established by the Commission as contained in Annex 10–04/B. Data from individual vessels shall be used for compliance purposes only, namely for:

(i) Active surveillance presence, and/or inspections by a Contracting Party in a specified CCAMLR subarea or division; or

(ii) The purposes of verifying the content of a *Dissostichus* Catch Document (DCD).

19. The CCAMLR Secretariat shall place a list of vessels submitting VMS reports and messages pursuant to this conservation measure on a password-protected section of the CCAMLR Web site. This list shall be divided into subareas and divisions, without indicating the exact positions of vessels, and be updated when a vessel changes subarea or division. The list shall be posted daily by the Secretariat, establishing an electronic archive.

20. VMS reports and messages (including vessel locations), for the purposes of paragraph 18(i) above, may be provided by the Secretariat to a Contracting Party other than the Flag State without the permission of the Flag State only during active surveillance, and/or inspection in accordance with the CCAMLR System of Inspection and subject to the time frames set out in paragraph 10. In this case, the Secretariat shall provide VMS reports and messages, including vessel locations over the previous 10 days, for vessels actually detected during surveillance, and/or inspection by a Contracting Party, and VMS reports and messages (including vessel locations) for all vessels within 100 n miles of that same location. The Flag State(s) concerned shall be provided by the Party conducting the active surveillance, and/or inspection, with a report including name of the vessel or aircraft on active surveillance, and/or inspection under the CCAMLR System of Inspection, and the full name(s) of the CCAMLR inspector(s) and their ID number(s). The Parties conducting the active surveillance, and/or inspection will make every reasonable effort to make this information available to the Flag State(s) as soon as possible.

21. A Party may contact the Secretariat prior to conducting active surveillance, and/or inspection in accordance with the CCAMLR System of Inspection, in a given area and request VMS reports and messages (including vessel locations), for vessels in that area. The Secretariat shall provide this information only with the permission of the Flag State for each of the vessels and according to the time frames set out in paragraph 10. On receipt of Flag State permission the Secretariat shall provide regular updates of positions to the Contracting Party for the duration of the active surveillance, and/or inspection in accordance with the CCAMLR System of Inspection.

22. A Contracting Party may request actual VMS reports and messages (including vessel locations) from the Secretariat for a vessel when verifying the claims on a DCD. In this case the Secretariat shall provide that data only with Flag State permission.

23. Notwithstanding the requirements of paragraphs 1 and 4, Contracting Parties may request VMS data for their own Flag vessels from the Secretariat.

24. The CCAMLR Secretariat shall annually, before 30 September, report on the implementation of and compliance with this conservation measure to the Commission.

[1] Includes vessels licensed under French domestic law and vessels licensed under South African domestic law.

[2] This paragraph does not apply to vessels licensed under French domestic law in the EEZs surrounding Kerguelen and Crozet Islands.

[3] This paragraph does not apply to vessels licensed under South African domestic law in the EEZ surrounding Prince Edward Islands.

[4] This paragraph and paragraphs thereafter do not apply to the krill fisheries, with the exception of paragraphs 15 and 24.

Annex 10–04/A

VMS Data Format 'Position', 'Exit', and 'Entry' Reports/Messages

Data element	Field code	Mandatory/ optional	Remarks
Start record	SR	M	System detail; indicates start of record.
Address	AD	M	Message detail; destination; 'XCA' for CCAMLR.
Sequence number	SQ	M[1]	Message detail; message serial number in current year.
Type of message	TM[2]	M	Message detail; message type, 'POS' as position report/message to be communicated by VMS or other means by vessels with a defective satellite tracking device.
Radio call sign	RC	M	Vessel registration detail; international radio call sign of the vessel.
Trip number	TN	O	Activity detail; fishing trip serial number in current year.
Vessel name	NA	M	Vessel registration detail; name of the vessel.
Contracting Party internal reference number.	IR	O	Vessel registration detail. Unique Contracting Party vessel number as ISO–3 Flag State code followed by number.
External registration number.	XR	O	Vessel registration detail; the side number of the vessel.
Latitude	LA	M[3]	Activity detail; position.
Longitude	LO	M[3]	Activity detail; position.
Latitude (decimal)	LT	M[4]	Activity detail; position.
Longitude (decimal)	LG	M[4]	Activity detail; position.
Date	DA	M	Message detail; position date.
Time	TI	M	Message detail; position time in UTC.

Data element	Field code	Mandatory/ optional	Remarks
End of record	ER	M	System detail; indicates end of the record.

[1] Optional in case of a VMS message.
[2] Type of message shall be 'ENT' for the first VMS message from the Convention Area as detected by the FMC of the Contracting Party, or as directly submitted by the vessel. Type of message shall be 'EXI' for the first VMS message from outside the Convention Area as detected by the FMC of the Contracting Party or as directly submitted by the vessel, and the values for latitude and longitude are, in this type of message, optional. Type of message shall be 'MAN' for reports communicated by vessels with a defective satellite tracking device.
[3] Mandatory for manual messages.
[4] Mandatory for VMS messages.

Format for Indirect Flag State Reporting Via E-mail

Code	Code definition	Field contents	Example	Field contents explanation
SR	Start record	No data		No data.
AD	Address	XCA	XCA	XCA = CCAMLR.
SQ	Sequence number	XXX	123	Message sequence number.
TM	Type of message	POS	POS	POS = position report, ENT = entry report, EXI = exit report.
RC	Radio call sign	XXXXXX	AB1234	Maximum of 8 characters.
NA	Vessel name	XXXXXXXX	Vessel Name	Maximum of 30 characters.
LT	Latitude	DD.ddd	-55.000	+/−numeral in GIS format. Must specify −for South and + for North.
LG	Longitude	DDD.ddd	-020.000	+/−numeral in GIS format. Must specify −for West and + for East.
DA	Record date	YYYYMMDD	20050114	8 characters only
TI	Record time	HHMM	0120	4 characters only, using 24-hour time format. Do not use separators or include seconds.
ER	End record	No data		No data.

Sample string: //SR//AD/XCA//SQ/001//TM/POS//RC/ABCD//NA/Vessel Name//LT/−55.000//LG/−020.000//DA/20050114//TI/0120//ER//
Notes:
• Three fields in Annex 10–04/A are optional. These are:
TN (trip number)
IR (Contracting Party internal reference number): Must start with the 3-character ISO country code, e.g. Argentina = ARGxxx
XR (external registration number).
• Do not include any other fields.
• Do not include separators (e.g.: . or /) in the date and time fields.
• Do not include seconds in the time fields.

Annex 10–04/B

Provisions on Secure and Confidential Treatment of Electronic Reports and Messages Transmitted Pursuant to Conservation Measure 10–04

1. Field of Application

1.1 The provisions set out below shall apply to all VMS reports and messages transmitted and received pursuant to Conservation Measure 10–04.

2. General Provisions

2.1 The CCAMLR Secretariat and the appropriate authorities of Contracting Parties transmitting and receiving VMS reports and messages shall take all necessary measures to comply with the security and confidentiality provisions set out in sections 3 and 4.

2.2 The CCAMLR Secretariat shall inform all Contracting Parties of the measures taken in the Secretariat to comply with these security and confidentiality provisions.

2.3 The CCAMLR Secretariat shall take all the necessary steps to ensure that the requirements pertaining to the deletion of VMS reports and messages handled by the Secretariat are complied with.

2.4 Each Contracting Party shall guarantee the CCAMLR Secretariat the right to obtain as appropriate, the rectification of reports and messages or the erasure of VMS reports and messages, the processing of which does not comply with the provisions of Conservation Measure 10–04.

3. Provisions on Confidentiality

3.1 All requests for data must be made to the CCAMLR Secretariat in writing. Requests for data must be made by the main Commission Contact or an alternative contact nominated by the main Commission Contact of the Contracting Party concerned. The Secretariat shall only provide data to a secure e-mail address specified at the time of making a request for data.

3.2 In cases where the CCAMLR Secretariat is required to seek the permission of the Flag State before releasing VMS reports and messages to another Party, the Flag State shall respond to the Secretariat as soon as possible but in any case within two working days.

3.3 Where the Flag State chooses not to give permission for the release of VMS reports and messages, the Flag State shall, in each instance, provide a written report within 10 working days to the Commission outlining the reasons why it chooses not to permit data to be released. The CCAMLR Secretariat shall place any report so provided, or notice that no report was received, on a password-protected part of the CCAMLR Web site.

3.4 VMS reports and messages shall only be released and used for the purposes stipulated in paragraph 18 of Conservation Measure 10–04.

3.5 VMS reports and messages released pursuant to paragraphs 20, 21, and 22 of Conservation Measure 10–04 shall provide details of: Name of vessel, date and time of position report, and latitude and longitude position at time of report.

3.6 Regarding paragraph 21 each inspecting Contracting Party shall make available VMS reports and messages and

positions derived therefrom only to their inspectors designated under the CCAMLR System of Inspection. VMS reports and messages shall be transmitted to their inspectors no more than 48 hours prior to entry into the CCAMLR, subarea or division where surveillance is to be conducted by the Contracting Party. Contracting Parties must ensure that VMS reports and messages are kept confidential by such inspectors.

3.7 The CCAMLR Secretariat shall delete all the original VMS reports and messages referred to in section 1 from the database at the CCAMLR Secretariat by the end of the first calendar month following the third year in which the VMS reports and messages have originated. Thereafter the information related to the movement of the fishing vessels shall only be retained by the CCAMLR Secretariat after measures have been taken to ensure that the identity of the individual vessels can no longer be established.

3.8 Contracting Parties may retain and store VMS reports and messages provided by the Secretariat for the purposes of active surveillance presence, and/or inspections, until 24 hours after the vessels to which the reports and messages pertain have departed from the CCAMLR subarea or division. Departure is deemed to have been effected six hours after the transmission of the intention to exit from the CCAMLR subarea or division.

4. Provisions on Security

4.1 Overview

4.1.1 Contracting Parties and the CCAMLR Secretariat shall ensure the secure treatment of VMS reports and messages in their respective electronic data processing facilities, in particular where the processing involves transmission over a network. Contracting Parties and the CCAMLR Secretariat must implement appropriate technical and organisational measures to protect reports and messages against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and against all inappropriate forms of processing.

4.1.2 The following security issues must be addressed from the outset:

• System access control:

The system has to withstand a break-in attempt from unauthorised persons.

• Authenticity and data access control:

The system has to be able to limit the access of authorised parties to a predefined set of data only.

• Communication security:

It shall be guaranteed that VMS reports and messages are securely communicated.

• Data security:

It has to be guaranteed that all VMS reports and messages that enter the system are securely stored for the required time and that they will not be tampered with.

• Security procedures:

Security procedures shall be designed addressing access to the system (both hardware and software), system administration and maintenance, backup and general usage of the system.

4.1.3 Having regard to the state of the art and the cost of their implementation, such measures shall ensure a level of security appropriate to the risks represented by the processing of the reports and the messages.

4.1.4 Security measures are described in more detail in the following paragraphs.

4.2 System Access Control

4.2.1 The following features are the mandatory requirements for the VMS installation located at the CCAMLR Data Centre:

• A stringent password and authentication system: Each user of the system is assigned a unique user identification and associated password. Each time the user logs on to the system he/she has to provide the correct password. Even when successfully logged on the user only has access to those and only those functions and data that he/she is configured to have access to. Only a privileged user has access to all the data.

• Physical access to the computer system is controlled.

• Auditing: Selective recording of events for analysis and detection of security breaches.

• Time-based access control: Access to the system can be specified in terms of times-of-day and days-of-week that each user is allowed to log on to the system.

• Terminal access control: Specifying for each workstation which users are allowed to access.

4.3 Authenticity and Data Access Security

4.3.1 Communication between Contracting Parties and the CCAMLR Secretariat for the purpose of Conservation Measure 10–04 shall use secure Internet protocols SSL, DES, or verified certificates obtained from the CCAMLR Secretariat.

4.4 Data Security

4.4.1 Access limitation to the data shall be secured via a flexible user identification and password mechanism. Each user shall be given access only to the data necessary for their task.

4.5 Security Procedures

4.5.1 Each Contracting Party and the CCAMLR Secretariat shall nominate a security system administrator. The security system administrator shall review the log files generated by the software for which they are responsible, properly maintain the system security for which they are responsible, restrict access to the system for which they are responsible as deemed needed and in the case of Contracting Parties, also act as a liaison with the Secretariat in order to solve security matters.

Conservation Measure 21–03 (2007)

Notifications of Intent To Participate in a Fishery for Euphausia superba

(Species: krill; Area: all; Season: all; Gear: all)

1. In order for the Scientific Committee to thoroughly study the notifications to fish for krill for the coming season, all Contracting Parties intending to fish for krill in the Convention Area shall notify the Secretariat of their intention not less than four (4) months in advance of the annual meeting of the Commission, immediately prior to the season in which they intend to fish, using the pro forma in Annex 21–03/A.

2. This notification shall include the information prescribed in paragraph 4 of Conservation Measure 10–02 in respect of each vessel proposing to participate in the fishery, with the exception that the notification shall not be required to specify the information referred to in subparagraph 4(ii) of Conservation Measure 10–02. Contracting Parties shall, to the extent practicable, also provide in their notification the additional information detailed in paragraph 5 of Conservation Measure 10–02 in respect to each fishing vessel notified. Contracting Parties are not hereby exempted from their obligations under Conservation Measure 10–02 to submit any necessary updates to vessel and licence details within the deadline established therein as of issuance of the licence to the vessel concerned.

3. A Contracting Party intending to fish for krill in the Convention Area may only notify in respect of vessels flying its flag at the time of the notification.

4. Contracting Parties shall ensure, including by submitting notifications by the due date, appropriate review by the Commission of notifications to fish for krill in the Convention Area before a vessel commences fishing.

5. Notwithstanding paragraph 4, Contracting Parties shall be entitled under Conservation Measure 10–02 to authorize participation in a krill fishery

by a vessel other than that notified to the Commission in accordance with paragraph 2, if the notified vessel is prevented from participation due to legitimate operational reasons or *force majeure*. In such circumstances the Contracting Party concerned shall immediately inform the Secretariat providing:

(i) Full details of the intended replacement vessel(s) as prescribed in paragraph 2;

(ii) A comprehensive account of the reasons justifying the replacement and any relevant supporting evidence or references.

The Secretariat shall immediately circulate this information to all Contracting Parties.

6. A vessel on either of the IUU Vessel Lists established under Conservation Measures 10–06 and 10–07 shall not be permitted by Contracting Parties to participate in krill fisheries.

7. The Secretariat shall provide the Commission and its relevant subsidiary bodies with information regarding substantial discrepancies between notifications and actual catches in the krill fishery in the latest season.

BILLING CODE 3510–22–P

ANNEX 21-03/A

NOTIFICATION OF INTENT TO PARTICIPATE IN A FISHERY FOR EUPHAUSIA SUPERBA

Contracting Party: _____

Fishing season: _____

Name of vessel: _____

Expected level of catch (tonnes): _____

Fishing technique: ☐ Conventional trawl

☐ Continuous fishing system

☐ Pumping to clear codend

☐ Other approved methods: Please specify _____

Products to be derived from the catch and their conversion factors[1]:

Product type	% of catch	Conversion factor[2]

[1] Information to be provided to the extent possible.
[2] Conversion factor = whole weight/processed weight.

Subarea/division	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
48.1												
48.2												
48.3												
48.4												
48.5												
48.6												
58.4.1												
58.4.2												
88.1												
88.2												
88.3												

X Mark boxes where and when the notified vessel(s) is/are most likely to operate.
Precautionary catch limits not set, therefore considered as exploratory fisheries.

Note that the details provided here are for information only and do not preclude operation in areas or times which were not specified.

BILLING CODE 3510–22–C

Conservation Measure 22–06 (2007) [1] [2]

Bottom Fishing in the Convention Area

(Species: all; Area: see paragraph 1; Season: all; Gear: bottom fishing)

The Commission,

Recognising the commitment made by Members to implement the CCAMLR precautionary and ecosystem approaches to fisheries management by embracing principles of conservation as stated in Article II of the Convention,

Conscious of the urgent need to protect vulnerable marine ecosystems from bottom fishing activities that have significant adverse impacts on such ecosystems,

Noting that United Nations General Assembly Resolution 61/105, adopted on 8 December 2006, calls on regional fisheries management organisations or arrangements with the competence to

regulate bottom fisheries to adopt and implement measures to prevent significant adverse impacts of bottom fisheries on vulnerable marine ecosystems and noting further that all CCAMLR Members joined in the consensus by which this resolution was adopted,

Noting also the importance of Article IX of the Convention, including the use of the best scientific evidence available,

Aware of the steps already taken by CCAMLR to address the impacts of deep-sea gillnetting and bottom trawling in the Convention Area, through the implementation of Conservation Measures 22–04 and 22–05 respectively,

Recognising that CCAMLR has responsibilities for the conservation of Antarctic marine living resources, part of which include the attributes of a regional fisheries management organisation,

Noting that all CCAMLR conservation measures are published on the CCAMLR website, hereby adopts the following conservation measure in accordance with Article IX of the Convention:

Management of Bottom Fishing

1. This conservation measure applies to areas in the Convention Area south of 60°S; and to the rest of the Convention Area with the exception of subareas and divisions where an established fishery was in place in 2006/07 with a catch limit greater than zero.

2. For the purposes of this measure, the term 'vulnerable marine ecosystems' in the context of CCAMLR includes seamounts, hydrothermal vents, cold water corals and sponge fields.

3. For the purposes of this measure, the term 'bottom fishing activities' includes the use of any gear that interacts with the bottom.

4. Until 30 November 2008, bottom fishing activities shall be limited to those areas for which bottom fishing activities were approved by the Commission in the 2006/07 fishing season.

5. Contracting Parties whose vessels wish to engage in any bottom fishing activities, beginning 1 December 2008, shall follow the procedures described in paragraphs 7 to 10 below.

6. Contracting Parties shall authorise vessels flying their flag to participate in bottom fishing activities only in accordance with the provisions of this conservation measure and Conservation Measure 10–02.

Assessment of Bottom Fishing

7. All individual bottom fishing activities commencing 1 December 2008 and thereafter shall be subject to assessment by the Scientific Committee, based on the best available scientific information, to determine if such activities, taking account of the history of bottom fishing in the areas proposed, would contribute to having significant adverse impacts on vulnerable marine ecosystems, and to ensure that if it is determined that these activities would make such contributions, that they are managed to prevent such impacts or are not authorised to proceed. The assessments shall include the following procedures:

(i) Each Contracting Party proposing to participate in bottom fishing shall submit to the Scientific Committee and Commission information and a preliminary assessment, where possible, of the known and anticipated impacts of its bottom fishing activities on vulnerable marine ecosystems, including benthos and benthic communities, no less than three months in advance of the next meeting of the Commission. These submissions shall also include the mitigation measures proposed by the Contracting Party to prevent such impacts.

(ii) The submission of such information shall be carried out in accordance with guidance developed by the Scientific Committee or, in the absence of such guidance, to the best of the Contracting Party's ability.

(iii) The Scientific Committee shall undertake an assessment, according to procedures and standards it develops, and provide advice to the Commission as to whether the proposed bottom fishing activity would contribute to having significant adverse impacts on vulnerable marine ecosystems and, if so, whether the proposed or additional mitigation measures would prevent such impacts. The Scientific Committee may use in its assessment additional information available to it, including information from other fisheries in the region or similar fisheries elsewhere.

(iv) The Commission shall, taking account of advice and recommendations provided by the Scientific Committee concerning bottom fishing activities, including data and information arising from reports pursuant to paragraph 8, adopt conservation measures to prevent significant adverse impacts on vulnerable marine ecosystems, that as appropriate:

(a) Allow, prohibit or restrict bottom fishing activities within particular areas;

(b) Require specific mitigation measures for bottom fishing activities;

(c) Allow, prohibit or restrict bottom fishing with certain gear types; and/or

(d) Contain any other relevant requirements or restrictions to prevent significant adverse impacts to vulnerable marine ecosystems.

Encounters With Vulnerable Marine Ecosystems

8. Contracting Parties, in the absence of site-specific or other conservation measures to prevent significant adverse impact on vulnerable marine ecosystems, shall require vessels flying their flag to cease bottom fishing activities in any location where evidence of a vulnerable marine ecosystem is encountered in the course of fishing operations, and to report the encounter to the Secretariat in accordance with the schedule of the Catch and Effort Reporting System (Conservation Measure 23–01, 23–02 or 23–03, whichever is applicable), so that appropriate conservation measures can be adopted in respect of the relevant site.

9. The Scientific Committee shall provide advice to the Commission on the known and anticipated impacts of bottom fishing activities on vulnerable marine ecosystems, and recommend practices, including ceasing fishing operations if needed, when evidence of a vulnerable marine ecosystem is encountered in the course of bottom fishing operations. Taking account of this advice, the Commission shall adopt initial conservation measures in 2008 to be applied when evidence of a vulnerable marine ecosystem is encountered in the course of fishing operations.

Monitoring and Control of Bottom Fishing Activities

10. Notwithstanding Members obligations pursuant to Conservation Measure 21–02, all Contracting Parties whose vessels participate in bottom fisheries shall:

(i) Ensure that their vessels are equipped and configured so that they can comply with all relevant conservation measures;

(ii) Ensure that each vessel carries at least one CCAMLR-designated scientific observer to collect data in accordance with this and other conservation measures;

(iii) Submit data pursuant to data collection plans for bottom fisheries to be developed by the Scientific Committee and included in conservation measures;

(iv) Be prohibited from continuing participation in the relevant bottom fishery if data arising from conservation measures relevant to that bottom fishery have not been submitted to CCAMLR pursuant to subparagraph 10(iii) for the most recent season in which fishing occurred, until the relevant data have been submitted to CCAMLR and the Scientific Committee has been allowed an opportunity to review the data.

11. The Secretariat shall annually compile a list of vessels authorised to fish pursuant to this conservation measure and shall make this list publicly available on CCAMLR's website.

Data Collection and Sharing and Scientific Research

12. The Scientific Committee shall, based on the best available scientific information, advise the Commission on where vulnerable marine ecosystems are known to occur or are likely to occur, and advise on potential mitigation measures. Contracting Parties shall provide the Scientific Committee with all relevant information to assist in this work. The Secretariat shall maintain an inventory including digital maps of all known vulnerable marine ecosystems in the Convention Area for circulation to all Contracting Parties and other relevant bodies.

13. Scientific bottom fishing research activities notified under Conservation Measure 24–01, paragraph 2, shall proceed according to Conservation Measure 24–01 and shall be undertaken with due regard to potential impacts on vulnerable marine ecosystems. Scientific bottom fishing research activities notified under Conservation Measure 24–01, paragraph 3, shall be treated in accordance with all aspects of paragraph 7 of this conservation measure, notwithstanding the procedures in Conservation Measure 24–01. Consistent with existing reporting requirements in Conservation Measure 24–01, paragraph 4, information regarding the location and the type of any vulnerable marine ecosystem encountered, in the course of scientific bottom fishing research activities, shall be reported to the Secretariat.

Review

14. This conservation measure will be reviewed at the next regular meeting of the Commission, based upon the findings of the Scientific Committee. In addition, beginning in 2009 and biennially thereafter, the Commission will examine the effectiveness of relevant conservation measures in protecting vulnerable marine ecosystems from significant adverse impacts, based upon advice from the Scientific Committee.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

Conservation Measure 23–06 (2007)

Data Reporting System for Euphausia superba Fisheries

(Species: krill; Area: all; Season: all; Gear: all)

1. This conservation measure is invoked by the conservation measures to which it is attached.

2. Catches shall be reported in accordance with the monthly Catch and Effort Reporting System set out in Conservation Measure 23–03 according to the statistical areas, subareas, divisions or any other area or unit specified with catch limits in Conservation Measure 51–02.

3. Provided that the total reported catch for the region for which a trigger level has been specified in Conservation Measures 51–01 and 51–03 in the fishing season is less than 80% of the applicable trigger level, catches shall be reported in accordance with the Monthly Catch and Effort Reporting System set out in Conservation Measure 23–03 according to the statistical areas, subareas, divisions or any other area or unit specified with catch limits in Conservation Measures 51–01 and 51–03.

4. When the total reported catch in any fishing season is greater than or equal to 80% of the trigger level set in Conservation Measures 51–01 and 51–03, catches shall be reported in accordance with the 10-day Catch and Effort Reporting System set out in Conservation Measure 23–02, according to the statistical areas, subareas, divisions or any other area or unit specified with catch limits in Conservation Measures 51–01 and 51–03.

5. In all seasons after the conditions of paragraph 4 have been met, paragraph 3 shall apply when the total catch is less than 50% of the trigger level and paragraph 4 shall apply when the total catch is greater than or equal to 50% of the trigger level.

6. At the end of each fishing season each Contracting Party shall obtain from each of its vessels the haul-by-haul data required to complete the CCAMLR fine-scale catch and effort data form (trawl fisheries Form C1). It shall transmit those data in the specified format to the Executive Secretary not later than 1 April of the following year.

7. This conservation measure shall be reviewed in 2010 or when catch limits for SSMUs are established in the relevant areas, whichever is sooner.

Conservation Measure 25–02 (2007) [1] [2]

Minimisation of the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research in the Convention Area.

(Species: seabirds; Area: all; Season: all; Gear: longline)

The Commission,

Noting the need to reduce the incidental mortality of seabirds during longline fishing by minimising their attraction to fishing vessels and by preventing them from attempting to seize baited hooks, particularly during the period when the lines are set,

Recognising that in certain subareas and divisions of the Convention Area there is also a high risk that seabirds will be caught during line hauling,

Adopts the following measures to reduce the possibility of incidental mortality of seabirds during longline fishing.

1. Fishing operations shall be conducted in such a way that hooklines [3] sink beyond the reach of seabirds as soon as possible after they are put in the water.

2. Vessels using autoline systems should add weights to the hookline or use integrated weight (IW) hooklines while deploying longlines. IW longlines of a minimum of 50 g/m or attachment to non-IW longlines of 5 kg weights at 50 to 60 m intervals are recommended.

3. Vessels using the Spanish method of longline fishing should release weights before line tension occurs; traditional weights [4] of at least 8.5 kg mass shall be used, spaced at intervals of no more than 40 m, or traditional weights [4] of at least 6 kg mass shall be used, spaced at intervals of no more than 20 m, or solid steel weights [5] of at least 5 kg mass shall be used, spaced at intervals of no more than 40 m.

4. Longlines shall be set at night only (i.e. during the hours of darkness between the times of nautical twilight [6]) [7]. During longline fishing at night, only the minimum ship's lights necessary for safety shall be used.

5. The dumping of offal is prohibited while longlines are being set. The dumping of offal during the haul shall be avoided. Any such discharge shall take place only on the opposite side of the vessel to that where longlines are hauled. For vessels or fisheries where there is not a requirement to retain offal on board the vessel, a system shall be implemented to remove fish hooks from offal and fish heads prior to discharge.

6. Vessels which are so configured that they lack on-board processing facilities or adequate capacity to retain offal on board, or the ability to discharge offal on the opposite side of the vessel

to that where longlines are hauled, shall not be authorised to fish in the Convention Area.

7. A streamer line shall be deployed during longline setting to deter birds from approaching the hookline. Specifications of the streamer line and its method of deployment are given in the appendix to this conservation measure.

8. A device designed to discourage birds from accessing baits during the haul of longlines shall be employed in those areas defined by CCAMLR as average-to-high or high (Level of Risk 4 or 5) in terms of risk of seabird by-catch. These areas are currently Statistical Subareas 48.3, 58.6 and 58.7 and Statistical Divisions 58.5.1 and 58.5.2.

9. Every effort should be made to ensure that birds captured alive during longlining are released alive and that wherever possible hooks are removed without jeopardising the life of the bird concerned.

10. Other variations in the design of mitigation measures may be tested on vessels carrying two observers, at least one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, providing that all other elements of this conservation measure are complied with [8]. Full proposals for any such testing must be notified to the Working Group on Fish Stock Assessment (WG–FSA) in advance of the fishing season in which the trials are proposed to be conducted.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands

[2] Except for waters adjacent to the Prince Edward Islands

[3] Hookline is defined as the groundline or mainline to which the baited hooks are attached by snoods.

[4] Traditional weights are those made from rocks or concrete.

[5] Solid steel weights shall not be made from chain links. They should be made in a hydrodynamic shape designed to sink rapidly.

[6] The exact times of nautical twilight are set forth in the Nautical Almanac tables for the relevant latitude, local time and date. A copy of the algorithm for calculating these times is available from the CCAMLR Secretariat. All times, whether for ship operations or observer reporting, shall be referenced to GMT.

[7] Wherever possible, setting of lines should be completed at least three hours before sunrise (to reduce loss of bait to/catches of white-chinned petrels).

[8] The mitigation measures under test should be constructed and operated taking full account of the principles set out in WG–FSA–03/22 (the published version of which is available from the CCAMLR Secretariat and Web site); testing should be carried out independently of actual commercial fishing and in a manner consistent with the spirit of Conservation Measure 21–02.

Appendix to Conservation Measure 25–02

1. The aerial extent of the streamer line, which is the part of the line supporting the streamers, is the effective seabird deterrent component of a streamer line. Vessels are encouraged to optimise the aerial extent and ensure that it protects the hookline as far astern of the vessel as possible, even in crosswinds.

2. The streamer line shall be attached to the vessel such that it is suspended from a point a minimum of 7 m above the water at the stern on the windward side of the point where the hookline enters the water.

3. The streamer line shall be a minimum of 150 m in length and include an object towed at the seaward end to create tension to maximise aerial coverage. The object towed should be maintained directly behind the attachment point to the vessel such that in crosswinds the aerial extent of the streamer line is over the hookline.

4. Branched streamers, each comprising two strands of a minimum of 3 mm diameter brightly coloured plastic tubing [9] or cord, shall be attached no more than 5 m apart commencing 5 m from the point of attachment of the streamer line to the vessel and thereafter along the aerial extent of the line. Streamer length shall range between minimums of 6.5 m from the stern to 1 m for the seaward end. When a streamer line is fully deployed, the branched streamers should reach the sea surface in the absence of wind and swell. Swivels or a similar device should be placed in the streamer line in such a way as to prevent streamers being twisted around the streamer line. Each branched streamer may also have a swivel or other device at its attachment point to the streamer line to prevent fouling of individual streamers.

5. Vessels are encouraged to deploy a second streamer line such that streamer lines are towed from the point of attachment each side of the hookline. The leeward streamer line should be of similar specifications (in order to avoid entanglement the leeward streamer line may need to be shorter) and deployed from the leeward side of the hookline.

[9] Plastic tubing should be of a type that is manufactured to be protected from ultraviolet radiation.

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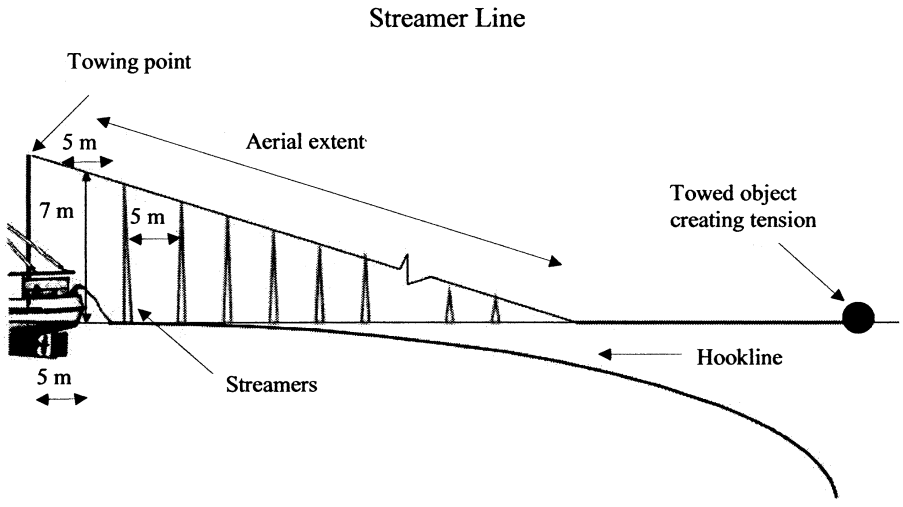

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Conservation Measure 31–02 (2007) [1] [2]

General measure for the closure of all fisheries

(Species: all; Area: all; Season: all; Gear: all)

This conservation measure governs the closure of all fisheries and is adopted in accordance with Article IX of the Convention.

General application	1. Following notification by the Secretariat of the closure of a fishery (Conservation Measures 23–01, 23–02, 23–03 and 41–01 refer), all vessels in the area, management area, subarea, division, small-scale research unit or other management unit subject to the closure notice, shall remove all their fishing gear from the water by the notified closure date and time. 2. On receipt of such notification by the vessel, no further longlines may be set within 24 hours of the notified closure date and time. If such notification is received less than 24 hours before the closure date and time, no further longlines may be set following receipt of that notification. 3. All vessels should depart the closed fishery as soon as all fishing gear has been removed from the water. 4. Notwithstanding paragraph 1, should it appear likely that a vessel will be unable to remove all its fishing gear from the water by the notified closure date and time because of: (i) Consideration of the safety of the vessel and crew; (ii) The limitations which may arise from adverse weather conditions; (iii) Sea-ice cover; or (iv) The need to protect the Antarctic marine environment, the vessel shall notify the Flag State concerned of the situation. The Flag State or vessel shall also notify the Secretariat. The vessel shall nonetheless make all reasonable efforts to remove all its fishing gear from the water as soon as possible.
Other relevant considerations.	5. In the event the vessel is unable to remove all of its fishing gear from the water by the notified closure date and time, the Flag State shall promptly inform the Secretariat. On receipt of such information the Secretariat shall promptly inform Members. 6. If paragraph 5 applies, the Flag State shall carry out an investigation of the vessel's actions and, according to its domestic procedures, report on its findings, including all relevant matters, to the Commission no later than the next meeting of the Commission. The final report should assess whether the vessel made all reasonable efforts to remove all its fishing gear from the water: (i) By the notified closure date and time; and (ii) As soon as possible after the notification referred to in paragraph 4. 7. In the event that a vessel does not depart the closed fishery as soon as all fishing gear has been removed from the water, the Flag State or vessel should inform the Secretariat. On receipt of such information the Secretariat shall promptly inform Members.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.
[2] Except for waters adjacent to the Prince Edward Islands.

Conservation Measure 32–09 (2007)

Prohibition of Directed Fishing for Dissostichus spp. *Except in Accordance With Specific Conservation Measures in the 2007/08*

Season (Species: toothfish; Area: 48.5; Season: 2007/08; Gear: all)

The Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

Directed fishing for *Dissostichus* spp. in Statistical Subarea 48.5 is prohibited from 1 December 2007 to 30 November 2008.

Conservation Measure 33–02 (2007)

Limitation of By-Catch in Statistical Division 58.5.2 in the 2007/08 Season

(Species: By-catch; Area: 58.5.2; Season: 2007/08; Gear: All)

1. There shall be no directed fishing for any species other than *Dissostichus eleginoides* and *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2007/08 fishing season.

2. In directed fisheries in Statistical Division 58.5.2 in the 2007/08 season, the by-catch of *Channichthys rhinoceratus* shall not exceed 150 tonnes, the by-catch of *Lepidonotothen squamifrons* shall not exceed 80 tonnes, the by-catch of *Macrourus* spp. shall not exceed 360 tonnes and the by-catch of skates and rays shall not exceed 120 tonnes. For the purposes of this measure, '*Macrourus* spp.' and 'skates and rays' should each be counted as a single species.

3. The by-catch of any fish species not mentioned in paragraph 2, and for which there is no other catch limit in force, shall not exceed 50 tonnes in Statistical Division 58.5.2.

4. If, in the course of a directed fishery, the by-catch in any one haul of *Channichthys rhinoceratus*, *Lepidonotothen squamifrons*, *Macrourus* spp., *Somniosus* spp. or skates and rays is equal to, or greater than 2 tonnes, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 2 tonnes for a period of at least five days [2]. The location where the by-catch exceeded 2 tonnes is defined as the path [3] followed by the fishing vessel.

5. If, in the course of a directed fishery, the by-catch in any one haul of any other by-catch species for which by-catch limitations apply under this conservation measure is equal to, or greater than 1 tonne, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 1 tonne for a period of at least five days. [2] The location where the by-catch exceeded 1 tonne is defined as the path [3] followed by the fishing vessel.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.
[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.
[3] For a trawl the path is defined from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel. For a longline or a pot, the path is defined from the point at which the first anchor of a set was deployed to the point at which the last anchor of that set was deployed.

Conservation Measure 33–03 (2007) [1] [2]

Limitation of By-Catch in New and Exploratory Fisheries in the 2007/08 Season

(Species: By-catch; Area: Various; Season: 2007/08; Gear: All)

1. This conservation measure applies to new and exploratory fisheries in all areas containing small-scale research units (SSRUs) in the 2007/08 season,

except where specific by-catch limits apply.

2. The catch limits for all by-catch species are set out in Annex 33–03/A. Within these catch limits, the total catch of by-catch species in any SSRU or combination of SSRUs as defined in relevant conservation measures shall not exceed the following limits:

• Skates and rays 5% of the catch limit of *Dissostichus* spp. or 50 tonnes whichever is greater;

• *Macrourus* spp. 16% of the catch limit for *Dissostichus* spp. or 20 tonnes, whichever is greater;

• All other species combined 20 tonnes.

3. For the purposes of this measure '*Macrourus* spp.' and 'skates and rays' should each be counted as a single species.

4. Unless otherwise requested by scientific observers, vessels, where possible, should release skates and rays alive from the line by cutting snoods, and when practical, removing the hooks.

5. If the by-catch of any one species is equal to or greater than 1 tonne in any one haul or set, then the fishing vessel shall move to another location at least 5 n miles [3] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 tonne for a period of at least five days [4]. The location where the by-catch exceeded 1 tonne is defined as the path [5] followed by the fishing vessel.

6. If the catch of *Macrourus* spp. taken by a single vessel in any two 10-day periods [6] in a single SSRU exceeds 1 500 kg in each 10-day period and exceeds 16% of the catch of *Dissostichus* spp. by that vessel in that SSRU in those periods, the vessel shall cease fishing in that SSRU for the remainder of the season.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands

[2] Except for waters adjacent to the Prince Edward Islands

[3] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[4] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

[5] For a trawl the path is defined from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel. For a longline the path is defined from the point at which the first anchor of a set was deployed to the point at which the last anchor of that set was deployed.

[6] A 10-day period is defined as day 1 to day 10, day 11 to day 20, or day 21 to the last day of the month.

Annex 33–03/A

TABLE 1.— BY-CATCH CATCH LIMITS FOR NEW AND EXPLORATORY FISHERIES IN 2007/08.

Subarea/division	Region	*Dissostichus* spp. catch limit (tonnes per region)	By-catch catch limit		
			Skates and rays (tonnes per region)	*Macrourus* spp. (tonnes per region)	Other species (tonnes per SSRU)
48.6	North of 60°S	200	50	32	20
	South of 60°S	200	50	32	20
58.4.1	Whole division	600	50	96	20
58.4.2	Whole division	780	50	124	20
58.4.3a	Whole division	250	50	26	20
58.4.3b	North of 60°S	150	50	80	20
88.1	Whole subarea	2660	133	426	20
88.2	South of 65°S	547	50	88	20

Region: As defined in column 2 of this table.
Rules for catch limits for by-catch species:
Skates and rays: 5% of the catch limit for *Dissostichus* spp. or 50 tonnes, whichever is greatest (SC–CAMLR–XXI, paragraph 5.76).
Macrourus spp.: 16% of the catch limit for *Dissostichus* spp. or 20 tonnes whichever is greatest, except in Divisions 58.4.3a and 58.4.3b (SC–CAMLR–XXII, paragraph 4.207).
Other species: 20 tonnes per SSRU.

Conservation Measure 41–01 (2007) [1] [2]

General Measures for Exploratory Fisheries for Dissostichus spp. *in the Convention Area in the 2007/08 Season*

(Species: toothfish; Area: various; Season: 2007/08; Gear: longline, trawl)

The Commission hereby adopts the following conservation measure:

1. This conservation measure applies to exploratory fisheries using the trawl or longline methods except for such fisheries where the Commission has given specific exemptions to the extent of those exemptions. In trawl fisheries, a haul comprises a single deployment of the trawl net. In longline fisheries, a haul comprises the setting of one or more lines in a single location.

2. Fishing should take place over as large a geographical and bathymetric range as possible to obtain the information necessary to determine fishery potential and to avoid over-concentration of catch and effort. To this end, fishing in any small-scale research unit (SSRU) shall cease when the reported catch reaches the specified catch limit [3] and that SSRU shall be closed to fishing for the remainder of the season.

3. In order to give effect to paragraph 2 above:

(i) The precise geographic position of a haul in trawl fisheries will be determined by the mid-point of the path between the start-point and end-point of the haul for the purposes of catch and effort reporting;

(ii) The precise geographic position of a haul/set in longline fisheries will be determined by the centre-point of the line or lines deployed for the purposes of catch and effort reporting;

(iii) The vessel will be deemed to be fishing in any SSRU from the beginning of the setting process until the completion of the hauling of all lines;

(iv) Catch and effort information for each species by SSRU shall be reported to the Executive Secretary every five days using the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01;

(v) The Secretariat shall notify Contracting Parties participating in these fisheries when the total catch for *Dissostichus eleginoides* and *Dissostichus mawsoni* combined in any SSRU is likely to reach the specified

catch limit, and of the closure of that SSRU when that limit is reached. [4] No part of a trawl path may lie within a closed SSRU and no part of a longline may be set within a closed SSRU.

4. The by-catch in each exploratory fishery shall be regulated as in Conservation Measure 33–03.

5. The total number and weight of *Dissostichus eleginoides* and *Dissostichus mawsoni* discarded, including those with the 'jellymeat' condition, shall be reported.

6. Each vessel participating in the exploratory fisheries for *Dissostichus* spp. during the 2007/08 season shall have one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing season.

7. The Data Collection Plan (Annex 41–01/A), Research Plan (Annex 41–01/B) and Tagging Program (Annex 41–01/C) shall be implemented. Data collected pursuant to the Data Collection and Research Plans for the period up to 31 August 2008 shall be reported to CCAMLR by 30 September 2008 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG–FSA) in 2008. Such data taken after 31 August 2008 shall be reported to CCAMLR not later than three months after the closure of the fishery, but, where possible, submitted in time for the consideration of WG–FSA.

8. Members who choose not to participate in the fishery prior to the commencement of the fishery shall inform the Secretariat of changes in their plans no later than one month before the start of the fishery. If, for whatever reason, Members are unable to participate in the fishery, they shall inform the Secretariat no later than one week after finding that they cannot participate. The Secretariat will inform all Contracting Parties immediately after such notification is received.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] Unless otherwise specified, the catch limit for *Dissostichus* spp. shall be 100 tonnes in any SSRU except in respect of Statistical Subarea 88.2.

[4] The closure of fisheries is governed by Conservation Measure 31–02.

Annex 41–01/A

Data Collection Plan for Exploratory Fisheries

1. All vessels will comply with the Five-day Catch and Effort Reporting System (Conservation Measure 23–01) and Monthly Fine-scale Catch, Effort and Biological Data Reporting Systems (Conservation Measures 23–04 and 23–05).

2. All data required by the CCAMLR *Scientific Observers Manual* for finfish fisheries will be collected. These include:

(i) Position, date and depth at the start and end of every haul;

(ii) Haul-by-haul catch and catch per effort by species;

(iii) Haul-by-haul length frequency of common species;

(iv) Sex and gonad state of common species;

(v) Diet and stomach fullness;

(vi) Scales and/or otoliths for age determination;

(vii) Number and mass by species of by-catch of fish and other organisms;

(viii) Observation on occurrence and incidental mortality of seabirds and mammals in relation to fishing operations.

3. Data specific to longline fisheries will be collected. These include:

(i) Position and sea depth at each end of every line in a haul;

(ii) Setting, soak and hauling times;

(iii) Number and species of fish lost at surface;

(iv) Number of hooks set;

(v) Bait type;

(vi) Baiting success (%);

(vii) Hook type;

(viii) Sea and cloud conditions and phase of the moon at the time of setting the lines.

Annex 41–01/B

Research Plan for Exploratory Fisheries

1. Activities under this research plan shall not be exempted from any conservation measure in force.

2. This plan applies to all small-scale research units (SSRUs) as defined in Table 1 and Figure 1.

3. Except when fishing in Statistical Subareas 88.1 and 88.2 (see paragraph 5), any vessel undertaking prospecting or commercial fishing in any SSRU must undertake the following research activities:

(i) On first entry into an SSRU, the first 10 hauls, designated 'first series', whether by trawl or longline, shall be designated 'research hauls' and must satisfy the criteria set out in paragraph 4.

(ii) The next 10 hauls, or 10 tonnes of catch for longlining, whichever trigger level is achieved first, or 10 tonnes of catch for trawling, are designated the 'second series'. Hauls in the second series can, at the discretion of the master, be fished as part of normal exploratory fishing. However, provided they satisfy the requirements of paragraph 4, these hauls can also be designated as research hauls.

(iii) On completion of the first and second series of hauls, if the master wishes to continue to fish within the SSRU, the vessel must undertake a 'third series' which will result in a total of 20 research hauls being made in all three series. The third series of hauls shall be completed during the same visit as the first and second series in an SSRU.

(iv) On completion of 20 research hauls the vessel may continue to fish within the SSRU.

4. To be designated as a research haul:

(i) Each research haul must be separated by not less than 5 n miles from any other research haul, distance to be measured from the geographical mid-point of each research haul;

(ii) Each haul shall comprise: for longlines, at least 3 500 hooks and no more than 10 000 hooks; this may comprise a number of separate lines set in the same location; for trawls, at least 30 minutes effective fishing time as defined in the *Draft Manual for Bottom Trawl Surveys in the Convention Area* (SC–CAMLR–XI, Annex 5, Appendix H, Attachment E, paragraph 4);

(iii) Each haul of a longline shall have a soak time of not less than six hours, measured from the time of completion of the setting process to the beginning of the hauling process.

5. In the exploratory fisheries in Subareas 88.1 and 88.2, all data specified in the Data Collection Plan (Annex 41–01/A) of this conservation measure shall be collected for every haul; all fish of each *Dissostichus* species in a haul (up to a maximum of 35 fish) are to be measured and randomly sampled for biological studies (paragraphs 2(iv) to (vi) of Annex 41–01/A).

6. In all other exploratory fisheries, all data specified in the Data Collection Plan (Annex 41–01/A) of this conservation measure shall be collected for every research haul; in particular, all fish in a research haul up to 100 fish are to be measured and at least 30 fish sampled for biological studies (paragraphs 2(iv) to (vi) of Annex 41–01/A). Where more than 100 fish are caught, a method for randomly subsampling the fish should be applied.

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Table 1: Description of small-scale research units (SSRUs) (see also Figure 1).

Region	SSRU	Boundary Line
48.6	A	From 50°S 20°W, due east to 1°30'E, due south to 60°S, due west to 20°W, due north to 50°S.
	B	From 60°S 20°W, due east to 10°W, due south to coast, westward along coast to 20°W, due north to 60°S.
	C	From 60°S 10°W, due east to 0° longitude, due south to coast, westward along coast to 10°W, due north to 60°S.
	D	From 60°S 0° longitude, due east to 10°E, due south to coast, westward along coast to 0° longitude, due north to 60°S.
	E	From 60°S 10°E, due east to 20°E, due south to coast, westward along coast to 10°E, due north to 60°S.
	F	From 60°S 20°E, due east to 30°E, due south to coast, westward along coast to 20°E, due north to 60°S.
	G	From 50°S 1°30'E, due east to 30°E, due south to 60°S, due west to 1°30'E, due north to 50°S.
58.4.1	A	From 55°S 86°E, due east to 150°E, due south to 60°S, due west to 86°E, due north to 55°S.
	B	From 60°S 86°E, due east to 90°E, due south to coast, westward along coast to 80°E, due north to 64°S, due east to 86°E, due north to 60°S.
	C	From 60°S 90°E, due east to 100°E, due south to coast, westward along coast to 90°E, due north to 60°S.
	D	From 60°S 100°E, due east to 110°E, due south to coast, westward along coast to 100°E, due north to 60°S.
	E	From 60°S 110°E, due east to 120°E, due south to coast, westward along coast to 110°E, due north to 60°S.
	F	From 60°S 120°E, due east to 130°E, due south to coast, westward along coast to 120°E, due north to 60°S.
	G	From 60°S 130°E, due east to 140°E, due south to coast, westward along coast to 130°E, due north to 60°S.
	H	From 60°S 140°E, due east to 150°E, due south to coast, westward along coast to 140°E, due north to 60°S.

58.4.2	A	From 62°S 30°E, due east to 40°E, due south to coast, westward along coast to 30°E, due north to 62°S.
	B	From 62°S 40°E, due east to 50°E, due south to coast, westward along coast to 40°E, due north to 62°S.
	C	From 62°S 50°E, due east to 60°E, due south to coast, westward along coast to 50°E, due north to 62°S.
	D	From 62°S 60°E, due east to 70°E, due south to coast, westward along coast to 60°E, due north to 62°S.
	E	From 62°S 70°E, due east to 73°10'E, due south to 64°S, due east to 80°E, due south to coast, westward along coast to 70°E, due north to 62°S.
58.4.3a	A	Whole division, from 56°S 60°E, due east to 73°10'E, due south to 62°S, due west to 60°E, due north to 56°S.
58.4.3b	A	From 56°S 73°10'E, due east to 80°E, due north to 55°S, due east to 86°E, south to 60°S, due west to 73°10'E, due north to 56°S.
	B	From 60°S 73°10'E, due east to 86°E, south to 64°S, due west to 73°10'E, due north to 60°S.
58.4.4	A	From 51°S 40°E, due east to 42°E, due south to 54°S, due west to 40°E, due north to 51°S.
	B	From 51°S 42°E, due east to 46°E, due south to 54°S, due west to 42°E, due north to 51°S.
	C	From 51°S 46°E, due east to 50°E, due south to 54°S, due west to 46°E, due north to 51°S.
	D	Whole division excluding SSRUs A, B, C, and with outer boundary from 50°S 30°E, due east to 60°E, due south to 62°S, due west to 30°E, due north to 50°S.

continued

Table 1 (continued)

Region	SSRU	Boundary Line
58.6	A	From 45°S 40°E, due east to 44°E, due south to 48°S, due west to 40°E, due north to 45°S.
	B	From 45°S 44°E, due east to 48°E, due south to 48°S, due west to 44°E, due north to 45°S.
	C	From 45°S 48°E, due east to 51°E, due south to 48°S, due west to 48°E, due north to 45°S.
	D	From 45°S 51°E, due east to 54°E, due south to 48°S, due west to 51°E, due north to 45°S.
58.7	A	From 45°S 37°E, due east to 40°E, due south to 48°S, due west to 37°E, due north to 45°S.
88.1	A	From 60°S 150°E, due east to 170°E, due south to 65°S, due west to 150°E, due north to 60°S.
	B	From 60°S 170°E, due east to 179°E, due south to 66°40'S, due west to 170°E, due north to 60°S.
	C	From 60°S 179°E, due east to 170°W, due south to 70°S, due west to 178°W, due north to 66°40'S, due west to 179°E, due north to 60°S.
	D	From 65°S 150°E, due east to 160°E, due south to coast, westward along coast to 150°E, due north to 65°S.
	E	From 65°S 160°E, due east to 170°E, due south to 68°30'S, due west to 160°E, due north to 65°S.
	F	From 68°30'S 160°E, due east to 170°E, due south to coast, westward along coast to 160°E, due north to 68°30'S.
	G	From 66°40'S 170°E, due east to 178°W, due south to 70°S, due west to 178°50'E, due south to 70°50'S, due west to 170°E, due north to 66°40'S.
	H	From 70°50'S 170°E, due east to 178°50'E, due south to 73°S, due west to coast, northward along coast to 170°E, due north to 70°50'S.
	I	From 70°S 178°50'E, due east to 170°W, due south to 73°S, due west to 178°50'E, due north to 70°S.

	J	From 73°S at coast near 169°30'E, due east to 178°50'E, due south to 80°S, due west to coast, northward along coast to 73°S.
	K	From 73°S 178°50'E, due east to 170°W, due south to 76°S, due west to 178°50'E, due north to 73°S.
	L	From 76°S 178°50'E, due east to 170°W, due south to 80°S, due west to 178°50'E, due north to 76°S.
88.2	A	From 60°S 170°W, due east to 160°W, due south to coast, westward along coast to 170°W, due north to 60°S.
	B	From 60°S 160°W, due east to 150°W, due south to coast, westward along coast to 160°W, due north to 60°S.
	C	From 60°S 150°W, due east to 140°W, due south to coast, westward along coast to 150°W, due north to 60°S.
	D	From 60°S 140°W, due east to 130°W, due south to coast, westward along coast to 140°W, due north to 60°S.
	E	From 60°S 130°W, due east to 120°W, due south to coast, westward along coast to 130°W, due north to 60°S.
	F	From 60°S 120°W, due east to 110°W, due south to coast, westward along coast to 120°W, due north to 60°S.
	G	From 60°S 110°W, due east to 105°W, due south to coast, westward along coast to 110°W, due north to 60°S.
88.3	A	From 60°S 105°W, due east to 95°W, due south to coast, westward along coast to 105°W, due north to 60°S.
	B	From 60°S 95°W, due east to 85°W, due south to coast, westward along coast to 95°W, due north to 60°S.
	C	From 60°S 85°W, due east to 75°W, due south to coast, westward along coast to 85°W, due north to 60°S.
	D	From 60°S 75°W, due east to 70°W, due south to coast, westward along coast to 75°W, due north to 60°S.

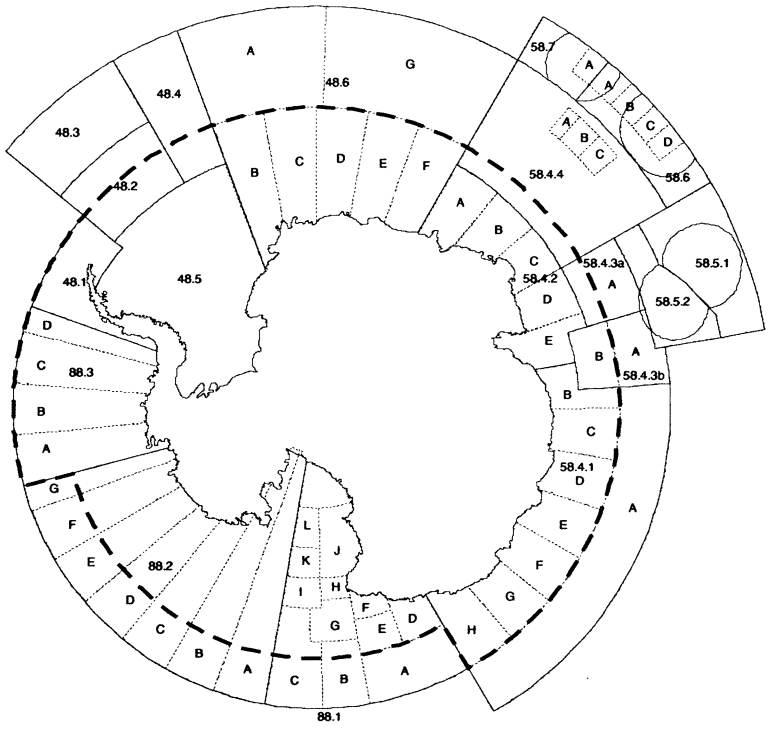

Figure 1: Small-scale research units for new and exploratory fisheries. The boundaries of these units are listed in Table 1. EEZ boundaries for Australia, France and South Africa are marked in order to address notifications for new and exploratory fisheries in waters adjacent to these zones. Dashed line – approximate delineation between Dissostichus eleginoides and Dissostichus mawsoni.

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Annex 41–01/C

Tagging Program for Dissostichus spp. *in Exploratory Fisheries*

1. The responsibility for ensuring tagging, tag recovery and correct reporting shall lie with the Flag State of the fishing vessel. The fishing vessel shall cooperate with the CCAMLR scientific observer in undertaking the tagging program.

2. This program shall apply in each exploratory longline fishery, and any vessel that participates in more than one exploratory fishery shall apply the following in each exploratory fishery in which that vessel fishes:

(i) Each longline vessel shall tag and release *Dissostichus* spp., continuously while fishing, at a rate specified in the conservation measure for that fishery according to the CCAMLR Tagging Protocol.[1]

(ii) The program shall target toothfish of all sizes in order to meet the tagging requirement, only toothfish that are in good condition shall be tagged and the availability of these fish shall be reported by the observer. All released toothfish must be double-tagged and releases should cover as broad a geographical area as possible. In regions where both species occur, the tagging rate shall to the extent practicable be in proportion to the species and sizes of *Dissostichus* spp. present in the catches.

(iii) All tags shall be clearly imprinted with a unique serial number and a return address so that the origin of tags can be traced in the case of recapture of the tagged toothfish. [1] From 1 September 2007, all tags for use in exploratory fisheries shall be sourced from the Secretariat.

(iv) Recaptured tagged fish (i.e. fish caught that have a previously inserted tag) shall not be re-released, even if at liberty for only a short period.

(v) All recaptured tagged fish should be biologically sampled (length, weight, sex, gonad stage), an electronic time-stamped photograph taken of the fish and tag, the otoliths recovered and the tag removed.

3. Toothfish that are tagged and released shall not be counted against the catch limits.

4. All relevant tag data and any data recording tag recaptures shall be reported electronically in the CCAMLR format [1] to the Executive Secretary (i) by the vessel every month along with its monthly fine-scale catch and effort (C2) data, and (ii) by the observer as part of the data reporting requirements for observer data.[1]

5. All relevant tag data, any data recording tag recaptures, and specimens (tags and otoliths) from recaptures shall also be reported electronically in the CCAMLR format [1] to the relevant regional tag data repository as detailed in the CCAMLR Tagging Protocol (available at *http://www.ccamlr.org*).

[1] In accordance with the CCAMLR Tagging Protocol for exploratory fisheries which is available from the Secretariat and included in the scientific observer logbook forms.

Conservation Measure 41–02 (2007)

Limits on the fishery for Dissostichus eleginoides in Statistical Subarea 48.3 in the 2007/08 and 2008/09 seasons

(Species: toothfish; Area: 48.3; Season: 2007/08 and 2008/09; Gear: longline, pot)

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01:

Access	1. The fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 shall be conducted by vessels using longlines and pots only.
	2. For the purpose of this fishery, the area open to the fishery is defined as that portion of Statistical Subarea 48.3 that lies within the area bounded by latitudes 52°30′S and 56°0′S and by longitudes 33°30′W and 48°0′W.
	3. A map illustrating the area defined by paragraph 2 is appended to this conservation measure (Annex 41–02/A). The portion of Statistical Subarea 48.3 outside that defined above shall be closed to directed fishing for *Dissostichus eleginoides* in the 2007/08 and 2008/09 seasons.
Catch limit	4. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2007/08 and 2008/09 seasons shall be limited to 3 920 tonnes in each season. The catch limit shall be further subdivided between the Management Areas shown in Annex 41–02/A as follows: Management Area A: 0 tonnes Management Area B: 1 176 tonnes in each season Management Area C: 2 744 tonnes in each season.
Season	5. For the purpose of the longline fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 2007/08 and 2008/09 seasons are defined as the period from 1 May to 31 August in each season, or until the catch limit is reached, whichever is sooner. For the purpose of the pot fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 2007/08 and 2008/09 seasons are defined as the period from 1 December to 30 November, or until the catch limit is reached, whichever is sooner. The season for longline fishing operations may be extended to 14 September in each season for any vessel which has demonstrated full compliance with Conservation Measure 25–02 in the previous season. This extension to the season shall also be subject to a catch limit of three (3) seabirds per vessel. If three seabirds are caught during the season extension, fishing shall cease immediately for that vessel.
By-catch	6. The by-catch of crab in any pot fishery undertaken shall be counted against the catch limit in the crab fishery in Statistical Subarea 48.3.
	7. The by-catch of finfish in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2007/08 and 2008/09 seasons shall not exceed 196 tonnes for skates and rays and 196 tonnes for *Macrourus* spp. in each season. For the purpose of these by-catch limits, '*Macrourus* spp.' and 'skates and rays' shall each be counted as a single species.
	8. If the by-catch of any one species is equal to or greater than 1 tonne in any one haul or set, then the fishing vessel shall move to another location at least 5 n miles [1] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 tonne for a period of at least five days. [2] The location where the by-catch exceeded 1 tonne is defined as the path [3] followed by the fishing vessel.
Mitigation	9. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimise the incidental mortality of seabirds in the course of fishing.
Observers	10. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.
Data: Catch/effort	11. For the purpose of implementing this conservation measure, the following shall apply: (i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01; (ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.
	12. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus eleginoides* and by-catch species are defined as any species other than *Dissostichus eleginoides*.
	13. The total number and weight of *Dissostichus eleginoides* discarded, including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.
Data: Biological	14. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.
Research fishing	15. Research fishing under the provisions of Conservation Measure 24–01 shall be limited to 10 tonnes of catch and to one vessel in Management Area A shown in the map in Annex 41–02/A during each season.
	16. Catches of *Dissostichus eleginoides* taken under the provisions of Conservation Measure 24–01 in the area of the fishery defined in this conservation measure shall be considered as part of the catch limit.
Environmental protection	17. Conservation Measure 26–01 applies.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

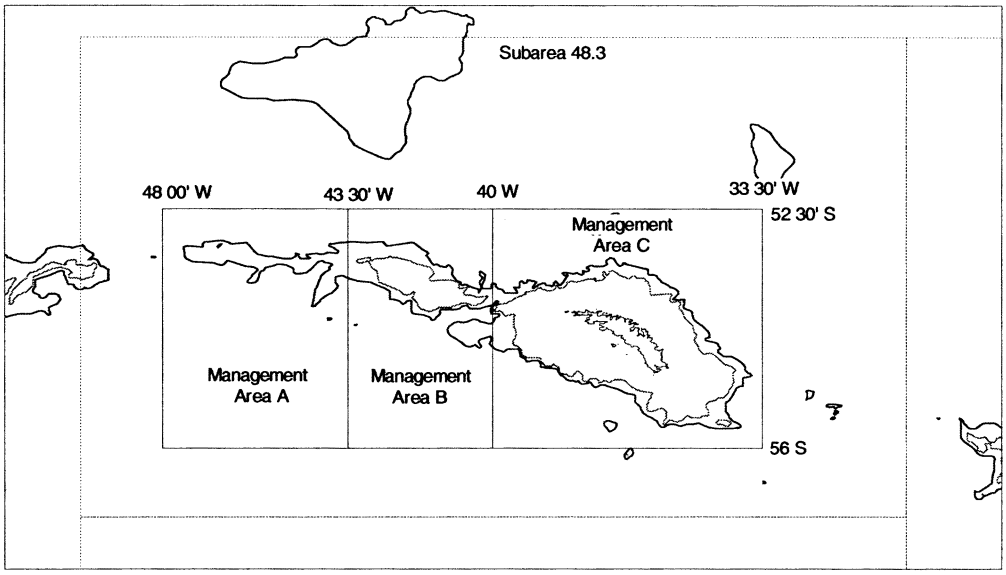
[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

[3] For a longline or a pot, the path is defined from the point at which the first anchor of a set was deployed to the point at which the last anchor of that set was deployed.

BILLING CODE 3510–22–P

ANNEX 41-02/A

Subarea 48.3 – the area of the fishery and the three management areas for catch allocation according to paragraph 4. Latitudes and longitudes are given in degrees and minutes. 1 000 and 2 000 m contours are shown.



BILLING CODE 3510–22–C

Conservation Measure 41–04 (2007)

Limits on the exploratory Fishery for Dissostichus spp. *in Statistical Subarea 48.6 in the 2007/08 season*

(Species: Toothfish; Area: 48.6; Season: 2007/08; Gear: Longline)

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access	1. Fishing for *Dissostichus* spp. in Statistical Subarea 48.6 shall be limited to the exploratory longline fishery by Japan, Republic of Korea, New Zealand and South Africa. The fishery shall be conducted by Japanese, Korean, New Zealand and South African flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.
Catch limit	2. The total catch of *Dissostichus* spp. in Statistical Subarea 48.6 in the 2007/08 season shall not exceed a precautionary catch limit of 200 tonnes north of 60°S and 200 tonnes south of 60°S.
Season	3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6, the 2007/08 season is defined as the period from 1 December 2007 to 30 November 2008.
By-catch	4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.
Mitigation	5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 4 (night setting), which shall not apply as long as the requirements of Conservation Measure 24–02 are met.
	6. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.
Observers	7. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.
Data: Catch/effort	8. For the purpose of implementing this conservation measure in the 2007/08 season, the following shall apply: (i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01; (ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.
	9. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.
Data: Biological	10. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.
Research	11. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.
	12. Toothfish shall be tagged at a rate of at least one fish per tonne green weight caught.

Environmental protection	13. Conservation Measure 26–01 applies. 14. There shall be no offal discharge in this fishery.

Conservation Measure 41–05 (2007)

Limits on the Exploratory Fishery for Dissostichus spp. *in Statistical Division 58.4.2 in the 2007/08 Season*

(Species: Toothfish; Area: 58.4.2; Season: 2007/08; Gear: Longline)

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02, and notes that this measure would be for one year and that data arising from these activities would be reviewed by the Scientific Committee:

Access	1. Fishing for *Dissostichus* spp. in Statistical Division 58.4.2 shall be limited to the exploratory longline fishery by Australia, Japan, Republic of Korea, Namibia, New Zealand, South Africa, Spain, Ukraine and Uruguay. The fishery shall be conducted by one (1) Australian, one (1) Japanese, five (5) Korean, two (2) Namibian, two (2) New Zealand, one (1) South African, one (1) Spanish, one (1) Ukrainian and one (1) Uruguayan flagged vessels using longlines only.
Catch limit	2. The total catch of *Dissostichus* spp. in Statistical Division 58.4.2, in the 2007/08 season shall not exceed a precautionary catch limit of 780 tonnes, of which no more than 260 tonnes shall be taken in any one of the five small-scale research units (SSRUs) as detailed in Annex B of Conservation Measure 41–01. 3. Catch limits for each of the SSRUs for Statistical Division 58.4.2 shall be as follows: A—260 tonnes; B—0 tonnes; C—260 tonnes; D—0 tonnes; E—260 tonnes.
Season	4. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.2, the 2007/08 season is defined as the period from 1 December 2007 to 30 November 2008.
Fishing operations	5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.2 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6. 6. Fishing will be prohibited in depths less than 550 m in order to protect benthic communities.
By-catch	7. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.
Mitigation	8. The exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.2 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 4 (night setting) shall not apply, providing that vessels comply with Conservation Measure 24–02. 9. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.
Observers	10. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.
Research	11. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively. 12. Toothfish shall be tagged at a rate of at least three fish per tonne green weight caught.
Data: Catch/effort	13. For the purpose of implementing this conservation measure in the 2007/08 season, the following shall apply: (i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01; (ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis. 14. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.
Data: Biological	15. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.
Environmental protection	16. Conservation Measure 26–01 applies.

Conservation Measure 41–06 (2007)

Limits on the Exploratory Fishery for Dissostichus spp. *on Elan Bank (Statistical Division 58.4.3a) Outside Areas of National Jurisdiction in the 2007/08 Season*

(Species: Toothfish; Area: 58.4.3a; Season: 2007/08; Gear: Longline)

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access	1. Fishing for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction shall be limited to the exploratory fishery by Uruguay. The fishery shall be conducted by one (1) Uruguayan flagged vessel using longlines only.
Catch limit	2. The total catch of *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction in the 2007/08 season shall not exceed a precautionary catch limit of 250 tonnes.
Season	3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction, the 2007/08 season is defined as the period from 1 May to 31 August 2008, or until the catch limit is reached, whichever is sooner.
By-catch	4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.

Mitigation	5. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimise the incidental mortality of seabirds in the course of fishing.
	6. The fishery on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction, may take place outside the prescribed season (paragraph 3) provided that, prior to entry into force of the licence and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with longline weighting as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.
	7. Should a total of three (3) seabirds be caught by a vessel outside the normal season (defined in paragraph 3), the vessel shall cease fishing immediately and shall not be permitted to fish outside the normal fishing season for the remainder of the 2007/08 fishing season.
Observers	8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.
Data: Catch/effort	9. For the purpose of implementing this conservation measure in the 2007/08 season, the following shall apply: (i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01; (ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.
	10. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.
Data: Biological	11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.
Research	12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.
	13. Toothfish shall be tagged at a rate of at least three fish per tonne green weight caught.
Environmental protection	14. Conservation Measure 26–01 applies.

Conservation Measure 41–07 (2007)

Limits on the exploratory Fishery for Dissostichus spp. *on BANZARE Bank (Statistical Division 58.4.3b) Outside Areas of National Jurisdiction in the 2007/08 Season*

(Species: Toothfish; Area: 58.4.3b; Season: 2007/08; Gear: Longline)

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

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Access	1. Fishing for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction shall be limited to the exploratory fishery by Australia, Japan, Republic of Korea, Namibia, Spain and Uruguay. The fishery shall be conducted by Australian, Japanese, Korean, Namibian, Spanish and Uruguayan flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.
Catch limit	2. The total catch of *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction in the 2007/08 season shall not exceed: (i) A precautionary catch limit of 150 tonnes applied as follows: SSRU A—150 tonnes[1] SSRU B—0 tonnes; (ii) An additional catch limit of 50 tonnes for the scientific research survey[2] in SSRUs A and B in 2007/08.
Season	3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, the 2007/08 season[1] is defined as the period from 1 May to 31 August 2008, or until the catch limit is reached, whichever is sooner.
By-catch	4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.
Mitigation	5. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–02 so as to minimise the incidental mortality of seabirds in the course of fishing.
	6. The fishery on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, may take place outside the prescribed season[1] (paragraph 3) provided that, prior to entry into force of the licence and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02 and such data shall be reported to the Secretariat immediately.
	7. Should a total of three (3) seabirds be caught by a vessel outside the normal season (defined in paragraph 3), the vessel shall cease fishing immediately and shall not be permitted to fish outside the normal fishing season for the remainder of the 2007/08 fishing season.
Observers	8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.
Data: Catch/effort	9. For the purpose of implementing this conservation measure in the 2007/08 season, the following shall apply: (i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01; (ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.

	10. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.
Data: Biological	11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.
Research	12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.
	13. Toothfish shall be tagged at a rate of at least three fish per tonne green weight caught.
Environmental protection	14. Conservation Measure 26–01 applies.

[1] Fishing is not to occur during the period from 16 March 2008 until the end of the scientific research survey or 1 June 2008, whichever is sooner.

[2] The scientific research survey will be that notified by Australia (SC–CAMLR–XXVI, paragraphs 9.8 to 9.10) and completed prior to 1 June 2008. Australia will notify the Secretariat at least three months before the start of the survey of the date of that start, and will further notify the Secretariat of the date of completion of the survey. The Secretariat will circulate this information to Members.

Conservation Measure 41–08 (2007)

Limits on the Fishery for Dissostichus Eleginoides in Statistical Division 58.5.2 in the 2007/08 and 2008/09 Seasons

(Species: Toothfish; Area: 58.5.2; Season: 2007/08 and 2008/09; Gear: Various)

Access	1. The fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2 shall be conducted by vessels using trawls, pots or longlines only.
Catch limit	2. The total catch of *Dissostichus eleginoides* in Statistical Division 58.5.2 in the 2007/08 and 2008/09 seasons shall be limited to 2 500 tonnes west of 79°20′ E.
Season	3. For the purpose of the trawl and pot fisheries for *Dissostichus eleginoides* in Statistical Division 58.5.2, the 2007/08 and 2008/09 seasons are defined as the period from 1 December to 30 November, or until the catch limit is reached, whichever is sooner. For the purpose of the longline fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2, the 2007/08 and 2008/09 seasons are defined as the period from 1 May to 14 September in each season, or until the catch limit is reached, whichever is sooner. The season for longline fishing operations may be extended from 15 April to 30 April and 15 September to 31 October in each season for any vessel which has demonstrated full compliance with Conservation Measure 25–02 in the previous season. These extensions to the season will also be subject to a total catch limit of three (3) seabirds per vessel. If three seabirds are caught during the season extension, fishing throughout the season extensions shall cease immediately for that vessel.
By-catch	4. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 33–02.
Mitigation	5. The operation of the trawl fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimise the incidental mortality of seabirds and mammals through the course of fishing. The operation of the longline fishery shall be carried out in accordance with Conservation Measure 25–02, except paragraph 4 (night setting) shall not apply for vessels using integrated weighted lines (IWLs) during the period 1 May to 31 October in each season. Such vessels may deploy IWL gear during daylight hours if, prior to entry into force of the licence and prior to entering the Convention Area, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 24–02. During the period 15 April to 30 April in each season, vessels shall use IWL gear and in a manner that ensures lines are set and hauled sequentially, in conjunction with night setting and paired streamer lines.
Observers	6. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period, with the exception of the period 15 April to 30 April in each season when two scientific observers shall be carried.
Data: Catch/effort	7. For the purpose of implementing this conservation measure, the following shall apply: (i) The Ten-day Catch and Effort Reporting System set out in Annex 41–08/A; (ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Annex 41–08/A. Fine-scale data shall be submitted on a haul-by-haul basis.
	8. For the purpose of Annex 41–08/A, the target species is *Dissostichus eleginoides* and by-catch species are defined as any species other than *Dissostichus eleginoides*.
	9. The total number and weight of *Dissostichus eleginoides* discarded, including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.
Data: Biological	10. Fine-scale biological data, as required under Annex 41–08/A, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.
Environmental protection	11. Conservation Measure 26–01 applies.

Annex 41–08/A

Data Reporting System

A ten-day catch and effort reporting system shall be implemented:

(i) For the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) At the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on

total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) The catch of *Dissostichus eleginoides* and of all by-catch species must be reported;

(v) Such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date;

(vii) At the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) The scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1 for trawl fishing, form C2 for longline fishing, or form C5 for pot fishing, latest versions. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) The catch of *Dissostichus eleginoides* and of all by-catch species must be reported;

(iii) The numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) The scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Dissostichus eleginoides* and by-catch species:

(a) Length measurements shall be to the nearest centimetre below;

(b) Representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month;

(v) The above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

Conservation Measure 41–09 (2007)

Limits on the exploratory Fishery for Dissostichus spp. *in Statistical Subarea 88.1 in the 2007/08 season*

(Species: Toothfish; Area: 88.1; Season: 2007/08; Gear: Longline)

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access	1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be limited to the exploratory longline fishery by Argentina, Republic of Korea, Namibia, New Zealand, Russia, South Africa, Spain, UK and Uruguay. The fishery shall be conducted by a maximum in the season of two (2) Argentine, five (5) Korean, one (1) Namibian, four (4) New Zealand, two (2) Russian, one (1) South African, one (1) Spanish, three (3) UK and two (2) Uruguayan flagged vessels using longlines only.
Catch limit	2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.1 in the 2007/08 season shall not exceed a precautionary catch limit of 2 700 tonnes of which 40 tonnes is set aside for research fishing (see paragraph 12) and the remaining 2 660 tonnes is applied as follows: SSRU A—0 tonnes SSRUs B, C and G—313 tonnes total SSRU D—0 tonnes SSRU E—0 tonnes SSRU F—0 tonnes SSRUs H, I and K—1 698 tonnes total SSRU J—495 tonnes SSRU L—154 tonnes.
Season	3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1, the 2007/08 season is defined as the period from 1 December 2007 to 31 August 2008.
Fishing operations	4. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.
By-catch	5. The total by-catch in Statistical Subarea 88.1 in the 2007/08 season shall not exceed a precautionary catch limit of 133 tonnes of skates and rays, and 426 tonnes of *Macrourus* spp. Within these total by-catch limits, individual limits will apply as follows: SSRU A—0 tonnes of any species SSRUs B, C and G total—50 tonnes of skates and rays, 50 tonnes of *Macrourus* spp., 60 tonnes of other species SSRU D—0 tonnes of any species SSRU E—0 tonnes of any species SSRU F—0 tonnes of any species SSRUs H, I and K total—84 tonnes of skates and rays, 271 tonnes of *Macrourus* spp., 60 tonnes of other species SSRU J—50 tonnes of skates and rays, 79 tonnes of *Macrourus* spp., 20 tonnes of other species SSRU L—50 tonnes of skates and rays, 24 tonnes of *Macrourus* spp., 20 tonnes of other species. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.
Mitigation	6. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 4 (night setting), which shall not apply as long as the requirements of Conservation Measure 24–02 are met. 7. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.
Observers	8. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.
VMS	9. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 10–04.

CDS	10. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 10–05.
Research	11. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively. The setting of research hauls (Conservation Measure 41–01, Annex B, paragraphs 3 and 4) is not required. 12. Research fishing under Conservation Measure 24–01 shall be limited to 10 tonnes of *Dissostichus* spp. green weight and a single vessel in each of SSRUs A, D, E and F during the 2007/08 season. 13. Toothfish shall be tagged at a rate of at least one fish per tonne green weight caught in each SSRU, except in SSRUs A, D, E and F where, under the 10-tonne research fishing limit, toothfish shall be tagged at a rate of at least three fish per tonne green weight caught.
Data: Catch/effort	14. For the purpose of implementing this conservation measure in the 2007/08 season, the following shall apply: (i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01; (ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis. 15. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.
Data: Biological	16. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.
Environmental protection	17. Conservation Measure 26–01 applies.
Additional elements	18. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be prohibited within 10 n miles of the coast of the Balleny Islands.

Conservation Measure 41–10 (2007)

Limits on the Exploratory Fishery for Dissostichus spp. *in Statistical Subarea 88.2 in the 2007/08 Season*

(Species: toothfish; Area: 88.2; Season: 2007/08; Gear: longline)

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02:

Access	1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.2 shall be limited to the exploratory longline fishery by Argentina, New Zealand, Russia, South Africa, Spain, UK and Uruguay. The fishery shall be conducted by a maximum in the season of two (2) Argentine, four (4) New Zealand, two (2) Russian, one (1) South African, one (1) Spanish, three (3) UK and two (2) Uruguayan flagged vessels using longlines only.
Catch limit	2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.2 south of 65 S in the 2007/08 season shall not exceed a precautionary catch limit of 567 tonnes of which 20 tonnes is set aside for research fishing (see paragraph 12) and the remaining 547 tonnes is applied as follows: SSRU A–0 tonnes SSRU B–0 tonnes SSRUs C, D, F and G–206 tonnes total SSRU E–341 tonnes.
Season	3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2, the 2007/08 season is defined as the period from 1 December 2007 to 31 August 2008. 4. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.
By-catch	5. The total by-catch in Statistical Subarea 88.2 in the 2007/08 season shall not exceed a precautionary catch limit of 50 tonnes of skates and rays, and 88 tonnes of *Macrourus* spp. Within these total by-catch limits, individual limits will apply as follows: SSRU A–0 tonnes of any species SSRU B–0 tonnes of any species SSRUs C, D, F, G–50 tonnes of skates and rays, 33 tonnes of *Macrourus* spp., 20 tonnes of other species in any SSRU SSRU E–50 tonnes of skates and rays, 55 tonnes of *Macrourus* spp., 20 tonnes of other species. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.
Mitigation	6. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 4 (night setting), which shall not apply as long as the requirements of ConservationMeasure 24–02 are met. 7. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.
Observers	8. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.
VMS	9. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 10–04.
CDS	10. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 10–05.
Research	11. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively. The setting of research hauls (Conservation Measure 41–01, Annex B, paragraphs 3 and 4) is not required.

	12. Research fishing under Conservation Measure 24–01 shall be limited to 10 tonnes of *Dissostichus* spp. green weight and a single vessel in each of SSRUs A and B during the 2007/08 season.
	13. Toothfish shall be tagged at a rate of at least one fish per tonne green weight caught in each SSRU, except in SSRUs A and B where, under the 10-tonne research fishing limit, toothfish shall be tagged at a rate of at least three fish per tonne green weight caught.
Data: Catch/effort	14. For the purpose of implementing this conservation measure in the 2007/08 season, the following shall apply: (i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01; (ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.
	15. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.
Data: Biological	16. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.
Environmental protection	17. Conservation Measure 26–01 applies.

Conservation Measure 41–11 (2007)

Limits on the Exploratory Fishery for Dissostichus spp. *in Statistical Division 58.4.1 in the 2007/08 Season*

(Species: Toothfish; Area: 58.4.1; Season: 2007/08; Gear: Longline)

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 21–02, and notes that this measure would be for one year and that data arising from these activities would be reviewed by the Scientific Committee:

Access	1. Fishing for *Dissostichus* spp. in Statistical Division 58.4.1 shall be limited to the exploratory longline fishery by Australia, Japan, Republic of Korea, Namibia, New Zealand, Spain, Ukraine and Uruguay. The fishery shall be conducted by one (1) Australian, one (1) Japanese, five (5) Korean, two (2) Namibian, three (3) New Zealander, one (1) Spanish, one (1) Ukrainian and one (1) Uruguayan flagged vessels using longlines only.
Catch limit	2. The total catch of *Dissostichus* spp. in Statistical Division 58.4.1 in the 2007/08 season shall not exceed a precautionary catch limit of 600 tonnes, of which no more than 200 tonnes shall be taken in any one of the eight small-scale research units (SSRUs) as detailed in Annex B of Conservation Measure 41–01.
	3. Catch limits for each of the SSRUs for Statistical Division 58.4.1 shall be as follows: SSRU A—0 tonnes SSRU B—0 tonnes SSRU C—200 tonnes SSRU D—0 tonnes SSRU E—200 tonnes SSRU F—0 tonnes SSRU G—200 tonnes SSRU H—0 tonnes.
Season	4. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.1, the 2007/08 season is defined as the period from 1 December 2007 to 30 November 2008.
Fishing operations	5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.1 shall be carried out in accordance with the provisions of Conservation Measure 41–01, except paragraph 6.
	6. Fishing will be prohibited in depths less than 550 m in order to protect benthic communities.
By-catch	7. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–03.
Mitigation	8. The exploratory longline fishery for *Dissostichus* spp. in Statistical Division 58.4.1 shall be carried out in accordance with the provisions of Conservation Measure 25–02, except paragraph 4 (night setting) shall not apply, providing that vessels comply with Conservation Measure 24–02.
	9. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 25–02.
Observers	10. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.
Research	11. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan and Tagging Program described in Conservation Measure 41–01, Annex B and Annex C respectively.
	12. Research fishing under Conservation Measure 24–01 shall be limited to 10 tonnes of *Dissostichus* spp. green weight and a single vessel in each of SSRUs A, B, D, F and H during the 2007/08 season.
	13. Toothfish shall be tagged at a rate of at least three fish per tonne green weight caught.
Data: Catch/effort	14. For the purpose of implementing this conservation measure in the 2007/08 season, the following shall apply: (i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01; (ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.
	15. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.
Data: Biological	16. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.
Environmental protection	17. Conservation Measure 26–01 applies.
	18. There shall be no offal discharge in this fishery.

Conservation Measure 42–01 (2007)

Limits on the Fishery for Champsocephalus gunnari in Statistical Subarea 48.3 in the 2007/08 Season

(Species: Icefish; Area: 48.3; Season: 2007/08; Gear: Trawl)

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01:

Access	1. The fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 shall be conducted by vessels using trawls only. The use of bottom trawls in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited. 2. Fishing for *Champsocephalus gunnari* shall be prohibited within 12 n miles of the coast of South Georgia during the period 1 March to 31 May.
Catch limit	3. The total catch of *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 2007/08 season shall be limited to 2 462 tonnes. 4. Where any haul contains more than 100 kg of *Champsocephalus gunnari*, and more than 10% of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10%, for a period of at least five days[2]. The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.
Season	5. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3, the 2007/08 season is defined as the period from 15 November 2007 to 14 November 2008, or until the catch limit is reached, whichever is sooner.
By-catch	6. The by-catch in this fishery shall be regulated as set out in Conservation Measure 33–01. If, in the course of the directed fishery for *Champsocephalus gunnari*, the by-catch in any one haul of any of the species named in Conservation Measure 33–01. • Is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or • Is equal to or greater than 2 tonnes, then The fishing vessel shall move to another location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species named in Conservation Measure 33–01 exceeded 5% for a period of at least five days.[2] The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.
Mitigation	7. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimise the incidental mortality of seabirds in the course of the fishery. Vessels shall use net binding[3] and consider adding weight to the codend to reduce seabird captures during shooting operations. 8. Should any vessel catch a total of 20 seabirds, it shall cease fishing and shall be excluded from further participation in the fishery in the 2007/08 season.
Observers	9. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.
Data: Catch/effort	10. For the purpose of implementing this conservation measure in the 2007/08 season, the following shall apply: (i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 23–01; (ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis. 11. For the purpose of Conservation Measures 23–01 and 23–04, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari*.
Data: Biological	12. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.
Environmental protection	14. Conservation Measure 26–01 applies.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

[3] See SC–CAMLR–XXV, Annex 5, Appendix D, paragraph 59 for guidelines for net binding.

Conservation Measure 42–02 (2007)

Limits on the Fishery for Champsocephalus gunnari in Statistical Division 58.5.2 in the 2007/08 Season

(Species: Icefish; Area: 58.5.2; Season: 2007/08; Gear: Trawl)

Access	1. The fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2 shall be conducted by vessels using trawls only. 2. For the purpose of this fishery for *Champsocephalus gunnari*, the area open to the fishery is defined as that portion of Statistical Division 58.5.2 that lies within the area enclosed by a line:

(i) Starting at the point where the meridian of longitude 72°15′E intersects the Australia-France Maritime Delimitation Agreement Boundary then south along the meridian to its intersection with the parallel of latitude 53°25′S;
(ii) Then east along that parallel to its intersection with the meridian of longitude 74°E;
(iii) Then northeasterly along the geodesic to the intersection of the parallel of latitude 52°40′S and the meridian of longitude 76°E;
(iv) Then north along the meridian to its intersection with the parallel of latitude 52°S;
(v) Then northwesterly along the geodesic to the intersection of the parallel of latitude 51°S with the meridian of longitude 74°30′E;
(vi) Then southwesterly along the geodesic to the point of commencement.

3. A chart illustrating the above definition is appended to this conservation measure (Annex 42–02/A). Areas in Statistical Division 58.5.2 outside that defined above shall be closed to directed fishing for *Champsocephalus gunnari*.

Catch limit ..... 4. The total catch of *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2007/08 season shall be limited to 220 tonnes.

5. Where any haul contains more than 100 kg of *Champsocephalus gunnari*, and more than 10% of the *Champsocephalus gunnari* by number are smaller than the specified minimum legal total length, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10% for a period of at least five days.[2] The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel. The minimum legal total length shall be 240 mm.

Season ..... 6. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2, the 2007/08 season is defined as the period from 1 December 2007 to 30 November 2008, or until the catch limit is reached, whichever is sooner.

By-catch ..... 7. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 33–02.

Mitigation ..... 8. The operation of this fishery shall be carried out in accordance with Conservation Measure 25–03 so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers ..... 9. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data: Catch/effort ..... 10. For the purpose of implementing this conservation measure in the 2007/08 season, the following shall apply:
(i) The Ten-day Catch and Effort Reporting System set out in Annex 42–02/B;
(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Annex 42–02/B. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Annex 42–02/B, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari*.

Data: Biological ..... 12. Fine-scale biological data, as required under Annex 42–02/B, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.

Environmental protection ..... 13. Conservation Measure 26–01 applies.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 23–01, pending the adoption of a more appropriate period by the Commission.

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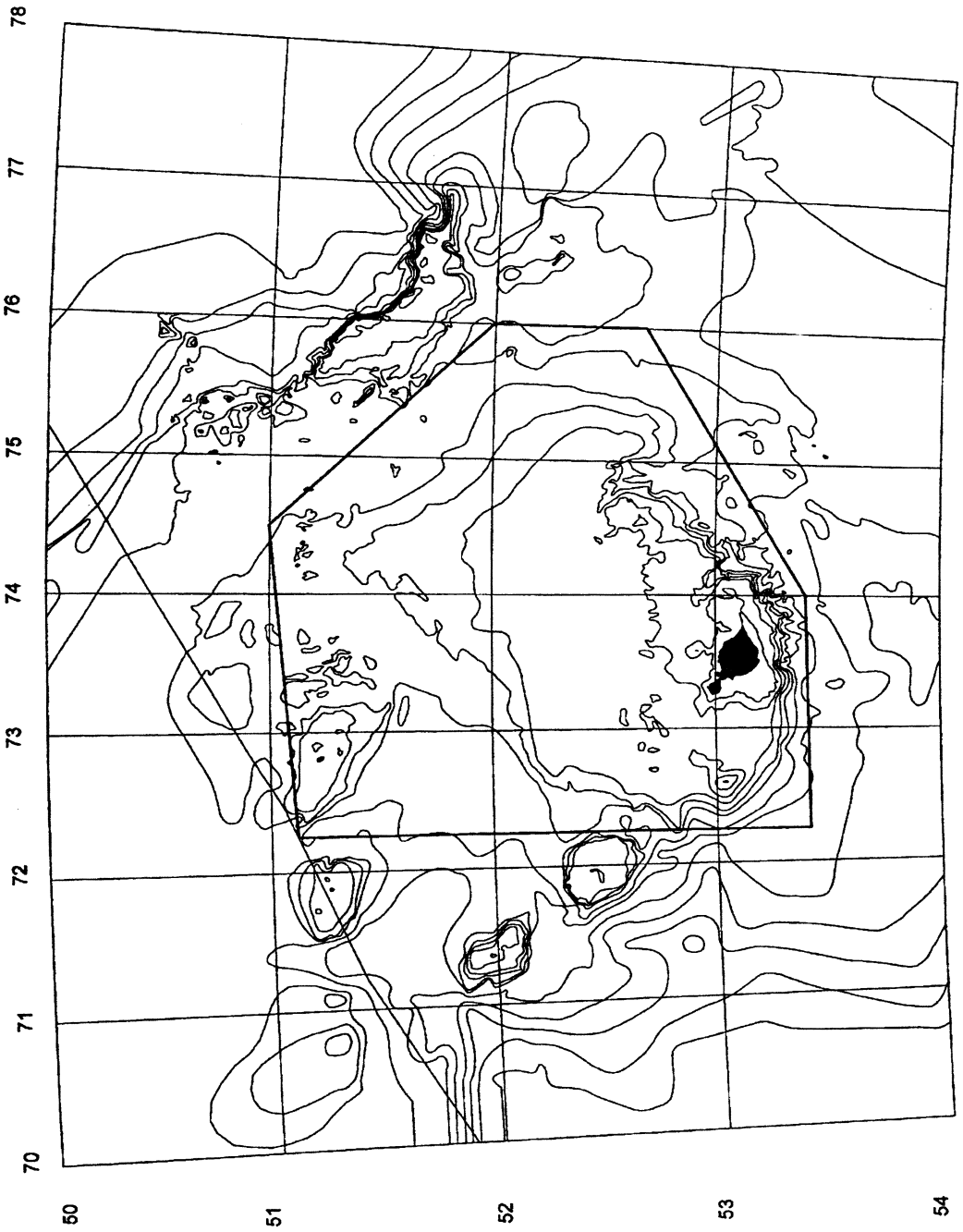
ANNEX 42-02/A

CHART OF THE HEARD ISLAND PLATEAU



BILLING CODE 3510–22–C

Annex 42–02/B

Data Reporting System

A ten-day catch and effort reporting system shall be implemented:

(i) For the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) At the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) A report must be submitted by every Contracting Party taking part in

the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) The catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(v) Such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date;

(vii) At the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) The scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) The catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(iii) The numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) The scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Champsocephalus gunnari* and by-catch species:

(a) Length measurements shall be to the nearest centimetre below;

(b) Representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month;

(v) The above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

Conservation Measure 51–01 (2007)

Precautionary Catch Limitations on Euphausia Superba in Statistical Subareas 48.1, 48.2, 48.3, and 48.4

(Species: Krill; Area: 48.1. 48.2, 48.3, 48.4; Season: All; Gear: All)

The Commission,

Noting that it has agreed (CCAMLR–XIX, paragraph 10.11) that the krill catches in Statistical Subareas 48.1, 48.2, 48.3 and 48.4 shall not exceed a set level, defined herein as a trigger level, until a procedure for division of the overall catch limit into smaller management units has been established, and that the Scientific Committee has been directed to provide advice on such a subdivision,

Recognizing that the Scientific Committee agreed a trigger level of 620,000 tonnes, adopts the following measure in accordance with Article IX of its Convention:

Catch limit	1. The total combined catch of *Euphausia superba* in Statistical Subareas 48.1, 48.2, 48.3 and 48.4 shall be limited to 3.47 million tonnes in any fishing season.
Trigger level	2. Until the Commission has defined an allocation of this total catch limit between smaller management units [1], based on the advice from the Scientific Committee, the total combined catch in Statistical Subareas 48.1, 48.2, 48.3 and 48.4 shall be further limited to 620 000 tonnes in any fishing season.
	3. This measure shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.
Season	4. A fishing season begins on 1 December and finishes on 30 November of the following year.
Data	5. For the purpose of implementing this conservation measure, the data requirements set out in Conservation Measure 23–06 shall apply.
Environmental protection	6. Conservation Measure 26–01 applies.

[1] Defined in CCAMLR–XXI, paragraph 4.5.

Conservation Measure 51–03 (2007)

Precautionary catch limitation on Euphausia superba in Statistical Division 58.4.2

(Species: Krill; Area: 58.4.2; Season: All; Gear: Trawl)

Catch limit	1. The total catch of *Euphausia superba* in Statistical Division 58.4.2 shall be limited to 2.645 million tonnes in any fishing season.
	2. The total catch limit shall be further subdivided into two subdivisions within Statistical Division 58.4.2 as follows: West of 55° E, 1.448 million tonnes; and east of 55° E, 1.080 million tonnes.
Trigger level [1]	3. Until the Commission has defined an allocation of this total catch limit between smaller management units, as the Scientific Committee may advise, the total catch in Division 58.4.2 shall be limited to 260 000 tonnes west of 55° E and 192 000 tonnes east of 55° E in any fishing season.
	4. This measure shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.
Season	5. A fishing season begins on 1 December and finishes on 30 November of the following year.
Observers	6. Each vessel participating in the fishery shall have at least one scientific observer in accordance with the CCAMLR Scheme of International Scientific Observation or a domestic scientific observer fulfilling the requests in the scheme, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period. [2]
Data	7. For the purposes of implementing this conservation measure, the data requirements set out in Conservation Measure 23–06 shall apply.
Environmental protection	8. Conservation Measure 26–01 applies.

[1] A trigger level is a set level that the catch shall not exceed until a procedure for the division of the overall catch limit into smaller management units, upon which the Scientific Committee has been directed to provide advice, has been established.

[2] Bearing in mind the limited ecological information from research and fisheries observers in Statistical Division 58.4.2 compared to Area 48, the Commission recognised the need to collect scientific data from the fishery. This paragraph applies only to the krill fishery in Statistical Division 58.4.2 and shall be revised depending on the advice of the Scientific Committee on a systematic scheme for scientific observation in the krill fishery or reviewed within three years, whichever comes earlier.

Conservation Measure 52–01 (2007)

Limits on the Fishery for Crab in Statistical Subarea 48.3 in the 2007/08 Season

(Species: Crab; Area: 48.3; Season: 2007/08; Gear: Pot)

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 31–01:

Access	1. The fishery for crab in Statistical Subarea 48.3 shall be conducted by vessels using pots only. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order Decapoda, Suborder Reptantia).
	2. The crab fishery shall be limited to one vessel per Member.
	3. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least three months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorised to participate in the crab fishery.
Catch limit	4. The total catch of crab in Statistical Subarea 48.3 in the 2007/08 season shall not exceed a precautionary catch limit of 1,600 tonnes.
	5. The crab fishery shall be limited to sexually mature male crabs—all female and undersized male crabs caught shall be released unharmed. In the case of *Paralomis spinosissima* and *Paralomis formosa,* males with a minimum carapace width of 94 and 90 mm respectively, may be retained in the catch.
Season	6. For the purpose of the pot fishery for crab in Statistical Subarea 48.3, the 2007/08 season is defined as the period from 1 December 2007 to 30 November 2008, or until the catch limit is reached, whichever is sooner.
By-catch	7. The by-catch of *Dissostichus eleginoides* shall be counted against the catch limit in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3.
Observers	8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period. Scientific observers shall be afforded unrestricted access to the catch for statistical random sampling prior to, as well as after, sorting by the crew.
Data: Catch/effort	9. For the purpose of implementing this conservation measure in the 2007/08 season, the following shall apply: (i) The Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02; (ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis.
	10. For the purpose of Conservation Measures 23–02 and 23–04 the target species is crab and by-catch species are defined as any species other than crab.
Data: Biological	11. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.
Research	12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the data requirements described in Annex 52–01/A and the experimental harvest regime described in Conservation Measure 52–02. Data collected for the period up to 31 August 2008 shall be reported to CCAMLR by 30 September 2008 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG–FSA) in 2008. Such data collected after 31 August 2008 shall be reported to CCAMLR not later than three months after the closure of the fishery.
Environmental protection	13. Conservation Measure 26–01 applies.

Annex 52–01/A

Data Requirements on the Crab Fishery in Statistical Subarea 48.3

Catch and Effort Data:

Cruise Descriptions

Cruise code, vessel code, permit number, year.

Pot Descriptions

Diagrams and other information, including pot shape, dimensions, mesh size, funnel position, aperture and orientation, number of chambers, presence of an escape port.

Effort Descriptions

Date, time, latitude and longitude of the start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.

Catch Descriptions

Retained catch in numbers and weight, by-catch of all species (see Table 1), incremental record number for linking with sample information.

TABLE 1.—DATA REQUIREMENTS FOR BY-CATCH SPECIES IN THE CRAB FISHERY IN STATISTICAL SUBAREA 48.3

Species	Data requirements
Dissostichus eleginoides.	Numbers and estimated total weight.
Notothenia rossii.	Numbers and estimated total weight.
Other species	Estimated total weight.

Biological Data:

For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire

contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.

Cruise Descriptions

Cruise code, vessel code, permit number.

Sample Descriptions

Date, position at start of the set, compass bearing of the set, line number.

Data

Species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

Conservation Measure 52–02 (2007)

Experimental Harvest Regime for the Crab Fishery in Statistical Subarea 48.3 in the 2007/08 Season

(Species: Crab; Area: 48.3; Season: 2007/08; Gear: Pot)

The following measures apply to all crab fishing within Statistical Subarea 48.3 in the 2007/08 fishing season. Every vessel participating in the crab fishery in Statistical Subarea 48.3 shall conduct fishing operations in accordance with an experimental harvest regime as outlined below:

1. Vessels shall conduct the experimental harvest regime in the 2007/08 season at the start of their first season of participation in the crab fishery and the following conditions shall apply:

(i) Every vessel when undertaking an experimental harvesting regime shall expend its first 200,000 pot hours of effort within a total area delineated by 12 blocks of 0.5° latitude by 1.0° longitude. For the purposes of this conservation measure, these blocks shall be numbered A to L. In Annex 52–02/A, the blocks are illustrated (Figure 1), and the geographic position is denoted by the coordinates of the northeast corner of the block. For each string, pot hours shall be calculated by taking the total number of pots on the string and multiplying that number by the soak time (in hours) for that string. Soak time shall be defined for each string as the time between start of setting and start of hauling;

(ii) Vessels shall not fish outside the area delineated by the 0.5° latitude by 1.0° longitude blocks prior to completing the experimental harvesting regime;

(iii) Vessels shall not expend more than 30,000 pot hours in any single block of 0.5° latitude by 1.0° longitude;

(iv) If a vessel returns to port before it has expended 200,000 pot hours in the experimental harvesting regime, the remaining pot hours shall be expended before it can be considered that the vessel has completed the experimental harvesting regime;

(v) After completing 200,000 pot hours of experimental fishing, it shall be considered that vessels have completed the experimental harvesting regime and they shall be permitted to commence fishing in a normal fashion.

2. Data collected during the experimental harvest regime up to 30 June 2008 shall be submitted to CCAMLR by 31 August 2008.

3. Normal fishing operations shall be conducted in accordance with the regulations set out in Conservation Measure 52–01.

4. For the purposes of implementing normal fishing operations after completion of the experimental harvest regime, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02 shall apply.

5. Vessels that complete the experimental harvest regime shall not be required to conduct experimental fishing in future seasons. However, these vessels shall abide by the guidelines set forth in Conservation Measure 52–01.

6. Fishing vessels shall participate in the experimental harvest regime independently (i.e. vessels may not cooperate to complete phases of the experiment).

7. Crabs taken by any vessel for research purposes will be considered as part of any catch limits in force for each species taken, and shall be reported to CCAMLR as part of the annual STATLANT returns.

8. All vessels participating in the experimental harvest regime shall carry at least one scientific observer on board during all fishing activities.

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ANNEX 52-02/A

LOCATIONS OF FISHING AREAS FOR THE EXPERIMENTAL HARVEST REGIME OF THE EXPLORATORY CRAB FISHERY

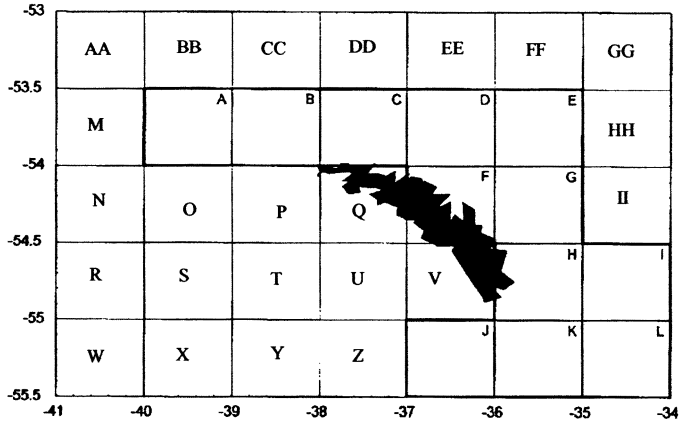

Figure 1: Operations area for Phase 1 of the experimental harvest regime for the crab fishery in Statistical Subarea 48.3.

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Conservation Measure 61–01 (2007)

Limits on the Exploratory Fishery for Martialia Hyadesi in Statistical Subarea 48.3 in the 2007/08 Season

(Species: Squid; Area: 48.3; Season: 2007/08; Gear: Jig)

The Commission hereby adopts the following conservation measure in accordance with Conservation Measures 21–02 and 31–01:

Access	1. Fishing for *Martialia hyadesi* in Statistical Subarea 48.3 shall be limited to the exploratory jig fishery by notifying countries. The fishery shall be conducted by vessels using jigs only.
Catch limit	2. The total catch of *Martialia hyadesi* in Statistical Subarea 48.3 in the 2007/08 season shall not exceed a precautionary catch limit of 2 500 tonnes.
Season	3. For the purpose of the exploratory jig fishery for *Martialia hyadesi* in Statistical Subarea 48.3, the 2007/08 season is defined as the period from 1 December 2007 to 30 November 2008, or until the catch limit is reached, whichever is sooner.
Observers	4. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.
Data: Catch/effort	5. For the purpose of implementing this conservation measure in the 2007/08 season, the following shall apply: (i) The Ten-day Catch and Effort Reporting System set out in Conservation Measure 23–02; (ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 23–04. Fine-scale data shall be submitted on a haul-by-haul basis. 6. For the purpose of Conservation Measures 23–02 and 23–04, the target species is *Martialia hyadesi* and by-catch species are defined as any species other than *Martialia hyadesi.*
Data: Biological	7. Fine-scale biological data, as required under Conservation Measure 23–05, shall be collected and recorded. Such data shall be reported in accordance with the CCAMLR Scheme of International Scientific Observation.
Research	8. Each vessel participating in this exploratory fishery shall collect data in accordance with the Data Collection Plan described in Annex 61–01/A. Data collected pursuant to the plan for the period up to 31 August 2008 shall be reported to CCAMLR by 30 September 2008.
Environmental protection	9. Conservation Measure 26–01 applies.

Annex 61–01/A

Data Collection Plan for Exploratory Squid (Martialia Hyadesi) Fisheries in Statistical Subarea 48.3

1. All vessels will comply with conditions set by CCAMLR. These include data required to complete the data form (Form TAC) for the Ten-day Catch and Effort Reporting System, as specified by Conservation Measure 23–02; and data required to complete the CCAMLR standard fine-scale catch and effort data form for a squid jig fishery (Form C3). This includes numbers of seabirds and marine mammals of each species caught and released or killed.

2. All data required by the CCAMLR *Scientific Observers Manual* for squid fisheries will be collected. These include:

(i) Vessel and observer program details (Form S1);

(ii) Catch information (Form S2);

(iii) Biological data (Form S3).

Resolution 26/XXVI

International Polar Year/Census of Antarctic Marine Life

The Commission,

Recognising that the International Polar Year is a large scientific program focused on the Arctic and Antarctic from March 2007 to March 2009,

Acknowledging that the International Polar Year involves over 60 States and 200 scientific projects, including the Census of Antarctic Marine Life (CAML),

Noting that CAML will investigate the distribution and abundance of Antarctica's vast marine biodiversity to develop a benchmark for the benefit of humankind,

Recalling the Edinburgh Antarctic Declaration on the International Polar Year from the Antarctic Treaty Consultative Meeting XXIX that gives political support to the International Polar Year,

Further recognizing that the Commission, at its Twenty-fifth meeting, urged all Members to contribute to CCAMLR International Polar Year projects,

Noting Article IX of the Convention setting out the Commission's functions, including to 'facilitate research into and comprehensive studies of Antarctic marine living resources and of the Antarctic marine ecosystem',

1. Welcomes the notifications received from Contracting Parties of proposed International Polar Year/Census of Antarctic Marine Life research activities to be undertaken in the CCAMLR Convention Area.

2. Expresses its appreciation to those Contracting Parties who have committed to participate in International Polar Year activities in the CCAMLR Convention Area and to further extend knowledge of the marine living resources in the Antarctic marine ecosystem.

3. Encourages all Contracting Parties to support and where possible contribute to the International Polar Year, including through the Census of Antarctic Marine Life.

Dated: December 10, 2007.

Alan Risenhoover,

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

Dated: December 11, 2007.

Margaret F. Hayes,

Director, Office of Ocean Affairs, Department of State.

[FR Doc. E7–24312 Filed 12–20–07; 8:45 am]

BILLING CODE 3510–22–P

Federal Register

Friday,

December 21, 2007

Part III

Department of Agriculture

Farm Service Agency

7 CFR Part 760

Emergency Agricultural Assistance, 2007; Crop Disaster and Livestock Indemnity Programs; Final Rule

2005–2007 Livestock Compensation and Catfish Grant Programs; Final Rule

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

RIN 0560–AH76

Emergency Agricultural Assistance, 2007; Crop Disaster and Livestock Indemnity Programs

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the Farm Service Agency (FSA) regulations for the 2007 Emergency Agricultural Assistance. The rule implements legislation that provides funds for agricultural disaster aid for eligible producers, specifically a Crop Disaster Program (CDP) and a 2005–2007 Livestock Indemnity Program (LIP). For CDP, the program applies only to 2005, 2006, and 2007 crop producers who chose to have a Federal Crop Insurance plan of insurance or Noninsured Crop Disaster Assistance Program coverage for the year of loss and suffered damage due to a natural disaster. Eligible crops for 2007 must have been planted prior to February 28, 2007. For LIP, the program applies only to livestock producers in counties designated as a major disaster or emergency area by the President or those declared a natural disaster area by the Secretary of Agriculture. Counties designated disasters by the President may be eligible even though agricultural loss was not covered by the designation if there has been an FSA Administrator's Physical Loss Notice covering such losses. The natural disaster declarations by the Secretary or designations by President must have been issued between January 1, 2005, and February 28, 2007; that is after January 1, 2005 and before February 28, 2007. Counties contiguous to such counties will also be eligible.

DATES: This rule is effective December 19, 2007.

FOR FURTHER INFORMATION CONTACT: Salomon Ramirez, Director, Production, Emergencies, and Compliance Division; Farm Service Agency; United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; telephone (202) 720–7641; e-mail *salomon.ramirez@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

This final rule implements the agricultural assistance provisions of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28) (the 2007 Emergency Supplemental), enacted May 25, 2007. The 2007 Emergency Supplemental authorizes the Secretary of Agriculture (Secretary) to assist producers of livestock and agricultural commodities through programs administered by FSA.

All counties, owners, contract growers, lessees, livestock, crops, and losses, must meet the eligibility criteria provided in this rule. False certifications carry severe ramifications. FSA will validate applications with random spot-checks.

A payment limitation of $80,000 per program per person is applicable to payments made under the 2007 Emergency Supplemental. The amount of any payment for which a participant may be eligible under any of these programs may be reduced by any amount received by the participant for the same or any similar loss. Other restrictions apply including, but not limited to, those pertaining to highly erodible land and wetland conservation provisions. Livestock and crop losses that are not weather-related are not covered.

The average adjusted gross income (AGI) limitation as administered under 7 CFR part 1400, subpart G, applies. AGI eligibility is based on the average of the adjusted gross incomes for the three tax years immediately preceding the tax year for which disaster assistance is being requested, with the exclusion of any year(s) the individual or entity did not have income or had an AGI of zero.

Crop Disaster Program

Section 9001 of the 2007 Emergency Supplemental authorizes the Secretary to provide assistance to crop producers for qualifying crop quantity or crop quality losses due to damaging weather and related conditions for one, but not more than one, of the 2005, 2006, or 2007 crop years. The 2007 Emergency Supplemental requires that assistance for quantity losses to be made available in the same manner as provided under section 815 of the Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106–387) (the 2001 Appropriations Act), except that the payment rate will be 42 percent of the established price, instead of 65 percent. Like under section 815 of the 2001 Appropriations Act, only approved yields based on production evidence submitted prior to the enactment of the 2007 Emergency Supplemental will be used for the purposes of the 2005, 2006, and 2007 CDP. This is also applicable to those plans of insurance or NAP that did not or do not have approved yields calculated based on actual production history. FSA does not have the resources or the knowledge to calculate those approved yields now. Additionally, historically, FSA has not computed approved yields following enactment of legislation authorizing similar ad hoc disaster assistance. There are a plethora of reasons for not computing such yields now, not the least of which is burdening participants and FSA offices with tasks that will undoubtedly slow the dispersal of funds that Congress wanted issued timely. There are also serious integrity issues related to allowing, as a general matter, participants an opportunity to now in conjunction with a loss claim application under this ad hoc legislation, the opportunity to now alter or change their expected level of production in the year of alleged loss. The same quantity loss thresholds used under section 815 of the 2001 Appropriations Act are applicable. The 2007 Emergency Supplemental provides that total assistance provided to a participant for a crop year under the Crop Disaster Program (CDP), together with any amount provided to the same participant for the same crop made pursuant to any crop insurance program or the Noninsured Crop Disaster Assistance Program (NAP), plus the value of the crop that was not lost, may not exceed 95 percent of the value of the crop in the absence of a loss, as estimated by FSA.

By statute, a participant seeking financial assistance under this rule will not be eligible for payments if the participant did not obtain a Federal Crop Insurance Plan or NAP coverage for the crop incurring loss for the year in which assistance is requested. Circumstances why a participant either chose to not have such insurance or NAP coverage are irrelevant to determination of CDP eligibility. Those circumstances, accordingly, will not be considered under any of the relief provisions outlined in 7 CFR part 718.

The CDP objectives are as follows:

- Use crop insurance principles to the extent practicable.
- Establish an equitable distribution of payments based on the losses of each producer.
- Treat producers with similar losses similarly.
- Distribute payments according to the geographic location of the losses.
- Ensure that all producers are notified of program benefits.

Eligible crops include insured crops and NAP covered crops. Insured crops

are crops insured by a Federally-subsidized crop insurance policy. NAP covered crops are crops for which crop insurance is not available, but are covered by NAP. Under the previous CDP, crop insurance and NAP coverage were not required for eligibility.

For quality losses, producers are eligible for assistance for quality losses of at least 25-percent. All crops are eligible for quality losses except for value loss crops [1] and some specialty crops.[2] The total affected production for a quality loss payment cannot exceed the expected production. Payments will be made only on 65 percent of the quantity of production.

Payment rates will be based on five broad loss levels, determined as follows:

Level	For estimated quality loss ranges (percentage)	The following percentages of established prices [1] are used:
I	25.0 and 34.9	30
II	35.0 and 54.9	45
III	55.0 and 74.9	65
IV	75.0 and 94.9	85
V	95.0 and 100.0	95

[1] Established prices are marketing contract prices, catastrophic risk protection, Actual Production History prices, or 5-year average prices.

For marketing contracts and quality loss assistance, under the CDP, production of a commodity sold pursuant to a marketing contract is eligible for quality loss assistance based on one or more prices specified in the contracts. When there are multiple marketing contract prices, a weighted average will be calculated to determine a single blended price. Production of a commodity not sold through marketing contracts is eligible for quality loss assistance based on the average local market discounts for reduced quality, as determined by the appropriate State committee of FSA.

For insurable crops, only producers who purchased crop insurance for the affected crop during the applicable disaster year are eligible to receive crop disaster payments. For NAP covered crops, producers must have participated in NAP for the crop for which they are seeking benefits in the disaster year.

Livestock Indemnity Program

Section 9002(b) of the 2007 Emergency Supplemental appropriates to the Secretary such sums as necessary to remain available until expended to provide assistance to livestock producers for certain livestock deaths directly resulting from natural disasters that occurred between January 1, 2005, and February 28, 2007, that is after January 1, 2005, but before February 28, 2007, including losses due to blizzards that started in 2006 and continued into January 2007. To be eligible for assistance under the 2005–2007 Livestock Indemnity Program (LIP), the participant must have suffered livestock loss due to an eligible disaster event occurring after January 1, 2005, but before February 28, 2007, and the livestock must have been physically located in a county or contiguous county having a natural disaster designated by the President or declared by the Secretary after January 1, 2005, but before February 28, 2007. For timely Presidential declarations that do not cover agricultural physical loss, the subject counties may still be eligible if the county was the subject of an approved Administrator's Physical Loss Notice (APLN) when the APLN applies to a natural disaster designated by the President. Livestock producers incurring livestock losses in more than one of the 2005, 2006, and 2007 calendar years may only select one year in which to receive assistance.

The 2005–2007 LIP is administered by FSA and funds have been appropriated to FSA for such purpose. Therefore, it is implemented through regulations in 7 CFR part 760. We are establishing a new subpart J for the 2005–2007 LIP regulations.

The 2005–2007 LIP will provide assistance to eligible producers (owners and contract growers) of eligible livestock located in a total of 2,944 counties. These 2,944 counties refer to the total number of declared counties, regardless of the number of times for which they received disaster declarations after January 1, 2005, but before February 28, 2007. The regulations will specify what makes a county eligible. The list of eligible counties is on the FSA Web site.

The natural disasters covered by the 2005–2007 LIP include various hurricanes, extreme heat, wildfires, and blizzards that occurred after January 1, 2005, but before February 28, 2007.

Payments under the 2005–2007 LIP are based on the type, kind, and weight of eligible livestock. The amount of payment that a person may receive under the 2005–2007 LIP cannot exceed $80,000.

Eligible livestock includes certain beef cattle, dairy cattle, buffalo, beefalo, equine, sheep, goats, deer, swine, poultry, reindeer, catfish, and crawfish that died as a direct result of an eligible disaster and on the day they perished were all of the following:

- Owned by an eligible owner or in the possession of an eligible contract grower;
- Maintained for commercial use as part of a farming operation of the participant on the day they died; and
- Died in an eligible county as a direct result of an eligible disaster event during the disaster period.

Participants must provide verifiable documentation of livestock deaths claimed.

Payments will be made to contract growers to the extent of their contractual risk, as determined by FSA. Any compensation received by the contract grower from the contractor for loss of income for the dead livestock will be deducted from the contract grower's payment.

An eligible producer who received payments for disaster-related livestock losses from the 2005 hurricanes under earlier LIPs may only receive payments under the 2005–2007 LIP under the following two circumstances: (1) A participant who lost livestock to subsequent disasters in 2006 or 2007, is eligible for payments resulting from the subsequent disasters, but must elect to declare losses and receive payments for only one of those two years. (2) A participant with eligible livestock who received payments for disaster-related livestock losses from the 2005 hurricanes under an earlier LIP may also elect to receive payments under the

[1] Value loss crops ineligible for quality losses include aquaculture, floriculture, mushrooms, ginseng root, ornamental nursery, and Christmas trees.

[2] Specialty crops ineligible for quality losses include honey, maple sap, and turf grass sod.

2005–2007 LIP, however, the payment will be reduced by the amount received for the same disaster under an earlier LIP. This second situation is not expected to produce any payments because payment rates under earlier programs were higher than payment rates under the 2005–2007 LIP.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553) and the Statement of Policy of the Secretary effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking, as specified in section 9005 of the 2007 Emergency Supplemental, which requires that the regulations be promulgated and administered without regard to those notice and comment provisions.

Executive Order 12866

This rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget. A Cost-Benefit Analysis (CBA) was completed and is available from the contact person listed above. The summary of the anticipated economic impacts for CDP and LIP are described below.

Crops

Total crop disaster payments are expected to range from $1.6 billion to $2.0 billion. The low end of the range is estimated at $1.6 billion reflecting the probability that the more restrictive eligibility provisions and the reduction in the quality loss threshold may lower payments. The high end of the range is estimated at $2.0 billion reflecting the probability that the new marketing contract provisions may increase payments.

The 2005 and 2006 payments are expected to be mainly based on the 2006 crop year because crop losses were more severe in 2006. A large portion of 2007 payments are expected to be paid to winter wheat and specialty crop producers affected by freezes. CDP payments for 2007 winter wheat are estimated at $190 million. CDP payments for 2007 oranges are estimated at $7 million. CDP payments for 2007 peaches are estimated at $6 million. CDP payments for 2007 lemons are estimated at $2 million.

The past crop disaster programs (2001/2002 and 2003/2004) had very similar crop disaster payouts, with payments of $2.5 billion for each program. Qualitative adjustments to the estimates were necessary because of program changes. Program changes that are expected to cause the estimate to be lower include:

- Insurable crops that are uninsured are ineligible for crop disaster payments;
- Non-insurable crops not covered, but eligible, through NAP are ineligible for crop disaster payments; and
- Producers that will be compensated for losses of at least 25 percent quality loss.

New provisions that allow production of a commodity sold through marketing contracts to be eligible for quality loss assistance based on the prices specified in the contracts are expected to increase payments.

Livestock

The value of expected claims under the 2005–2007 LIP is $14.4 million. To the extent program payments are ultimately spent on forage or grain or affect the total supply of available livestock, the impacts of the 2005–2007 LIP on any sector of the economy, including livestock feed prices, livestock prices, and consumer prices, are not expected to be measurable. However, for those participants who have suffered losses from disasters between January 1, 2005, and February 28, 2007, and qualify for payments under the 2005–2007 LIP, their farm income losses will be somewhat offset or reduced by these payments, and they and their local communities may benefit accordingly.

Most claims for losses are expected to result from conditions of extreme heat in California and blizzards that affected Colorado, western Kansas, two counties in northern New Mexico, and one county in Oklahoma. There are expected to be some producers in the Gulf Coast states who may not have applied for payments under an earlier LIP, or who had losses from other disasters for which the county in which they produced the livestock was declared a primary disaster county or an adjoining county. For example, several hundred cattle are reported to have died in Texas as a result of wildfires. Such claims are not expected to be significant, however. Other claims may also exist among other counties in the United States, but these are also expected to be quite small and no information exists upon which to make estimates.

The impact of the 2005–2007 LIP is not expected to be significant in terms of aggregate change in social welfare. FSA initially estimates expected payments totaling $14.4 million for the 2005–2007 LIP, the sum of approximately $13.4 million for land-based losses and $1 million for payments to catfish and crawfish producers. The actual number of eligible owners, contract growers, and livestock and program costs will become more certain toward the end of signup for the program. Actual claims are expected to be less than the estimated $14.4 million because some persons may exceed the $80,000 payment limit, or their adjusted gross incomes may exceed $2.5 million.

The $14.4 million is $3.3 million less than the $17.7 million paid out under the 2005 LIP. In comparison, the 2005 LIP used a 30 percent payout rate, compared to the 26 percent rate used in the 2005–2007 LIP, and paid for hurricane-related losses located in States affected by those hurricanes. If the 2005–2007 LIP payout rate was also 30 percent, the payout amount would be $16.6 million (0.3*($14.4/.26) = $16.6), or over $1 million less than the 2005 payout amount.

The above magnitude of difference appears reasonable in spite of the fact that the 2005–2007 LIP is national in scope, and covers all disasters between January 1, 2005, and February 28, 2007, including catfish and crawfish, while the 2005 LIP only covered 9 states in the Southeast and Gulf Coast region. First, nearly all payments under the 2005–2007 LIP are expected to cover two specific disasters: losses of an estimated 16,000 dairy cattle from extreme heat in California and an estimated 20,000 beef cattle lost from blizzards in the winter of 2006–2007 that affected Colorado, Kansas, and New Mexico. Second, participants who received payments under the 2005 LIP are not expected to apply for payments under the 2005–2007 LIP because their payment rates were higher under the earlier program and they cannot receive payments under both programs without returning monies received under the 2005 LIP.

Regulatory Flexibility Act

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

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). The following final rule was determined to be Categorically Excluded because it is considered a ministerial action solely involving the transfer of

funds to offset disaster related losses with no site-specific or ground-disturbing actions occurring as a requirement or an immediate result of program implementation. Therefore, no environmental assessment or environmental impact statement will be completed for this final rule.

Executive Order 12372

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

Executive Order 12612

This rule does not have Federalism implications that warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988

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

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal government or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

These regulations are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 9005(b)(3) of the 2007 Emergency Supplemental, which provides that these regulations, which are necessary to implement title IX of the 2007 Emergency Supplemental, be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been determined to be Major under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121) (SBREFA). SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. Consistent with the provisions of 9005(c) of the 2007 Emergency Supplemental, FSA finds that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay assistance to the many people affected by the disasters addressed by this rule. Therefore, this rule is effective immediately.

List of Subjects in 7 CFR Part 760

Dairy products, Indemnity payments, Pesticides and pests, Reporting and recordkeeping requirements.

■ For the reasons explained above, 7 CFR part 760 is amended as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

■ 1. Revise the authority citation for 7 CFR part 760 to read as follows:

Authority: 7 U.S.C. 612c; Pub. L. 106–387, 114 Stat. 1549; Pub. L. 107–76, 115 Stat. 704; Title III, Pub. L. 109–234, 120 Stat. 474; 16 U.S.C. 3801, note; and Title IX, Pub. L. 110–28.

■ 2. Amend 7 CFR part 760 by adding new subparts I and J to read as follows:

Subpart I—2005–2007 Crop Disaster Program

Sec.

760.800 Applicability.
760.801 Administration.
760.802 Definitions.
760.803 Eligibility.
760.804 Time and method of application.
760.805 Limitations on payments and other benefits.
760.806 Crop eligibility requirements.
760.807 Miscellaneous provisions.
760.808 General provisions.
760.809 Eligible damaging conditions.
760.810 Qualifying 2005, 2006, or 2007 quantity crop losses.
760.811 Rates and yields; calculating payments.
760.812 Production losses; participant responsibility.
760.813 Determination of production.
760.814 Calculation of acreage for crop losses other than prevented planted.
760.815 Calculation of prevented planted acreage.
760.816 Value loss crops.
760.817 Quality losses for 2005, 2006, and 2007 crops.
760.818 Marketing contracts.
760.819 Misrepresentation, scheme, or device.
760.820 Offsets, assignments, and debt settlement.
760.821 Compliance with highly erodible land and wetland conservation.

Subpart J—2005–2007 Livestock Indemnity Program

760.900 Administration.
760.901 Applicability.
760.902 Eligible counties and disaster periods.
760.903 Definitions.
760.904 Limitations on payments and other benefits.
760.905 Eligible owners and contract growers.
760.906 Eligible livestock.
760.907 Application process.
760.908 Deceased individuals or dissolved entities.
760.909 Payment calculation.
760.910 Appeals.
760.911 Offsets, assignments, and debt settlement.
760.912 Records and inspections.
760.913 Refunds; joint and several liability.

Subpart I—2005–2007 Crop Disaster Program

§ 760.800 Applicability.

This part sets forth the terms and conditions for the 2005–2007 Crop Disaster Program (2005–2007 CDP). CDP makes emergency financial assistance available to producers who have incurred crop losses in quantity or quality for eligible 2005, 2006, or 2007 crop years due to disasters as determined by the Secretary under provisions of Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28). However, to be eligible for assistance, the crop subject to the loss must have been planted or existed before February 28, 2007, or, in the case of prevented planting, would have been planted before February 28, 2007.

§ 760.801 Administration.

(a) The program will be administered under the general supervision of the Deputy Administrator for Farm Programs and will be carried out in the field by FSA State and county committees.

(b) State and county committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(c) The State committee will take any action required by this part that has not been taken by a county committee. The State committee will also:

(1) Correct, or require a county committee to correct, any action taken by that FSA county committee that is not in accordance with this part; and

(2) Require a county committee to withhold taking or reverse any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee will prevent the Deputy Administrator for Farm Programs from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs may authorize State and county committees to waive or modify non-statutory deadlines or other program requirements in cases where lateness or failure to meet such does not adversely affect the operation of the program.

§ 760.802 Definitions.

The following definitions apply to this part. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

Actual production means the total quantity of the crop appraised, harvested, or assigned, as determined by the FSA State or county committee in accordance with instructions issued by the Deputy Administrator for Farm Programs.

Administrative fee means an amount the producer must pay for Noninsured Crop Disaster Assistance Program (NAP) enrollment for non-insurable crops.

Affected production means, with respect to quality losses, the harvested production of an eligible crop that has a documented quality reduction of 25 percent or more on the verifiable production record.

Appraised production means production determined by FSA, or a company reinsured by the Federal Crop Insurance Corporation (FCIC), that was unharvested but was determined to reflect the crop's yield potential at the time of appraisal.

Approved yield means the amount of production per acre, computed in accordance with FCIC's Actual Production History (APH) Program at part 400, subpart G of this title or, for crops not included under part 400, subpart G of this title, the yield used to determine the guarantee. For crops covered under NAP, the approved yield is established according to part 1437 of this title. Only the approved yields based on production evidence submitted to FSA prior to May 25, 2007 will be used for purposes of the 2005–2007 CDP.

Aquaculture means a value loss crop for the reproduction and rearing of aquatic species in controlled or selected environments including, but not limited to, ocean ranching, except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law.

Aquaculture facility means any land or structure including, but not limited to, a laboratory, concrete pond, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

Aquaculture species means any aquaculture species as defined in part 1437 of this title.

Average market price means the price or dollar equivalent on an appropriate basis for an eligible crop established by FSA, or CCC, or RMA, as applicable, for determining payment amounts. Such price will be based on historical data of the harvest basis excluding transportation, storage, processing, packing, marketing, or other post-harvesting expenses. Average market prices are generally applicable to all similarly situated participants and are not established in response to individual participants. Accordingly, the established average market prices are not appealable under parts 11 or 780 of this title.

Catastrophic risk protection means the minimum level of coverage offered by FCIC.

CCC means the Commodity Credit Corporation.

Controlled environment means, with respect to those crops for which a controlled environment is expected to be provided, including but not limited to ornamental nursery, aquaculture (including ornamental fish), and floriculture, an environment in which everything that can practicably be controlled with structures, facilities, growing media (including, but not limited to, water, soil, or nutrients) by the producer, is in fact controlled by the producer.

Crop insurance means an insurance policy reinsured by FCIC under the provisions of the Federal Crop Insurance Act, as amended.

Crop year means:

(1) For insured crops, the crop year as defined according to the applicable crop insurance policy;

(2) For NAP covered crops, as provided in part 1437 of this title.

Damaging weather means drought, excessive moisture, hail, freeze, tornado, hurricane, typhoon, excessive wind, excessive heat, weather-related saltwater intrusion, weather-related irrigation water rationing, and earthquake and volcanic eruptions, or any combination. It also includes a related condition that occurs as a result of the damaging weather and exacerbates the condition of the crop, such as crop disease, and insect infestation.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or designee.

Eligible crop means a crop insured by FCIC as defined in part 400 of this title, or included under NAP as defined under part 1437 of this title for which insurance or NAP coverage was obtained timely for the year which CDP benefits are sought.

End use means the purpose for which the harvested crop is used, such as grain, hay, or seed.

Expected production means, for an agricultural unit, the historic yield multiplied by the number of planted or prevented acres of the crop for the unit.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

Final planting date means the latest date, established by the Risk Management Agency (RMA) for insured crops, by which the crop must initially be planted in order to be insured for the full production guarantee or amount of insurance per acre. For NAP covered crops, the final planting date is as provided in part 1437 of this title.

Flood prevention means:

(1) For aquaculture species, placing the aquaculture facility in an area not prone to flood;

(2) In the case of raceways, devices or structures designed for the control of water level; and

(3) With respect to nursery crops, placing containerized stock in a raised area above expected flood level and providing draining facilities, such as drainage ditches or tile, gravel, cinder, or sand base.

Good nursery growing practices means utilizing flood prevention, growing media, fertilization to obtain expected production results, irrigation, insect and disease control, weed, rodent and wildlife control, and over winterization storage facilities.

Ground water means aqueous supply existing in an aquifer subsurface that is brought to the surface and made available for irrigation by mechanical means such as by pumps and irrigation wells.

Growing media means:

(1) For aquaculture species, media that provides nutrients necessary for the production of the aquaculture species and protects the aquaculture species from harmful species or chemicals or

(2) For nursery crops, a well-drained media with a minimum 20 percent air pore space and pH adjustment for the type of plant produced designed to prevent ''root rot.''

Harvested means:

(1) For insured crops, harvested as defined according to the applicable crop insurance policy;

(2) For NAP covered single harvest crops, that a crop has been removed from the field, either by hand or mechanically, or by grazing of livestock;

(3) For NAP covered crops with potential multiple harvests in 1 year or harvested over multiple years, that the producer has, by hand or mechanically, removed at least one mature crop from the field during the crop year;

(4) For mechanically-harvested NAP covered crops, that the crop has been removed from the field and placed in a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazed land will not be considered harvested for the purpose of determining an unharvested or prevented planting payment factor. A crop that is intended for mechanical harvest, but subsequently grazed and not mechanically harvested, will have an unharvested factor applied.

Historic yield means, for a unit, the higher of the county average yield or the participant's approved yield.

(1) An insured participant's yield will be the higher of the county average yield listed or the approved federal crop insurance APH, for the disaster year.

(2) NAP participant's yield will be the higher of the county average or approved NAP APH for the disaster year.

Insurable crop means an agricultural crop (excluding livestock) for which the producer on a farm is eligible to obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Marketing contract means a legally binding written contract between a purchaser and grower for the purpose of marketing a crop.

Market value means:

(1) The price(s) designated in the marketing contract; or

(2) If not designated in a marketing contract, the rate established for quantity payments under § 760.811.

Maximum average loss level means the maximum average level of crop loss to be attributed to a participant without acceptable production records (verifiable or reliable). Loss levels are expressed in either a percent of loss or yield per acre, and are intended to reflect the amount of production that a participant would have been expected to make if not for the eligible disaster conditions in the area or county, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

Multi-use crop means a crop intended for more than one end use during the calendar year such as grass harvested for seed, hay, and grazing.

Multiple cropping means the planting of two or more different crops on the same acreage for harvest within the same crop year.

Multiple planting means the planting for harvest of the same crop in more than one planting period in a crop year on different acreage.

NASS means the National Agricultural Statistics Service.

Net crop insurance indemnity means the indemnity minus the producer paid premium.

NAP covered means a crop for which the participants obtained assistance under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).

Normal mortality means the percentage of dead aquaculture species that would normally occur during the crop year.

Person means person as defined in part 1400 of this title, and all rules with respect to the determination of a person found in that part are applicable to this part. However, the determinations made in this part in accordance with part 1400, subpart B, Person Determinations, of this title will also take into account any affiliation with any entity in which an individual or entity has an interest, regardless of whether or not such entities are considered to be actively engaged in farming.

Planted acreage means land in which seed, plants, or trees have been placed, appropriate for the crop and planting method, at a correct depth, into a seedbed that has been properly prepared for the planting method and production practice normal to the USDA plant hardiness zone as determined by the county committee.

Prevented planting means the inability to plant an eligible crop with proper equipment during the planting period as a result of an eligible cause of loss, as determined by FSA.

Production means quantity of the crop or commodity produced expressed in a specific unit of measure including, but not limited to, bushels or pounds.

Rate means price per unit of the crop or commodity.

Recording county means, for a producer with farming interests in only one county, the FSA county office in which the producer's farm is administratively located or, for a producer with farming interests that are administratively located in more than one county, the FSA county office designated by FSA to control the payments received by the producer.

Related condition means, with respect to a disaster, a condition that causes deterioration of a crop, such as insect infestation, plant disease, or aflatoxin, that is accelerated or exacerbated as a result of damaging weather, as determined in accordance with instructions issued by the Deputy Administrator.

Reliable production records means evidence provided by the participant that is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries that are determined acceptable by the county committee.

Repeat crop means, with respect to production, a commodity that is planted or prevented from being planted in more than one planting period on the same acreage in the same crop year.

RMA means the Risk Management Agency.

Salvage value means the dollar amount or equivalent for the quantity of the commodity that cannot be marketed or sold in any recognized market for the crop.

Secondary use means the harvesting of a crop for a use other than the intended use.

Secondary use value means the value determined by multiplying the quantity of secondary use times the FSA or CCC-established price for that use.

State committee means the FSA State committee.

Surface irrigation water means aqueous supply anticipated for irrigation of agricultural crops absent an eligible disaster condition impacting either the aquifer or watershed. Surface irrigation water may result from feral sources or from irrigation districts.

Tropical crops has the meaning assigned in part 1437 of this title.

Tropical region has the meaning assigned in part 1437 of this title.

Unharvested factor means a percentage established for a crop and applied in a payment formula to reduce the payment for reduced expenses incurred because commercial harvest was not performed. Unharvested factors are generally applicable to all similarly situated participants and are not established in response to individual

participants. Accordingly established unharvested factors are not appealable under parts 11 and 780 of this title.

Unit means, unless otherwise determined by the Deputy Administrator, basic unit as defined in part 457 of this title that, for ornamental nursery production, includes all eligible plant species and sizes.

Unit of measure means:

(1) For all insured crops, the FCIC-established unit of measure;

(2) For all NAP covered crops, the established unit of measure, if available, used for the 2005, 2006, or 2007 NAP price and yield;

(3) For aquaculture species, a standard unit of measure such as gallons, pounds, inches, or pieces, established by the State committee for all aquaculture species or varieties;

(4) For turfgrass sod, a square yard;

(5) For maple sap, a gallon;

(6) For honey, pounds; and

(7) For all other crops, the smallest unit of measure that lends itself to the greatest level of accuracy with minimal use of fractions, as determined by the State committee.

United States means all 50 States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and to the extent the Deputy Administrator determines it to be feasible and appropriate, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the former Trust Territory of the Pacific Islands, which include Palau, Federated States of Micronesia, and the Marshall Islands.

USDA means the United States Department of Agriculture.

USDA Plant Hardiness Zone means 11 regions or planting zones as defined by a 10 degree Fahrenheit difference in the average annual minimum temperature.

Value loss crop has the meaning assigned in part 1437 of this title.

Verifiable production record means:

(1) For quantity losses, evidence that is used to substantiate the amount of production reported and that can be verified by FSA through an independent source; or

(2) For quality losses, evidence that is used to substantiate the amount of production reported and that can be verified by FSA through an independent source including determined quality factors and the specific quantity covered by those factors.

Yield means unit of production, measured in bushels, pounds, or other unit of measure, per area of consideration, usually measured in acres.

§ 760.803 Eligibility.

(a) Participants will be eligible to receive disaster benefits under this part only if they incurred qualifying quantity or quality losses for the 2005, 2006, or 2007 crops, as further specified in this part, as a result of damaging weather or any related condition. Participants may not receive benefits with respect to volunteer stands of crops.

(b) Payments may be made for losses suffered by an eligible participant who, at the time of application, is a deceased individual or is a dissolved entity if a representative, who currently has authority to enter into a contract for the participant, signs the 2005, 2006, or 2007 Crop Disaster Program application. Participants must provide proof of the authority to sign legal documents for the deceased individual or dissolved entity. If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(c) As a condition to receive benefits under this part, the Participant must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of part 12 of this title for the 2005, 2006, or 2007 crop year, as applicable, and must not otherwise be precluded from receiving benefits under parts 12 or 1400 of this title or any law.

§ 760.804 Time and method of application.

(a) The 2005, 2006, 2007 Crop Disaster Program application must be submitted on a completed FSA–840, or such other form designated for such application purpose by FSA, in the FSA county office in the participant's control county office before the close of business on a date that will be announced by the Deputy Administrator.

(b) Once signed by a participant, the application for benefits is considered to contain information and certifications of and pertaining to the participant regardless of who entered the information on the application.

(c) The participant requesting benefits under this program certifies the accuracy and truthfulness of the information provided in the application as well as any documentation filed with or in support of the application. All information is subject to verification by FSA. For example, as specified in § 760.818(f), the participant may be required to provide documentation to substantiate and validate quality standards and marketing contract prices. Refusal to allow FSA or any agency of the Department of Agriculture to verify any information provided will result in the participant's forfeiting eligibility under this program. Furnishing required information is voluntary; however without it, FSA is under no obligation to act on the application or approve benefits. Providing a false certification to the government is punishable by imprisonment, fines, and other penalties.

(d) FSA may require the participant to submit any additional information it deems necessary to implement or determine any eligibility provision of this part. For example, as specified in § 760.818(f), the participant may be required to provide documentation to substantiate and validate quality standards and marketing contract prices.

(e) The application submitted in accordance with paragraph (a) of this section is not considered valid and complete for issuance of payment under this part unless FSA determines all the applicable eligibility provisions have been satisfied and the participant has submitted all of following completed forms:

(1) If Item 16 on FSA–840 is answered ''YES,'' FSA–840M, Crop Disaster Program for Multiple Crop—Same Acreage Certification;

(2) CCC–502, Farm Operating Plan for Payment Eligibility;

(3) CCC–526, Payment Eligibility Average Adjusted Gross Income Certification;

(4) AD–1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation Certification; and

(5) FSA–578, Report of Acreage.

(f) Application approval and payment by FSA does not relieve a participant from having to submit any form required, but not filed, according to paragraph (e) of this section.

§ 760.805 Limitations on payments and other benefits.

(a) A participant may receive benefits for crop losses for only one of the 2005, 2006, or 2007 crop years as specified under this part.

(b) Payments will not be made under this part for grazing losses.

(c) Payments determined to be issued are considered due and payable not later than 60 days after a participant's application is completed with all information necessary for FSA to determine producer eligibility for benefits.

(d) FSA may divide and classify crops based on loss susceptibility, yield, and other factors.

(e) No person, as defined by part 1400 subpart B of this title, may receive more than a total of $80,000 in disaster benefits under this part. In applying the

$80,000 per person payment limitation, regardless of whether 2005, 2006, or 2007 crop year benefits are at issue or sought, the most restrictive ''person'' determination for the participant in the years 2005, 2006, and 2007, will be used to limit benefits.

(f) No participant may receive disaster benefits under this part in an amount that exceeds 95 percent of the value of the expected production for the relevant period as determined by FSA. Accordingly, the sum of the value of the crop not lost, if any; the disaster payment received under this part; and any crop insurance payment or payments received under the NAP for losses to the same crop, cannot exceed 95 percent of what the crop's value would have been if there had been no loss.

(g) An individual or entity whose adjusted gross income is in excess of $2.5 million, as defined by and determined under part 1400 subpart G of this title, is not eligible to receive disaster benefits under this part.

(h) Any participant in a county eligible for either of the following programs must complete a duplicate benefits certification. If the participant received a payment authorized by either of the following, the amount of that payment will be reduced from the calculated 2005–2007 CDP payment:

(1) The Hurricane Indemnity Program (subpart B of this part);

(2) The Hurricane Disaster Programs (subparts D, E, F, and G of part 1416 of this title);

(3) The 2005 Louisiana Sugarcane Hurricane Disaster Assistance Program; or

(4) The 2005 Crop Florida Sugarcane Disaster Program.

§ 760.806 Crop eligibility requirements.

(a) A participant on a farm is eligible for assistance under this section with respect to losses to an insurable commodity or NAP if the participant:

(1) In the case of an insurable commodity, obtained a policy or plan of insurance under the Federal Crop Insurance Act for the crop incurring the losses; or

(2) In the case of a NAP covered crop, filed the required paperwork and paid the administrative fee by the applicable filing deadline, for the noninsurable commodity under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 for the crop incurring the losses.

(b) The reasons a participant either elected not to have coverage or did not have coverage mentioned in paragraphs (a)(1) or (2) of this section are not relevant to the determination of the participant's ineligibility under this section. In addition, such reasons for not having crop insurance coverage have no bearing for consideration under part 718, subpart D of this chapter.

§ 760.807 Miscellaneous provisions.

(a) A person is not eligible to receive disaster assistance under this part if it is determined by FSA that the person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of this part;

(2) Made any fraudulent representation;

(3) Misrepresented any fact affecting a program determination;

(4) Is ineligible under § 1400.5 of this title; or

(5) Does not have entitlement to an ownership share of the crop.

(i) Growers growing eligible crops under contract for crop owners are not eligible unless the grower can be determined to have a share of the crop.

(ii) Any verbal or written contract that precludes the grower from having an ownership share renders the grower ineligible for benefits under this part.

(b) A person ineligible under § 1437.15(c) of this title for any year is likewise ineligible for benefits under this part for that year or years.

(c) A person ineligible under § 400.458 of this title for any year is likewise ineligible for benefits under this part for that year or years.

(d) All persons with a financial interest in the operation receiving benefits under this part are jointly and severally liable for any refund, including related charges, which is determined to be due FSA for any reason.

(e) In the event that any request for assistance or payment under this part resulted from erroneous information or a miscalculation, the assistance or payment will be recalculated and any excess refunded to FSA with interest to be calculated from the date of the disbursement to the producer.

(f) The liability of anyone for any penalty or sanction under or in connection with this part, or for any refund to FSA or related charge is in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

(g) The regulations in parts 11 and 780 of this title apply to determinations under this part.

(h) Any payment to any person will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or its proceeds.

(i) For the purposes of the effect of lien on eligibility for Federal programs (28 U.S.C. 3201(e)), FSA waives the restriction on receipt of funds or benefits under this program but only as to beneficiaries who, as a condition of such waiver, agree to apply the benefits received under this part to reduce the amount of the judgment lien.

(j) Under this program, participants are either eligible or ineligible. Participants in general, do not render performance or need to comply. They either suffered eligible losses or they did not. Accordingly, the provisions of § 718.304 of this chapter do not apply to this part.

§ 760.808 General provisions.

(a) For calculations of loss, the participant's existing unit structure will be used as the basis for the calculation established in accordance with:

(1) For insured crops, part 457 of this title; or

(2) For NAP covered crops, part 1437 of this title.

(b) County average yield for loss calculations will be the average of the 2001 through 2005 official county yields established by FSA, excluding the years with the highest and lowest yields, respectively.

(c) County committees will assign production or reduce the historic yield when the county committee determines:

(1) An acceptable appraisal or record of harvested production does not exist;

(2) The loss is due to an ineligible cause of loss or practices, soil type, climate, or other environmental factors that cause lower yields than those upon which the historic yield is based;

(3) The participant has a contract providing a guaranteed payment for all or a portion of the crop; or

(4) The crop was planted beyond the normal planting period for the crop.

(d) The county committee will establish a maximum average loss level that reflects the amount of production producers would have produced if not for the eligible damaging weather or related conditions in the area or county for the same crop. The maximum average loss level for the county will be expressed as either a percent of loss or yield per acre. The maximum average loss level will apply when:

(1) Unharvested acreage has not been appraised by FSA, or a company reinsured by FCIC; or

(2) Acceptable production records for harvested acres are not available from any source.

(e) Assignment of production or reduction in yield will apply for

practices that result in lower yields than those for which the historic yield is based.

§ 760.809 Eligible damaging conditions.

(a) Except as provided in paragraphs (b) and (c) of this section, to be eligible for benefits under this part the loss of the crop, or reduction in quality, or prevented planting must be due to damaging weather or related conditions as defined in § 760.802.

(b) Benefits are not available under this part for any losses in quantity or quality, or prevented planting due to:

(1) Poor farming practices;

(2) Poor management decisions; or

(3) Drifting herbicides.

(c) With the exception of paragraph (d) of this section, in all cases, the eligible damaging condition must have directly impacted the specific crop or crop acreage during its planting or growing period.

(d) If FSA has determined that there has been an eligible loss of surface irrigation water due to drought and such loss of surface irrigation water impacts eligible crop acreage, FSA may approve assistance to the extent permitted by section 760.814.

§ 760.810 Qualifying 2005, 2006, or 2007 quantity crop losses.

(a) To receive benefits under this part, the county committee must determine that because of eligible damaging weather or related condition specifically impacting the crop or crop acreage, the participant with respect to the 2005, 2006, or 2007 crop:

(1) Was prevented from planting a crop;

(2) Sustained a loss in excess of 35 percent of the expected production of a crop; or

(3) Sustained a loss in excess of 35 percent of the value for value loss crops.

(b) Qualifying losses under this part do not include losses:

(1) For the 2007 crop, those acres planted, or in the case of prevented planting, would have been planted, on or after February 28, 2007;

(2) That are determined by FSA to be the result of poor management decisions, poor farming practices, or drifting herbicides;

(3) That are the result of the failure of the participant to re-seed or replant the same crop in the county where it is customary to re-seed or replant after a loss;

(4) That are not as a result of a damaging weather or a weather related condition specifically impacting the crop or crop acreage;

(5) To crops not intended for harvest in crop year 2005, 2006, or 2007;

(6) Of by-products resulting from processing or harvesting a crop, such as cottonseed, peanut shells, wheat, or oat straw;

(7) To home gardens;

(8) That are a result of water contained or released by any governmental, public, or private dam or reservoir project if an easement exists on the acreage affected for the containment or release of the water; or

(9) If losses could be attributed to conditions occurring outside of the applicable crop year growing season.

(c) Qualifying losses under this part for nursery stock will not include losses:

(1) For the 2007 crop, that nursery inventory acquired on or after February 28, 2007;

(2) Caused by a failure of power supply or brownouts;

(3) Caused by the inability to market nursery stock as a result of lack of compliance with State and local commercial ordinances and laws, quarantine, boycott, or refusal of a buyer to accept production;

(4) Caused by fire unless directly related to an eligible natural disaster;

(5) Affecting crops where weeds and other forms of undergrowth in the vicinity of the nursery stock have not been controlled; or

(6) Caused by the collapse or failure of buildings or structures.

(d) Qualifying losses under this part for honey, where the honey production by colonies or bees was diminished, will not include losses:

(1) For the 2007 crop, for production from those bees acquired on or after February 28, 2007;

(2) Where the inability to extract was due to the unavailability of equipment, the collapse or failure of equipment, or apparatus used in the honey operation;

(3) Resulting from storage of honey after harvest;

(4) To honey production because of bee feeding;

(5) Caused by the application of chemicals;

(6) Caused by theft, fire, or vandalism;

(7) Caused by the movement of bees by the producer or any other person; or

(8) Due to disease or pest infestation of the colonies.

(e) Qualifying losses for other value loss crops, except nursery, will not include losses for the 2007 crop that were acquired on or after February 28, 2007.

(f) Loss calculations will take into account other conditions and adjustments provided for in this part.

§ 760.811 Rates and yields; calculating payments.

(a)(1) Payments made under this part to a participant for a loss of quantity on a unit with respect to yield-based crops are determined by multiplying the average market price times 42 percent, times the loss of production which exceeds 35 percent of the expected production, as determined by FSA, of the unit.

(2) Payments made under this part to a participant for a quantity loss on a unit with respect to value-based crops are determined by multiplying the payment rate established for the crop by FSA times the loss of value that exceeds 35 percent of the expected production value, as determined by FSA, of the unit.

(3) As determined by FSA, additional quality loss payments may be made using a 25 percent quality loss threshold. The quality loss threshold is determined according to § 760.817.

(b) Payment rates for the 2005, 2006, or 2007 year crop losses will be 42 percent of the average market price.

(c) Separate payment rates and yields for the same crop may be established by the State committee as authorized by the Deputy Administrator, when there is supporting data from NASS or other sources approved by FSA that show there is a significant difference in yield or value based on a distinct and separate end use of the crop. Despite potential differences in yield or values, separate rates or yields will not be established for crops with different cultural practices, such as those grown organically or hydroponically.

(d) Production from all end uses of a multi-use crop or all secondary uses for multiple market crops will be calculated separately and summarized together.

(e) Each eligible participant's share of a disaster payment will be based on the participant's ownership entitlement share of the crop or crop proceeds, or, if no crop was produced, the share of the crop the participant would have received if the crop had been produced. If the participant has no ownership share of the crop, the participant is ineligible for assistance under this part.

(f) When calculating a payment for a unit loss:

(1) An unharvested payment factor will be applied to crop acreage planted but not harvested;

(2) A prevented planting factor will be applied to any prevented planted acreage eligible for payment; and

(3) Unharvested payment factors may be adjusted if costs normally associated with growing the crop are not incurred.

§ 760.812 Production losses; participant responsibility.

(a) Where available and determined accurate by FSA, RMA loss records will be used for insured crops.

(b) If RMA loss records are not available, or if the FSA county committee determines the RMA loss records are inaccurate or incomplete, or if the FSA county committee makes inquiry, participants are responsible for:

(1) Retaining or providing, when required, the best verifiable or reliable production records available for the crop;

(2) Summarizing all the production evidence;

(3) Accounting for the total amount of unit production for the crop, whether or not records reflect this production;

(4) Providing the information in a manner that can be easily understood by the county committee; and

(5) Providing supporting documentation if the county committee has reason to question the damaging weather event or question whether all production has been accounted for.

(c) In determining production under this section, the participant must supply verifiable or reliable production records to substantiate production to the county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, production records include: commercial receipts; settlement sheets; warehouse ledger sheets; load summaries; or appraisal information from a loss adjuster acceptable to FSA. If the eligible crop was farm-stored, sold, fed to livestock, or disposed of in means other than commercial channels, production records for these purposes include: truck scale tickets; appraisal information from a loss adjuster acceptable to FSA; contemporaneous diaries; or other documentary evidence, such as contemporaneous measurements.

(d) Participants must provide all records for any production of a crop that is grown with an arrangement, agreement, or contract for guaranteed payment.

§ 760.813 Determination of production.

(a) Production under this part includes all harvested production, unharvested appraised production, and assigned production for the total planted acreage of the crop on the unit.

(b) The harvested production of eligible crop acreage harvested more than once in a crop year includes the total harvested production from all these harvests.

(c) If a crop is appraised and subsequently harvested as the intended use, the actual harvested production must be taken into account to determine benefits. FSA will analyze and determine whether a participant's evidence of actual production represents all that could or would have been harvested.

(d) For all crops eligible for loan deficiency payments or marketing assistance loans with an intended use of grain but harvested as silage, ensilage, cobbage, hay, cracked, rolled, or crimped, production will be adjusted based on a whole grain equivalent as established by FSA.

(e) For crops with an established yield and market price for multiple intended uses, a value will be calculated by FSA with respect to the intended use or uses for disaster purposes based on historical production and acreage evidence provided by the participant and FSA will determine the eligible acres for each use.

(f) For crops sold in a market that is not a recognized market for the crop with no established county average yield and average market price, 42 percent of the salvage value received will be deducted from the disaster payment.

(g) If a participant does not receive compensation based upon the quantity of the commodity delivered to a purchaser, but has an agreement or contract for guaranteed payment for production, the determination of the production will be the greater of the actual production or the guaranteed payment converted to production as determined by FSA.

(h) Production that is commingled between units before it was a matter of record or combination of record and cannot be separated by using records or other means acceptable to FSA will be prorated to each respective unit by FSA. Commingled production may be attributed to the applicable unit, if the participant made the unit production of a commodity a matter of record before commingling and does any of the following, as applicable:

(1) Provides copies of verifiable documents showing that production of the commodity was purchased, acquired, or otherwise obtained from beyond the unit;

(2) Had the production measured in a manner acceptable to the county committee; or

(3) Had the current year's production appraised in a manner acceptable to the county committee.

(i) The county committee will assign production for the unit when the county committee determines that:

(1) The participant has failed to provide adequate and acceptable production records;

(2) The loss to the crop is because of a disaster condition not covered by this part, or circumstances other than natural disaster, and there has not otherwise been an accounting of this ineligible cause of loss;

(3) The participant carries out a practice, such as multiple cropping, that generally results in lower yields than the established historic yields;

(4) The participant has a contract to receive a guaranteed payment for all or a portion of the crop;

(5) A crop was late-planted;

(6) Unharvested acreage was not timely appraised; or

(7) Other appropriate causes exist for such assignment as determined by the Deputy Administrator.

(j) For peanuts, the actual production is all peanuts harvested for nuts, regardless of their disposition or use, as adjusted for low quality.

(k) For tobacco, the actual production is the sum of the tobacco: marketed or available to be marketed; destroyed after harvest; and produced but unharvested, as determined by an appraisal.

§ 760.814 Calculation of acreage for crop losses other than prevented planted.

(a) Payment acreage of a crop is limited to the lesser of insured acreage or NAP covered acreage of the crop, as applicable, or actual acreage of the crop planted for harvest.

(b) In cases where there is a repeat crop or a multiple planted crop in more than one planting period, or if there is multiple cropped acreage meeting criteria established in paragraph (c) or (d) of this section, each of these crops may be considered separate crops if the county committee determines that all of the following conditions are met:

(1) Were planted with the intent to harvest;

(2) Were planted within the normal planting period for that crop;

(3) Meet all other eligibility provisions of this part including good farming practices; and

(4) Could reach maturity if each planting was harvested or would have been harvested.

(c) In cases where there is multiple-cropped acreage, each crop may be eligible for disaster assistance separately if both of the following conditions are met:

(1) The specific crops are approved by the State committee as eligible multiple-cropping practices in accordance with procedures approved by the Deputy Administrator and separately meet all requirements, including insurance or NAP requirements ; and

(2) The farm containing the multiple-cropped acreage has a history of successful multiple cropping more than one crop on the same acreage in the same crop year, in the year previous to the disaster, or at least 2 of the 4 crop

years immediately preceding the disaster crop year based on timely filed crop acreage reports.

(d) A participant with multiple-cropped acreage not meeting the criteria in paragraph (c) of this section may be eligible for disaster assistance on more than one crop if the participant has verifiable records establishing a history of carrying out a successful multiple-cropping practice on the specific crops for which assistance is requested. All required records acceptable to FSA as determined by the Deputy Administrator must be provided before payments are issued.

(e) A participant with multiple-cropped acreage not meeting the criteria in paragraphs (c) or (d) of this section must select the crop for which assistance will be requested. If more than one participant has an interest in the multiple cropped acreage, all participants must agree to the crop designated for payment by the end of the application period or no payment will be approved for any crop on the multiple-cropped acreage.

(f) Benefits under this part apply to irrigated crops where, in cases determined by the Deputy Administrator, acreage was affected by a lack of surface irrigation water due to drought or contamination of ground water or surface irrigation water due to saltwater intrusion. In no case is a loss of ground water, for any reason, an eligible cause of loss.

§ 760.815 Calculation of prevented planted acreage.

(a) When determining losses under this part, prevented planted acreage will be considered separately from planted acreage of the same crop.

(b) For insured crops, or NAP covered crops, as applicable, disaster payments under this part for prevented planted acreage will not be made unless RMA or FSA, as applicable, documentation indicates that the eligible participant received a prevented planting payment under either NAP or the RMA-administered program.

(c) The participant must prove, to the satisfaction of the county committee, an intent to plant the crop and that such crop could not be planted because of an eligible disaster. The county committee must be able to determine the participant was prevented from planting the crop by an eligible disaster that:

(1) Prevented other producers from planting on acreage with similar characteristics in the surrounding area;

(2) Occurred after the previous planting period for the crop; and

(3) Unless otherwise approved by the Deputy Administrator, began no earlier than the planting season for that crop.

(d) Prevented planted disaster benefits under this part do not apply to:

(1) Acreage not insured or NAP covered;

(2) Any acreage on which a crop other than a cover crop was harvested, hayed, or grazed during the crop year;

(3) Any acreage for which a cash lease payment is received for the use of the acreage the same crop year, unless the county committee determines the lease was for haying and grazing rights only and was not a lease for use of the land;

(4) Acreage for which the participant or any other person received a prevented planted payment for any crop for the same acreage, excluding share arrangements;

(5) Acreage for which the participant cannot provide verifiable proof to the county committee that inputs such as seed, chemicals, and fertilizer were available to plant and produce a crop with the expectation of producing at least a normal yield; and

(6) Any other acreage for which, for whatever reason, there is cause to question whether the crop could have been planted for a successful and timely harvest, or for which prevented planting credit is not allowed under the provisions of this part.

(e) Prevented planting payments are not provided on acreage that had either a previous or subsequent crop planted in the same crop year on the acreage, unless the county committee determines that all of the following conditions are met:

(1) There is an established practice of planting two or more crops for harvest on the same acreage in the same crop year;

(2) Both crops could have reached maturity if each planting was harvested or would have been harvested;

(3) Both the initial and subsequent planted crops were planted or prevented planting within the normal planting period for that crop;

(4) Both the initial and subsequent planted crops meet all other eligibility provisions of this part including good farming practices; and

(5) The specific crops meet the eligibility criteria for a separate crop designation as a repeat or approved multiple cropping practice set out in § 760.814.

(f)(1) Disaster benefits under this part do not apply to crops where the prevented planted acreage was affected by a disaster that was caused by drought unless on the final planting date or the late planting period for non-irrigated acreage, the area that was prevented from being planted had insufficient soil moisture for germination of seed and progress toward crop maturity because of a prolonged period of dry weather;

(2) Verifiable information collected by sources whose business or purpose is to record weather conditions, including, but not limited to, local weather reporting stations of the U.S. National Weather Service.

(g) Prevented planting benefits under this part apply to irrigated crops where adequate irrigation facilities were in place before the eligible disaster and the acreage was prevented from being planted due to a lack of water resulting from drought conditions or contamination by saltwater intrusion of an irrigation supply resulting from drought conditions.

(h) For NAP covered crops, prevented planting provisions apply according to part 718 of this chapter.

(i) Late-filed crop acreage reports for prevented planted acreage in previous years are not acceptable for CDP purposes.

§ 760.816 Value loss crops.

(a) Notwithstanding any other provisions of this part, this section applies to value loss crops and tropical crops. Unless otherwise specified, all the eligibility provisions of part 1437 of this title apply to value loss crops and tropical crops under this part.

(b) For value loss crops, benefits under this part are calculated based on the loss of value at the time of the damaging weather or related condition, as determined by FSA.

(c) For tropical crops:

(1) CDP benefits for 2005 are calculated according to general provisions of part 1437, but not subpart F, of this title.

(2) CDP benefits for 2006 and 2007 are calculated according to part 1437, subpart F of this title.

§ 760.817 Quality losses for 2005, 2006, and 2007 crops.

(a) Subject to other provisions of this part, assistance will be made available to participants determined eligible under this section for crop quality losses of 25 percent or greater of the value that all affected production of the crop would have had if the crop had not suffered a quality loss.

(b) The amount of payment for a quality loss will be equal to 65 percent of the quantity of the crop affected by the quality loss, not to exceed expected production based on harvested acres, multiplied by 42 percent of the per unit average market value based on percentage of quality loss for the crop as determined by the Deputy Administrator.

(c) This section applies to all crops eligible for 2005, 2006, and 2007 crop disaster assistance under this part, with the exceptions of value loss crops, honey, and maple sap, and applies to crop production that has a reduced economic value due to the reduction in quality.

(d) Participants may not be compensated under this section to the extent that such participants have received assistance under other provisions of this part, attributable in whole or in part to diminished quality.

§ 760.818 Marketing contracts.

(a) A marketing contract must meet all of the conditions outlined in paragraphs (b), (c), and (d) of this section.

(b) A marketing contract, at a minimum, must meet all of the following conditions:

(1) Be a legal contract in the State where executed;

(2) Specify the commodity under contract;

(3) Specify crop year;

(4) Be signed by both the participant, or legal representative, and the purchaser of the specified commodity;

(5) Include a commitment to deliver the contracted quantity;

(6) Include a commitment to purchase the contracted quantity that meets specified minimum quality standards and other criteria as specified;

(7) Define a determinable quantity by containing either a:

(i) Specified production quantity or

(ii) A specified acreage for which production quantity can be calculated;

(8) Define a determinable price by containing either a:

(i) Specified price or

(ii) Method to determine such a price;

(9) Contain a relationship between the price and the quality using either:

(i) Specified quality standards or

(ii) A method to determine such quality standards from published third party data; and

(10) Have been executed within 10 days after:

(i) End of insurance period for insured crops or

(ii) Normal harvest date for NAP covered crops as determined by FSA.

(c) The purchaser of the commodity specified in the marketing contract must meet at least one of the following:

(1) Be a licensed commodity warehouseman;

(2) Be a business enterprise regularly engaged in the processing of a commodity, that possesses all licenses and permits for marketing the commodity required by the State in which it operates, and that possesses or has contracted for facilities with enough equipment to accept and process the commodity within a reasonable amount of time after harvest; or

(3) Is able to physically receive the harvested production.

(d) In order for the commodity specified in the marketing contract to be considered sold pursuant to the marketing contract, the commodity must have been produced by the participant in the crop year specified in the contract, and at least one of the following conditions must be met:

(1) Commodity was sold under the terms of the contract or

(2) Participant attempted to deliver the commodity to the purchaser, but the commodity was rejected due to quality factors as specified in the contract.

(e) The amount of payment for affected production, as determined in § 760.817(b), sold pursuant to one or more marketing contracts will take into consideration the marketing contract price as determined by FSA.

(f) County committees have the authority to require a participant to provide necessary documentation, which may include, but is not limited to, previous marketing contracts fulfilled, to substantiate and validate quality standards in paragraph (b)(9) of this section and marketing contract price received for the commodity for which crop quality loss assistance is requested. In cases where the county committee has reason to believe the participant lacks the capacity or history to fulfill the quality provisions of the marketing contract the county committee will require such documentation.

§ 760.819 Misrepresentation, scheme, or device.

(a) A person is ineligible to receive assistance under this part if it is determined that such person has:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation under this program;

(3) Misrepresented any fact affecting a program or person determination; or

(4) Has violated or been determined ineligible under § 1400.5 of this title.

§ 760.820 Offsets, assignments, and debt settlement.

(a) Except as provided in paragraph (b) of this section, any payment to any person will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this title apply to any payments made under this part.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments found at part 1404 of this title.

(c) A debt or claim may be settled according to part 792 of this chapter.

§ 760.821 Compliance with highly erodible land and wetland conservation.

(a) The highly erodible land and wetland conservation provisions of part 12 of this title apply to the receipt of disaster assistance for 2005, 2006, and 2007 crop losses made available under this authority.

(b) Eligible participants must be in compliance with the highly erodible land and wetland conservation compliance provisions for the year for which financial assistance is requested.

Subpart J—2005–2007 Livestock Indemnity Program

§ 760.900 Administration.

(a) The regulations in this subpart specify the terms and conditions applicable to the 2005–2007 Livestock Indemnity Program (2005–2007 LIP), which will be administered under the general supervision and direction of the Administrator, FSA.

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State FSA committee will take any action required by the regulations of this subpart that the county FSA committee has not taken. The State FSA committee will also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action that is not in accordance with this subpart.

(d) No delegation to a State or county FSA committee will preclude the Deputy Administrator for Farm Programs from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

§ 760.901 Applicability.

(a) This subpart establishes the terms and conditions under which the 2005–2007 LIP will be administered under Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act,

2007 (Pub. L. 110–28) for eligible counties as specified in § 760.902(a).

(b) Eligible livestock owners and contract growers will be compensated in accordance with § 760.909 for eligible livestock deaths that occurred in eligible counties as a direct result of an eligible disaster event. Drought is not an eligible disaster event except when anthrax, as a related condition that occurs as a result of drought, results in the death of eligible livestock.

§ 760.902 Eligible counties and disaster periods.

Counties are eligible for agricultural assistance under the 2005–2007 LIP if they received a timely Presidential designation, a timely Secretarial declaration, or a qualifying Administrator's Physical Loss Notice (APLN) determination in a county otherwise the subject of a timely Presidential declaration, or are counties contiguous to such counties. Presidential designations and Secretarial declarations will be considered timely only if made after January 1, 2005, and before February 28, 2007. Eligible counties, disaster events, and disaster periods are listed at *http://disaster.fsa.usda.gov*.

§ 760.903 Definitions.

The following definitions apply to this subpart. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

Adult beef bull means a male beef bovine animal that was at least 2 years old and used for breeding purposes before it died.

Adult beef cow means a female beef bovine animal that had delivered one or more offspring before dying. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant at the time it died.

Adult buffalo and beefalo bull means a male animal of those breeds that was at least 2 years old and used for breeding purposes before it died.

Adult buffalo and beefalo cow means a female animal of those breeds that had delivered one or more offspring before dying. A first-time bred buffalo or beefalo heifer is also considered an adult buffalo or beefalo cow if it was pregnant at the time it died.

Adult dairy bull means a male dairy breed bovine animal at least 2 years old used primarily for breeding dairy cows before it died.

Adult dairy cow means a female bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring before dying. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant at the time it died.

Agricultural operation means a farming operation.

Application means the ''2005–2007 Livestock Indemnity Program'' form.

Application period means the date established by the Deputy Administrator for Farm Programs for participants to apply for program benefits.

Buck means a male goat.

Catfish means catfish grown as food for human consumption by a commercial operator on private property in water in a controlled environment.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer to apply for program benefits.

Contract means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

Controlled environment means an environment in which everything that can practicably be controlled by the participant with structures, facilities, and growing media (including, but not limited to, water and nutrients) and was in fact controlled by the participant at the time of the disaster.

Crawfish means crawfish grown as food for human consumption by a commercial operator on private property in water in a controlled environment.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or the designee.

Doe means a female goat.

Equine animal means a domesticated horse, mule, or donkey.

Ewe means a female sheep.

Farming operation means a business enterprise engaged in producing agricultural products.

Goat means a domesticated, ruminant mammal of the genus *Capra,* including Angora goats. Goats are further defined by sex (bucks and does) and age (kids).

Kid means a goat less than 1 year old.

Lamb means a sheep less than 1 year old.

Livestock owner means one having legal ownership of the livestock for which benefits are being requested on the day such livestock died due to an eligible disaster.

Non-adult beef cattle means a bovine that does not meet the definition of adult beef cow or bull. Non-adult beef cattle are further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

Non-adult buffalo or beefalo means an animal of those breeds that does not meet the definition of adult buffalo/beefalo cow or bull. Non-adult buffalo or beefalo are further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time of death.

Non-adult dairy cattle means a bovine livestock, of a breed used for the purpose of providing milk for human consumption, that do not meet the definition of adult dairy cow or bull. Non-adult dairy cattle are further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

Poultry means domesticated chickens, turkeys, ducks, and geese. Poultry are further delineated by sex, age, and purpose of production as determined by FSA.

Ram means a male sheep.

Sheep means a domesticated, ruminant mammal of the genus *Ovis*. Sheep are further defined by sex (rams and ewes) and age (lambs).

Swine means a domesticated omnivorous pig, hog, and boar. Swine are further delineated by sex and weight as determined by FSA.

§ 760.904 Limitations on payments and other benefits.

(a) A participant may receive benefits for livestock losses for only one of the 2005, 2006, or 2007 calendar years as specified under this part.

(b) A ''person'' as determined under part 1400 of this title may receive no more than $80,000 under this subpart. In applying the $80,000 per person payment limitation, regardless of whether 2005, 2006, or 2007 calendar year benefits are at issue or sought, the most restrictive ''person'' determination for the participant in the years 2005, 2006, and 2007, will be used to limit benefits.

(c) The provisions of part 1400, subpart G, of this title relating to limits to payments for individuals or entities with certain levels of adjusted gross income apply to this program.

(d) As a condition to receive benefits under this subpart, a participant must have been in compliance with the provisions of parts 12 and 718 of this title and must not otherwise be precluded from receiving benefits under any law.

(e) An individual or entity determined to be a foreign person under part 1400 of this title is not eligible to receive benefits under this subpart.

§ 760.905 Eligible owners and contract growers.

(a) To be considered eligible, a livestock owner must have had legal ownership of the eligible livestock, as provided in § 760.906(a), on the day the livestock died.

(b) To be considered eligible, a contract grower on the day the livestock died must have had:

(1) A written agreement with the owner of eligible livestock setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock; and

(2) Control of the eligible livestock, as provided in § 760.906(b), on the day the livestock died.

§ 760.906 Eligible livestock.

(a) To be considered eligible livestock for livestock owners, livestock must be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, catfish, crawfish, equine, sheep, goats, swine, poultry, deer, or reindeer and meet all the conditions in paragraph (c) of this section.

(b) To be considered eligible livestock for contract growers, livestock must be poultry or swine as defined in § 760.903 and meet all the conditions in paragraph (c) of this section.

(c) To be considered eligible, livestock must meet all of the following conditions:

(1) Died in an eligible county as a direct result of an eligible disaster event;

(i) After January 1, 2005, but before February 28, 2007;

(ii) No later than 60 calendar days from the ending date of the applicable disaster period, but before February 28, 2007; and

(iii) In the calendar year for which benefits are being requested.

(2) The disaster event that caused the loss must be the same event for which a natural disaster was declared or designated.

(3) Been maintained for commercial use as part of a farming operation on the day they died; and

(4) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, roping, pets, or for show.

(d) In those counties in § 760.902, the following types of animals owned by a livestock owner are eligible livestock:

(1) Adult beef bulls;
(2) Adult beef cows;
(3) Adult buffalo or beefalo bulls;
(4) Adult buffalo or beefalo cows;
(5) Adult dairy bulls;
(6) Adult dairy cows;
(7) Catfish;
(8) Chickens, broilers, pullets;
(9) Chickens, chicks;
(10) Chickens, layers, roasters;
(11) Crawfish;
(12) Deer;
(13) Ducks;
(14) Ducks, ducklings;
(15) Equine;
(16) Geese, goose;
(17) Geese, gosling;
(18) Goats, bucks;
(19) Goats, does;
(20) Goats, kids;
(21) Non-adult beef cattle;
(22) Non-adult buffalo/beefalo;
(23) Non-adult dairy cattle;
(24) Reindeer
(25) Sheep, ewes;
(26) Sheep, lambs;
(27) Sheep, rams;
(28) Swine, feeder pigs under 50 pounds;
(29) Swine, sows, boars, barrows, gilts 50 to 150 pounds;
(30) Swine, sows, boars, barrows, gilts over 150 pounds;
(31) Turkeys, poults; and
(32) Turkeys, toms, fryers, and roasters.

(e) In those counties in § 760.902, the following types of animals are eligible livestock for contract growers:

(1) Chickens, broilers, pullets;
(2) Chickens, layers, roasters;
(3) Geese, goose;
(4) Swine, boars, sows;
(5) Swine, feeder pigs;
(6) Swine, lightweight barrows, gilts;
(7) Swine, sows, boars, barrows, gilts; and
(8) Turkeys, toms, fryers, and roasters.

§ 760.907 Application process.

(a) To apply for 2005–2007 LIP, submit a completed application to the administrative county FSA office that maintains the farm records for your agricultural operation, a copy of your grower contract, if you are a contract grower, and other supporting documents required for determining your eligibility as an applicant. Supporting documents must show:

(1) Evidence of loss,

(2) Current physical location of livestock in inventory, and

(3) Physical location of claimed livestock at the time of death.

(b) The application must be filed during the application period announced by the Deputy Administrator.

(c) A minor child is eligible to apply for program benefits if all eligibility requirements are met and one of the following conditions exists:

(1) The right of majority has been conferred upon the minor by court proceedings or statute;

(2) A guardian has been appointed to manage the minor's property, and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

(d) The participant must provide adequate proof that the death of the eligible livestock occurred in an eligible county as a direct result of an eligible disaster event during the applicable disaster period. The quantity and kind of livestock that died as a direct result of the eligible disaster event may be documented by: purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records; Internal Revenue Service records; property tax records; private insurance documents; and other similar verifiable documents as determined by FSA.

(e) Certification of livestock deaths by third parties may be accepted only if both the following conditions are met:

(1) The livestock owner or livestock contract grower, as applicable, certifies in writing:

(i) That there is no other documentation of death available;

(ii) The number of livestock, by category determined by FSA, were in inventory at the time the applicable disaster event occurred; and

(iii) Other details required for FSA to determine the certification acceptable; and

(2) The third party provides their telephone number, address, and a written statement containing:

(i) Specific details about their knowledge of the livestock deaths;

(ii) Their affiliation with the livestock owner;

(iii) The accuracy of the deaths claimed by the livestock owner; and

(iv) Other details required by FSA to determine the certification acceptable.

(f) Data furnished by the participant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

§ 760.908 Deceased individuals or dissolved entities.

(a) Payments may be made for eligible losses suffered by an eligible participant who is now a deceased individual or is a dissolved entity if a representative, who currently has authority to enter

into a contract, on behalf of the participant, signs the application for payment.

(b) Legal documents showing proof of authority to sign for the deceased individual or dissolved entity must be provided.

(c) If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

§ 760.909 Payment calculation.

(a) Under this subpart separate payment rates are established for eligible livestock owners and eligible livestock contract growers in accordance with paragraphs (b) and (c) of this section. Payments for the 2005–2007 LIP are calculated by multiplying the national payment rate for each livestock category, as determined in paragraphs (b) and (c) of this section, by the number of eligible livestock in each category, as provided in § 760.906. Adjustments will be applied in accordance with paragraphs (d) and (e) of this section.

(b) The 2005–2007 LIP national payment rate for eligible livestock owners is based on 26 percent of the average fair market value of the livestock.

(c) The 2005–2007 LIP national payment rate for eligible livestock contract growers is based on 26 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The 2005 payment calculated under 2005–2007 LIP for eligible livestock owners will be reduced by the amount the participant received under:

(1) The Livestock Indemnity Program (subpart E of this part);

(2) The Aquaculture Grant Program (subpart G of this part); and

(3) The Livestock Indemnity Program II (part 1416, subpart C of this title).

(e) The 2005 payment calculated under 2005–2007 LIP for eligible livestock contract growers will be reduced by the amount the participant received:

(1) Under the Livestock Indemnity Program (subpart E of this part);

(2) For the loss of income from the dead livestock from the party who contracted with the producer to grow the livestock; and

(3) Under the Livestock Indemnity Program II (part 1416, subpart C of this title).

§ 760.910 Appeals.

The appeal regulations set forth at parts 11 and 780 of this title apply to determinations made pursuant to this subpart.

§ 760.911 Offsets, assignments, and debt settlement.

(a) Any payment to any participant will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 792 of this chapter apply to payments made under this subpart.

(b) Any participant entitled to any payment may assign any payment in accordance with regulations governing the assignment of payments found at part 1404 of this title.

§ 760.912 Records and inspections.

Participants receiving payments under this subpart or any other person who furnishes information for the purposes of enabling such participant to receive a payment under this subpart must maintain any books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. Participants receiving payments or any other person who furnishes such information to FSA must allow authorized representatives of USDA and the General Accountability Office, during regular business hours, to inspect, examine, and make copies of such books or records, and to enter upon, inspect and verify all applicable livestock and acreage in which the participant has an interest for the purpose of confirming the accuracy of information provided by or for the participant.

§ 760.913 Refunds; joint and several liability.

In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this subpart, and if any refund of a payment to FSA will otherwise become due in connection with this subpart, all payments made in regard to such matter must be refunded to FSA together with interest and late-payment charges as provided for in part 792 of this chapter.

Signed in Washington, DC, December 18, 2007.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. 07–6153 Filed 12–19–07; 9:03 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

RIN 0560–AH72

2005–2007 Livestock Compensation and Catfish Grant Programs

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the Farm Service Agency (FSA) regulations for the 2007 Emergency Agricultural Assistance. The rule implements legislation that provides funds for agricultural disaster aid for eligible producers, specifically the continuation of the Livestock Compensation Program (LCP) and the Catfish Grant Program (CGP). The programs will provide financial assistance to eligible livestock and catfish producers in counties designated as a major disaster or emergency by the President or those declared a natural disaster by the Secretary of Agriculture. Counties designated disasters by the President may be eligible even though agricultural loss was not covered by the designation if there has been an FSA Administrator's Physical Loss Notice covering such losses. The natural disaster declarations by the Secretary or designations by the President must have been issued between January 1, 2005, and February 28, 2007; that is after January 1, 2005, and before February 28, 2007. Counties contiguous to such counties will also be eligible. These programs are designed to provide financial assistance to producers who suffered feed losses due to natural disasters in the eligible counties.

DATES: This rule is effective December 19, 2007.

FOR FURTHER INFORMATION CONTACT: Salomon Ramirez, Director, Production, Emergencies, and Compliance Division; Farm Service Agency; United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; telephone (202) 720–7641; e-mail *salomon.ramirez@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

This final rule implements certain agricultural assistance provisions of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110–28) (the 2007 Emergency Supplemental). The 2007 Emergency Supplemental authorizes the

Secretary of Agriculture (Secretary) to assist producers of livestock through programs administered by the Farm Service Agency (FSA).

All counties, owners, lessees, livestock, and losses, must meet the eligibility criteria provided in this rule. False certifications carry severe ramifications. FSA will validate applications with random spot-checks.

A payment limitation of $80,000 per program will be applicable to payments made under the 2007 Emergency Supplemental. The amount of any payment, for which a participant is eligible under either of these programs, will be reduced by any amount received by the participant for the same or any similar loss. Other restrictions apply including, but not limited to, those pertaining to highly erodible land and wetland conservation provisions. Livestock losses that are not weather-related are not covered.

The average adjusted gross income (AGI) limitation, as administered under 7 CFR part 1400, subpart G, will also apply. AGI eligibility will be based on the average of the adjusted gross incomes for the three tax years immediately preceding the tax year for which disaster assistance is being requested, with the exclusion of any year(s) the individual or entity did not have income or had an AGI of zero.

Section 9002(a) of the 2007 Emergency Supplemental appropriates to the Secretary such sums as necessary to remain available until expended, to provide compensation in eligible ''disaster counties'' to livestock producers, including catfish producers, who, between January 1, 2005, and February 28, 2007, that is after January 1, 2005 and before February 28, 2007, suffered feed losses or incurred additional feed costs directly resulting from natural disasters. This would include losses due to blizzards that started in 2006 and continued into January, 2007. This also means livestock producers can elect to receive compensation for losses in the calendar year 2007 grazing season that are attributable to wildfires occurring during the applicable period, as determined by the Secretary so long as the loss occurred before February 28, 2007.

Accordingly, to be eligible for assistance under the 2005–2007 Livestock Compensation Program (LCP) or 2005–2007 Catfish Grant Program (CGP), the participant must have suffered certain feed losses between January 1, 2005, and February 28, 2007, that is after January 1, 2005 and before February 28, 2007. By statute, the livestock operation must be physically located in a county, or contiguous to that county, having a major disaster or emergency designated by the President or a natural disaster declared by the Secretary, where, in both cases, the declaration was made after January 1, 2005, but before February 28, 2007. For timely Presidential declarations that do not cover agricultural loss, the subject counties may still be eligible if the county was the subject because of the same disaster of an Administrator's Physical Loss Notification (APLN). Livestock producers, including catfish producers, incurring a loss in more than one of the 2005, 2006, and 2007 calendar years, must select only one year for which to receive benefits.

The 2007 Emergency Supplemental directed the Secretary of Agriculture to continue the livestock compensation program established under subpart B of part 1416 of title 7, Code of Federal Regulations as announced by the Secretary on February 12, 2007 (72 FR 6443). The regulations in part 1416 are operated under the Commodity Credit Corporation. However, no appropriations were specifically made to CCC for LCP or CGP; rather, appropriations were made to the Secretary. Therefore, the programs will be continued in a similar manner to the existing programs, but are being established as FSA programs in 7 CFR part 760.

To the greatest extent possible, however, the related regulations in 7 CFR part 1416, subparts A, B, and I have been duplicated in 7 CFR part 760 as new subparts K, L, and M. Subpart K specifies general provisions for the 2005–2007 LCP and CGP. These general provisions cover a range of requirements and information common to both programs, including applicability; eligible counties, disaster events, and disaster periods; definitions, and limitations on payments and benefits. Subpart L provides the provisions for the 2005–2007 LCP. Subpart M provides the provisions for the 2005–2007 CGP. Subparts L and M each provide details about the administration of the program, application for payment, eligible producers, and payment calculation. In addition, Subpart L also provides details about applicability; definitions; eligible livestock; application process, appeals, offsets, assignments, and debt settlement; recordkeeping and inspections; and refund liability.

The 2007 Emergency Supplemental also contains provisions relating to the manner in which loss elections would be made, how sales of livestock during the disaster would be handled, and other eligibility matters. The regulations are consistent with those specifications. With respect to sales made specifically due to the disaster, the rules base payment caps on the number of animals held at the beginning date of the disaster period, thus avoiding a penalty for sales as a result of the disaster, except when livestock are normally sold before the beginning date of the grazing period.

LCP will provide assistance for eligible producers (owners and cash lessees) of eligible livestock located in a total of 2,944 counties. These 2,944 counties refer to the total number of declared, designated, and FSA Administrator Physical Loss Notice counties, regardless of the number of times for which they received disaster declarations between January 1, 2005, and February 28, 2007, as well as counties contiguous to these counties. A list of eligible counties is located on the FSA website. For catfish payments, a cap is set that limits payments to 61 percent of 1/6th of the cost of a normal ton of feed. Six months is the normal feeding period for catfish. This cap effectively limits the potential payment for a year's worth of feed purchases, even if for 2007 they are all purchased in the eligible part of 2007, to 30 days worth of payments.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553), as specified in section 9005 of the 2007 Emergency Supplemental, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of Section 553 of title 5, United States Code or of the Statement of Policy of the Secretary effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking.

Executive Order 12866

This rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget. A Cost-Benefit Analysis (CBA) was completed and is available from the contact person listed above.

Summary of Economic Impacts

The natural disasters covered by the 2005–2007 LCP include various hurricanes, droughts, wildfires, and blizzards that occurred after January 1, 2005, but before February 28, 2007. The purpose of the 2005–2007 LCP is to provide compensation to eligible livestock producers for the value of actual feed lost or certain feed costs incurred as the result of an eligible disaster. To be eligible for payments,

producers self-certify to the livestock owned or cash leased on the beginning date of the applicable disaster period and to their feed losses.

Expected feed losses were calculated for the states that were known to have incurred feed losses or additional feed costs, due to droughts, hurricanes, blizzards, or other disasters, after January 1, 2005, but before February 28, 2007. Potentially, all states could have incurred grazing or forage losses or higher forage costs from drought that occurred during that time interval because nearly all rural counties in the United States were designated primary disaster counties because of drought sometime during that period, or were counties located contiguously to such primary counties. Covered losses include eligible, forage losses that may have been incurred from blizzards that occurred in December 2006 and January 2007 in southeastern Colorado, western Kansas, one county in Oklahoma, and two counties in Northeastern New Mexico, and from wildfires in early 2007 in the southeastern United States.

Payments under the 2005–2007 LCP should provide benefits to those immediate communities where feed loss or increased feed cost occurred as a result of the disasters such as drought, hurricanes, ice storms, blizzards, and tornados after January 1, 2005, but before February 28, 2007. These payments could have noticeable regional effects, particularly in counties severely affected by declared disasters, but overall, payments are not expected to have a measurable economic impact nationally.

The 2005–2007 LCP authorizes assistance for eligible owners and cash lessees of eligible livestock located in a total of 2,944 counties timely declared or designated as disaster counties by the Secretary of Agriculture, the President, including those Presidentially declared counties with a qualifying FSA Administrator's Physical Loss Notification, plus counties contiguous to those counties so declared or designated counties . These counties are located in all fifty states and Puerto Rico. These 2,944 counties refer to the total number of individual counties regardless of the number of years or disasters in which they qualify. Qualifying declarations of designations must, to qualify, have been made after January 1, 2005, and before February 28, 2007.

The value of expected claims under the 2005–2007 LCP is estimated at $684 million. To the extent program payments are ultimately spent on forage or grain or affect the total supply of available livestock, the impacts of the 2005–2007 LCP on any sector of the economy, including livestock feed prices, livestock prices, and consumer prices, are not expected to be measurable. The effect on aggregate social welfare of any slight redistribution of wealth and income resulting from the 2005–2007 LCP payment claims is expected to be slight. However, for those producers who have suffered losses due to any of several disasters that occurred after January 1, 2005, but before February 28, 2007, and qualify for payments under the 2005–2007 LCP, their farm income losses will be somewhat offset or reduced by these payments, and they and their local communities will benefit accordingly.

The purpose of the CGP is to provide grants to states for the purpose of compensating catfish producers for eligible disaster-related feed losses that occurred after January 1, 2005, but before February 28, 2007. The states then are to distribute the grant monies to catfish producers who suffered eligible feed losses. Most of the losses for which compensation is likely to be made are for producers located in Louisiana, Mississippi, and Texas, where about 59 percent of the nation's catfish are produced, and which bore the brunt of hurricane Katrina, which is believed responsible for most of the feed losses by catfish in these States. Producers must prove their feed losses.

FSA estimates the expected value of the block grants necessary to compensate expected feed losses to be $3.7 million. The estimated $3.7 million is calculated from maximum possible feed losses of $16.5 million for all states. FSA believes eligible feed losses in Louisiana, Mississippi, and Texas could account for 30 percent of maximum possible losses in those states and eligible feed losses could approximate 10 percent of maximum possible losses in the other 7 major catfish producing states.

Expected grant assistance of $3.7 million should help catfish producers to restore their purchasing power from feed losses incurred by disasters (mainly hurricanes) that occurred after January 1, 2005, but before February 28, 2007.

Regulatory Flexibility Act

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

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). The following final rule was determined to be Categorically Excluded because it is considered a ministerial action solely involving the transfer of funds to offset disaster related losses with no site-specific or ground-disturbing actions occurring as a requirement or an immediate result of program implementation. Therefore, no environmental assessment or environmental impact statement will be completed for this final rule.

Executive Order 12372

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

Executive Order 12612

This rule does not have Federalism implications that warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988

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

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal government or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

These regulations are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 9005(b)(3) of the 2007 Emergency Supplemental, which provides that these regulations, which are necessary to implement title IX of the 2007 Emergency Supplemental, be

promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been determined to be Major under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121) (SBREFA). SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. Consistent with section 9005(c) of the 2007 Emergency Supplemental, FSA finds that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay assistance to the many people affected by the disasters addressed by this rule. Therefore, this rule is effective immediately.

List of Subjects in 7 CFR Part 760

Agriculture, Disaster assistance, Fish, Livestock.

■ For the reasons explained above, 7 CFR part 760 is amended as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

■ 1. Revise the authority citation for 7 CFR part 760 to read as follows:

Authority: 7 U.S.C. 612c; Pub. L. 106–387, 114 Stat. 1549; Pub. L. 107–76, 115 Stat. 704; Title III, Pub. L. 109–234, 120 Stat. 474; 16 U.S.C. 3801, note; and Title IX, Pub.L. 110–28.

■ 2. Amend 7 CFR part 760 by adding new subparts K, L, and M to read as follows:

Subpart K—General Provisions for 2005–2007 Livestock Compensation and Catfish Grant Programs

Sec.

760.1000 Applicability.
760.1001 Eligible counties, disaster events, and disaster periods.
760.1002 Definitions.
760.1003 Limitations on payments and other benefits.

Subpart L—2005–2007 Livestock Compensation Program

760.1100 Applicability.
760.1101 Administration.
760.1102 Definitions.
760.1103 Eligible livestock and producers.
760.1104 Application for payment.
760.1105 Application process.
760.1106 Payment calculation.
760.1107 Appeals.
760.1108 Offsets, assignments, and debt settlement.
760.1109 Recordkeeping and inspections.
760.1110 Refunds; joint and several liability.

Subpart M—2005–2007 Catfish Grant Program

760.1200 Administration.
760.1201 Application for payment.
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760.1203 Payment calculation.

Subpart K—General Provisions for 2005–2007 Livestock Compensation and Catfish Grant Programs

§ 760.1000 Applicability.

(a) This subpart establishes the terms and conditions under which the following programs will be administered under Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 for participants affected by eligible disaster events and located in counties that are eligible as specified in § 760.1001:

(1) The 2005–2007 Livestock Compensation Program (2005–2007 LCP); and

(2) The 2005–2007 Catfish Grant Program (2005–2007 CGP).

(b) Farm Service Agency (FSA) funds as are necessary for the programs in subparts L and M of this part are available under Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007.

§ 760.1001 Eligible counties, disaster events, and disaster periods.

(a) Except as provided in this subpart, FSA will provide assistance under the programs listed in § 760.1000 to eligible participants who have suffered certain losses due to eligible disaster events in eligible disaster counties provided in paragraph (c) of this section.

(b) The ''Disaster Period'' is the time period in which losses occurred for the particular disaster that may be considered eligible for the programs under subparts L and M of this part. The start and end dates for each eligible disaster period are specified at *http://disaster.fsa.usda.gov.*

(c) Eligible counties are those primary counties declared by the Secretary or designated for the applicable loss by the President, including counties contiguous to those counties, between January 1, 2005, and February 28, 2007 (that is after January 1, 2005 and before February 28, 2007). The listing is provided at *http://disaster.fsa.usda.gov.* For counties where there was an otherwise timely Presidential declaration, but the declarations do not cover agricultural physical loss, the subject counties may still be eligible if the counties were the subject of an approved Administrator's Physical Loss Notice (APLN) when the APLN applies to a natural disaster timely designated by the President.

§ 760.1002 Definitions.

The following definitions apply to the programs in subpart L and M of this part. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

Commercial use means a use performed as part of the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

Farming operation means a business enterprise engaged in producing agricultural products.

§ 760.1003 Limitations on payments and other benefits.

(a) A participant may receive benefits for eligible livestock feed losses, including additional feed costs, for only one of the 2005, 2006, or 2007 calendar years under 2005–2007 LCP, subpart L of this part, or under the CGP of subpart M of this part.

(b) As specified in § 760.1106(c), the payment under the 2005–2007 LCP may not exceed the smaller of the calculated payment in § 760.1106(a) or the value of the producer's eligible feed loss, increased feed costs, or forage or grazing loss.

(c) A person may receive no more than $80,000 under 2005–2007 LCP, subpart L of this part. In applying the $80,000 per person payment limitation, regardless of whether the 2005, 2006, or 2007 calendar year benefits are at issue or sought, the most restrictive ''person'' determination for the participant in the years 2005, 2006, and 2007, will be used to limit benefits. The rules and definitions of part 1400 of this title apply in construing who is a qualified separate ''person'' for purposes of this limit. All payment eligibility requirements of part 1400 as they apply to any other payments, also apply to payments under subpart L of this part.

(d) For payments under 2005–2007 CGP, a farming operation may receive no more than $80,000, except for general partnerships and joint ventures, in which case assistance will not exceed

$80,000 times the number of eligible members of the general partnership or joint venture. This limit must be enforced by the state government administering the grant program.

(e) The provisions of part 1400, subpart G, of this title apply to these programs. That is the rules that limit the eligibility for benefits of those individuals or entities with an adjusted gross income greater than a certain limit will be applied in the same manner to payments under subparts L and M of this part.

(f) As a condition to receive benefits under subparts L and M of this part, a participant must have been in compliance with the provisions of parts 12 and 718 of this title for the calendar year for which benefits are being requested and must not otherwise be precluded from receiving benefits under any law.

(g) An individual or entity determined to be a foreign person under part 1400 of this title is not eligible to receive benefits under subparts L and M of this part.

(h) In addition to limitations provided in subparts L and M of this part, participants cannot receive duplicate benefits under subparts L and M of this part for the same loss or any similar loss under:

(1) An agricultural disaster assistance provision contained in the announcement of the Secretary on January 26, 2006, or August 29, 2006;

(2) The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109–234; 120 Stat. 418); or

(3) Any other disaster assistance program.

Subpart L–2005–2007 Livestock Compensation Program

§ 760.1100 Applicability.

This subpart sets forth the terms and conditions applicable to the 2005–2007 Livestock Compensation Program (LCP).

§ 760.1101 Administration.

(a) This program is administered under the general supervision of the Administrator, Farm Service Agency (FSA).

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State FSA committee must take any action required by the regulations of this subpart that the county FSA committee has not taken. The State committee must also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action that is not in accordance with this subpart.

(d) No provision or delegation to a State or county FSA committee will preclude the FSA Deputy Administrator for Farm Programs (Deputy Administrator), or a designee of such, from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator for Farm Programs may authorize state and county committees to waive or modify nonstatutory deadlines or other program requirements in cases where lateness or failure to meet such does not adversely affect the operation of the program.

§ 760.1102 Definitions.

The following definitions apply to this subpart.

Adult beef bull means a male beef bovine animal that was at least 2 years old and used for breeding purposes on the beginning date of the disaster period.

Adult beef cow means a female beef bovine animal that had delivered one or more offspring before the disaster period. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant on the beginning date of the disaster period.

Adult buffalo and beefalo bull means a male animal of those breeds that was at least 2 years old and used for breeding purposes on the beginning date of the disaster period.

Adult buffalo and beefalo cow means a female animal of those breeds that had delivered one or more offspring before the beginning date of the applicable disaster period. A first-time bred buffalo or beefalo heifer is also considered to be an adult buffalo or beefalo cow if it was pregnant on the beginning date of the disaster period.

Adult dairy bull means a male dairy bovine breed animal at least 2 years old used primarily for breeding dairy cows on the beginning date of the disaster period.

Adult dairy cow means a female bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring before the beginning date of the applicable disaster period. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant on the beginning date of the disaster period.

Agricultural operation means a farming operation.

Application means the ''2005/2006/2007 Livestock Compensation Program'' form.

Application period means the date established by the Deputy Administrator for Farm Programs for participants to apply for program benefits.

Disaster period means the applicable disaster period specified in § 760.1001.

Equine animal means a domesticated horse, mule, or donkey.

Goat means a domesticated, ruminant mammal of the genus *Capra,* including Angora goats.

Non-adult beef cattle means a bovine animal that weighed 500 pounds or more on the beginning date of the disaster period, but does not meet the definition of an adult beef cow or bull.

Non-adult buffalo/beefalo means an animal of those breeds that weighed 500 pounds or more on the beginning date of the disaster period, but does not meet the definition of an adult buffalo or beefalo cow or bull.

Non-adult dairy cattle means a bovine livestock, of a breed used for the purpose of providing milk for human consumption, that weighed 500 pounds or more on the beginning date of the disaster period, but does not meet the definition of an adult dairy cow or bull.

Owner means one who had legal ownership of the livestock for which benefits are being requested under this subpart on the beginning date of the applicable disaster period as set forth in § 760.1001.

Poultry means a domesticated chicken, turkey, duck, or goose. Poultry are further delineated by sex, age and purpose of production, as determined by FSA.

Sheep means a domesticated, ruminant mammal of the genus *Ovis.*

Swine means a domesticated omnivorous pig, hog, and boar. Swine are further delineated by sex and weight as determined by FSA.

§ 760.1103 Eligible livestock and producers.

(a) To be considered eligible livestock to generate benefits under this subpart, livestock must meet all the following conditions:

(1) Be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, equine, poultry, elk, reindeer, sheep, goats, swine, or deer;

(2) Been physically located in the eligible disaster county on the beginning date of the disaster period;

(3) Been maintained for commercial use as part of the producer's farming operation on the beginning date of the disaster period; and

(4) Not have been produced and maintained for reasons other than

commercial use as part of a farming operation. Such excluded uses include, but are not limited to, wild free roaming animals or animals used for recreational purposes, such as pleasure, roping, hunting, pets, or for show.

(b) To be considered an eligible livestock producer, the participant's eligible livestock must have been located in the eligible disaster county on the beginning date of the disaster period. To be eligible, also, the livestock producer must have:

(1) Owned or cash-leased eligible livestock on the beginning date of the disaster period (provided that if there is a cash lease, only the cash lessee and not the owner will be eligible); and

(2) Suffered any of the following:

(i) A grazing loss on eligible grazing lands physically located in the eligible disaster county, where the forage was damaged or destroyed by an eligible disaster event, and intended for use as feed for the participant's eligible livestock;

(ii) A loss of feed from forage or feedstuffs physically located in the eligible disaster county, that was mechanically harvested and intended for use as feed for the participant's eligible livestock, that was damaged or destroyed after harvest as the result of an eligible disaster event;

(iii) A loss of feed from purchased forage or feedstuffs physically located in the eligible disaster county, intended for use as feed for the participant's eligible livestock, that was damaged or destroyed by an eligible disaster event; or

(iv) Increased feed costs incurred in the eligible disaster county, due to an eligible disaster event, to feed the participant's eligible livestock.

(c) The eligible livestock categories are:

(1) Adult beef cows or bulls;

(2) Non-adult beef cattle;

(3) Adult buffalo or beefalo cows or bulls;

(4) Non-adult buffalo or beefalo;

(5) Adult dairy cows or bulls;

(6) Non-adult dairy cattle;

(7) Goats;

(8) Sheep;

(9) Equine;

(10) Reindeer;

(11) Elk;

(12) Poultry; and

(13) Deer.

(d) Ineligible livestock include, but are not limited to, livestock:

(1) Livestock that were or would have been in a feedlot regardless of whether there was a disaster or where such livestock were in a feedlot as part of a participant's normal business operation, as determined by FSA;

(2) Emus;

(3) Yaks;

(4) Ostriches;

(5) Llamas;

(6) All beef and dairy cattle, and buffalo and beefalo that weighed less than 500 pounds on the beginning date of the disaster period;

(7) Any wild free roaming livestock, including horses and deer;

(8) Livestock produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, livestock produced or maintained for recreational purposes, such as:

(i) Roping,

(ii) Hunting,

(iii) Show,

(iv) Pleasure,

(v) Use as pets, or

(vi) Consumption by owner.

§ 760.1104 Application for payment.

(a) To apply for 2005–2007 LCP, an application and required supporting documentation must be submitted to the administrative county FSA office.

(b) The application must be filed during the application period announced by the Deputy Administrator for Farm Programs.

(c) Payments may be made for eligible losses suffered by an eligible livestock producer who is now a deceased individual or is a dissolved entity if a representative who currently has authority to enter into a contract, on behalf of the livestock producer, signs the application for payment. Legal documents showing proof of authority to sign for the deceased individual or dissolved entity must be provided. If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(d) Data furnished by the participant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

(e) A minor child is eligible to apply for program benefits if all eligibility requirements are met and one of the following conditions exists:

(1) The right of majority has been conferred upon the minor by court proceedings or statute;

(2) A guardian has been appointed to manage the minor's property, and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 760.1105 Application process.

(a) Participants must submit to FSA:

(1) A completed application in accordance with § 760.1104;

(2) Adequate proof, as determined by FSA, that the feed lost:

(i) Was for the claimed eligible livestock;

(ii) Was lost as a direct result of an eligible disaster event during an eligible disaster period specified in § 760.1001;

(iii) Was lost after January 1, 2005, but before February 28, 2007; and

(iv) Occurred in the calendar year for which benefits are being requested; and

(3) Any other supporting documentation as determined by FSA to be necessary to make a determination of eligibility of the participant. Supporting documents include, but are not limited to: verifiable purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records; Internal Revenue Service records; property tax records; private insurance documents; sales records, and similar documents determined acceptable by FSA.

(b) [Reserved]

§ 760.1106 Payment calculation.

(a) Preliminary, unadjusted LCP payments are calculated for a producer by multiplying the national payment rate for each livestock category, as provided in paragraph (c) of this section, by the number of eligible livestock for the producer in each category. The national payment rate represents the cost of the amount of corn needed to maintain the specific livestock for 30 days, as determined by FSA. As provided in subpart K of this part, a producer may receive benefits for only one of the three program years, 2005, 2006, or 2007. The producer must indicate which year has been chosen. Payments are available only with respect to disaster-related fees losses in the period from January 2, 2005 through February 27, 2007, in eligible counties for losses during the times specified for the disaster periods as specified in § 760.1001(b).

(b) The preliminary LCP payment calculated in accordance with paragraph (a) of this section:

(1) For 2005 LCP provided for under this subpart will be reduced by the amount the participant received for the specific livestock under the Feed Indemnity Program in accordance with subpart D of this part and LCP for the 2005 hurricanes under subpart B of part 1416 of this title; and

(2) For 2006 LCP under this subpart will be reduced by the amount the

participant received for the same or similar loss under the Livestock Assistance Grant Program in accordance with subpart H of this part.

(c) Subject to such other limitations as may apply, including those in paragraph (b) of this section, the payment under the 2005–2007 LCP may not exceed for the relevant year chosen by the producer the smaller of either the:

(1) Payment calculated in paragraph (a) of this section for that year; or

(2) Value of the producer's eligible feed loss, increased feed costs, or forage or grazing loss as determined by FSA for that year.

(d) The actual payment to the producer will be the amount provided for in paragraph (c) of this section subject to the adjustments and limits provided for in this section or in this part.

§ 760.1107 Appeals.

The appeal regulations in parts 11 and 780 of this title apply to determinations made under this subpart.

§ 760.1108 Offsets, assignments, and debt settlement.

(a) Any payment to any participant will be made without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings in parts 792 and 1403 of this title apply to payments made under this subpart.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments in part 1404 of this chapter.

§ 760.1109 Recordkeeping and inspections.

Participants receiving payments under this subpart or any other person who furnishes information for the purposes of enabling the participant to receive a payment under this subpart must maintain any books, records, and accounts supporting that information for a minimum of 3 years following the end of the year during which the application for payment was filed. Participants receiving payments or any other person who furnishes the information to FSA must allow authorized representatives of USDA and the General Accounting Office, during regular business hours, and to enter upon, inspect, examine, and make copies of the books or records, and to inspect and verify all applicable livestock and acreage in which the participant has an interest for the purpose of confirming the accuracy of the information provided by or for the participant.

§ 760.1110 Refunds; joint and several liability.

In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this subpart, and if any refund of a payment to FSA will otherwise become due in connection with this subpart, all payments made in regard to such matter must be refunded to FSA together with interest and late-payment charges as provided for in part 792 of this title, provided that interest will run from the date of the disbursement of the refund to the producer.

Subpart M—2005–2007 Catfish Grant Program

§ 760.1200 Administration.

FSA will administer a limited 2005–2007 CGP to provide assistance to catfish producers in eligible counties that suffered catfish feed and related losses between January 1, 2005, and February 28, 2007, that is after January 1, 2005, and before February 28, 2007. Under the 2005–2007 CGP, FSA will provide grants to State governments in those States that have catfish producers that are located in eligible counties and that have agreed to participate in the 2005–2007 CGP. The amount of each grant will be based on the total value of catfish feed and related losses suffered in eligible counties in the subject state. Each State must submit a work plan providing a summary of how the State will implement the 2005–2007 CGP.

§ 760.1201 Application for payment.

Application procedures for 2005–2007 CGP will be as determined by the State governments.

§ 760.1202 Eligible producers.

(a) To be considered an eligible catfish producer, an participant must:

(1) Raise catfish in a controlled environment and be physically located in an eligible county on the beginning date of the disaster period;

(2) Maintain the catfish for commercial use as part of a farming operation;

(3) Have a risk in production of such catfish; and

(4) Have suffered one of the following types of losses relating to catfish feed as a direct result of the county's disaster event that occurred in that year:

(i) Physical loss of feed that was damaged or destroyed,

(ii) Cost to the extent allowed by FSA, associated with lost feeding days, or

(iii) Cost associated with increased feed prices.

(b) [Reserved]

§ 760.1203 Payment calculation.

(a) Producers must be paid for feed losses of higher costs only for one of the three years, 2005, 2006, or 2007, and the loss must be for eligible catfish feed losses in an eligible county, as determined pursuant to subpart K of this part. Further, the feed loss or higher costs must be caused by the disaster that caused the county to qualify as an eligible county. The loss, moreover, to qualify for payment, must have occurred during the allowable time period provided in this part, namely the period beginning on January 2, 2005 and ending February 27, 2007. The producer must pick the year of the benefits sought.

(b) Subject to all adjustments and limits provided for in this part the amount of assistance provided to each participant from the State will be equal to the smaller of:

(1) Depending on the year chosen by the producer, the value of the participant's 2005, 2006, or 2007 catfish feed and related losses as a direct result of an eligible disaster event, as determined by the State or

(2) Result of multiplying:

(i) Total tons of catfish feed purchased by the participant in depending on the year chosen by the producer 2005 (entire year), 2006 (entire year), or 2007 (through February 27, 2007, only), times,

(ii) Catfish feed payment rate for 2005, 2006, or 2007, as applicable, as set by FSA.

(c) The catfish feed rate represents 61 percent of the normal cost of a ton of feed for a year divided by six to reflect the normal feeding price for catfish.

Signed in Washington, DC, December 18, 2007.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. 07–6154 Filed 12–19–07; 9:03 am]

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Federal Register

Friday,

December 21, 2007

Part IV

Environmental Protection Agency

Air Fresheners; TSCA Section 21 Petition; Notice

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2007–1016; FRL–8345–9]

Air Fresheners; TSCA Section 21 Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On September 20, 2007, the Sierra Club, the National Center for Healthy Housing, the Alliance for Healthy Homes, and the Natural Resources Defense Council (NRDC) petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA) to: Call-in allegations of adverse reactions related to air freshener products recorded by manufacturers and processors pursuant to TSCA section 8(c) and 40 CFR part 717; adopt a rule pursuant to TSCA section 8(d) to require submittal of heath and safety studies related to air fresheners, including lab results of ingredients and health effects from respiratory exposures; adopt a rule pursuant to TSCA section 4 to require manufacturers to conduct acute and chronic studies to evaluate the impact of air fresheners on human health; and adopt a rule pursuant to TSCA section 6 to require that air fresheners be labeled to identify all of their ingredients. TSCA section 21 does not apply to the petitioners' request for a call-in under TSCA section 8(c), and, for the reasons set forth in this notice, EPA has denied the petitioners' remaining three requests.

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

For technical information contact: Robert Jones, Chemical Control Division (7405M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8161; e-mail address: *jones.robert @epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, process, import, or distribute in commerce air fresheners or their ingredients. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers (including importers) and processors (NAICS code 325), e.g., air and room freshener manufacturers.
- Other manufacturers (including importers) and processors (NAICS code 3399), e.g., manufacturers of potpourri.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the TSCA section 21 petition on air fresheners. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2007–1016. All documents in the docket are listed in the docket's 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

A. What is a TSCA Section 21 Petition?

Section 21 of TSCA allows any person to petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under TSCA section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth the facts that are claimed to establish the necessity for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. A petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding within 60 days of either a denial or the expiration of the 90 day period.

B. What Criteria Apply to a Decision on a TSCA Section 21 Petition?

1. *Legal standard regarding TSCA section 21 petitions*. Section 21(b)(1) of TSCA requires that the petition ''set forth the facts which it is claimed establish that it is necessary'' to issue the rule or order requested. 15 U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. In addition, TSCA section 21 establishes standards a court must use to decide whether to order EPA to initiate rulemaking in the event of a lawsuit filed by the petitioner after denial of a TSCA section 21 petition. 15 U.S.C. 2620(b)(4)(B). Accordingly, EPA has relied on the standards in TSCA section 21 and in the provisions under which actions have been requested to evaluate this petition.

2. *Legal standard regarding TSCA section 8(d) rules*. Section 8(d) of TSCA authorizes EPA to require the submission of unpublished health and safety studies initiated or conducted by, or known to or reasonably ascertainable by, manufacturers, processors, and distributors of chemical substances or mixtures. Studies may be excluded ''if the Administrator finds that submission of lists of such studies are unnecessary to carry out the purposes of [TSCA].'' 15 U.S.C. 2607(d)(1).

Section 21(b)(4)(B) of TSCA provides the standard for judicial review should EPA deny a request for rulemaking under TSCA section 8(d): ''If the petitioner demonstrates to the satisfaction of the court by a preponderance of the evidence that ...there is a reasonable basis to conclude that the issuance of such a rule ...is necessary to protect health or the environment against an unreasonable risk of injury,'' the court shall order the Administrator to initiate the requested action. 15 U.S.C. 2620(b)(4)(B).

3. *Legal standard regarding TSCA section 4 rules.* EPA must make several findings in order to issue a rule to require testing under TSCA section 4. In all cases, EPA must find that data and experience are insufficient to reasonably determine or predict the effects of a chemical or mixture on health or the environment and that testing of the chemical is necessary to develop the missing data. 15 U.S.C. 2603(a)(1). In addition, EPA must find either that the chemical or mixture may present an unreasonable risk of injury or that the chemical is produced in substantial quantities and may either result in significant or substantial human exposure or result in substantial environmental release. Id.

In the case of a mixture, EPA must also find that ''the effects which the mixture's manufacture, distribution in commerce, processing, use, or disposal or any combination of such activities may have on health or the environment may not be reasonably and more efficiently determined or predicted by testing the chemical substances which comprise the mixture.'' 15 U.S.C. 2603(a)(2).

If EPA denies a petition for TSCA section 4 rulemaking and the petitioners challenge that decision, TSCA section 21 allows a court to order EPA to initiate rulemaking if the petitioner demonstrates to the satisfaction of the court by a preponderance of the evidence in a *de novo* proceeding that findings very similar to those described in this unit with respect to a chemical substance have been met. However, TSCA section 21 omits the finding that ''testing is necessary to develop the data'' from the findings that a petitioner must demonstrate in order for a court to require EPA to initiate TSCA section 4 rulemaking. 15 U.S.C. 2620(b)(4)(B)(i). Nonetheless, EPA believes TSCA section 21(b)(4) is best interpreted as incorporating this finding. The alternative would be to read the statute as empowering a court to require EPA to initiate a rulemaking even where the Agency could not make proposed findings consistent with TSCA section 4 or take final action on the rule. EPA's interpretation is supported by legislative history. House Conference Report 94–1679 at pp. 97–99 (1976).

In addition, EPA believes TSCA section 21(b)(4) does not provide for judicial review of a petition to promulgate a test rule for mixtures. Section 21(b)(4)(B)(i) of TSCA specifies that the court's review pertains to application of the TSCA section 4 factors to chemical substances. Moreover, TSCA section 21(b)(4)(B)(i) does not contain the additional finding that TSCA section 4 requires for issuing a test rule for mixtures (that the effect may not be reasonably and more efficiently determined or predicted by testing the chemical components). Congress left the complex issues associated with the testing of mixtures to the Administrator's discretion.

4. *Legal standard regarding TSCA section 6 rules.* In order to promulgate a rule under TSCA section 6, the Administrator must find that ''there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture . . . presents or will present an unreasonable risk.'' 15 U.S.C. 2605(a). This finding cannot be made considering risk alone. In promulgating any rule under TSCA section 6(a), the statute requires that the Administrator consider:

- The effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture.
- The effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture.
- The benefits of such substance or mixture for various uses and the availability of substitutes for such uses.
- The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health. 15 U.S.C. 2605(c)(1).

Furthermore, the control measure adopted is to be the ''least burdensome requirement'' that adequately protects against the unreasonable risk. 15 U.S.C. 2605(a).

Section 21(b)(4)(B) of TSCA provides the standard for judicial review should EPA deny a request for rulemaking under TSCA section 6(a): ''If the petitioner demonstrates to the satisfaction of the court by a preponderance of the evidence that ... there is a reasonable basis to conclude that the issuance of such a rule ... is necessary to protect health or the environment against an unreasonable risk of injury,'' the court shall order the Administrator to initiate the requested action. 15 U.S.C. 2620(b)(4)(B).

C. What Action is Requested Under this TSCA Section 21 Petition?

On September 19, 2007, the Sierra Club, the National Center for Healthy Housing, the Alliance for Healthy Homes, and NRDC petitioned EPA to:

1. Call-in allegations of adverse reactions related to air freshener products recorded by manufacturers and processors pursuant to TSCA section 8(c) and 40 CFR part 717.

2. Adopt a rule pursuant to TSCA section 8(d) to require submittal of health and safety studies related to air fresheners, including lab results of ingredients and health effects from respiratory exposures.

3. Adopt a rule pursuant to TSCA section 4 to require manufacturers to conduct acute and chronic studies to evaluate the impact of air fresheners on human health.

4. Adopt a rule pursuant to TSCA section 6 to require that air fresheners be labeled to identify all of their ingredients (Ref. 1).

The petition defined air fresheners as:

> ...a broad range of product types, from traditional sprays to outlet- and battery-operated plug-ins, solid gel dispensers, hanging car air fresheners and potpourri. Air fresheners can serve two purposes: odor control (which includes unscented air fresheners) and aesthetic scent. Some products may serve both purposes, and others may serve only one. Cleaning products that kill germs, clean surfaces and leave a pleasant fragrance are not included in these petitions.
> (Ref. 1)

The petitioners also simultaneously petitioned the Consumer Product Safety Commission (CPSC) under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) ''to undertake specific actions to assess fully the risk to the public from exposure to air fresheners and to take reasonable steps to reduce that risk'' (Ref. 1). In November 2007, the CPSC declined to docket the petition for rulemaking, because it did not meet the CPSC's statutory or regulatory requirements (Ref. 2). CPSC stated that it was rejecting the petition because the petition did not ''identify the specific toxic constituent(s) and their concentration(s) in the air fresheners, the mechanism of exposure and/or uptake of each such constituent or the 'substantial illness' that might result from customary or reasonably foreseeable handling or use of such air fresheners that contain each

of these substances.'' CPSC also found that the petition did not ''provide[] sufficient information to establish that a rule is necessary.''

D. What Support Do the Petitioners Offer for These Requests?

Petitioners are concerned about potential risks from air fresheners and believe EPA should take the requested actions to assess and reduce any such risks. The petition discusses at length three reports in support of these requests:

• The American Association of Poison Control Centers' (AAPCC) 2005 Annual Report (Ref. 3).

• An ''opinion'' issued in January 2006 by the European Commission's Scientific Committee on Health and Environmental Risks (SCHER) (Ref. 4) on a report issued in January 2005 by the Bureau Européen des Unions de Consommateurs (BEUC), which measured and assessed chemical emissions from 74 air fresheners sold in Europe (Ref. 5).

• A report issued in September 2007 by NRDC on the presence of phthalate esters in air fresheners (Ref. 6).

1. *Association of Poison Control Centers (AAPCC) Report.* In support of the assertion that air fresheners present ''a significant source of human exposure to a veritable cocktail of dangerous and potentially dangerous'' chemicals, the petition presents information drawn from the AAPCC 2005 Annual Report. EPA considered the AAPCC report and does not agree with the petitioners that the information in the report raises significant concerns about possible health effects of air fresheners.

According to the petition (Ref. 1), the AAPCC reported the following ''exposures'' to air fresheners based on calls to local poison control centers in 2005: 14,094 people overall (including 11,800 children younger than 6). Of the reported exposures, the petition indicates that 98% were unintentional, and 2,623 resulted in injuries (2,492 minor injuries; 125 moderate injuries; 5 major injuries; and 1 death).

These numbers, however, represent only a very small percentage (0.58%) of the total number of 2,424,180 exposures to all substances reported in the AAPCC's 2005 Annual Report (Ref. 3). This incidental percentage is the more striking considering the industry's assertion that 70% of U.S. homes use air fresheners (Ref. 7) and the petitioners' assertion that ''[a]lmost every American is exposed to air fresheners in some manner'' (Ref. 1). Moreover, according to the 2005 AAPCC report, only 32 (0.23%) of the 14,094 reported air freshener exposures involved an adverse reaction, which is defined by AAPCC as ''an adverse event occurring with normal, prescribed, labeled, or recommended use of the product, as opposed to overdose, misuse, or abuse'' (Ref. 3).

Considering the widespread use of air fresheners, the number of reported exposure incidents for air fresheners is relatively small when compared to the reported exposure incidents for other product categories. In the AAPCC report, air fresheners are one of five subcategories of deodorizers, and deodorizers have among the lowest number of reported exposures and injuries among the 55 categories in the AAPCC report (Refs. 3 and 8). In the AAPCC report, deodorizers are not included in the list of 23 categories ''most frequently involved in human exposures'' (Refs. 3 and 8). Deodorizers are 20th among 23 categories for ''most frequently involved in pediatric exposures (children younger than 6 years),'' but deodorizers were involved in only 1.3% of the total number of such exposures (Ref. 3). (The percentages for the 21st (asthma therapies), 22nd (dietary supplements/herbals/homeopathic), and 23rd (antidepressants) categories were 1.2%, 1.1%, and 1.1%, respectively, nearly the same as for deodorizers). Nearly 95% of the injuries resulting from air freshener exposures were minor, 4.8% were moderate, and only 0.2% (5) were major. Of the two deaths reported, one resulted from intentional misuse and the reason for the other was reported as ''unknown'' (Refs. 3 and 8).

The petitioners assert that these figures under-represent exposures because people may not recognize the relationship asserted by the petitioners between air freshener exposures and adverse effects (Ref. 1). On the other hand, EPA recognizes that asthma attacks and other health effects may be incorrectly attributed by callers to air freshener exposures. EPA has no basis to draw conclusions based on the possibility of unreported exposures to air fresheners or any other products. It is also important to note that these exposure reports, which provide the basis for the AAPCC report, rarely, if ever, include information about the concentrations or durations of the reported exposures and, therefore, cannot be used to make any conclusions about actual exposures during use or long-term health risks (Ref. 9).

2. *NRDC Report.* According to the petition, NRDC tested 14 air fresheners and found phthalate esters in 12 (Ref. 6). NRDC stated that none of these 12 air fresheners listed phthalate esters as ingredients on their labels. According to the petition, phthalate esters are associated with ''a number of reproductive health risks'' and with allergic symptoms and asthma. The petitioners also state that ''California's Office of Environmental Health Hazard Assessment lists some phthalates (including some found in these air fresheners) as chemicals known to the state to cause reproductive toxicity under California's Proposition 65'' (Ref. 1).

Phthalate esters are a broad category of chemicals with varying toxicological profiles. California Proposition 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986) requires the State to publish a list of chemicals known to be carcinogens or developmental toxicants and requires businesses to provide public notice about any ''significant'' amount of a listed chemical in their products by, among other methods, labeling a consumer product (*http://www.oehha.ca.gov/prop65.html*) (Ref. 11). Of the five phthalate esters on the Proposition 65 list, only one (di-*n*-butyl phthalate (DBP)) was reported in the NRDC study as being detected in air fresheners. According to the U.S. Centers for Disease Control Third National Report on Human Exposure to Environmental Chemicals, many consumer products contain phthalate esters, including vinyl flooring, adhesives, detergents, lubricating oils, solvents, automotive plastics, plastic clothing (e.g., raincoats), personal-care products (e.g., soap, shampoo, deodorants, fragrances, hair spray, nail polish), medical pharmaceuticals, plastic bags, garden hoses, inflatable recreational toys, blood-storage bags, intravenous medical tubing, and children's toys (Ref. 10).

The NRDC study tested for 15 phthalate esters (including 4 of the 5 phthalate esters on the Proposition 65 list) and found one or more of 5 phthalate esters (including 1 (DBP) on the Proposition 65 list) in 12 of 14 air freshener products tested. The 5 phthalate esters were: Di-*n*-butyl phthalate (DBP), CAS No. 84–74–2; diethyl phthalate (DEP), CAS No. 84–66–2; diisobutyl phthalate (DIBP), CAS No. 84–69–5; diisohexyl phthalate (DIHP), CAS No.146–50–9; and dimethyl phthalate (DMP), CAS No. 131–11–3 (Ref. 6).

With the exception of DEP, the phthalate esters were detected at very low concentrations (less than 7 parts per million (ppm)), which might indicate their presence as an impurity or lab contaminant rather than as an intentional ingredient. DBP was the only phthalate ester on the California Proposition 65 list (where it is listed for

developmental toxicity) detected in the air fresheners examined in the NRDC report. DBP was detected at very low concentrations in 5 samples: At concentrations less than 1 ppm in four samples and at a concentration of 4.5 ppm in one sample.

DEP was detected in three samples at concentrations of 360 ppm, 1,100 ppm, and 7,300 ppm; DEP was detected in six other samples at concentrations of 6.3 ppm or less (Ref. 6). DEP is known to be used as a solvent and vehicle in a wide variety of fragrance and cosmetic products at concentrations ranging from <0.1% to 11% (i.e., 1,000 to 110,000 ppm) (Ref. 29), which could explain its detection at concentrations in the thousands of ppm in several air fresheners reported by NRDC. While higher than the very low levels of other detected phthalate esters, the levels of DEP in air fresheners identified in the NRDC Report are still quite low. In 2003, the European Union's (EU) Scientific Committee on Cosmetic Products and Non–Food Products Intended for Consumers (SCCNFP), a scientific advisory body to the European Commission (as is the EU's SCHER that is cited by the petitioners), concluded that the safety profile of DEP supports its use in European cosmetic products at ''current levels'' (Refs. 12 and 13).

The petitioners also referenced several studies in footnotes within the petition and in a public comment that reported possible associations between general exposure to phthalate esters (i.e., not specifically from exposure to air fresheners) and potential adverse health effects in humans. The NRDC report did not measure nor estimate the potential exposures or risks that may result from the use of air fresheners in which phthalate esters have been detected and so does not provide a basis to assess such exposure or potential risk. There are numerous other potential sources of phthalate esters to which consumers may be exposed that could lead to potentially higher exposures than those that may result from use of air fresheners.

In 2007, following release of a report by Greenpeace that reported concentrations of phthalate esters in perfumes (Ref. 14), the EU's Scientific Committee on Consumer Products (SCCP) issued an opinion on certain phthalate esters in cosmetic products (Ref. 15). The SCCP opinion addressed nine phthalate esters including four of the five phthalate esters detected in air freshener samples by NRDC. The magnitude of the phthalate ester concentrations reported in the Greenpeace report for perfumes are similar to those reported by NRDC. DIHP, detected by NRDC at a concentration of 2.1 ppm in one air freshener, was not included in the SCCP opinion. The SCCP concluded that: There was no need to update the SCCNFP opinion on the safe use of DEP in cosmetics; in view of the low concentrations of DIBP and DMP found in samples analyzed (38 and 2,982 ppm, respectively), there would be no quantifiable risk for the consumer; and that traces of DBP up to 100 ppm do not indicate a risk to the health of the consumer. Similarly, the Cosmetic Ingredient Review Expert Panel concluded in 2002/2003 that DBP, DMP, and DEP are safe for use in cosmetic products (including perfumes and hair sprays) ''in the present practices of use and concentrations'' (Ref. 29).

EPA recently contracted with the National Academy of Sciences (NAS) to evaluate human health risks and the potential for conducting a cumulative risk assessment for phthalate esters (Ref. 16). (Project information is available at *http://www8.nationalacademies.org/cp/projectview.aspx?key=48860*). Specifically, EPA is eliciting external expert consultation to evaluate the issues related to cumulative hazard and dose–response assessment. The study panel will examine the strengths and limitations of a cumulative approach opposed to or in addition to an individual chemical approach for risk assessment of phthalates. EPA anticipates that the final product of this study panel will be a report discussing the issues identified by the panel, the ways in which any assessment may be approached, the strengths and limitations of any of the proposed approaches, and whether any additional research is needed. The project began in September 2007 and NAS is scheduled to submit a report in December 2008.

In addition, EPA has developed five individual phthalate human health risk assessments (DEP, DMP, di(2-ethylhexyl)phthalate, dibutyl phthalate, and butyl benzyl phthalate) that are currently available on the Integrated Risk Information System (IRIS) database. The IRIS Summaries for these phthalates can be found at *http://cfpub.epa.gov/ncea/iris/index.cfm?fuseaction=iris.showSubstanceList*. The IRIS Program has also undertaken reassessments for di(2-ethylhexyl)phthalate, dibutyl phthalate, and butyl benzyl phthalate. The schedules for the reassessments of these phthalates are available on IRIS Track *http://cfpub.epa.gov/ncea/iristrac/index.cfm*).

In sum, the NRDC report indicates that some phthalate esters are present in some air fresheners at generally low concentrations. This information is not surprising and does not provide a basis to suspect that the presence of the phthalate esters at the concentrations detected presents a significant public health risk. In addition, the NAS evaluation, which is expected to address phthalate esters more comprehensively, rather than in a very specific use such as air fresheners, will help inform any risk assessment or testing needs.

3. *BEUC and SCHER reports.* The petition also relies on an opinion issued by SCHER in January 2006 about a report issued by the Bureau Européen des Unions de Consommateurs (BEUC) in January 2005 that measured and assessed chemical emissions from 74 air fresheners sold in Europe (Refs. 4 and 5).

In order to understand these reports, some background information is necessary. BEUC is a European association of national consumer organizations. In November 2004, BEUC announced that a study it had commissioned had found that air fresheners emitted toxic air pollutants (Ref. 17). According to the report, the study tested 74 ''products belonging to different categories (incense, natural products, scented candles, aerosols, liquid diffusers, electric diffusers and gels),'' ''simulate[ed] common use of such products by consumers,'' and measured, ''for each product, the concentration of Volatile Organic Compounds (VOCs) and aldehydes in the air after the use'' (Ref. 5). The BEUC report focused on emissions of ''total VOCs'' and several individual VOCs: Allergens, benzene, formaldehyde, terpenes, styrene, DEP, and toluene. The BEUC report found that the 74 products studied emitted over 350 different chemicals.

A company that produces air fresheners filed a lawsuit in Belgium to compel BEUC to withdraw public statements indicating ''that normal usage of the fragrances generates serious health risks, and that these fragrances are not subjected to regulations in terms of product safety standards'' (Ref. 28). In March 2005, the court found that the BEUC study did not support statements that air fresheners were ''dangerous to people's health.'' The court ordered BEUC to withdraw statements that ''might or could create the impression that fragrances are unsafe with normal usage'' and issue a statement that its ''repeated public communications on the subject of air freshener safety'' were ''not appropriate as the currently known results from [the BEUC study] on which [BEUC] based [its] statements in effect do not justify the conclusion that air

fresheners are diffusing substances ... in concentrations that present a hazard to public health'' and ''may unjustly have generated the unwarranted impression that the air fresheners on sale in the Netherlands can result in health risk under normal usage.''

SCHER was subsequently asked to consider whether the specific chemical emissions from air fresheners reported in the BEUC study represented a health risk to consumers and what further studies might be necessary to adequately assess the potential health risks from air fresheners. SCHER issued its assessment in January 2006 (Ref. 4). SCHER noted that ''Neither the composition of the tested products, nor the rationale for the selection of the individual substances studied are given in the BEUC report;'' that ''[t]he individual compounds in the reported results are, in most cases, well studied;'' and that ''[t]he results in the BEUC study may ... be regarded as realistic worst case values.'' SCHER noted that, with the exception of benzene emissions resulting from the burning of certain incense products, the air concentrations of the substances assessed in the BEUC report were below known limit values for adverse health effects and/or were within the range of typical indoor air concentrations.

SCHER reached the general conclusion that current scientific knowledge on ''the use of air fresheners, emissions and resulting concentrations in indoor air'' was ''limited'' and that ''the [exposure] data on air fresheners available to the SCHER are insufficient for an overall risk evaluation for consumers.'' SCHER concluded that ''[m]ore data, on e.g. the use pattern of these products, are required to allow assessment of the actual exposure of the residents'' and that, in particular, ''the frequency of the used air freshener, the duration of exposure and the frequency of peak levels needs to be considered.''

EPA conducted a literature review of sources of information relevant to human exposure to air freshener products (i.e., formulation, emission measurement, air monitoring, and modeling information) (Ref. 21). This review identified additional studies not reviewed in the BEUC and SCHER reports. Some of the same analytes reported in the BEUC report (e.g., terpenes and formaldehyde) were detected in these studies, usually at lower maximum concentrations than those reflected in the BEUC report.

EPA then reviewed the BEUC and SCHER reports in light of the information gathered during the literature review (Ref. 18). EPA concluded, as did the SCHER report, that there were deficiencies related to the quality of the data in the BEUC report. EPA concluded that the information and findings in the BEUC report did not appear to satisfy EPA's Information Quality Guidelines (Ref. 19). EPA also concluded that uncertainty about how representative the BEUC results are for the U.S. air freshener market is a key limitation in their usefulness for estimating potential U.S. consumer exposures.

The petitioners point out that BEUC found that ''for most products tested the emitted total VOC values exceeded 200 microgram/milligram cubed ($\mu g/m^3$), the proposed maximum limit value in indoor air in several countries...'' While total VOC does measure the presence of VOCs indoors, there is no validated evidence to indicate that this measure is a predictor of indoor air quality concerns or potential health effects. Total VOC does not indicate the impact of other pollutants present or building factors that may also impact indoor air quality and health. In addition, there is no standardized procedure for measuring total VOCs and, therefore, no ability to compare between reported measurements. Although under certain conditions total VOC measurements may be useful as a screening tool, EPA does not believe total VOC measurements should be used as an indicator of indoor air quality or health concerns.

4. *Epidemiological studies and other information.* In addition to the three sources listed in Unit II.D., the petitioners submitted to EPA epidemiological studies as additional support (Refs. 22 and 23). Reference 23 was submitted as part of the petition. Reference 22 was submitted after the petition and, consequently, is not considered by EPA to be part of the petition. However, EPA reviewed both studies. The studies attempted to determine whether there was an association between asthma and either the use of common household cleaners or chemical hypersensitivity. EPA's review concluded that both studies, neither of which was specifically designed to evaluate possible health effects related to exposure to air fresheners, contained numerous design limitations and could not be used to support an association between asthma and the use of air fresheners (Ref. 20).

Petitioners also present certain arguments about the risks and benefits of air fresheners. Petitioners assert that ''air fresheners provide no public health value'' (Ref. 1). Petitioners further assert that air fresheners may mask the presence of mold and other health threats (Ref 1). Petitioners have provided no basis for EPA to evaluate these assertions, although EPA agrees that, in general, air fresheners are not a solution for indoor air quality issues. In addition, public health value is not the only type of benefit cognizable under TSCA. As petitioners recognize, air fresheners are purchased in large quantities, and, as noted in comments submitted by industry, 70% of homes in the United States use air fresheners (Ref. 7); which together suggest that consumers place significant value on them. With regard to petitioners' second assertion, EPA sees no connection between the actions requested and any risk that might be presented by the masking of mold or similar conditions.

5. *Conclusion.* The information provided by petitioners does not support the conclusion that air fresheners present a significant health risk, or a health risk that is a priority in relation to risks potentially posed by other chemicals or products. In addition to the limitations discussed in Unit II.D., it is clear that the information supplied by petitioners is only a sample of the information available on health risks potentially associated with air fresheners. Based on comments received during the comment period and independent inquiry by EPA (see Unit III.C.1.), there are a number of additional publicly available studies and analyses of the potential health effects from air fresheners and air freshener ingredients. Industry commenters assert that some of these studies demonstrate that air fresheners in general do not present a significant risk (Refs. 24 and 25). EPA expresses no view on this industry characterization, but EPA cannot judge whether air fresheners generally, or any particular air fresheners, present an unreasonable risk, or a significant risk at all, without further review of available information.

E. Other Considerations

EPA has a number of high priority chemical assessment and risk management projects and actions already underway that are requiring a substantial amount of OPPT resources. EPA views many of these projects as being more broadly applicable, and as having greater potential to result in the understanding and reduction of possible chemical risks, than the actions suggested by the petitioners. These projects include, for example, the following:

In August 2007, the President committed the United States to join Canada and Mexico in a collaborative effort under the Security and Prosperity Partnership (SPP) to rapidly and efficiently improve chemical security

and safety throughout North America. The U.S. contribution to this partnership is, by 2012, to assess and initiate needed actions on the approximately 9,000 chemicals manufactured in, or imported into, the United States in volumes greater than 25,000 pounds. These include 3,000 ''high-production-volume'' (HPV) chemicals (produced or imported at 1 million lbs/year annually) and 6,000 ''medium-production-volume'' MPV chemicals (produced or imported between 25,000 and 1 million lbs/year). EPA expects that many of the ingredients of air fresheners will be encompassed within these groups of chemicals. The North American collaboration also provides for the sharing of scientific information and technical understanding, best practices, and research on new approaches to chemical testing and assessment. The scope and pace of this commitment represents a significant commitment of Agency resources over the period of the next 5 years. Additional information on this commitment can be found at: *http://www.epa.gov/chemrtk/index.htm*.

Another, chemical-specific, project involves conducting and integrating new studies into the ongoing risk assessment on perfluorooctanoic acid (PFOA) and managing the related 2010/15 PFOA Stewardship Program, in which companies have committed to reduce emissions and product content of PFOA and other perfluorinated compounds, many of which have been found in the blood of the general U.S. population. Additional information on this project can be found at: *http://www.epa.gov/oppt/pfoa/index.htm*.

In addition, EPA has several efforts underway under the Design for the Environment (DfE) Program. DfE works in partnership with a broad range of stakeholders to reduce risk to people and the environment by preventing pollution. One example of special relevance to fragrances and air fresheners is DfE's work with formulators of chemical products to identify safer chemical alternatives for ingredients of concern and to recognize those formulators who develop safer chemical products through green chemistry. Cleaning products can contain a wide variety of ingredients including surfactants, solvents, builders, and fragrances. Fragrances are key ingredients in some cleaning products. To enable and further environmental stewardship in the fragrance industry, and to help fragrance houses identify safer ingredients for the formulation of fragrances in cleaning products, DfE is working with stakeholders from the fragrance industry, formulators of cleaning products, environmental groups, and other Agency representatives. The goal of this stakeholder effort is to define safer fragrance materials for cleaning products, and provide fragrance houses and cleaning product formulators with a marketplace for those ingredients. Additional information on the DfE program in general and the formulators project in particular is available at: *http://www.cleangredients.org*.

III. Disposition of Petition

EPA has concluded that the petition does not set forth sufficient facts to support the petitioners' assertion that it is necessary to initiate the requested rulemakings under TSCA sections 4, 6, or 8(d). Furthermore, EPA has concluded that a TSCA section 8(c) data call-in is not a petitionable matter under TSCA section 21. A detailed explanation of EPA's determination follows.

A. TSCA Section 8(c) Request

The petitioners requested that EPA ''call-in allegations of adverse reactions recorded by manufacturers and processors [of air fresheners] pursuant to TSCA section 8(c) and 40 CFR part 717 [EPA's TSCA section 8(c) regulations].''

Section 8(c) of TSCA provides that ''[a]ny person who manufactures, processes, or distributes in commerce any chemical substance or mixture shall maintain records of significant adverse reactions to health or the environment, as determined by the Administrator [of EPA] by rule, alleged to have been caused by the substance or mixture,'' and that, ''[u]pon request of any duly designated representative of the Administrator, each person who is required to maintain records under [TSCA section 8(c)] shall permit the inspection of such records and shall submit copies of such records.'' 15 U.S.C. 2607(c). EPA issued regulations implementing TSCA section 8(c), 40 CFR part 717, which were published in the **Federal Register** issue of August 22, 1983 (48 FR 38187). These regulations provide that EPA may require that records of allegations of significant adverse reactions be reported either by letter or by notice in the **Federal Register**: ''EPA will notify those responsible for reporting by letter or will announce any such requirements for submitting copies of records by a notice in the **Federal Register**.'' 40 CFR 717.17(b).

The requested call-in is not a petitionable matter under TSCA section 21. Among the actions potentially available under TSCA section 8, only rules are proper objects of a TSCA section 21 petition. Pursuant to TSCA section 8(c), and EPA's implementing regulations at 40 CFR 717.17, allegations of adverse reactions are not called in by rule. In contrast, other provisions of TSCA—including part of TSCA section 8(c)—require or authorize the Administrator to act by rule. Section 21 of TSCA allows any person to petition ''to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 2603, 2605, or 2607.'' 15 U.S.C. 2620(a). EPA interprets TSCA section 21 to apply only to the enumerated actions. EPA believes the Congress reasonably chose to extend TSCA section 21 only to the specific rules and orders identified under TSCA section 21. In general, rules are more broadly applicable and more significant regulatory actions than individual implementation actions, such as TSCA section 8(c) call-ins. While TSCA section 21 provides for petitions for 2 types of orders, these rest on findings related to potential health or environmental risks, or production and release of, or exposure to, a chemical or mixture, and each requires potentially significant action by the recipient of the order. Congress chose not to extend TSCA section 21 to other kinds of agency implementation actions.

B. Denial of TSCA Section 8(d) Request

Petitioners requested that EPA promulgate a rule pursuant to TSCA section 8(d) to require submittal of heath and safety studies related to air fresheners, including lab results of ingredients and health effects from respiratory exposures. This request is denied. Petitioners have not set forth sufficient facts to establish that it is necessary to initiate the requested TSCA section 8(d) rulemaking.

First, in order to grant petitioners' request, air fresheners would have to be treated as a category of mixtures, rather than an individual chemical or particular mixture, and based on the limited analyses undertaken in responding to the petition, EPA does not believe that it would be appropriate at this time to treat the vast array of air freshener products as a category. The issues associated with addressing air fresheners as a category are further discussed in Unit III.C.1. Second, petitioners have not provided sufficient facts or information to support their assertion that air fresheners present an unreasonable, or even a significant, risk. Finally, even if petitioners had demonstrated that air fresheners present an unreasonable risk, they have not demonstrated that the requested TSCA section 8(d) rule would be necessary or

an appropriate tool to protect human health against that risk.

As described in Unit II.D., the information that the petitioners relied upon to support their request is not persuasive and is not adequate to support the assertion that air fresheners present a significant public health risk, much less an unreasonable risk.

The cost of this TSCA section 8(d) rule would be substantial for both the industry and the Agency. Although such a rule would not require industry to perform new testing, the scope of studies covered by the requested rule would be very broad. It is not clear whether the ''manufacturers and processors'' that would to be subject to the rule petitioners request are intended to include manufacturers and processors of air freshener ingredients as well as products. Such a rule would potentially cover a very large group of entities, products, and ingredients.

In addition, this rulemaking would require substantial Agency resources to develop, and significant Agency resources would also be required to analyze submitted studies on air fresheners.

Petitioners request EPA to use a TSCA section 8(d) rule to obtain ingredient information. While information on air freshener ingredients could be a useful starting point for assessing whether air fresheners present any significant health risk, TSCA section 8(d) does not provide an efficient or effective way to obtain ingredient information because a TSCA section 8(d) rule would only obtain the ingredient information that was part of a health or safety study. Section 8(d) of TSCA is not designed for, and is not an efficient or effective means of obtaining general or comprehensive ingredient information on air fresheners.

As a second general type of information, petitioners request EPA to use a TSCA section 8(d) rule to obtain information on ''exposure of consumers to air fresheners,'' ''health effects of exposure to air fresheners,'' and ''toxicity, persistence, and other characteristics of air fresheners that affect health and/or the environment.'' EPA generally considers this type of information to be health and safety information, which could be obtained through a TSCA section 8(d) rule. However, air fresheners are mixtures of chemicals, not individual chemicals, and as such contain a large number and wide variety of different chemicals. As a result, the interpretation of individual air freshener study results could be very difficult. When assessing studies of mixtures it is frequently difficult to determine which chemical or combination of chemicals produced a given result or caused a given effect. Further, the likely compositional diversity of the tested air freshener formulations presents EPA with difficulties in assessing the significance of any such health and safety studies in relationship to the ingredients and concentrations that are commonly present in commercially available air fresheners. Moreover, since air freshener ingredients are likely to change over time, the value or significance of health and safety study information on particular air freshener formulations could be limited.

EPA would want a better general understanding of air freshener ingredients before concluding that the broad rule requested by the petitioners is a necessary or efficient tool to address possible health effects associated with air fresheners. In addition, EPA currently does not view collection of TSCA section 8(d) information on air fresheners, or analysis of such information should EPA obtain it, as a high priority among the many chemical issues and activities that the Agency could potentially expend resources investigating, and the petitioners have not persuaded EPA otherwise.

Accordingly, EPA concludes that the petitioners have not set forth sufficient facts to support their assertion (and information available to EPA does not otherwise indicate) that it is necessary or appropriate to issue the requested TSCA section 8(d) rule.

C. Denial of TSCA Section 4 Request

Petitioners requested that EPA promulgate a rule under TSCA section 4 to require ''acute and chronic studies that use appropriate exposure routes and that capture a diversity of life stages and health conditions, such as asthma, for large populations of mammals evaluating the impact of air fresheners on human health. These tests must consider the byproducts of a reaction of the air fresheners with ozone and analyze both exposure and sensitization'' (Ref. 1). This request is denied. Petitioners have not set forth sufficient facts to support their assertion that it is necessary to issue a TSCA section 4 rule, as required by TSCA section 21(b)(1).

In addition to the request for a TSCA section 4 testing rule with respect to ''air fresheners'' as described in the petition, petitioners also presented additional requests, orally and in written comments. EPA does not consider these additional requests part of the TSCA section 21 petition, but nonetheless does address the petitioners' suggested alternative approaches in this unit.

1. *TSCA section 4 request set forth in petition.* Petitioners have not set forth sufficient facts to support their assertion that it is necessary to issue a TSCA section 4 rule for air fresheners.

As a threshold matter, petitioners' request as articulated in the petition would entail treatment of ''air fresheners'' as a category of chemical substances or mixtures (almost certainly mixtures, since it is unlikely that any air freshener is composed of a single chemical substance). Petitioners present both their request and their support for the request in terms of ''air fresheners.'' For example, the petition states, ''air fresheners may pose a risk to public health'' and defines air fresheners broadly to include a ''broad range of product types,'' from sprays to ''plug-ins'' to potpourri. Thus, treatment of air fresheners as a category would be necessary to grant petitioners' request as articulated in the petition.

EPA has broad discretion to determine whether to regulate by category under TSCA section 26(c). Beyond the language of TSCA section 26(c), this discretion is evidenced by the fact that TSCA section 21(b)(4)(B)(i) provides an opportunity for a *de novo* hearing with respect to petitions for testing of chemical substances, but not for categories of chemicals or mixtures. As with mixtures, Congress left the complex issues associated with regulation by category to the Administrator's discretion. Congress intended this authority to ''facilitate the efficient and effective administration'' of TSCA. Senate Report No. 94–698 at p. 31.

While a broad category might be appropriate under certain circumstances, based on the limited analyses undertaken by EPA in responding to the petition, EPA does not believe that treating air fresheners as a category for the purposes of a TSCA section 4 testing rule would be appropriate, efficient, or effective at this time given the large number and wide variety of air fresheners. There is a vast array of mixtures and physical forms within the meaning of air fresheners that the petitioners provide. The category is so broad and varied that similar treatment for each member of the category (i.e., testing of each member) would not be practical, efficient or effective. In addition, EPA is not able at this time, nor would it be able in the reasonably foreseeable future, to identify a standard or standards for development of certain test data, as required by TSCA section 4(b)(1), that would be appropriate to the category as a whole. Specifically, EPA is currently not aware of any standard test

method for testing respiratory sensitization in animals. Given limited information and the lack of applicable standards, a testing rule for the category air fresheners would take years and a very large expenditure of resources for EPA to develop, promulgate and implement. In addition, a requirement to conduct the wide array of testing requested by petitioners would be costly for industry. The implementation of such a requirement would entail multiple methods to test a wide variety of products for each of the identified endpoints. Moreover, even if EPA could identify or devise appropriate test standards for respiratory sensitization, it is not at all certain that testing of air fresheners for this effect or other acute and chronic effects would provide useful data relevant to determining whether air fresheners as a class, or any particular chemical substances or mixtures, present an unreasonable risk. As described in Unit III.B., the interpretation of air freshener study results would be problematic.

Even if category treatment were appropriate, petitioners have not set forth sufficient facts and information to support the TSCA section 4 findings for air fresheners.

First, petitioners have not set forth facts sufficient to support the required finding for mixtures under TSCA section 4(a)(2): That the effects of air fresheners would not be ''reasonably and more efficiently determined or predicted by testing the chemical substances which comprise the mixture.'' 15 U.S.C. 2603(a)(2). EPA has broad discretion to make this finding, and EPA does not, at this time, believe this finding is warranted. (TSCA section 21(b)(4)(B)(i) provides an opportunity for a *de novo* hearing with respect to petitions for testing of individual chemical substances, but not for mixtures.) On the contrary, based on the limited analyses undertaken by EPA in responding to the petition, identifying individual substances used in air fresheners and proceeding with additional requirements only where appropriate with respect to particular substances would be the more reasonable and efficient approach and would allow the Agency to target both public and private resources towards developing useful data. Given more complete information on the chemical substances, EPA might conclude that testing of some air freshener mixtures or ingredients would be appropriate, but petitioners provide no basis to support this finding for the category of air fresheners as a whole.

Petitioners assert that the testing of individual chemical substances alone could lead to gaps in data about synergistic effects or byproducts of air fresheners with ozone. While this is possible, petitioners have not provided any information to support the assertion nor at present does EPA have any basis to evaluate the assertion.

In addition, petitioners have not set forth sufficient facts to support the other required TSCA section 4 findings as described in Unit II.B.2. For example, petitioners have not set forth sufficient facts for EPA to find that information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of air fresheners, or that testing of the air fresheners is necessary to develop missing data. 15 U.S.C. 2603. Petitioners have cited some information in an attempt to make these showings. For example, they point out that the EPA HPV Information System contains no repeat dose toxicity studies for respiratory exposure for the common fragrances reported in the BEUC study, and that more than 25 material safety data sheets (MSDSs) on air fresheners reviewed by the petitioners indicated no data are available for respiratory tract sensitization. This information could be suggestive of an insufficiency of data, but EPA cannot judge whether existing data or experience are insufficient to determine or predict the health effects of air fresheners and, even so, whether new testing would be necessary to develop such data without review of the additional available information. EPA's literature search indicates the existence of many published health and safety studies pertaining to the potential health effects of air fresheners or their ingredients (Ref. 24). Further, comments received on the petition indicate a large body of information created and maintained by the fragrance industry of which many are reported to be published in peer-reviewed scientific literature (Ref. 25).

In light of the large body of additional available information which was not considered by petitioners, the petition does not support petitioners' claims regarding the insufficiency of existing data or that testing is necessary.

For these reasons, the petitioners have not demonstrated that it is necessary or appropriate to issue the requested TSCA section 4 rule.

2. *Additional TSCA section 4 request articulated at meeting.* EPA met with petitioners at their request on October 24, 2007, to discuss this petition. At that time, petitioners indicated that they intended their TSCA section 4 request to be for the testing of individual chemical substances used in air fresheners, not the air fresheners themselves (Ref. 26). A request to promulgate a TSCA section 4 rule with respect to either a category of chemical substances or individual chemical substances is significantly different from the request as articulated in the petition. Given the petitioners' obligation to articulate requests and set forth facts in their petition, EPA does not view this request as part of the petition. Nonetheless, EPA will address the alternative approaches identified by petitioners.

First, EPA does not believe the designation of ''chemical substances used in air fresheners'' as a category of chemical substances for the purpose of the requested TSCA section 4 testing rule is appropriate, for reasons similar to those discussed in Unit III.C.1. This category is extremely large, undefined and indiscriminate. It appears that petitioners are requesting that EPA require testing for all of the chemical substances in all air fresheners (Ref. 27, p. 1). This would be a massive testing rule—significantly larger than any EPA has ever promulgated before. In addition to the sheer scope of the requested rule, similar treatment for each member of the category would not be practical, efficient or effective. The chemical substances in air fresheners have not been completely identified, and EPA has no reason to believe that by virtue of their use in air fresheners, these substances would be appropriate for treatment as a category for the purposes of a TSCA section 4 rule. In addition, petitioners have failed to set forth facts sufficient to support the TSCA section 4 findings as described in Unit II.B.3. with respect to the category of ''chemical substances used in air fresheners.'' The petitioners have not shown that the TSCA section 4 findings can be made for any chemical substance used in air fresheners. In addition, the category is likely to include chemicals that are benign, and/or are not produced in substantial quantities, and/or that have been extensively studied. Therefore, EPA does not believe that the requested testing of all chemical substances used in air fresheners should be applied.

To the extent petitioners seek testing on only some of the chemical substances used in air fresheners, petitioners have not specified for which ingredients testing should be required nor have they provided information that would enable EPA to make the TSCA section 4 findings with respect to any individual chemical substances. Petitioners have identified a few chemical substances used in air fresheners, but they have not set forth facts with respect to any individual

substances to support the TSCA section 4 findings. For example, petitioners identify phthalate esters as a category of chemicals they are concerned about, but they have not shown that phthalate esters as a category, or any particular phthalate ester, meet the findings under TSCA section 4(a)(1). In addition, with respect to phthalate esters, the NAS evaluation regarding phthalate esters will help inform consideration of the sufficiency of the existing data and the need for any testing.

3. *Additional TSCA section 4 request made in comments.* Through written comments on the petition dated November 5, 2007, petitioners presented an additional request for a rule requiring that ''[each of the] manufacturers [of air fresheners] specifically test at least one formulation for each category of air freshener that it sells'' (Ref. 27). EPA again considers this additional request to be different from the request in the petition, and not part of the petition, but will address the alternative approach identified by petitioners.

In order to require testing under TSCA section 4 on a particular mixture, the TSCA section 4 findings must be met with respect to the mixture to be tested. Petitioners' request is essentially for a rule requiring testing on individual mixtures, which they have identified as ''formulations.'' While petitioners' comments imply that any ''formulation'' might be a candidate for testing, they do not identify any particular mixture, nor have they provided a rationale for selecting which air fresheners should be tested.

The petitioners have not set forth facts sufficient to support their assertion that a TSCA section 4 testing rule is necessary with respect to any particular mixture. It is possible that some air freshener ''formulations'' may meet the standards for testing as described in Unit II.B.2., but the petitioners have not identified such a mixture or provided any information toward these findings. For example, the petitioners have not set forth sufficient facts to make the necessary finding under TSCA section 4(a)(2) with respect to any mixture. As described in Unit II.B.3., EPA would have to find that the effects of the mixture ''may not be reasonably and more efficiently determined or predicted by testing the chemical substances which comprise the mixture.'' 15 U.S.C. 2603(a)(2). Here, as described in Unit III.C.1., EPA currently believes that identifying individual substances used in air fresheners and proceeding with additional requirements only where appropriate with respect to particular substances, would be the more reasonable and efficient approach. By way of further example, petitioners have also not set forth sufficient facts to show an insufficiency of data or necessity of testing for any particular formulations. Rather, ''air fresheners'' by the petitioners' own definition encompass a ''broad range of product types'' and varying formulations.

To the extent the petitioners assert that testing of some subset of air fresheners could be required as a category of mixtures, this approach presents the same problems identified in Unit III.C.1. While the category described in the petitioners' comment is not quite as sweeping as the request in their petition, it is still a very expansive and ill-defined category of mixtures, and more information and analysis would be needed to determine if such an approach even merits further consideration.

D. Denial of Request to Issue TSCA Section 6 Labeling Rule

The petitioners requested that EPA issue a rule under TSCA section 6(a)(3) requiring air fresheners to be labeled to identify all ingredients. This request is denied. Petitioners have not set forth sufficient facts to establish that it is necessary to initiate the requested TSCA section 6(a) rulemaking.

In support of their request, the petitioners assert that manufacturers and importers are already aware of the ingredients in their products, that their products are unnecessary, and that requiring the requested labeling would therefore impose an insignificant cost. The petitioners also assert that many of the chemicals present in air fresheners are toxic. However the petition does not provide a reasonable basis to conclude that air fresheners, or the chemicals used in air fresheners, present or will present an unreasonable risk of injury to health or the environment. In addition to the limitations of the three reports petitioners principally rely on, the petition does not provide a basis upon which to estimate the cost of the requested rulemaking. Furthermore, the petition does not provide a basis for finding that the action requested by petitioners would be necessary to protect adequately against any unreasonable risk, or that it is the least burdensome requirement that would adequately protect against such risk.

As a threshold issue, as with their other requests, the petitioners do not demonstrate that any particular air freshener or air freshener ingredient presents or will present an unreasonable risk. The petitioners do briefly discuss some specific risk issues, but their statements are not sufficient to support any risk conclusions about any particular products or ingredients. For example, they cite the conclusions of the SCHER report that burning of some incense products available in Europe generated high benzene concentrations and that such ''benzene emissions need attention to diminish the exposure'' (Ref. 4). EPA does not believe this information is relevant, because the definition of air freshener provided by the petitioners does not appear to include incense. The definition in the petition does not include any products involving combustion—a process that raises issues significantly different from those raised by non-combustion products. In addition, combustion—whether of incense, candles, or anything else—creates chemicals that are not present in the original article, and it does not appear to EPA that the listing of ingredients in the article would be an effective means of protecting against any risk that might result from combustion of the ingredients.

Because the petitioners have not set forth sufficient facts with respect to any particular air freshener mixture or ingredient, EPA would have to treat air fresheners as a category of mixtures in order to grant the petitioners' request under TSCA section 6(a). This would result in a rule requiring labeling for a very broad product type, despite the fact that the petitioners have not shown that any specific air freshener, or air fresheners generally, present or will present an unreasonable risk. As described in Unit II.D., the information that the petitioners relied upon to support their request do not provide sufficient facts to support the assertion that air fresheners present or will present a significant risk, much less an unreasonable risk to human health or the environment. In addition, while not part of the petition, EPA also considered information provided by the petitioners and others during the public comment period. This information also did not provide a reasonable basis to conclude that air fresheners, or the chemicals in air fresheners, present or will present an unreasonable risk of injury to health or the environment.

In addition to the limitations of the risk information provided by petitioners, petitioners did not provide adequate information to address the other components of the unreasonable risk standard. These relate not merely to the effects of the mixture (i.e., air freshener), or the chemicals comprising the mixture, but also to the benefits of the substance(s) for various uses and the availability of substitutes for such uses and to the reasonably ascertainable economic consequences of the control

mechanisms proposed to control the risk.

These considerations are integral to the determination that there is a reasonable basis to conclude that a substance presents or will present an unreasonable risk, and the petitioners have not presented sufficient facts to address them. The petitioners asserted that the costs of their requested controls would be small and that the benefits of their controls would reduce risk, but provided no data or other information to substantiate either their estimates of cost or of the efficacy of their proposed control action. With respect to cost, contrary to petitioners' assertion, it seems likely to EPA that the cost of a rule requiring the listing of every ingredient of every air freshener would be substantial. The cost to the Agency of promulgating such a rule would also be very large. EPA would need to develop sufficient information to provide a reasonable basis to conclude that air fresheners as a category present or will present an unreasonable risk (it would need a record significantly more extensive than the information supplied by petitioner), and that product labeling is the least burdensome requirement that would adequately address that risk. The petitioners made no attempt to address this last requirement.

With regard to the benefits of air fresheners, even assuming air fresheners provide no public health value, this is not the only kind of benefit cognizable under TSCA. As petitioners recognize, air fresheners are purchased in large quantities, which suggests that consumers place significant value on them.

In sum, the petitioners have not set forth sufficient facts to establish that the requested rulemaking under TSCA section 6 is necessary, and EPA has denied the request.

IV. Comments Received

EPA published a notice in the **Federal Register** issue October 23, 2007 (72 FR 60016) (FRL–8154–5) announcing receipt of the petition and inviting public comment on or before November 7, 2007. EPA received 28 timely comments, 4 of which were from the petitioners. One of the comments was received the day after the comment deadline due to a delivery problem on the part of the courier. EPA decided to consider this comment with the others.

Eleven comments were from individuals who supported the petition. Several were allergy or asthma sufferers who felt that air fresheners aggravate their health problems. Several indicated a belief that manufacturers are not adequately testing their products and were especially concerned about children and air freshener misuse.

Five comments were from health, environmental, or animal welfare non-profit organizations (Toxics Information Project, Environmental Health Coalition of Western Massachusetts, People for the Ethical Treatment of Animals (PETA), Ecological Health Organization (ECHO), and the American Lung Association of New England). Four of the five supported the petition, while the fifth, PETA, supported portions of the petition in principle, while opposing the portion calling for testing on large numbers of animals. PETA criticized some of the information that the petitioners cited in support of their petition, and argued that additional animal testing is not necessary and would not provide useful information on the effects of air fresheners on human health.

Eight comments were received from air freshener manufacturing companies named in the petition and from trade organizations representing manufacturers of fragrance and fragrance-related products. (Reckitt Benckiser, Soap and Detergent Association, Grocery Manufacturers/Food Products Association, Fragrance Materials Association of the United States, Consumer Specialty Products Association, Dial Corporation, American Chemistry Council Phthalate Esters Panel, and Blythe, Inc.). All of these companies and organizations opposed EPA granting any part of the petition. The American Chemistry Council Phthalate Esters Panel and the Fragrance Materials Association of the United States (FMA) comments focused on the safety of several phthalate esters and the remainder of the commenters focused on air fresheners and fragrances generally.

The Consumer Specialty Products Association (CSPA) comments are representative of the industry comments, and almost all of the other industry commenters specifically endorsed CSPA's comment submission. The CSPA comment argued that the petition should be denied because:

1. There is inadequate evidence that air fresheners cause significant adverse reactions.

2. Sufficient air freshener safety data are already available to EPA.

3. The fragrance industry is already engaged in safety testing.

4. Labeling requirements are unjustified and duplicative of FHSA.

CSPA's comments asserted that the fragrance industry is adequately self-regulating through an industry research and testing organization, Research Institute for Fragrance Materials, and an industry standards-setting organization, International Fragrance Association. The comment included documents explaining the role of these organizations in the evaluation of ingredient safety by the fragrance industry. CSPA comments (and those from the two companies) explained the product stewardship programs used by Reckitt Benckiser and SC Johnson. CSPA's comments included their disagreements with and criticisms of the studies and data that petitioners used to support their position, and supplied additional studies that CSPA argued demonstrate the safety of fragrances and/or air fresheners.

The petitioners submitted four more comments, including two epidemiological studies: One on household cleaning sprays and adult asthma and one on prenatal phthalate ester exposure. Petitioners also submitted a press release about a National Institutes of Health (NIH) study concluding that exposure to 1,4-dichlorobenzene, a VOC, used in household cleaning products, may cause reductions in lung function. Finally, petitioners submitted a comment clarifying two terms used in their petition, and further defining the type and scale of testing they are petitioning for under TSCA section 4. Given the petitioners' obligation to clearly articulate requests and set forth facts in their original petition and the short span of time within which EPA must respond to the petition as written, EPA does not view the clarifications and scope modifications subsequently submitted in petitioner's comments as components of the petition. Nevertheless, EPA has considered and addressed petitioners' comments, as detailed in Unit III.

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List of Subjects

Environmental protection, Air fresheners, Phthalates, Volatile Organic Compounds (VOCs).

Dated: December 18, 2007.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

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LIST OF PUBLIC LAWS

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H.R. 3315/P.L. 110–139

To provide that the great hall of the Capitol Visitor Center shall be known as Emancipation Hall. (Dec. 18, 2007; 121 Stat. 1491)

H.R. 6/P.L. 110–140

Energy Independence and Security Act of 2007 (Dec. 19, 2007; 121 Stat. 1492)

H.R. 4118/P.L. 110–141

To exclude from gross income payments from the Hokie Spirit Memorial Fund to the victims of the tragic event at Virginia Polytechnic Institute & State University. (Dec. 19, 2007; 121 Stat. 1802)

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